



Life Insurance Act 1995

No. 4, 1995

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This compilation includes commenced amendments made by Act No. 9, 2018 and Act No. 10, 2018. The amendment made by Act No. 13, 2018 has not commenced but is noted in the endnotes.

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About this compilation

This compilation

This is a compilation of the *Life Insurance Act 1995* that shows the text of the law as amended and in force on 5 March 2018 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1	Short title.....1
2	Commencement.....1
3	Objects of Act.....1
4	Additional operation of Act.....2
5	Exclusion of certain State insurance.....3
6	Extension of Act to Norfolk Island.....3
7	General administration of Act.....3
7A	Determination that certain provisions do not apply.....4
7B	Breach of condition of a determination under section 7A.....5
8	Dictionary.....5
Part 2—Explanation of key concepts	7
9	Life policy.....7
9A	Continuous disability policy.....8
10	Issue and ownership of policies.....9
11	Life insurance business.....9
12	Classes of life insurance business.....11
12A	Declarations that insurance or annuity business is life insurance business.....11
12B	Declarations that other financial business is life insurance business.....12
13	Business of a statutory fund.....15
14	Investment account benefits, investment-linked benefits.....15
15	Participating, non-participating benefits.....17
15A	Relevant group of bodies corporate.....17
16	Related bodies corporate and subsidiaries.....18
Part 2A—Special provisions relating to life companies that are friendly societies	19
Division 1—Preliminary	19
16A	Overview.....19
16B	Definitions.....20
Division 2—Friendly societies and how this Act applies to them	22
16C	What is a friendly society?.....22

16D	Act applies to friendly societies in accordance with this Part	23
16E	Restriction on use of expression <i>friendly society</i>	23
Division 3—Modified operation of key concepts		26
16F	Issue, ownership etc. of policies	26
Division 4—Modified operation of provisions relating to statutory funds		28
Subdivision 1—Modifications		28
16G	Act generally applies as if references to a statutory fund were references to an approved benefit fund	28
16H	Modification of section 34.....	28
16I	Modification of section 38.....	29
16J	Modification of section 43.....	30
16K	Modification of section 45.....	30
Subdivision 2—Approved benefit fund rules		30
16L	Approval of benefit fund rules.....	30
16N	When benefit fund rules approved by APRA come into force	32
16O	Benefit fund rules approved by APRA and in force form part of company's constitution.....	32
16P	Amendment of approved benefit fund rules not effective unless approved by APRA.....	32
16Q	Amendment of approved benefit fund rules on initiative of friendly society.....	33
16R	Amendment of approved benefit fund rules as required by APRA	34
16T	When amendment of benefit fund rules approved or determined by APRA come into force	35
16U	Approval of consequential amendments of company's constitution.....	36
16V	Consequential amendments of constitution as required by APRA	37
16X	When consequential amendments approved or determined by APRA come into force.....	39
16Y	Consequential amendments approved by APRA and in force take effect as amendments of company's constitution.....	40
16Z	Contractual effect of approved benefit fund rules and policies.....	40

Division 5—Other modifications	41
16ZA Assignment of an interest in a benefit fund that is, because of section 16F, taken to be a policy.....	41
16ZB Certain friendly societies may continue to carry on health insurance business—modified operation of this Act	41
16ZC Other modifications	42
Part 2B—Special provisions relating to Australian branches of foreign life insurance companies	43
16ZD Eligible foreign life insurance company	43
16ZE Limited application of Act to eligible foreign life insurance companies.....	44
16ZF Compliance Committee of eligible foreign life insurance company	45
16ZG Address for service of eligible foreign life insurance companies.....	46
Part 3—Registration of life companies and their NOHCs	47
Division 1—Registration of life companies	47
17 When registration is required	47
18 Certain activities not regarded as carrying on life business	47
19 Certain persons taken to carry on life business etc.	48
20 Application for registration	48
21 Decision on application for registration	49
22 Conditions on registration	49
23 Breach of registration conditions.....	50
26 When APRA may revoke registration	51
27 Voluntary deregistration.....	53
27A Assignment of liabilities to enable revocation.....	53
Division 2—Registration of NOHCs of life companies	56
28A Registration as a NOHC	56
28B Conditions on a NOHC registration	56
28BA Breach of conditions on a NOHC registration.....	57
28C When APRA may revoke a NOHC registration	58
28D When APRA must revoke a NOHC registration	59
28E Continuation of body corporate's NOHC registration.....	59
28 Continuation of effect of company's registration	60

28AA	APRA may give notice to ensure that life company has a registered NOHC	60
Part 4—Statutory funds of life companies		62
Division 1—General requirements		62
29	What is a statutory fund?	62
30	Outline of requirements regarding statutory funds	62
31	Requirement that company have statutory funds	63
32	Duty of company in relation to statutory funds	63
33	Notice to APRA when fund established	64
34	Assets of statutory fund	64
35	Identification of policies referable to statutory fund	65
36	Payments to statutory fund	66
37	Capital payments to statutory funds	67
38	Expenditure and application of statutory fund	67
39	Prohibition of reinsurance between funds	68
40	Mortgages etc. of assets	68
41	Effect of non-compliance with section 38—general	69
41A	Effect of non-compliance with section 38—certain classes of transactions	70
42	Investment performance guarantee—limit of certain liabilities	70
43	Investment of statutory funds	71
45	Transfer of assets between funds	72
46	Restriction on restructure or termination of statutory funds	73
47	Ascertainment of income and outgoings of a statutory fund	73
Division 2—Duties and liabilities of directors etc.		74
48	Duty of directors in relation to statutory funds	74
49	APRA may give notice	75
50	Liability of directors	76
51	APRA’s power to sue in the name of a company	76
Division 3—Restructure and termination of statutory funds		77
52	Restructure of statutory funds	77
53	Termination of statutory funds	78

Division 4—Additional requirements for transfer of policies between statutory funds by endorsement	80
55 Additional requirements for transfer of policies between statutory funds by endorsement.....	80
Division 5—Allocation of profits and losses and capital payments	81
56 Interpretation	81
57 Obligation to allocate operating profit or loss	81
58 Operating profit etc.	82
59 Allocation of operating profit etc.	82
60 Basis of allocation of operating profit etc.....	83
Division 6—Distribution of retained profits and shareholders’ capital	86
61 Interpretation	86
62 Distribution of retained profits	88
63 Distribution of shareholders’ capital	89
Part 6—Financial management of life companies etc.	91
Division 1—Preliminary	91
74 Interpretation	91
Division 2—Financial records and statements	92
75 Financial records—Australian and Australian/overseas funds.....	92
76 Financial records—overseas funds	92
76A Keeping records.....	93
77 Financial year of a life company	94
78 Treatment of income and outgoings relating to mixed business	95
79 Treatment of income or outgoings relating to 2 or more categories of business etc.	96
80 Basis of apportionment.....	97
81 Treatment of appreciation and depreciation of assets	97
83 Requirement for life company to have an auditor	97
83A Additional auditors	98
83B Compliance with prudential standards.....	98
84 Appointment of auditor	98
85 Ending an appointment as auditor	98
86 Life company must enable auditors.....	99
87 Notification of appointment etc. of auditor	99

88	Obligations of auditors of certain bodies to report to bodies and APRA	100
88A	Auditor may give information to APRA	102
88B	Duty of auditor to give information when required	102
89	Qualified privilege of auditors.....	103
90	Auditor must notify APRA of attempts to unduly influence etc. the auditor	103
91	Giving auditor false or misleading information	104
Division 3—Appointed actuaries		106
93	Appointment.....	106
94	Ending an appointment as actuary.....	106
95	Notification of appointment etc.	107
96	Compliance with prudential standards.....	108
97	Role of actuary	108
98	Actuary's obligation to report to APRA	108
98A	Appointed actuary may give information to APRA.....	110
98B	Duty of appointed actuary to give information when required.....	110
99	Qualified privilege of appointed actuary	111
Division 8—Miscellaneous		113
114	Method of valuing policy liabilities.....	113
124	Policy owner's right to copy of reporting documents	113
125	Referring matters to professional associations for auditors and actuaries	113
125A	APRA may direct removal of auditor or actuary	114
Part 7—Monitoring and investigation of life companies and registered NOHCs		117
Division 1—Preliminary		117
126	Interpretation	117
127	Appointment of authorised persons	118
128	Associated body corporate	118
129	Related bodies corporate	118
Division 2—Monitoring life companies and registered NOHCs		120
130	Purpose of Division	120
131	Requirement to give information to Regulator	120
132	Requirement to produce records.....	121
132A	Requirement to notify APRA of certain matters.....	121

133	Access to premises	124
133A	Enforceable undertakings	125
Division 3—Investigation by APRA		126
135	Giving of show cause notice	126
136	Grounds for giving of show cause notice	126
137	Decision to investigate	127
138	Investigation of associated body corporate	128
139	Investigation procedure	129
140	Access to premises for purposes of investigation	129
141	Requirement to produce records	129
142	Regulator's power to require assistance	130
143	Application for warrant to seize records not produced	130
144	Grant of warrant	131
145	Powers if records produced or seized	132
146	Powers if records not produced	133
147	Offences related to investigations	133
149	Regulator must give body corporate written summary of conclusions	134
151	Identity cards	134
Division 3A—Life companies required to comply with determinations of the Superannuation Complaints Tribunal		136
151A	Life companies must comply with determinations of the Superannuation Complaints Tribunal	136
Division 4—Special provisions relating to the execution of warrants		137
152	Interpretation	137
153	Use of equipment to examine or process things	137
154	Use of electronic equipment at premises	138
155	Compensation for damage to electronic equipment	140
156	Copies of seized things to be provided	140
Division 5—Protections in relation to information		142
Subdivision A—Protection for whistleblowers		142
156A	Disclosures qualifying for whistleblower protection	142
156B	Whistleblower protection for disclosures that qualify	143

156C	Victimisation of whistleblowers prohibited.....	144
156D	Right to compensation.....	145
156E	Confidentiality requirement for body and its officers, employees and auditors	146
Subdivision B—Self-incrimination		147
156F	Self-incrimination.....	147
Part 8—Judicial management, other external administration and winding up		149
Division 1—Judicial management		149
157	Application for order for judicial management	149
158	Order for judicial management after investigation	149
159	Order for judicial management on other grounds	150
160	Commencement of judicial management	151
161	Moratorium—effect of judicial management on court and tribunal proceedings	151
161A	Moratorium—effect of judicial management on enforcement process regarding property	153
161B	Moratorium—effect of judicial management on disposal of property	154
161C	Moratorium—Restrictions on exercise of third party property rights	155
161D	Moratorium—effect of judicial management on supply of essential services	155
161E	Moratorium—effect of judicial management on annual general meeting.....	156
163	Appointment of judicial manager	156
164	Remuneration of judicial manager	157
165	Effect of judicial management on powers of officers etc.	158
165A	Effect on external administrator of judicial manager managing company.....	160
165B	Judicial management not ground for denial of obligations	160
166	Continued application of other Parts of Act	161
167	Court’s control of judicial manager	162
168	Powers of judicial manager	162
168A	Judicial manager’s additional powers to facilitate recapitalisation	163
168B	Considering report before acting under section 168A.....	164

168C	Act under section 168A not ground for denial of obligations	167
169	Application by APRA for instructions to judicial manager	168
170	Request by APRA for information	168
171	Duration of judicial management	168
172	Cancellation of judicial management	168
173	Judicial manager must conduct management efficiently and economically	169
174	Disclaimer of onerous property	170
175	Report by judicial manager	170
176	Order of Court on report of judicial manager	172
177	Transfer of business to another company	173
178	Resignation.....	173
179	Immunity	173
179A	Exceptions to Part IV of the <i>Competition and Consumer Act 2010</i>	174
Division 1AA—Statutory management of life company		175
Subdivision A—General provisions relating to statutory management		175
179AA	Consequences of inability or failure of life company etc. to meet certain requirements	175
179AB	Start of control of body corporate's business by Life Insurance Act statutory manager.....	179
179AC	Life Insurance Act statutory managers—termination of control.....	180
Subdivision B—Provisions dealing with control of a body corporate's business by a Life Insurance Act statutory manager		182
179AD	Life Insurance Act statutory manager's powers and functions	182
179AE	Safeguards on exercise of Life Insurance Act statutory manager's powers and functions.....	185
179AF	Life Insurance Act statutory manager's additional powers to facilitate recapitalisation	186
179AG	Considering report before acting under section 179AF	188
179AH	Act under section 179AF not ground for denying obligation.....	190
179AI	APRA may require a person to give information etc. for the purposes of this Division	191

179AJ	Administrator in control—additional powers to recommend action by APRA.....	193
179AK	Life Insurance Act statutory manager’s liabilities and duties	194
179AL	Transaction by Life Insurance Act statutory manager not voidable under section 588FE of the <i>Corporations Act 2001</i>	194
179AM	Administrator in control—additional duties	195
179AN	Administrator in control—additional duties where action may affect financial system stability in Australia	196
179AO	Termination of Life Insurance Act statutory manager’s appointment	196
179AP	Effect on directors of Life Insurance Act statutory manager taking control of a body corporate’s business	197
179AQ	Effect on external administrator of Life Insurance Act statutory manager taking control of a body corporate’s business	199
179AR	Moratorium—effect of Life Insurance Act statutory management on court and tribunal proceedings	199
179AS	Moratorium—effect of Life Insurance Act statutory management on enforcement process regarding property	201
179AT	Moratorium—effect of Life Insurance Act statutory management on disposal of property	202
179AU	Moratorium—Restrictions on exercise of third party property rights	203
179AV	Moratorium—effect of Life Insurance Act statutory management on supply of essential services	203
179AW	Moratorium—effect of Life Insurance Act statutory management on annual general meeting	204
179AX	Life Insurance Act statutory manager being in control not grounds for denial of obligations.....	204
179AY	Application of other provisions	205
179AZ	Costs of statutory management.....	205
179AZA	APRA must report to Treasurer and publish information about statutory management	206
179AZB	Exceptions to Part IV of the <i>Competition and Consumer Act 2010</i>	207

Division 1A—Other external administration	208
179B Relationship of this Division with Chapter 5 of the <i>Corporations Act 2001</i>	208
179C Involving APRA in proposed appointment of external administrators of life companies and NOHCs	208
Division 2—Winding-up	210
180 Winding-up of life companies	210
181 Order on application by APRA	211
182 Operation of Corporations Act	212
183 Notification to APRA regarding applications by liquidator	212
183A Application by liquidator for directions— voluntary winding up of friendly society	212
183B Application by APRA—voluntary winding up of friendly society	213
184 Application by APRA for directions	213
185 APRA’s power to ask for information	213
186 Determination of amounts to be treated as liabilities of life company	214
187 Application of statutory fund assets	215
188 Liability of directors for loss to statutory fund	216
Part 9—Transfers and amalgamations of life insurance business	218
189 Interpretation	218
190 Transfer or amalgamation of life insurance business	218
191 Steps to be taken before application for confirmation	219
192 Actuarial report on scheme	220
193 Application to Court	220
194 Confirmation of scheme	220
195 Effect of confirmation etc	221
196 Costs of actuary’s report	221
197 Documents to be lodged in case of transfer or amalgamation	221
Part 10—Provisions relating to policies	222
Division 1—Issue of policies	222
198 Alteration of proposal and policy forms	222

199	Capacity of young persons to insure etc.	223
Division 2—Assignments and mortgages		224
200	Assignment of policy.....	224
201	Mortgages and trusts	226
202	Effect of notice of trust etc.	227
203	Transfer of policy after change of trustee.....	227
Division 2A—Restriction on assignment or commutation of payments under structured settlements and structured orders		229
203A	Definitions.....	229
203B	Application of Division to tax-exempt annuities and lump sums.....	229
203C	Assignments or commutations of tax-exempt annuities are generally not effective	230
203D	Assignments or commutations of tax-exempt lump sums are not effective.....	230
203E	Relationship with Division 2.....	230
Division 3—Protection of policies		231
204	Protection of interest of insured.....	231
205	Protection of policy money on person's death.....	231
Division 4—Surrender values, paid-up policies and non-forfeiture of policies		233
206	Application of Division.....	233
207	Surrender of policies	233
208	Relaxation of company's obligations to surrender	234
209	Paid-up policies	234
210	Non-forfeiture of policies in certain cases of non-payment of premiums.....	235
Division 5—Payment of policy money		237
211	Probate or administration not necessary in certain cases—a single policy	237
212	Probate or administration not necessary in certain cases—2 or more policies.....	238
213	Death of policy owner who is not the life insured	239
214	Company not bound to see to the application of money paid by it.....	240
215	Power to pay money into Court.....	240
216	Unclaimed money	240

216A	Disclosure of information relating to unclaimed money	244
217	No deduction in respect of other policies	244
Division 6—Children’s advancement policies		246
218	Interpretation	246
219	Property in child’s advancement policy	247
220	Death or bankruptcy of policy owner	247
Division 7—Lost or destroyed policy documents		249
221	Lost or destroyed policy—issue of replacement policy document	249
222	Form of replacement policy document	250
223	Notice before issuing replacement policy document	250
224	Claim under policy where policy document lost or destroyed	251
225	Application of sections 221, 222, 223 and 224 to replacement policy document	252
Division 8—General		253
226	Registers	253
227	Registration of policies	253
228	Effect of suicide on policy	254
229	Condition as to war risk void	254
230	Policies not invalidated by contraventions of the Act	254
Part 10A—Prudential standards and directions		255
Division 1—Prudential standards		255
230A	APRA may make prudential standards for life companies, registered NOHCs and subsidiaries	255
230AAA	Obligation to comply with the prudential standards	258
Division 1A—Conversion and write-off provisions		259
230AAB	Definitions	259
230AAC	Conversion and write-off provisions	260
230AAD	Conversion or write-off etc. not grounds for denial of obligations	261
Division 2—Directions		263
Subdivision A—Recapitalisation directions		263
230AA	Who this Subdivision applies to	263

230AB	Recapitalisation direction by APRA.....	264
230AC	Additional contents of a recapitalisation direction	265
230AD	Compliance with a recapitalisation direction.....	267
230AE	APRA must obtain expert's report on the fair value of shares etc.	267
230AF	Determination of the fair value of shares by an expert.....	269
230AG	Determination of the fair value of rights by an expert.....	269
230AH	Ascertaining the fair value of other capital instruments	270
230AI	Contravention of certain provisions does not affect the validity of recapitalisation direction etc.....	270
230AJ	Recapitalisation direction not grounds for denial of obligations	271
230AK	Supply of information about issue and revocation of recapitalisation directions.....	271
230AL	Non-compliance with a recapitalisation direction	273
230AM	Exceptions to Part IV of the <i>Competition and Consumer Act 2010</i>	274
Subdivision B—Other directions		275
230B	APRA may give directions in certain circumstances	275
230C	Direction not grounds for denial of obligations	282
230D	Supply of information about issue and revocation of directions.....	283
230F	Non-compliance with a direction	284
Subdivision C—Secrecy and disclosure provisions relating to all directions		286
231	APRA may determine that a direction is covered by secrecy provision.....	286
231A	Secrecy relating to directions	287
231B	Disclosure of publicly available information.....	288
231C	Disclosure allowed by APRA	288
231D	Disclosure to legal representative for purpose of seeking legal advice.....	289
231E	Disclosure allowed by APRA Act secrecy provision.....	289
231F	Disclosure in circumstances set out in the regulations	290
231G	Disclosure for purpose.....	290

231H	Exceptions operate independently	291
Part 11—Miscellaneous		292
233	Operation of State and Territory laws	292
233A	Transfer by life insurance company to statutory fund	292
234	Prohibition of mixed insurance business	293
235	Injunctions	293
236	Review of certain decisions	296
237	Constitution and procedure of Tribunal	299
240	Register of Life Companies and Non-Operating Holding Companies	300
241	Inspection of Register etc.	300
242	Non-shareholder members of life company— voting by post	301
245	Disqualified persons not to be directors, principal executive officers etc. of life companies	302
245A	Court power of disqualification	305
245B	Court power to revoke or vary a disqualification etc.	306
245C	Privilege against exposure to penalty— disqualification under section 245A	307
246	Principal executive officer	308
246A	Protection from liability—general	309
246B	Protection from liability—directions and secrecy	309
246C	Protection from liability—provisions do not limit each other	310
247	Protection of person who discloses information etc. under compulsion	310
248	Offences	311
250	Conduct by directors, employees and agents	311
251	Compensation for acquisition of property	313
251AA	Act has effect despite the Corporations Act	313
251A	Authorising contracts etc. for protecting policy owners' interests and financial system stability	314
251B	Borrowing funds for payments under authorised contracts etc.	315
253	Regulations	316
Part 12—How this Act affects existing life companies etc.		317
254	Companies registered under <i>Life Insurance Act</i> <i>1945</i>	317

264	Saving provision: sections 83, 84 and 94 of the <i>Life Insurance Act 1945</i>	317
Schedule—Dictionary		319
Endnotes		328
Endnote 1—About the endnotes		328
Endnote 2—Abbreviation key		330
Endnote 3—Legislation history		331
Endnote 4—Amendment history		341
Endnote 5—Editorial changes		361

An Act relating to life insurance, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Life Insurance Act 1995*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act

- (1) The main objects of this Act are:
 - (a) to protect the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry; and
 - (b) to promote financial system stability in Australia.
- (1A) An additional object of this Act is to protect the interests of persons entitled to other kinds of benefits provided in the course of carrying on life insurance business (including business that is declared to be life insurance business).
- (2) The principal means adopted for the achievement of these objects are the following:

Section 4

- (a) restricting the conduct of life insurance business to companies that are able to meet certain requirements as to suitability;
 - (b) imposing on life companies requirements designed to promote prudent management of the life insurance business of such companies, including requirements designed to ensure the solvency and capital adequacy of statutory funds;
 - (c) providing for the supervision of life companies by APRA and ASIC;
 - (d) providing for APRA to manage or respond to circumstances in which the ability of a life company to meet its obligations may be threatened;
 - (e) making provision to ensure that, in the winding-up of a life company, the interests of policy owners are adequately protected;
 - (f) providing for the supervision of transfers and amalgamations of life insurance business by the Court.
- (3) Generally, this Act achieves these objects by provisions applying to all life companies. However, there are a number of special provisions that apply only to friendly societies (see in particular Part 2A).

4 Additional operation of Act

- (1) Without prejudice to its effect apart from this subsection, this Act also has the effect it would have if each reference to a company were, by express provision, confined to a company that is a corporation to which paragraph 51(xx) of the Constitution applies.
- (2) Without prejudice to its effect apart from this subsection, this Act also has the effect it would have if each reference to a subsidiary of a life company were, by express provision, confined to such a subsidiary that:
 - (a) is a corporation to which paragraph 51(xx) of the Constitution applies; or

Section 5

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

5 Exclusion of certain State insurance

This Act does not apply with respect to State insurance that does not extend beyond the limits of the State concerned.

6 Extension of Act to Norfolk Island

This Act extends to the Territory of Norfolk Island.

7 General administration of Act

- (1) Subject to subsection (3):
 - (a) APRA has the general administration of:
 - (i) Parts 3 to 6; and

Section 7A

- (ii) Parts 8 to 9; and
 - (iii) sections 206 to 210; and
 - (iiia) Part 10A; and
 - (iv) Part 12; and
 - (b) ASIC has the general administration of Part 10 (other than sections 206 to 210).
- (2) Parts 1 to 2, 7 and 11 confer powers and duties on APRA for the purposes of APRA's administration of its provisions and powers and duties on ASIC for the purposes of its administration of its provisions.
- Note: Generally neither APRA nor ASIC is referred to in these provisions. Regulator is used instead. See the definition of **Regulator** in the Dictionary in the Schedule.
- (3) The Minister may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

7A Determination that certain provisions do not apply

- (1) APRA may, in writing, determine that any or all of the following provisions of this Act do not apply to a person while the determination is in force:
- (a) a provision of Part 2, 2A, 2B or 3;
 - (b) a provision of Division 1, 3, 4, 5 or 6 of Part 4;
 - (c) section 75;
 - (d) section 76;
 - (e) section 78;
 - (f) section 79;
 - (g) section 80;
 - (h) section 81;
 - (j) section 230AAA.
- (2) The determination:
- (a) may be expressed to apply to a particular person or to a class of persons; and

Section 7B

- (b) may specify the period during which the determination is in force; and
 - (c) may be made subject to specified conditions.
- (3) If APRA makes a determination that applies to a particular person, APRA must also give the person written notice of the determination.
- (4) APRA may, in writing, vary or revoke a determination under this section.
- (5) The following instruments made under this section are not legislative instruments:
 - (a) a determination that applies to a particular person;
 - (b) an instrument varying or revoking a determination that applies to a particular person.
- (6) Otherwise, an instrument made under this section is a legislative instrument.

7B Breach of condition of a determination under section 7A

- (1) A person commits an offence if:
 - (a) a determination under section 7A applies to a person; and
 - (b) the person does or fails to do an act; and
 - (c) doing or failing to do the act results in a breach of a condition to which the determination is subject.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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

8 Dictionary

- (1) A dictionary of expressions used in the Act is contained in the Schedule.

Section 8

- (2) Unless the contrary intention appears, an expression defined in the dictionary has the meaning there set out.

Part 2—Explanation of key concepts

9 Life policy

- (1) Subject to subsection (2), each of the following constitutes a life policy for the purposes of this Act:
 - (a) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;
 - (b) a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life;
 - (c) a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life;
 - (d) a contract that provides for the payment of an annuity for a term not dependent on the continuance of human life but exceeding the term prescribed by the regulations for the purposes of this paragraph;
 - (e) a continuous disability policy;
 - (f) a contract (whether or not it is a contract of insurance) that constitutes an investment account contract;
 - (g) a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract.
- (2) A contract that provides for the payment of money on the death of a person is not a life policy if:
 - (a) by the terms of the contract, the duration of the contract is to be not more than one year; and
 - (b) payment is only to be made in the event of:
 - (i) death by accident; or
 - (ii) death resulting from a specified sickness.

Section 9A

9A Continuous disability policy

- (1) Subject to this section, a continuous disability policy is a contract of insurance:
 - (a) that is, by its terms, to be of more than 3 years' duration; and
 - (b) under which a benefit is payable in the event of:
 - (i) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the *insured*); or
 - (ii) injury to, or disability of, the insured as a result of accident or sickness; or
 - (iii) the insured being found to have a stated condition or disease.
- (2) A contract of insurance that is, by its terms, to be of a duration of not more than 3 years is taken to comply with paragraph (1)(a) if:
 - (a) contracts of insurance of the same kind as the contract are usually of more than 3 years' duration; and
 - (b) the contract is of a lesser duration only because of the age of the owner of the policy at the time when it was entered into.
- (3) A contract of insurance is not a continuous disability policy if the terms of the contract permit alteration, at the instance of the life company concerned, of the benefits provided for by the contract or the premiums payable under the contract.
- (4) A contract of insurance the terms of which permit alteration, at the instance of the life company concerned, of the benefits provided for by the contract is not thereby excluded by subsection (3) from being a continuous disability policy if, by those terms, the only alterations that are permitted to be made are alterations that improve the benefits and are made following an offer made by the life company and accepted by the owner of the policy.
- (5) A contract of insurance the terms of which permit alteration, at the instance of the life company concerned, of the premiums payable under the contract is not thereby excluded by subsection (3) from being a continuous disability policy if the terms of all contracts of

the same kind as the contract only permit such alterations if they are made on a simultaneous and consistent basis.

- (6) A contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984* is not a continuous disability policy.
- (7) A contract of insurance entered into in the course of carrying on health insurance business is not a continuous disability policy.

10 Issue and ownership of policies

- (1) For the purposes of this Act:
 - (a) a life company issues a policy when the company enters into the contract that constitutes the policy; and
 - (b) a policy is issued to the person with whom the life company enters into the contract.
- (2) For the purposes of this Act, the owner of a policy is:
 - (a) the person to whom the policy is issued; or
 - (b) if the rights of that person under the policy have been assigned under this Act or transferred by the operation of the policy, the person who has those rights.

11 Life insurance business

- (1) A reference in this Act to life insurance business is a reference to:
 - (a) business that consists of any or all of the following:
 - (i) the issuing of life policies;
 - (ii) the issuing of sinking fund policies;
 - (iii) the undertaking of liability under life policies;
 - (iv) the undertaking of liability under sinking fund policies;and
 - (b) any business that relates to business referred to in paragraph (a).

Note: Declarations under sections 12A and 12B have the effect of extending the kinds of business that are life insurance business for the purposes of this Act.

Section 11

- (2) In order to avoid doubt and without limiting paragraph (1)(b), it is declared that the reference in that paragraph to business that relates to business referred to in paragraph (1)(a) includes business relating to the investment, administration and management of the assets of a statutory fund.
- (3) For the purposes of this Act, the following do not constitute life insurance business:
- (a) business in relation to benefits provided by a trade union for its members or their dependants;
 - (b) business in relation to the benefits provided for its members or their dependants by an association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*;
 - (c) business in relation to any scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or by employees, or by both, wholly through an organisation established by the employer or employees or by both;
 - (d) in the case of a person who issues policies to his or her employees, and not to any other persons, in Australia, the business that consists of the issue of those policies or the undertaking of liability under those policies;
 - (e) business in relation to a scheme or arrangement for the provision, by a person other than a life company, of benefits consisting of:
 - (i) the provision of funeral, burial or cremation services, with or without the supply of goods connected with such services; or
 - (ii) the payment of money, on the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of the person;and no other benefits, except benefits incidental to the scheme or arrangement.

Section 12

Note: This subsection has effect subject to sections 12A and 12B (under which certain business may be declared to be life insurance business for the purposes of this Act).

12 Classes of life insurance business

- (1) For the purposes of this Act, the following are the classes of life insurance business:
 - (a) ordinary business;
 - (b) superannuation business.The expressions “ordinary business” and “superannuation business” are defined in the Dictionary.
- (2) APRA may, at the request of a life company, declare, in writing, that life insurance business carried on by the life company and included in one class of life insurance business is to be treated, for the purposes of this Act, as if it were included in the other class of life insurance business.
- (3) If APRA makes a declaration:
 - (a) this Act has effect accordingly; and
 - (b) APRA must give a copy of the declaration to the life company at whose request the declaration was made.

12A Declarations that insurance or annuity business is life insurance business

- (1) APRA may, on the application of a company, declare, in writing, that insurance business (other than health insurance business or business of insurance against loss of, or damage to, property) or business relating to the payment of annuities:
 - (a) that is carried on by the company; or
 - (b) that the company proposes to carry on;is to be treated, for the purposes of this Act, as if it were life insurance business.
- (2) The application must comply with any applicable requirements in the prudential standards.

Section 12B

- (3) APRA must only make the declaration if it is satisfied that:
 - (a) the company is a life company; or
 - (b) the company is not currently a life company, but the only business it proposes to carry on if the declaration is made is:
 - (i) the business in respect of which the declaration is sought; or
 - (ii) that business and other business that will be, or is likely to be declared to be, life insurance business.
- (4) In deciding whether to make the declaration, APRA may also have regard to the following matters:
 - (a) whether the business in respect of which the declaration is sought is similar in nature to other life insurance business;
 - (b) whether it would be appropriate for the business to be regulated under this Act;
 - (c) whether it would be more appropriate for the business to be regulated under some other law (for example, the *Insurance Act 1973*);
 - (d) the tax treatment of benefits provided in the course of the business;
 - (e) if the company is not registered under section 21—whether the company would be able to be registered under section 21;
 - (f) any other matter that APRA considers is relevant.
- (5) The declaration must also state the class of life insurance business in which the business is to be treated as being included.
- (6) If APRA makes a declaration:
 - (a) this Act has effect accordingly; and
 - (b) APRA must give a copy of the declaration to the company.

12B Declarations that other financial business is life insurance business

- (1) This section applies to business consisting of the provision of eligible financial benefits. For this purpose, an *eligible financial*

Section 12B

benefit is a benefit in relation to which the following conditions are satisfied:

- (a) the benefit is to be provided by a company to a person in accordance with a contract;
- (b) the person's entitlement to the benefit is conditional on amounts being paid in accordance with the contract;
- (c) the benefit is an amount of money (and is not, for example, the provision of a service or facility);
- (d) the benefit is not an excluded benefit under any of the following subparagraphs:
 - (i) the benefit is an excluded benefit if the contract is entered into in the course of banking business, as defined in section 5 of the *Banking Act 1959*, carried on by the company;
 - (ii) the benefit is an excluded benefit if the right to the benefit constitutes an interest in a registered scheme, as defined in section 9 of the *Corporations Act 2001*;
 - (iii) the benefit is an excluded benefit if the right to the benefit constitutes an interest in a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme, as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*;
 - (iv) the benefit is an excluded benefit if it is provided under a contract of insurance entered into in the course of carrying on health insurance business;
 - (v) the benefit is an excluded benefit if it is a benefit of a kind specified in regulations for the purposes of this subparagraph.
- (2) APRA may, on the application of a company, declare, in writing, that business:
 - (a) that:
 - (i) is carried on by the company; and
 - (ii) is business to which this section applies; or
 - (b) that:

Section 12B

- (i) the company proposes to carry on; and
 - (ii) will, when it is carried on, be business to which this section applies;
- is to be treated, for the purposes of this Act, as if it were life insurance business.
- (3) The application must comply with any applicable requirements in the prudential standards.
- (4) APRA must only make the declaration if it is satisfied that:
 - (a) the company is a life company; or
 - (b) the company is not currently a life company, but the only business it proposes to carry on if the declaration is made is:
 - (i) the business in respect of which the declaration is sought; or
 - (ii) that business and other business that will be, or is likely to be declared to be, life insurance business.
- (5) In deciding whether to make the declaration, APRA may also have regard to the following matters:
 - (a) whether the business in respect of which the declaration is sought is similar in nature to other life insurance business;
 - (b) whether it would be appropriate for the business to be regulated under this Act;
 - (c) whether it would be more appropriate for the business to be regulated under some other law (for example, Chapter 5C of the *Corporations Act 2001*);
 - (d) the tax treatment of benefits provided in the course of the business;
 - (e) if the company is not registered under section 21—whether the company would be able to be registered under section 21;
 - (f) any other matter that APRA considers is relevant.
- (6) The declaration must also state the class of life insurance business in which the business is to be treated as being included.

- (7) If APRA makes a declaration:
 - (a) this Act has effect accordingly; and
 - (b) APRA must give a copy of the declaration to the company.

13 Business of a statutory fund

- (1) A reference in this Act to the business of a statutory fund of a life company is a reference to the life insurance business to which the fund relates.
- (2) For the purposes of this Act:
 - (a) a liability (including a policy liability) is taken to be referable to the business of a statutory fund if the liability is of a kind that, under Part 4, may be discharged out of the assets of the fund; and
 - (b) an expense is taken to be referable to the business of a statutory fund if the expense is of a kind that, under Part 4, may be met out of the assets of the fund.

14 Investment account benefits, investment-linked benefits

- (1) In this Act:
 - (a) the expression “investment account benefits” refers to benefits payable under an investment account contract; and
 - (b) the expression “investment-linked benefits” refers to benefits payable under an investment-linked contract.
- (2) An investment account contract is a contract that:
 - (a) provides for benefits to be paid:
 - (i) on death; or
 - (ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be; and
 - (b) provides for the benefits to be calculated by reference to:
 - (i) a running account under the contract; or
 - (ii) units the value of which are guaranteed by the contract not to be reduced; and

Section 14

- (c) provides for the account to be increased (for example, by the amounts of premiums paid or interest payable).
- (3) In spite of subsection (2), a contract is not an investment account contract if it provides for the account to be reduced otherwise than by the amounts of withdrawals by the person responsible for the payment of premiums or by the amounts of charges payable under the contract.
- (4) An investment-linked contract is a contract:
 - (a) the principal object of which is the provision of benefits calculated by reference to units the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided; and
 - (b) that provides for benefits to be paid:
 - (i) on death; or
 - (ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be.
- (5) APRA, at the request of a life company, may make a written declaration:
 - (a) that contracts of a kind specified in the declaration and entered into by the company are, or would be, investment account contracts; or
 - (b) that contracts of a kind specified in the declaration and entered into by the company are, or would be, investment-linked contracts.
- (6) If APRA makes a declaration:
 - (a) this Act has effect accordingly; and
 - (b) APRA must give a copy of the declaration to the life company at whose request the declaration was made.

15 Participating, non-participating benefits

- (1) Subject to this section, a participating benefit is any benefit other than a non-participating benefit.
- (2) Subject to this section, a non-participating benefit is a benefit that has the following features:
 - (a) the benefit does not include any entitlement to share in any distribution by the life company of profits or surplus;
 - (b) the amount of the benefit is specified in the policy document or is to be calculated according to a formula that:
 - (i) is set out in the policy document; and
 - (ii) does not include any element that is in any way dependent on, or to be ascertained according to, a decision of the life company concerned.
- (3) A benefit is a non-participating benefit if it is declared by the prudential standards to be a non-participating benefit.
- (4) APRA, at the request of a life company, may make a written declaration:
 - (a) that benefits of a specified kind, when provided for by policies issued by the company, are, or would be, participating benefits; or
 - (b) that benefits of a specified kind, when provided for by policies issued by the company, are, or would be, non-participating benefits.
- (5) If APRA makes a declaration:
 - (a) this Act has effect accordingly; and
 - (b) APRA must give a copy of the declaration to the life company at whose request the declaration was made.

15A Relevant group of bodies corporate

For the purposes of this Act:

- (a) a life company and its subsidiaries together constitute a ***relevant group of bodies corporate***; and

Section 16

- (b) a registered NOHC and its subsidiaries together also constitute a *relevant group of bodies corporate*.

16 Related bodies corporate and subsidiaries

Except for the purposes of Part 7, the question whether:

- (a) one body corporate is a subsidiary of another; or
(b) one body corporate is related to another;

is to be determined, in the same way as it would be determined under the *Corporations Act 2001*.

Part 2A—Special provisions relating to life companies that are friendly societies

Division 1—Preliminary

16A Overview

- (1) The concept of a friendly society is defined for the purposes of this Act in section 16C.
- (2) A friendly society will be a life company if it carries on life insurance business in Australia.
- (3) In working out whether a friendly society does carry on life insurance business (within the meaning of section 11), the effect of Division 3 must be taken into account. The effect of any relevant declarations under section 12A or 12B must also be taken into account.
- (4) This Act applies to life companies that are friendly societies subject to:
 - (a) the modified operation of key concepts set out in Division 3; and
 - (b) the modifications relating to statutory funds set out in Division 4; and
 - (c) any other modifications set out in Division 5 or in regulations for the purposes of section 16ZC.
- (5) In addition to the modifications set out in this Part and in regulations for the purposes of section 16ZC, this Act includes some other special provisions in relation to friendly societies. See in particular various provisions in Division 2 of Part 8 about winding up of friendly societies.

Section 16B

- (6) Unless a contrary intention appears, a reference in this Act to a particular provision of this Act also includes, if that provision has been modified as mentioned in subsection (4), a reference to that provision as so modified.

Note: So, for example, if a provision referred to in subsection 7A(1) has been modified, a determination under that section may be made in relation to the provision as so modified.

16B Definitions

- (1) For the purposes of this Act:

adequately adopted, in relation to benefit fund rules or an amendment of benefit fund rules, has the meaning given by subsection (2).

approved benefit fund means a benefit fund for which there are approved benefit fund rules.

approved benefit fund rules means rules (as amended from time to time by amendments in force under section 16T) in relation to which the following conditions are satisfied:

- (a) an approval under section 16L is in force in relation to the rules; and
- (b) the rules are in force under section 16N.

benefit fund means a fund:

- (a) that is established to provide benefits in accordance with rules of a friendly society; and
- (b) that is established in the records of the friendly society.

benefit fund rules, in relation to a benefit fund, means the rules referred to in paragraph (a) of the definition of ***benefit fund***.

friendly society has the meaning given by section 16C.

jointly regulated friendly society has the meaning given by subsection 16ZB(2).

Section 16B

- (2) For the purposes of this Act, benefit fund rules of a company have, or an amendment of benefit fund rules of a company has, been ***adequately adopted*** if:

- (a) the rules have, or the amendment has, been adopted by or on behalf of the company, or by or on behalf of the members or a class of the members of the company, in a way set out in the prudential standards for the purposes of this subsection; and
- (b) APRA considers that adoption of the rules or the amendment in that way adequately takes into account the interests of members of the company.

APRA may consult ASIC in considering the matters referred to in paragraph (b).

Division 2—Friendly societies and how this Act applies to them

16C What is a friendly society?

- (1) For the purposes of this Act, a **friendly society** is a body:
 - (a) that is registered as a company under the *Corporations Act 2001*; and
 - (b) that is either:
 - (i) taken to be registered under this Act because of item 11 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; or
 - (ii) covered by a determination under subsection (2).

- (2) APRA may, in writing, determine that a specified body that is registered as a company under the *Corporations Act 2001* is a friendly society for the purposes of this Act.

Note: A company may be specified by name, by inclusion in a specified class or in some other way.

- (3) APRA may, in writing, vary or revoke a determination made under subsection (2).
- (4) APRA must comply with any applicable requirements in the prudential standards relating to the circumstances in which the powers under subsections (2) and (3) may be exercised.
- (5) If APRA:
 - (a) makes a determination under subsection (2); or
 - (b) varies or revokes a determination under subsection (3);APRA must cause notice of that action to be published in the *Gazette*. If the action relates to a particular company, otherwise than because the company is included in a specified class of companies, APRA must also give the company written notice of the action.

- (6) If APRA:
- (a) makes a determination under subsection (2); or
 - (b) varies or revokes a determination under subsection (3);
- APRA must also give notice of that action to ASIC.

16D Act applies to friendly societies in accordance with this Part

This Act applies to a friendly society subject to the provisions of this Part.

Note: As noted in subsection 16A(5), this Act also contains some other special provisions in relation to friendly societies.

16E Restriction on use of expression *friendly society*

- (1) A body corporate commits an offence if:
- (a) it assumes or uses, in Australia, the expression ***friendly society*** in relation to a financial business carried on by the body corporate (whether or not in Australia); and
 - (b) it is not a friendly society; and
 - (c) APRA did not consent to that assumption or use of that expression.

Penalty: 50 penalty units.

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

- (1A) Subsection (1) is an offence of strict liability.

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

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

- (2) If a body corporate assumes or uses the expression ***friendly society*** in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and

Section 16E

- (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

- (3) A consent may be expressed to apply to a particular body corporate or to bodies corporate included in a class of bodies corporate.
- (4) APRA may, at any time:
 - (a) impose conditions, or additional conditions, on a consent; or
 - (b) vary or revoke conditions imposed on a consent; or
 - (c) revoke a consent.
- (5) The form of the granting of a consent, or the taking of action under subsection (4) in relation to a consent, is to be as follows:
 - (a) if the consent applies to a particular body corporate—notice in writing served on the body corporate;
 - (b) if the consent applies to a class of bodies corporate—notice in writing published in the *Gazette*.
- (6) If APRA:
 - (a) grants a consent; or
 - (b) takes action under subsection (4) in relation to a consent;APRA must also give ASIC notice of the granting of the consent or the taking of that action.
- (7) A body corporate commits an offence if:
 - (a) it has been given a consent under this section; and
 - (b) it contravenes a condition to which the consent is subject.

Penalty: 50 penalty units.

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

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

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

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

(8) If a body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (7), the body corporate commits an offence against that subsection in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

(9) In this section:

financial business means a business that:

- (a) consists of, or includes, the provision of financial services; or
- (b) relates, in whole or in part, to the provision of financial services.

Division 3—Modified operation of key concepts

16F Issue, ownership etc. of policies

New interests in benefit funds

- (1) A friendly society is taken to issue a policy to a person when it accepts an application by the person for an interest in a benefit fund of the friendly society in accordance with the benefit fund rules. However, acceptance of an application for an increase to, or a continuation of, an existing interest in a benefit fund does not constitute the issue of a policy.

Interests in benefit funds existing as at the transfer date

- (2) An interest that a person holds in a benefit fund of a friendly society on the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* is taken to be a policy issued to the person by the friendly society.

Terms etc. of the policy

- (3) If subsection (1) or (2) applies, then:
 - (a) the benefit fund rules are taken to be the terms of the policy referred to in that subsection; and
 - (b) the owner of the policy is taken to be:
 - (i) the person referred to in that subsection; or
 - (ii) if that person's rights to the interest in the benefit fund have been assigned under this Act or transferred by the operation of the benefit fund rules—the person who has those rights; and
 - (c) an amount that is required or permitted, by the benefit fund rules, to be paid in respect of those rights is taken to be a premium in respect of the policy; and

Section 16F

(d) the policy is taken to be referable to the benefit fund.

Note 1: Approved benefit fund rules have effect as a contract (see section 16Z).

Note 2: The policy that a friendly society is taken by subsection (1) or (2) to issue or to have issued will, depending on the terms of the benefit fund rules, be:

- (a) a life policy (see section 9); or
- (b) a sinking fund policy (see the definition in the Schedule); or
- (c) a section 12A or 12B policy (see the definition in the Schedule); or
- (d) some other kind of policy.

(4) Subsections (1), (2) and (3) have effect:

- (a) for the purposes of this Act; and
- (b) for the purposes of all other laws of the Commonwealth, subject to the expression of a contrary intention.

(5) In this section:

policy is not limited to a life policy, a sinking fund policy or a section 12A or 12B policy.

Division 4—Modified operation of provisions relating to statutory funds

Subdivision 1—Modifications

16G Act generally applies as if references to a statutory fund were references to an approved benefit fund

- (1) Subject to subsection (2), this Act applies to a friendly society as if each reference to a statutory fund were instead a reference to an approved benefit fund.

Note: An *approved benefit fund* is a benefit fund for which there are approved benefit fund rules (see the definition in section 16B). Benefit fund rules are *approved benefit fund rules* if an approval under section 16L is in force in relation to the rules and the rules are in force under section 16N.

- (2) Subsection (1) has effect subject to:
- (a) the other provisions of this Subdivision; and
 - (b) the expression of a contrary intention in a particular provision; and
 - (c) the expression of a contrary intention in a particular provision of regulations for the purposes of section 16ZC.
- (3) Other laws of the Commonwealth have effect in relation to friendly societies as if any reference in such a law to a statutory fund of a life company also included a reference to an approved benefit fund of a friendly society, subject to the expression of a contrary intention.

16H Modification of section 34

Section 34 has effect in relation to a friendly society as if subsections (2), (3) and (4) were omitted and the following subsections were substituted:

- (2) Assets or investments obtained by the application of assets (other than money) of an approved benefit fund are themselves assets of the fund. If an investment is a joint investment (see subsection (4A)), the asset is an asset of each of the contributing funds in proportion to their respective contributions.
- (3) Subject to subsections (4) and (4A), a friendly society must keep assets of an approved benefit fund distinct and separate from assets of other approved benefit funds and from all other money, assets or investments of the friendly society.
- (4) A friendly society may maintain a single bank account for money that constitutes assets of 2 or more approved benefit funds if the account is maintained in accordance with the prudential standards.
- (4A) A friendly society may invest assets of 2 or more approved benefit funds in a single investment if:
 - (a) the approved benefit fund rules of each of those funds provide for the assets of the fund to be invested together with the assets of the other fund or funds; and
 - (b) the investment complies with the applicable requirements (if any) in the prudential standards relating to assets of one fund being invested together with assets of another fund or funds.

The investment is referred to as a **joint investment**, each of the funds is referred to as a **contributing fund** and the assets of a fund that are invested in the investment are referred to as the fund's **contribution**.

16I Modification of section 38

Section 38 has effect in relation to a friendly society as if the following subsection were added at the end of the section:

- (8) Nothing in this section authorises a friendly society to apply assets of an approved benefit fund, or to mortgage or charge such assets, otherwise than as provided by the approved benefit fund rules.

Section 16J

16J Modification of section 43

Section 43 has effect in relation to a friendly society as if the following paragraph were inserted after paragraph (3)(b):

- (ba) nothing in this Act authorises a friendly society to make an investment of assets of an approved benefit fund unless:
 - (i) the investment is of a kind provided for by the approved benefit fund rules; and
 - (ii) the investment complies with the requirements (if any) in the prudential standards;

16K Modification of section 45

Section 45 has effect in relation to a friendly society as if the following subsection were added at the end of the section:

- (5) In this section as it applies to a company that is a friendly society, a reference to an approved benefit fund includes a reference to the management fund of the society. The ***management fund*** of the society is the fund of the society that consists of the assets and liabilities of the society that do not form part of an approved benefit fund of the society.

Subdivision 2—Approved benefit fund rules

16L Approval of benefit fund rules

- (1) A body that is registered as a company under the *Corporations Act 2001* may apply in writing to APRA for approval of benefit fund rules for a benefit fund operated or to be operated by the company.

Note 1: The application may also include an application for approval of consequential amendments of the company's constitution (see section 16U).

Note 2: Rules of a jointly regulated friendly society relating to its health insurance business are not covered by this Subdivision.

- (2) The application must be accompanied by a copy of the benefit fund rules and must comply with any applicable requirements in the prudential standards.
- (3) APRA must, in writing, approve the benefit fund rules if:
- (a) application has been made for approval of the rules in accordance with subsection (2); and
 - (b) APRA is satisfied that:
 - (i) the carrying on of the activities to which the rules relate constitutes the carrying on of life insurance business; and
 - (ii) the rules are consistent with this Act; and
 - (c) APRA is satisfied that the rules have been adequately adopted.

APRA must give the company written notice of its decision whether to approve the rules.

- (4) The company commits an offence if:
- (a) APRA has approved the benefit fund rules; and
 - (b) the prudential standards require the company to notify some or all of its members of the rules; and
 - (c) the company does not notify those members of the rules in accordance with that requirement.

Penalty for contravention of this subsection: 50 penalty units.

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

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

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

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

Section 16N

16N When benefit fund rules approved by APRA come into force

Benefit fund rules approved by APRA under section 16L come into force on the later of the following days:

- (a) the day on which APRA approved the rules;
- (b) the day (if any) specified in the rules as the day on which they are to come into force;
- (c) if the company that applied for approval of the rules was not a friendly society on the day on which the application was made—the day on which the company becomes a friendly society.

16O Benefit fund rules approved by APRA and in force form part of company's constitution

Benefit fund rules that:

- (a) have been approved by APRA under section 16L; and
- (b) have come into force under section 16N;

are, by force of this section, part of the constitution of the company that applied for approval of the rules.

16P Amendment of approved benefit fund rules not effective unless approved by APRA

- (1) An amendment of approved benefit fund rules of a friendly society is effective if, and only if:
 - (a) the amendment has been approved by APRA under subsection 16Q(3) and is in force under section 16T; or
 - (b) the amendment is determined by APRA under subsection 16R(4) and is in force under section 16T.
- (2) Without limiting subsection (1), an amendment of approved benefit fund rules that is in force under section 16T takes effect, by force of this section, as an amendment of the constitution of the friendly society.

16Q Amendment of approved benefit fund rules on initiative of friendly society

- (1) A friendly society may apply in writing for approval of a proposed amendment of approved benefit fund rules of the friendly society.

Note: The application may also include an application for approval of consequential amendments of the company's constitution (see section 16U).

- (2) The application must be accompanied by a copy of the amendment and must comply with any applicable requirements in the prudential standards.

- (3) APRA must, in writing, approve the amendment if:
- (a) application has been made for approval of the amendment in accordance with subsection (2); and
 - (b) APRA is satisfied that the rules, as proposed to be amended, will satisfy the requirements of paragraph 16L(3)(b); and
 - (c) APRA is satisfied that the amendment has been adequately adopted.

APRA must give the friendly society written notice of its decision whether to approve the amendment.

- (4) The friendly society commits an offence if:
- (a) APRA has approved the amendment; and
 - (b) the prudential standards require the friendly society to notify some or all of its members of the amendment; and
 - (c) the friendly society does not notify those members of the amendment in accordance with that requirement.

Penalty for contravention of this subsection: 50 penalty units.

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

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

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

Section 16R

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

16R Amendment of approved benefit fund rules as required by APRA

When this section applies

- (1) This section applies if APRA considers that approved benefit fund rules of a friendly society are deficient because they are inconsistent with this Act.

APRA may give notice requiring amendment

- (2) APRA may, by written notice given to the friendly society, require the friendly society:
 - (a) to propose an amendment of the approved benefit fund rules, to rectify the deficiency, in accordance with requirements specified in, or determined in accordance with, the notice; and
 - (b) to submit the amendment for APRA's approval.

The notice must specify a reasonable period for the submission of the amendment.

Compliance with notice—submission of amendment for approval under section 16Q

- (3) To submit an amendment for APRA's approval, the friendly society must apply in writing to APRA for approval of the amendment under section 16Q.

Non-compliance with notice—APRA's power to determine amendment

- (4) If:
 - (a) the friendly society submits an amendment for APRA's approval before the end of the period specified in the notice, but APRA refuses to approve the amendment under section 16Q; or

Section 16T

- (b) the friendly society fails to submit an amendment for APRA's approval before the end of that period;
APRA may, in writing, determine an amendment of the rules to rectify the deficiency.

Non-compliance with notice—notifying friendly society of amendment determined

- (5) If APRA determines an amendment of the approved benefit fund rules under subsection (4), APRA must immediately give the friendly society written notice of the amendment.

Non-compliance with notice—notifying members of amendment

- (6) The friendly society commits an offence if:
- (a) APRA gives the friendly society notice of an amendment of the benefit fund rules that APRA has determined; and
 - (b) the prudential standards require the friendly society to notify some or all of its members of the amendment; and
 - (c) the friendly society does not notify those members of the amendment in accordance with that requirement.

Penalty for contravention of this subsection: 50 penalty units.

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

- (7) Subsection (6) is an offence of strict liability.

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

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

16T When amendment of benefit fund rules approved or determined by APRA come into force

An amendment of approved benefit fund rules:

- (a) approved by APRA under section 16Q; or
- (b) determined by APRA under section 16R;

Section 16U

comes into force on the later of the following days:

- (c) the day on which APRA approved or determined the amendment;
- (d) the day (if any) specified in the amendment as the day on which it is to come into force.

16U Approval of consequential amendments of company's constitution

- (1) An application:

- (a) by a company under section 16L for approval of benefit fund rules; or
- (b) by a company under section 16Q for approval of a proposed amendment of approved benefit fund rules;

may also include an application for approval of proposed amendments (the *consequential amendments*) of the constitution of the company that are consequential on the proposed benefit fund rules or amendment of benefit fund rules.

Note: This covers applications by friendly societies, all of which are companies.

- (2) The application for approval of the consequential amendments must be accompanied by a copy of the consequential amendments and must comply with any applicable requirements in the prudential standards.
- (3) APRA may approve the consequential amendments if APRA is satisfied that the changes proposed to be made by the consequential amendments:
- (a) are consequential on the proposed benefit fund rules or amendment of benefit fund rules; and
 - (b) do not also deal with other matters.

APRA may consult ASIC in considering the matters referred to in paragraphs (a) and (b). APRA must give the company written notice of its decision whether to approve the consequential amendments.

- (4) The company commits an offence if:
- (a) APRA has approved the consequential amendments; and
 - (b) the prudential standards require the company to notify some or all of its members of the consequential amendments; and
 - (c) the company does not notify those members of the consequential amendments in accordance with that requirement.

Penalty for contravention of this subsection: 50 penalty units.

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

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

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

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

16V Consequential amendments of constitution as required by APRA

When this section applies

- (1) This section applies if APRA considers that the constitution of a company is deficient because, as a result of the adoption or amendment of approved benefit fund rules of the company, the constitution is inconsistent with those rules.

APRA may give notice requiring amendments

- (2) APRA may, by written notice given to the company, require the company:
- (a) to propose consequential amendments to its constitution, to rectify the deficiency, in accordance with requirements specified in, or determined in accordance with, the notice; and

Section 16V

(b) to submit the amendments for APRA's approval.

The notice must specify a reasonable period for the submission of the amendments.

Compliance with notice—submission of amendments for approval

- (3) To submit consequential amendments for APRA's approval, the company must apply in writing to APRA for approval of the amendments under this subsection. The application must be accompanied by a copy of the amendments and must comply with any applicable requirements in the prudential standards.

Approval of submitted amendments

- (4) APRA may approve the consequential amendments if APRA is satisfied that:
- (a) an application has been made for approval of the amendments in accordance with subsection (3); and
 - (b) the amendments rectify the deficiency referred to in subsection (1).

APRA must give the company written notice of its decision whether to approve the consequential amendments.

Non-compliance with notice—APRA's power to determine amendments

- (5) If:
- (a) the company submits consequential amendments for APRA's approval before the end of the period specified in the notice, but APRA refuses to approve the amendments under subsection (4); or
 - (b) the company fails to submit consequential amendments for APRA's approval before the end of that period;

APRA may, in writing, determine consequential amendments of the constitution to rectify the deficiency.

Section 16X

Non-compliance with notice—notifying company of amendments determined

- (6) If APRA determines consequential amendments of the constitution under subsection (5), APRA must immediately give the company written notice of the amendments.

Notifying members of amendments

- (7) The company commits an offence if:
- (a) APRA has either:
 - (i) approved consequential amendments under subsection (4); or
 - (ii) given the company notice of consequential amendments that APRA has determined under subsection (5); and
 - (b) the prudential standards require the company to notify some or all of its members of the consequential amendments; and
 - (c) the company does not notify those members of the consequential amendments in accordance with that requirement.

Penalty for contravention of this subsection: 50 penalty units.

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

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

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

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

16X When consequential amendments approved or determined by APRA come into force

Consequential amendments:

- (a) approved by APRA under subsection 16U(3) or subsection 16V(4); or

Section 16Y

- (b) determined by APRA under subsection 16V(5);
come into force on the later of the following days:
- (c) the day on which APRA approved or determined the amendments;
- (d) the day (if any) specified in the amendments as the day on which they are to come into force.

16Y Consequential amendments approved by APRA and in force take effect as amendments of company's constitution

A consequential amendment of a company's constitution that is in force under section 16X takes effect, by force of this section, as an amendment of the constitution of the company.

16Z Contractual effect of approved benefit fund rules and policies

- (1) Approved benefit fund rules of a friendly society have effect as a contract between the friendly society and each person who is, because of section 16F, taken to be the owner of a policy referable to the benefit fund.
- (2) Without limiting the generality of subsection (1), a policy that is, because of section 16F, taken to be issued by a friendly society has effect, and may be enforced, as a contract between:
 - (a) the person who is, because of that section, taken to be the owner of the policy; and
 - (b) either:
 - (i) the friendly society that is taken to have issued the policy; or
 - (ii) if that friendly society's liabilities under the policy have been transferred or assigned to another company—that other company.

Division 5—Other modifications

16ZA Assignment of an interest in a benefit fund that is, because of section 16F, taken to be a policy

An assignment of an interest in a benefit fund that is, because of section 16F, taken to be a policy is taken to satisfy the requirements of subsection 200(2) if the following requirements have been satisfied:

- (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the form set out in the relevant benefit fund rules;
- (b) the memorandum must be signed by the transferor and the transferee;
- (c) the transferor must give 2 copies of the signed memorandum to the friendly society concerned;
- (d) the assignment must be registered in a register of assignments kept by the friendly society concerned;
- (e) the date of registration must be inserted in the memorandum;
- (f) the memorandum must be signed by an officer of the friendly society concerned who is authorised to do so by the friendly society.

16ZB Certain friendly societies may continue to carry on health insurance business—modified operation of this Act

- (1) A friendly society:
 - (a) that is taken to be registered under this Act because of item 11 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and
 - (b) that was carrying on health insurance business immediately before being taken to be so registered;may continue to carry on that health insurance business after being taken to be so registered.

Section 16ZC

- (2) A reference in this Act to a ***jointly regulated friendly society*** is a reference to a friendly society that carries on life insurance business and that also carries on health insurance business in accordance with subsection (1).

Note: The society's life insurance business is regulated under this Act, while its health insurance business is regulated under the *Private Health Insurance Act 2007* and the *Private Health Insurance (Prudential Supervision) Act 2015*.

- (3) Section 234 has effect subject to subsection (1) of this section.
- (4) Without limiting the matters that may be dealt with in regulations under section 16ZC, regulations under that section may set out modifications of this Act as it applies in relation to jointly regulated friendly societies.

16ZC Other modifications

- (1) The regulations may set out modifications of this Act that are to apply in relation to friendly societies (in addition to the modifications set out in the other provisions of this Part).
- (2) Modifications set out in regulations for the purposes of subsection (1) cannot:
- (a) modify a provision of this Act that creates an offence; or
 - (b) include new provisions that create offences.
- (3) This Act applies to a friendly society subject to any modifications set out in regulations for the purposes of subsection (1).

Part 2B—Special provisions relating to Australian branches of foreign life insurance companies

16ZD Eligible foreign life insurance company

- (1) A body corporate is an *eligible foreign life insurance company* if:
- (a) it is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and
 - (b) it is authorised in a foreign country, or part of a foreign country, to carry on life insurance business; and
 - (c) it has established, or proposes to establish, an Australian branch; and
 - (d) it is not an existing life company that is registered under section 21; and
 - (e) the conditions specified in the regulations are satisfied in relation to the body corporate.
- (2) The conditions specified in the regulations for the purposes of paragraph (1)(e) may include either or both of the following kinds of conditions:
- (a) a condition that the body corporate be authorised to carry on life insurance business in a specified country, or a specified part of a foreign country;
 - (b) a condition that the body corporate be incorporated in a specified country, or a specified part of a foreign country.
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) Subsection (2) does not limit the regulations that may be made for the purposes of paragraph (1)(e).

Section 16ZE

(4) In this section:

Australian branch, in relation to a body corporate, means a permanent establishment (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) in Australia through which the body corporate carries on or proposes to carry on life insurance business.

16ZE Limited application of Act to eligible foreign life insurance companies

- (1) Subject to this section, this Act does not apply in relation to life insurance business carried on outside Australia by an eligible foreign life insurance company.
- (2) Subsection (1) does not apply to sections 180, 181 and 182.
- (3) Subsection (1) also does not apply to the provisions listed in subsection (4), however those provisions do not apply in relation to:
 - (a) business of an eligible foreign life insurance company (other than Australian business assets and liabilities); or
 - (b) the management of an eligible foreign life insurance company, to the extent that the management relates to such business of the eligible foreign life insurance company.
- (4) The provisions are as follows:
 - (a) Divisions 1, 1AA and 1A of Part 8;
 - (b) sections 183, 183A, 183B, 183, 184, 185, 186, 187 and 188.
- (5) Subsection 165(4) does not apply to the issue of policies by an eligible foreign life insurance company in the course of carrying on life insurance business carried on outside Australia by the company.
- (6) In this section:

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

Section 16ZF

Australian business assets and liabilities, of an eligible foreign life insurance company, means the following:

- (a) the assets and liabilities of the eligible foreign life insurance company in Australia;
- (b) any other assets and liabilities of the eligible foreign life insurance company that:
 - (i) are related to its operations in Australia; and
 - (ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

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

16ZF Compliance Committee of eligible foreign life insurance company

- (1) A committee is the ***Compliance Committee*** of an eligible foreign life insurance company if:
 - (a) the members of the committee have powers of management in relation to the Australian branch of the company that carries out life insurance business in Australia; and
 - (b) those powers of management are sufficient to enable those members to ensure that the company complies with this Act; and
 - (c) the committee is established and operated in accordance with requirements set out in the prudential standards.
- (2) The prudential standards may set out the following requirements in relation to the establishment and operation of Compliance Committees:
 - (a) requirements relating to the composition of Compliance Committees;
 - (b) requirements relating to the resignation of members of Compliance Committees;
 - (c) requirements relating to the disclosure of interests of members of Compliance Committees;

Section 16ZG

- (d) requirements relating to the termination of appointment of members of Compliance Committees;
 - (e) requirements relating to the residency in Australia of members of Compliance Committees.
- (3) Subsection (2) does not limit the requirements that may be set out in the prudential standards for the purposes of paragraph (1)(c).
- (4) An eligible foreign life insurance company that is a life company must establish and operate a Compliance Committee.

16ZG Address for service of eligible foreign life insurance companies

- (1) A document or notice required or permitted to be served on, or given to, an eligible foreign life insurance company for the purposes of this Act may be served or given by:
- (a) leaving it at its address for service (see subsection (2)); or
 - (b) sending it by registered post to that address.
- (2) An address becomes the address for service for the eligible foreign life insurance company when written notice of the address is given to APRA. (The address continues to be the address for service until APRA is given written notice of another address.)

Part 3—Registration of life companies and their NOHCs

Division 1—Registration of life companies

17 When registration is required

- (1) A person other than a company registered under section 21 must not intentionally:
 - (a) issue a life policy; or
 - (b) undertake liability under a life policy.
- (2) Subsection (1) does not prohibit a person from:
 - (a) acting as agent of a company registered under section 21; or
 - (b) entering into, or undertaking liability under, a contract referred to in subsection (3) if the particular contract is not a contract of insurance.
- (3) Paragraph (2)(b) applies to the following contracts:
 - (a) an investment account contract;
 - (b) an investment-linked contract.
- (4) If a declaration is in force under section 12A or 12B in relation to business carried on or proposed to be carried on by a company, the company must not intentionally carry on that business unless the company is registered under section 21.

18 Certain activities not regarded as carrying on life business

A person is not taken to be carrying on life business merely because the person:

- (a) collects premiums under a policy issued outside Australia to a person who was resident outside Australia at the time of issue of the policy; or
- (b) makes payments due under such a policy.

Section 19

19 Certain persons taken to carry on life business etc.

- (1) For the purposes of this Part, a person who publishes or distributes, or procures the publication or distribution of, a statement relating to the willingness of the person to do something that constitutes the carrying on of life business is taken to carry on that business.
- (2) For the purposes of this Part, a person is taken to carry on life business in Australia if:
 - (a) business that, under this Act, would constitute life business is carried on by another person outside Australia; and
 - (b) the first-mentioned person acts, in Australia, as the agent of that other person in relation to the business carried on outside Australia.

20 Application for registration

- (1) A company may apply in writing to APRA for registration under section 21.
- (2) The application must:
 - (a) be in the form (if any) approved by APRA; and
 - (b) be accompanied by any information requested by APRA; and
 - (c) nominate for the purposes of this Act:
 - (i) the person who is to be the principal executive officer of the life company; and
 - (ii) the period that is to be the financial year of the life company.
- (2A) APRA may, by legislative instrument, set criteria for the registration of a company under this Act.
- (3) For the purposes of determining an application, APRA may by written notice require an applicant to provide information specified in the notice, before the end of the period specified in the notice.
- (4) If the applicant does not provide the specified information before the end of the specified period or any longer period agreed to in writing by APRA, the application is taken to be withdrawn.

- (5) A notice under subsection (3) must include a statement about the effect of subsection (4).

21 Decision on application for registration

- (1) APRA must, in writing, register a company that applies for registration under section 20, unless APRA is satisfied that a ground for refusal specified in subsection (3) exists.
- (3) The following are the grounds on which APRA may refuse to register a company:
- (d) that the company is not able, or is unlikely to be able, to meet its obligations, including obligations in respect of business other than life insurance business;
 - (e) that the company is not able, or is unlikely to be able, to comply with the provisions of this Act or the *Financial Sector (Collection of Data) Act 2001*;
 - (f) that the name of the company so closely resembles the name of a company already registered under this section as to be likely to deceive;
 - (g) in the case of a company that carries on, or proposes to carry on, some other form of business in addition to life insurance business, that the carrying on of that other form of business in addition to insurance business would be contrary to the public interest;
 - (h) that the company is a subsidiary of a NOHC that is not a registered NOHC.

22 Conditions on registration

- (1) APRA may, at any time, by giving written notice to a company:
- (a) impose conditions, or additional conditions, on the company's registration under section 21; or
 - (b) vary or revoke conditions imposed on the company's registration under section 21.

The conditions must relate to prudential matters.

Section 23

- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) Without limiting the conditions that APRA may impose on a registration, APRA may make the registration conditional on a body corporate, of which the company is a subsidiary, being a registered NOHC.
- (4) If APRA imposes, varies or revokes the conditions on a company's registration, APRA must:
 - (a) give written notice to the company; and
 - (b) ensure that notice that the action has been taken is published in the *Gazette*.
- (5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).

23 Breach of registration conditions

- (1) A company commits an offence if:
 - (a) the company does an act or fails to do an act; and
 - (b) doing the act or failing to do the act results in a contravention of a condition of the company's registration under section 21; and
 - (c) there is no determination in force under section 7A that this subsection does not apply to the company.

Penalty: 300 penalty units.

- (2) If an individual:
 - (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.
- (3) An offence against this section is an offence of strict liability.

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

26 When APRA may revoke registration

- (1) APRA may revoke (in writing) a company's registration under section 21 if APRA is satisfied that the company has no liabilities in respect of life insurance business carried on by it in Australia and that:
- (a) the company has failed to comply with:
 - (i) a requirement of this Act or of an instrument made for the purposes of this Act; or
 - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
 - (iii) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or
 - (iv) a direction under this Act; or
 - (v) a condition of the company's registration; or
 - (b) it would be contrary to the public interest for the registration to remain in force; or
 - (c) the company has failed to pay:
 - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
 - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
 - (d) the company is insolvent and is unlikely to return to solvency within a reasonable period of time; or
 - (e) the company has inadequate capital and is unlikely to have adequate capital within a reasonable period of time; or
 - (f) the company has ceased to carry on life insurance business in Australia; or
 - (g) the company has not, within the period of 12 months after it was granted a registration, carried on life insurance business in Australia; or
 - (h) both of the following apply:

Section 26

- (i) the company is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;
 - (ii) an authorisation (however described) for the company to carry on life insurance business in a foreign country has been revoked or otherwise withdrawn in that foreign country.
- (2) Before revoking a company's registration, APRA must give written notice to the company advising it that:
 - (a) APRA is considering revoking the registration for the reasons specified; and
 - (b) the company may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).
- (3) To avoid doubt, APRA may give a notice under subsection (2) to a company even if, at the time the notice is given, APRA is not satisfied that the company has no liabilities in respect of life insurance business carried on by it in Australia.
- (4) If APRA gives a notice under subsection (2) to a company, APRA must not revoke the company's registration until after the date specified in the notice, and after consideration of any submission, as mentioned in paragraph (2)(b).
- (5) APRA may decide that subsection (2) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be contrary to the public interest.
- (6) If APRA revokes a company's registration, APRA must:
 - (a) give written notice to the company; and
 - (b) ensure that notice of the revocation is published in the *Gazette*.
- (7) A revocation is not invalid merely because of a failure to comply with subsection (6).

27 Voluntary deregistration

- (1) If:
- (a) a company gives APRA a written request that its registration under section 21 be cancelled; and
 - (b) APRA is satisfied that:
 - (i) no policies issued by the company remain in force; and
 - (ii) the company is not subject to any outstanding policy liabilities;
- APRA may revoke (under this section) the registration under section 21 of the company by giving the company written notice of revocation.
- (2) Revocation under this section of the registration of a company takes effect when APRA gives the company written notice of revocation.

27A Assignment of liabilities to enable revocation

- (1) If APRA considers that it would, under section 26, revoke a company's registration if the company had no liabilities in respect of life insurance business carried on by it in Australia, APRA may direct the company to arrange, subject to APRA's approval, to assign those liabilities to one or more other companies that are registered under section 21. The company must effect the assignment of the liabilities within the period specified in the direction and comply with such conditions relating to the assignment as are specified by APRA in the direction.
- (2) Subsection (1) has effect despite subsection 190(1).
- Note: A company that has asked APRA for a revocation under section 27 may, for the purpose of obtaining the revocation, make an application to the Court under Part 9 for an order transferring the company's life insurance business to another company.
- (3) A company must not assign its liabilities under this section, and a purported assignment under this section is of no effect, unless the assignment is approved by APRA under subsection (4).

Section 27A

- (4) APRA may only approve a proposed assignment of a company's liabilities under this section if APRA is satisfied that the assignment is appropriate, having regard to:
- (a) the interests of the company's policy owners; and
 - (b) the interests of the policy owners of the company or companies to which the liabilities are to be assigned; and
 - (c) the public interest; and
 - (d) any other matter APRA considers relevant.
- The approval must be in writing and may be made subject to specified conditions.
- (5) If a company (the **first company**) accepts an assignment of liabilities from another company (the **second company**) approved by APRA under subsection (4), the following are taken to have occurred:
- (a) policies in respect of which liability is accepted by the first company (the **transferring policies**) are to be treated for all purposes as if each policy had been transferred by novation from the second company to the first company;
 - (b) a policy owner of a transferring policy is taken to have the same rights against the first company as the person would have against that company had the person's policy been transferred by novation to the first company;
 - (c) the rights of the first company against policy owners of transferring policies are the same as they would be had the transferring policies been transferred by novation to the first company from the second company.
- (6) If APRA approves an assignment, the company must:
- (a) comply with the conditions on the approval; and
 - (b) give reasonable notice (in writing) of the assignment to the company's policy owners; and
 - (c) give APRA such written evidence of the assignment as APRA reasonably requires.
- (7) An assignment of liabilities under this section may include the assignment of any rights or benefits in connection with life policies

Section 27A

in respect of the life insurance business carried on in Australia by the company concerned.

- (8) A direction under subsection (1) has effect despite anything in the *Insurance Acquisitions and Takeovers Act 1991*.
- (9) A company commits an offence if:
 - (a) the company does, or fails to do, an act; and
 - (b) by doing or failing to do the act, the company fails to comply with a direction under this section.

Penalty: 300 penalty units.

- (10) If an individual:
 - (a) commits an offence against subsection (9) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (9);
 he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

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

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

Division 2—Registration of NOHCs of life companies

28A Registration as a NOHC

- (1) A body corporate may apply in writing to APRA for registration under this section (the ***NOHC registration***). The NOHC registration operates in relation to the body corporate and any life companies that are subsidiaries of the body corporate from time to time.

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

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

28B Conditions on a NOHC registration

- (1) APRA may, at any time, by giving written notice to a registered NOHC:
 - (a) impose conditions, or additional conditions, on the NOHC registration; and
 - (b) vary or revoke conditions imposed on the NOHC registration.

The conditions must relate to prudential matters.

- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) If APRA imposes, varies or revokes the conditions on a NOHC registration, APRA must:
 - (a) give written notice to the registered NOHC; and
 - (b) ensure that notice that the action has been taken is published in the *Gazette*.
- (4) The taking of an action is not invalid merely because of a failure to comply with subsection (3).

28BA Breach of conditions on a NOHC registration

- (1) A body corporate commits an offence if:
 - (a) the body corporate does an act or fails to do an act; and
 - (b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's NOHC registration; and
 - (c) there is no determination in force under section 7A that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

- (2) If an individual:
 - (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.
- (3) An offence against this section is an offence of strict liability.

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

Section 28C

28C When APRA may revoke a NOHC registration

- (1) APRA may revoke a NOHC registration if APRA is satisfied that:
 - (a) the registered NOHC has failed to comply with:
 - (i) a requirement of this Act or of an instrument made for the purposes of this Act; or
 - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
 - (ia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or
 - (iii) a direction under this Act to the registered NOHC; or
 - (iv) a condition of the registration; or
 - (b) it would be contrary to the public interest for the registration to remain in force; or
 - (c) the registered NOHC has failed to pay:
 - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
 - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
 - (d) it would be contrary to the interests of the policy owners of any life company that is a subsidiary of the registered NOHC for the registration to remain in force; or
 - (e) the registered NOHC has ceased to be a NOHC of any life company.
- (2) Before revoking a NOHC registration, APRA must give written notice to the registered NOHC advising it that:
 - (a) APRA is considering revoking the registration for the reasons specified; and
 - (b) the registered NOHC may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).

Section 28D

APRA must consider any submissions made by the registered NOHC by that date.

- (3) APRA may decide that subsection (2) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be:
 - (a) contrary to the public interest; or
 - (b) contrary to the interests of the policy owners of any life company that is a subsidiary of the registered NOHC concerned.
- (4) If APRA revokes a body corporate's NOHC registration, APRA must give written notice to the body corporate.
- (5) Revocation under this section of the registration of a body corporate takes effect at the end of 7 days after APRA gives the body written notice of the revocation.

28D When APRA must revoke a NOHC registration

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

28E Continuation of body corporate's NOHC registration

If APRA revokes a body corporate's NOHC registration by a notice under subsection 28C(4) or 28D(2), the notice may state that

Section 28

the registration continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations that is administered by APRA; or
 - (b) a specified provision of another law of the Commonwealth that is administered by APRA;
- and the statement has effect accordingly.

28 Continuation of effect of company's registration

If APRA revokes a company's registration by a notice under subsection 26(1) or 27(1), the notice may state that the registration continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations that is administered by APRA; or
 - (b) a specified provision of another law of the Commonwealth that is administered by APRA;
- and the statement has effect accordingly.

28AA APRA may give notice to ensure that life company has a registered NOHC

- (1) This section applies if:
 - (a) a body corporate is a holding company of a life company; and
 - (b) the life company is not a subsidiary of a registered NOHC.
- (2) APRA may, by notice in writing to the body corporate, require it to ensure, in accordance with the conditions (if any) specified in the notice, that either of the following occurs:
 - (a) the body corporate becomes a registered NOHC of the life company;
 - (b) a subsidiary of the body corporate becomes a registered NOHC of the life company.

Section 28AA

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

- (3) The notice may deal with the time by which, or period during which, it is to be complied with.
- (4) The body corporate has power to comply with the notice despite anything in its constitution or any contract or arrangement to which it is a party.
- (5) APRA may, by notice in writing to the body corporate, vary the notice mentioned in subsection (2) if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (6) The notice mentioned in subsection (2) has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the notice mentioned in subsection (2) if, at the time of revocation, it considers that the notice is no longer necessary or appropriate.
- (7) Section 230F applies in relation to a notice to a body corporate under subsection (2) in the same way in which it applies to a direction to a life company under section 230B.
- (8) However, section 230F does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:
 - (a) the contravention happens merely because APRA refuses to register the body corporate (or its subsidiary) under Division 2 of Part 3; and
 - (b) APRA's reasons for that refusal do not include the reason that one or more conditions specified in the notice are not satisfied.

Part 4—Statutory funds of life companies

Division 1—General requirements

29 What is a statutory fund?

A statutory fund is a fund that:

- (a) is established in the records of a life company; and
- (b) relates solely to the life insurance business of the company or a particular part of that business.

30 Outline of requirements regarding statutory funds

The principal requirements of this Part in relation to statutory funds may be summarised as follows:

- (a) all amounts received by a life company in respect of the business of a fund must be credited to the fund;
- (b) all assets and investments related to the business of a fund must be included in the fund;
- (c) all liabilities (including policy liabilities) of the company arising out of the conduct of the business of a fund must be treated as liabilities of the fund;
- (d) the assets of a fund are only available for expenditure related to the conduct of the business of the fund;
- (e) statutory funds may not be restructured or terminated without the approval of APRA;
- (f) profits and losses of a statutory fund may only be dealt with in accordance with Divisions 5 and 6 (the object of those Divisions being to ensure that such profits and losses are dealt with in a manner that protects the interests of policy owners and is consistent with prudent management of the fund).

31 Requirement that company have statutory funds

A life company must comply with the following requirements:

- (a) a life company must at all times have at least one statutory fund in respect of its life insurance business but may have more statutory funds if it chooses to do so;
- (b) a life company that carries on life insurance business consisting of the provision of investment-linked benefits must maintain a statutory fund or statutory funds exclusively for that business so far as it is carried on in Australia;
- (c) except so far as paragraph (d) applies or APRA approves otherwise, a life company that carries on life insurance business outside Australia (other than an eligible foreign life insurance company) must have a statutory fund or statutory funds exclusively in respect of that business;
- (d) a life company may only maintain a statutory fund in respect of both life insurance business carried on outside Australia and life insurance business carried on in Australia if:
 - (i) the statutory fund was established before the commencement of this Act; and
 - (ii) so far as it relates to business carried on outside Australia, the fund relates only to business carried on in a country or countries in which the company was carrying on life insurance business immediately before the commencement of this Act; and
 - (iii) the company is not an eligible foreign life insurance company.

32 Duty of company in relation to statutory funds

- (1) In the investment, administration and management of the assets of a statutory fund, a life company:
 - (a) must comply with this Part; and
 - (b) must give priority to the interests of owners and prospective owners of policies referable to the fund.

Section 33

- (2) An act or decision of a life company in relation to a statutory fund does not contravene paragraph (1)(b) if, having regard to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of owners and prospective owners of policies referable to the fund.
- (3) An investment by a life company is not ineffective merely because it is made in contravention of paragraph (1)(b).
- (4) A reference in subsection (1) or (2) to the interests of owners of policies referable to a statutory fund is a reference to the interests of such persons viewed as a group.
- (5) Nothing in subsection (1) prevents a life company doing anything that the company is permitted by this Part to do.

33 Notice to APRA when fund established

- (1) Whenever a life company establishes a statutory fund otherwise than under an approval given under section 52, the company must give APRA written notice of:
 - (a) the establishment of the fund; and
 - (b) the date on which the fund was established; and
 - (c) the nature of the life insurance business of the company to which the fund relates; and
 - (d) such other matters as are prescribed by the regulations.
- (2) The notice must be given in accordance with the regulations.

34 Assets of statutory fund

- (1) For the purposes of this Act, the assets of a statutory fund at a particular time are the following:
 - (a) the balance of money represented by amounts credited to the fund in accordance with section 36;
 - (b) assets of the company obtained as a result of the expenditure or application of money credited to the fund;

- (c) investments held by the company as a result of the expenditure or application of money credited to the fund;
 - (d) other money, assets or investments of the company transferred to the fund, whether under this Act or otherwise.
- (2) Assets or investments obtained by the application of assets (other than money) of a statutory fund are themselves assets of the fund.
- (3) Subject to subsection (4), a life company must keep assets of a statutory fund distinct and separate from assets of other statutory funds and from all other money, assets or investments of the company.
- (4) A life company may maintain a single bank account for money that constitutes assets of 2 or more statutory funds if the account is maintained in accordance with the prudential standards.
- (5) In order to avoid doubt, it is declared that nothing in this Act is intended to constitute a life company or the directors of a life company a trustee or trustees of the assets of the statutory funds of the company.

35 Identification of policies referable to statutory fund

- (1) A policy document must specify the statutory fund or statutory funds to which the policy is referable.
- (2) A policy document must not make provision inconsistent with section 31.
- (3) A provision in a policy document that a policy is referable to 2 or more statutory funds is not effective unless it specifies:
 - (a) the benefits under the policy that are to be provided out of each fund; and
 - (b) either:
 - (i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund; or
 - (ii) the way in which that proportion is to be calculated.

Section 36

- (4) Subsection (1) does not prevent a policy document being endorsed so as to change the statutory fund or funds to which the policy is referable.

Note: If the fund or funds to which a policy is referable is changed in this way, section 55 must be complied with.

- (5) If:
- (a) a policy was issued before the commencement of this Act; and
 - (b) since that commencement, the company that issued the policy has given the policy owner written notice of the statutory fund or funds to which the policy is referable;
- this Act has effect as if the notice were part of the policy document relating to the policy.
- (6) During the period of 15 months beginning at the commencement of this Act, subsection (1) does not apply to the policy document relating to a policy issued before the commencement of this Act.

36 Payments to statutory fund

The following amounts must be credited by a life company to a statutory fund:

- (a) premiums payable under policies referable solely to the fund;
- (b) in the case of a policy that is referable to the fund and one or more other statutory funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the fund;
- (c) amounts paid to the company in relation to a liability under section 48 or 50 in relation to the fund;
- (d) income from the investment of assets of the fund;
- (e) money paid to or by the company under a judgment of a court relating to any matter concerning the business of the fund or any failure to comply with this Part in relation to the fund;
- (f) any other money received by the life company in connection with its conduct of the business of the fund.

37 Capital payments to statutory funds

- (1) Nothing in this Act prevents a life company from making a capital payment to a statutory fund.
- (2) For the purposes of this Part, a life company makes a capital payment to a statutory fund if it credits to the fund an amount that:
 - (a) is not required to be credited to the fund; and
 - (b) does not represent any part of the assets of another statutory fund.

38 Expenditure and application of statutory fund

- (1) A life company must not apply, or deal with, assets of a statutory fund, whether directly or indirectly, except in accordance with this section.
- (2) The assets of a statutory fund may only be applied:
 - (a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund; or
 - (b) for the making of investments in accordance with section 43; or
 - (c) for the purposes of a distribution under Division 6.
- (3) A life company must not mortgage or charge any of the assets of a statutory fund except:
 - (a) to secure a bank overdraft; or
 - (b) in connection with the undertaking of a major development project and in accordance with section 40; or
 - (c) for such other purposes, and subject to such other conditions, as are prescribed by the regulations.
- (4) A life company must not borrow money, for the purposes of the business of a statutory fund, by means of an unsecured borrowing if the result would be that the total amount of principal outstanding under unsecured borrowings for the purposes of the business of the fund would exceed an amount ascertained in accordance with the prudential standards.

Section 39

(5) In subsection (4):

unsecured borrowing does not include:

- (a) a borrowing of money by means of a bank overdraft; or
 - (b) a borrowing of money by means of an arrangement of a prescribed kind.
- (6) The assets of a statutory fund are not available to meet a liability of a life company under a contract of guarantee unless:
- (a) the contract of guarantee was entered into by the company in connection with an investment by the company of assets of the fund; and
 - (b) the investment was made in accordance with this Part.
- (7) Nothing in this section applies to the transfer of assets from one statutory fund to another in accordance with Division 3, 4 or 6.

39 Prohibition of reinsurance between funds

- (1) In order to avoid doubt, it is declared that a life company contravenes this Part if it engages in the practice of reinsurance between statutory funds of the company.
- (2) For the purposes of subsection (1), the practice of reinsurance between statutory funds consists of the following elements:
 - (a) part of the premium payable under a policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable (***the reinsuring fund***);
 - (b) a corresponding proportion of the liability under the policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

40 Mortgages etc. of assets

- (1) A life company may mortgage or charge an asset of a statutory fund, otherwise than for a purpose of the kind referred to in paragraph 38(3)(a) or (c), if:

- (a) the mortgage or charge is to be given in connection with the undertaking of a major development project; and
 - (b) the giving of the mortgage or charge has been approved by APRA.
- (2) An approval under subsection (1) must:
 - (a) be in writing; and
 - (b) include a statement that APRA is satisfied that the mortgage or charge is to be given in connection with the undertaking of a major development project; and
 - (c) specify any conditions to which the approval is subject.
- (4) An approval may be given subject to such conditions (if any) as APRA thinks appropriate. The conditions that may be imposed include conditions relating to the terms and conditions of the mortgage or charge or of any other agreement or arrangement to be entered into by the life company in relation to the project.

41 Effect of non-compliance with section 38—general

- (1) Subject to subsection (2) and subsection 32(3), a transaction (other than a transaction to which section 41A applies) entered into in contravention of section 38 is of no effect.
- (2) The Court, on application by a party to the transaction, may make an order declaring that the transaction is effective, and is to be taken always to have been effective, for all purposes.
- (3) If the Court is satisfied that the applicant entered into the transaction in good faith and without knowledge of the contravention of section 38, as the case may be, the Court may have regard to any hardship that would be caused to the applicant if an order were not made under subsection (2).
- (4) Subsection (3) is not intended to limit the matters to which the Court may have regard on an application under subsection (2).

Section 41A

41A Effect of non-compliance with section 38—certain classes of transactions

- (1) Subject to this section, a transaction that is included in a class of transactions declared by the regulations to be transactions to which this section applies is not ineffective merely because it was entered into in contravention of section 38.
- (2) The Court, on application by APRA, may make an order declaring that a particular transaction entered into in contravention of section 38 is, and is to be taken always to have been, of no effect for any purpose.
- (3) The Court must not make an order under subsection (2) if it is satisfied that the effect of the order (if made) would be to prejudice rights of any person in respect of, or arising out of, the transaction that have been acquired in good faith and without knowledge of the contravention.

42 Investment performance guarantee—limit of certain liabilities

- (1) This section applies to a statutory fund if:
 - (a) the business of the fund consists of the provision of investment-linked benefits; and
 - (b) any of the policies referable to the fund includes an investment performance guarantee.
- (2) A life company must at all times ensure that the investment performance guarantee factor of a statutory fund to which this section applies does not exceed 5%.
- (3) The investment performance guarantee factor of a statutory fund at a particular time is the proportion of the amount of the current policy liabilities of the fund at that time that represents the total cost, as at that time, of providing the investment performance guarantees included in policies referable to the fund.
- (4) For the purposes of this section:

- (a) the amount of the current policy liabilities of a statutory fund at a particular time is the amount that, in accordance with the prudential standards, is to be taken to be the total value, at that time, of all policy liabilities of the company in relation to policies referable to the fund; and
 - (b) the total cost, as at a particular time, of providing the investment performance guarantees included in policies referable to a statutory fund is the amount calculated, as at that time, in accordance with the prudential standards.
- (5) In this section:

investment performance guarantee, in relation to a policy, means a provision that the amount payable under the policy at a particular time by way of investment-linked benefits is not less than an amount specified in, or calculated in accordance with, the policy.

43 Investment of statutory funds

- (1) In this section, *listed corporation* has the same meaning as in the *Corporations Act 2001*.
- (2) The general rule regarding investment of assets of a statutory fund is that a life company may invest such assets in any way that is likely to further the business of the fund.
- (3) The general rule stated in subsection (2) is subject to the following qualifications:
 - (a) nothing in this Act authorises a life company to make an investment the company would otherwise be prohibited from making;
 - (b) nothing in this Act authorises a life company to make an investment the company would not otherwise have power to make;
 - (c) except with the approval of APRA, a life company must not invest assets of a statutory fund in a company that is related to the life company but is not a subsidiary of the life company;

Section 45

- (d) a life company must not invest assets of a statutory fund, or keep such assets invested, in a subsidiary of the life company if the investment, or the retention of the investment, as the case requires, is prohibited by the regulations.
- (4) Nothing in paragraph (3)(c) or (d) prevents a life company investing assets of a statutory fund, or keeping such assets invested, in ordinary voting shares of listed corporations related to the life company (whether or not they are subsidiaries) if the total value of the assets of the fund so invested does not exceed 2.5% of the total value of all assets of the fund.
- (5) A transaction is not ineffective merely because it involves a contravention of paragraph (3)(c) or (d).
- (6) Nothing in this section:
 - (a) prevents a life company from investing money of a statutory fund by way of deposit with a bank; or
 - (b) requires the approval of APRA for such an investment.
- (7) For the purposes of this Part, an investment by way of a loan is to be taken to be made when the loan agreement is entered into.

45 Transfer of assets between funds

- (1) A life company must not transfer an asset from one statutory fund to another statutory fund except in accordance with subsection (2) or Division 3, 4 or 6.
- (2) A life company may transfer an asset from one statutory fund (*the losing fund*) to another statutory fund (*the gaining fund*) if:
 - (a) the company transfers from the gaining fund to the losing fund an amount equal to the fair value of the asset; and
 - (b) in relation to the owners of policies referable to the losing fund and the gaining fund, the transfer is fair and reasonable in all the circumstances.

- (3) For the purposes of subsection (2), the fair value of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.
- (4) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under this Act or any other law of the Commonwealth or of a State or Territory.

46 Restriction on restructure or termination of statutory funds

- (1) A life company must not:
 - (a) change the statutory fund or funds to which a policy is referable; or
 - (b) terminate a statutory fund;except in accordance with:
 - (c) subsection 35(4) and section 55; or
 - (d) Division 3.
- (2) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under this Act or any other law of the Commonwealth or of a State or Territory.

47 Ascertainment of income and outgoings of a statutory fund

- (1) The prudential standards may specify:
 - (a) what constitutes income of a statutory fund; and
 - (b) what constitutes outgoings of a statutory fund.
- (2) If prudential standards are made for the purposes of subsection (1), then, for the purposes of this Act:
 - (a) what constitutes income of a statutory fund must be determined in accordance with the prudential standards; and
 - (b) what constitutes outgoings of a statutory fund must be determined in accordance with the prudential standards.

Division 2—Duties and liabilities of directors etc.

48 Duty of directors in relation to statutory funds

- (1) A director of a life company has a duty to the owners of policies referable to a statutory fund of the company.
- (2) The director's duty is a duty to take reasonable care, and use due diligence, to see that, in the investment, administration and management of the assets of the fund, the life company:
 - (a) complies with this Part; and
 - (b) gives priority to the interests of owners and prospective owners of policies referable to the fund.
- (3) In order to avoid doubt, it is declared that, in the event of conflict between the interests of owners and prospective owners of policies referable to a statutory fund and the interests of shareholders of a life company, a director's duty is to take reasonable care, and use due diligence, to see that the company gives priority to the interests of owners and prospective owners of those policies over the interests of shareholders.
- (4) A reference in subsection (2) or (3) to the interests of owners of policies referable to a statutory fund is a reference to the interests of such persons viewed as a group.
- (5) A director of a life company does not commit a breach of duty because of the doing of an act by the company if the company is permitted by this Part to do the act.
- (6) If:
 - (a) in respect of any act or omission of a life company, a director of the company is guilty of a breach of the duty imposed by subsection (1); and
 - (b) the act or omission of the company results in a loss to a statutory fund of the company;the director is liable to pay the company an amount equal to the amount of the loss.

- (7) If 2 or more persons are liable under subsection (6) in relation to the same act or omission, the liability of those persons is joint and several.
- (8) An action under subsection (6) may be brought:
 - (a) by the company; or
 - (b) with the written approval of APRA, by the owner of a policy referable to the statutory fund involved.
- (9) An approval under subsection (8) may be given subject to conditions relating to the persons, or the number of persons, who may join in the action as plaintiffs.
- (10) A person cannot be made liable both under this section and under section 50 in respect of the same act or omission of a life company.

49 APRA may give notice

- (1) If a life company has contravened this Part, APRA may give the company a written notice requiring the company, within a specified period, to take such action as is specified in the notice to remedy the contravention.
- (2) The period specified in a notice must be a period ending not earlier than one month after the giving of the notice.
- (3) The action to be specified in a notice is such action as APRA thinks appropriate and reasonable to overcome the effects of the contravention.
- (4) At any time before the end of the period specified in a notice, APRA may extend the period by such further period as APRA thinks fit.
- (5) A life company must comply with a notice under subsection (1).

Section 50

50 Liability of directors

- (1) If:
- (a) APRA has given a notice to a life company under section 49 in respect of a contravention of this Part; and
 - (b) the contravention has resulted in a loss to a statutory fund; and
 - (c) the company has failed to comply with the notice within the period specified in it or within that period as extended under subsection 49(4);
- the persons who were the directors of the company when the contravention occurred are jointly and severally liable to pay the company an amount equal to the amount of the loss.
- (2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to ensure that the company complied with the notice.

51 APRA's power to sue in the name of a company

If APRA thinks that it is in the interests of the owners of policies referable to a statutory fund to do so, APRA may bring an action against a person in the name, and for the benefit, of a life company for the recovery of an amount that the company is entitled to recover under section 50.

Division 3—Restructure and termination of statutory funds

52 Restructure of statutory funds

- (1) The prudential standards may provide that:
 - (a) a life company may apply to APRA to restructure its statutory funds by making one or more policies that are referable to a statutory fund or funds of the company become referable to another statutory fund or funds of the company (whether existing or proposed); and
 - (b) if the application is approved, the restructure is to take place.
- (2) The fund, or each fund, to which the policies are referable before the restructure is a *transferring fund*, and the fund, or each fund, to which the policies will become referable after the restructure is a *receiving fund*.
- (3) Without limiting the generality of subsection (1), the prudential standards may provide for the following:
 - (a) requirements for making the application;
 - (b) criteria for approving or refusing to approve the application;
 - (c) requirements to notify interested persons of the outcome of the application;
 - (d) matters connected with how the restructure takes place, including the following:
 - (i) policies becoming referable to a receiving fund or funds;
 - (ii) policy and other liabilities becoming referable to a receiving fund or funds;
 - (iii) assets of a transferring fund becoming assets of a receiving fund or funds;
 - (iv) the timing of the restructure;
 - (v) if a receiving fund is a proposed new statutory fund—the establishment of that fund;

Section 53

- (e) requirements for the company to give APRA information following the restructure.
- (4) APRA cannot approve the application if it considers that:
 - (a) the restructure will result in unfairness to the owners of policies referable to a transferring fund or a receiving fund when those owners are viewed as a group; or
 - (b) immediately after the restructure:
 - (i) a transferring fund will not satisfy the prudential standards in relation to solvency; or
 - (ii) a receiving fund will not satisfy the prudential standards in relation to solvency; or
 - (c) the company is being wound up when the application is made.

53 Termination of statutory funds

- (1) The prudential standards may provide that:
 - (a) a life company may apply to APRA to terminate one or more of its statutory funds; and
 - (b) if the application is approved, the termination is to take place.
- (2) Without limiting the generality of subsection (1), the prudential standards may provide for the following:
 - (a) requirements for making the application;
 - (b) criteria for approving or refusing to approve the application;
 - (c) requirements to notify interested parties of the outcome of the application;
 - (d) matters connected with how the termination takes place, including the following:
 - (i) distribution or application of assets;
 - (ii) settling of liabilities;
 - (iii) the timing of the termination;
 - (e) requirements for the company to give APRA information following the termination.

- (3) APRA cannot approve the application if it considers that:
- (a) the termination will result in unfairness to the owners of policies referable to the fund or funds when those owners are viewed as a group; or
 - (b) the company is being wound up when the application is made.

Division 4—Additional requirements for transfer of policies between statutory funds by endorsement

55 Additional requirements for transfer of policies between statutory funds by endorsement

- (1) In this section, *liabilities*, in relation to a life company, means:
- (a) policy liabilities; and
 - (b) reserves; and
 - (c) any other liabilities of the company.
- (2) If:
- (a) a life company has more than one statutory fund in respect of its life insurance business; and
 - (b) because of an endorsement as mentioned in subsection 35(4), either:
 - (i) a policy has ceased to be referable to one of those funds and become referable to another fund; or
 - (ii) a policy referable to one or more of those funds has become referable to a further fund or funds;
- the company must transfer to each fund to which the policy has become referable assets of a value equivalent to such part of the liabilities (including policy liabilities) of the company as is ascertained in accordance with the prudential standards.
- (3) If, because of an endorsement as mentioned in subsection 35(4):
- (a) a policy that is referable to a statutory fund becomes referable to another statutory fund; or
 - (b) a policy that is referable to one statutory fund becomes referable to 2 or more statutory funds;
- the life company concerned must give notice to the owner of the policy in accordance with the prudential standards.

Division 5—Allocation of profits and losses and capital payments

56 Interpretation

- (1) In this Division:

Australian fund has the same meaning as in Part 6.

Australian/overseas fund has the same meaning as in Part 6.

Australian participating business means participating business carried on in Australia.

overseas fund has the same meaning as in Part 6.

overseas participating business means participating business carried on outside Australia.

- (2) The categories of business of a statutory fund for the purposes of this Division are the categories of business into which the classes of life insurance business to which the fund relates are divided by section 75 or 76.
- (3) In its application to a company other than a company limited only by shares, a provision of this Division that includes the expression “shareholders” is to be read as if “members” were substituted for “shareholders”.

57 Obligation to allocate operating profit or loss

If annual financial statements given to APRA under the *Financial Sector (Collection of Data) Act 2001* disclose that a category of business of a statutory fund has an operating profit for the period to which the statements relate or has incurred an operating loss for the period, the life company must allocate the profit or loss, as the case may be.

58 Operating profit etc.

- (1) A category of business of a statutory fund has an operating profit for a period if the income of the category for the period exceeds outgoings of the category for the period. The amount of the operating profit is the amount by which income exceeds outgoings.
- (2) A category of business of a statutory fund incurs an operating loss for a period if the outgoings of the category for the period exceed the income of the category for the period. The amount of the operating loss is the amount by which outgoings exceed income.

59 Allocation of operating profit etc.

- (1) A life company must allocate all of the operating profit or loss of a category of business of a statutory fund for a period.
- (2) A life company allocates an operating profit for a period by identifying in its financial statements prepared as at the end of the period:
 - (a) the amount of the profit; and
 - (b) the amount of the profit that should be treated as, or added to, Australian policy owners' retained profits; and
 - (c) the amount of the profit that should be treated as, or added to, overseas policy owners' retained profits; and
 - (d) the amount of the profit that should be treated as, or added to, shareholders' retained profits (Australian participating); and
 - (e) the amount of the profit that should be treated as, or added to, shareholders' retained profits (overseas and non-participating).
- (3) A life company allocates an operating loss for a period by identifying in its financial statements prepared as at the end of the period:
 - (a) the amount of the loss; and
 - (b) the amount representing the portion of the loss to be taken into account in reduction of Australian policy owners' retained profits; and

- (c) the amount representing the portion of the loss to be taken into account in reduction of overseas policy owners' retained profits; and
 - (d) the amount representing the portion of the loss to be taken into account in reduction of shareholders' retained profits (Australian participating); and
 - (e) the amount representing the portion of the loss to be taken into account in reduction of shareholders' retained profits (overseas and non-participating).
- (4) A life company must allocate to shareholders' capital of a statutory fund all capital payments made to the fund under section 37.
- (5) A company allocates a capital payment by:
- (a) identifying in its financial statements prepared as at the end of the period in which the payment was made the amount of the payment; and
 - (b) identifying that amount as an amount that should be added to shareholders' capital.

60 Basis of allocation of operating profit etc.

- (1) The allocation of an operating profit of a category of business of a statutory fund must be made in accordance with the following rules:
- (a) in the case of a profit of a category representing Australian participating business, at least 80%, or such higher percentage as is specified in the constitution of the company, of the profit must be treated as, or added to, Australian policy owners' retained profits of the statutory fund;
 - (b) any part of a profit of a category representing Australian participating business and not allocated under paragraph (a) must be treated as, or added to, shareholders' retained profits (Australian participating) of the statutory fund;
 - (c) subject to paragraph (d), any part of a profit of a category representing overseas participating business, to the extent that such an allocation would not be inconsistent with the

Section 60

- constitution of the company, may be treated as, or added to, overseas policy owners' retained profits of the statutory fund;
- (d) if the constitution of the company requires any part of a profit representing overseas participating business to be treated as overseas policy owners' retained profits, at least that part of the profit must be treated as, or added to, overseas policy owners' retained profits of the statutory fund under paragraph (c);
 - (e) any part of a profit of a category representing overseas participating business and not allocated under paragraph (c) must be treated as, or added to, shareholders' retained profits (overseas and non-participating) of the statutory fund;
 - (f) a profit of a category representing non-participating business must be treated as, or added to, shareholders' retained profits (overseas and non-participating) of the statutory fund.
- (2) The allocation of an operating loss of a category of business of a statutory fund must be made in accordance with the following rules:
- (a) in the case of a loss of a category representing Australian participating business, no more than 80%, or such higher percentage as is specified in the constitution of the company, may be taken into account in reduction of Australian policy owners' retained profits of the statutory fund;
 - (b) any part of a loss of a category representing Australian participating business and not allocated under paragraph (a) must be allocated in reduction of shareholders' retained profits (Australian participating) of the statutory fund;
 - (c) subject to paragraph (d), any part of a loss of a category representing overseas participating business, to the extent that such an allocation would not be inconsistent with the constitution of the company, may be allocated in reduction of overseas policy owners' retained profits of the statutory fund;
 - (d) if the constitution of the company requires any part of a loss of a category representing overseas participating business to be allocated in reduction of overseas policy owners' retained profits, no more than that part of the loss may be allocated in

reduction of overseas policy owners' retained profits of the statutory fund under paragraph (c);

- (e) any part of a loss of a category representing overseas participating business and not allocated under paragraph (c) must be allocated in reduction of shareholders' retained profits (overseas and non-participating) of the statutory fund;
- (f) a loss of a category representing non-participating business must be allocated in reduction of shareholders' retained profits (overseas and non-participating) of the statutory fund.

Division 6—Distribution of retained profits and shareholders' capital

61 Interpretation

- (1) In this Part:

Australian policy owners' retained profits, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(a);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(a).

overseas policy owners' retained profits, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(c);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(c).

shareholders' capital, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total amount of capital payments allocated, before that time, under subsection 59(5);

less the total of the amounts referred to in paragraphs (a) and (b) distributed before that time.

shareholders' retained profits (Australian participating), in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(b);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(b).

shareholders' retained profits (overseas and non-participating), in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraphs 60(1)(e) and (f);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraphs 60(2)(e) and (f).

starting amount, for the purposes of a definition in this section, means the amount ascertained in accordance with prudential standards made for the purposes of the definition.

- (2) In its application to a company other than a company limited only by shares,
a provision of this Division that includes the expression "shareholders" is to be read as follows:
 - (a) the provision is to be read as if "members" were substituted for "shareholders";

Section 62

- (b) in the case of subsection 62(1), the resulting reference to “members’ funds” is to be read as a reference to an account of the company representing funds that are not assets of a statutory fund.

62 Distribution of retained profits

- (1) The distribution of retained profits of a statutory fund must be in accordance with the following rules:
 - (a) Australian policy owners’ retained profits may only be distributed to owners of Australian policies that provide for participating benefits;
 - (b) subject to paragraph (c), overseas policy owners’ retained profits may only be distributed to owners of overseas policies that provide for participating benefits;
 - (c) overseas policy owners’ retained profits may be distributed to owners of Australian policies that provide for participating benefits or transferred to shareholders’ funds if the distribution or transfer has been approved by APRA;
 - (d) shareholders’ retained profits (Australian participating) and shareholders’ retained profits (overseas and non-participating) may be:
 - (i) transferred to shareholders’ funds; or
 - (ii) transferred to another statutory fund of the company; or
 - (iii) distributed to owners of policies that provide for participating benefits.
- (2) A distribution of retained profits of a statutory fund may only be made after the directors of the company have received the appointed actuary’s written advice as to the likely consequences of the proposed distribution.
- (3) A distribution of retained profits of a statutory fund must not be made if:
 - (a) the distribution would have the result that the prudential standards in relation to solvency would not be satisfied in relation to the fund; or

- (b) the distribution would involve a contravention of a direction given by APRA under section 230B in relation to solvency; or
 - (c) in the case of a distribution of shareholders' retained profits (Australian participating), the distribution would involve a contravention of prudential standards made for the purposes of subsection (5).
- (4) Except with the approval of APRA, a distribution of shareholders' retained profits (Australian participating) or shareholders' retained profits (overseas and non-participating) must not be made if:
 - (a) the distribution would have the result that the prudential standards in relation to capital adequacy would not be satisfied in relation to the fund; or
 - (b) the distribution would involve a contravention of a direction given by APRA under section 230B in relation to capital adequacy.
- (5) The prudential standards may prohibit the distribution of shareholders' retained profits (Australian participating) unless the distribution is in accordance with specified requirements relating to the distribution of Australian policy owners' retained profits.

63 Distribution of shareholders' capital

- (1) A distribution of shareholders' capital in relation to a statutory fund:
 - (a) may only be made after the directors of the life company concerned have received the appointed actuary's written advice as to the likely consequences of the proposed distribution; and
 - (b) must not be made if:
 - (i) the distribution would have the result that the prudential standards in relation to solvency would not be satisfied in relation to the fund; or
 - (ii) the distribution would involve a contravention of a direction given by APRA under section 230B in relation to solvency.

Section 63

- (2) Except with the approval of APRA, a distribution of shareholders' capital in relation to a statutory fund must not be made if:
 - (a) the distribution would have the result that the prudential standards in relation to capital adequacy would not be satisfied in relation to the fund; or
 - (b) the distribution would involve a contravention of a direction given by APRA under section 230B in relation to capital adequacy.
- (3) Shareholders' capital may only be distributed in the following ways:
 - (a) by transfer to shareholders' funds;
 - (b) by transfer to another statutory fund of the company;
 - (c) by distribution to owners of policies that provide for participating benefits.

Part 6—Financial management of life companies etc.

Division 1—Preliminary

74 Interpretation

In this Part, unless the contrary intention appears:

Australian fund means a statutory fund that relates only to life insurance business carried on in Australia.

Australian/overseas fund means a statutory fund that relates to life insurance business carried on in Australia and life insurance business carried on outside Australia.

overseas fund means a statutory fund that relates only to life insurance business carried on outside Australia.

Division 2—Financial records and statements

75 Financial records—Australian and Australian/overseas funds

- (1) A life company must keep such records of the income and outgoings of each statutory fund (other than an overseas fund) of the company as will record properly the affairs and transactions of the company in respect of:
 - (a) each class of life insurance business to which the fund relates; and
 - (b) each category of business within such a class; and
 - (c) each subcategory of business within such a category.
- (2) In the case of an Australian fund, a class of life insurance business to which the fund relates is divided into the following categories:
 - (a) Australian participating business;
 - (b) non-participating business.
- (3) In the case of an Australian/overseas fund, a class of life insurance business to which the fund relates is divided into the following categories:
 - (a) Australian participating business;
 - (b) overseas participating business;
 - (c) non-participating business.
- (4) If a life company administers part of the life insurance business included in a category of business to which a statutory fund relates separately from all other business included in that category, that part of the life insurance business constitutes a subcategory within that category of business.

76 Financial records—overseas funds

- (1) A life company must keep such records of the income and outgoings of an overseas fund of the company as will record properly the affairs and transactions of the company in respect of:

Section 76A

- (a) each class of life insurance business to which the fund relates; and
 - (b) each category of business within such a class.
- (2) A class of life insurance business to which an overseas fund relates is divided into the following categories:
 - (a) overseas participating business;
 - (b) non-participating business.
- (3) This section does not apply in relation to an eligible foreign life insurance company.

76A Keeping records

Records must be kept in Australia etc.

- (1) A life company must keep any records that the company is required to keep under section 75 or 76, or under section 286 of the *Corporations Act 2001*:
 - (a) in writing:
 - (i) in the English language; or
 - (ii) in a form in which the records are readily accessible and readily convertible into writing in the English language; and
 - (b) either:
 - (i) in Australia; or
 - (ii) if APRA gives written approval and the company meets the conditions (if any) specified in the approval—in another country specified in the approval.
- (2) APRA's approval may be given subject to specified conditions.

Notification of address where records are kept

- (3) A life company must notify APRA, in the approved form, of the address where the company's records are kept:

Section 77

- (a) if, immediately before the commencement of this section, the company is registered under this Act—within 28 days after that commencement; or
 - (b) otherwise—within 28 days after the company is registered under this Act.
- (4) If:
 - (a) a life company has notified APRA of the address where the company's records are kept; and
 - (b) the company moves the financial records to a new address; the company must notify APRA, in the approved form, of the new address where the records are kept.
- (5) The notification must be given within 28 days after the day on which the records are moved to the new address.

Offence

- (6) A life company commits an offence if the company contravenes subsection (1).

Penalty: 200 penalty units.

77 Financial year of a life company

- (1) Subject to subsection (6), the financial year of an existing life company is the period that, immediately before the commencement of this Act, was the financial year of the company under the *Life Insurance Act 1945*.
- (2) Subject to subsection (6), the financial year of any other life company is the period nominated by the company for the purposes of section 20.
- (3) A life company may give APRA written notice that it wishes to change its financial year.

- (4) A notice must specify:
 - (a) the period that is to be treated as the first financial year of the company commencing after the giving of the notice; and
 - (b) the period that is to constitute the second and subsequent financial years of the company after the giving of the notice.
- (5) The period specified for the purpose of paragraph (4)(a) may exceed 12 months but must not exceed 15 months.
- (6) If APRA approves the change proposed in a notice, the periods specified in the notice become financial years of the company.
- (7) If a period specified in a notice for the purpose of paragraph (4)(a) commences after the first day of a period (*the existing financial year*) that would, if the notice had not been given, have constituted a financial year of the company, the portion of the existing financial year before that commencement constitutes a financial year of the company.

78 Treatment of income and outgoings relating to mixed business

- (1) If:
 - (a) a life company carries on other business as well as its life insurance business; and
 - (b) an amount of income or outgoings relates both to the business of a statutory fund and to the other business;the company must apportion the amount so as to determine what part of the amount relates to the business of the statutory fund.
- (2) Only the part of the amount so determined is to be treated as related to the business of the statutory fund.
- (3) If a life company incurs a liability in respect of a matter that is related in part to the business of a statutory fund of the company and in part to the business of another company:
 - (a) the life company must apportion the liability; and
 - (b) only the portion of the liability referable to the business of the statutory fund may be treated as outgoings of the fund.

Section 79

79 Treatment of income or outgoings relating to 2 or more categories of business etc.

- (1) If an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78) relates to the business of 2 or more statutory funds, the company must:
 - (a) apportion the amount so as to determine what part of the amount relates to the business of each fund; and
 - (b) include in its records relating to each fund the part of the amount that relates to the business of that fund.
- (2) If an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or subsection (1) of this section) relates to 2 classes of life insurance to which a statutory fund relates, the company must:
 - (a) apportion the amount so as to determine what part of the amount relates to each class; and
 - (b) include in its records relating to each class the part of the amount that relates to that class.
- (3) For the purposes of section 75, if an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or this section) relates to 2 or more categories of business, the company must:
 - (a) apportion the amount so as to determine what part of the amount relates to each of the categories of business; and
 - (b) include in its records relating to each category the part of the amount that relates to that category.
- (4) For the purposes of section 75, if an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or this section) relates to 2 or more subcategories, the company must:
 - (a) apportion the amount so as to determine what part of the amount relates to each subcategory; and
 - (b) include in its records relating to each subcategory the part of the amount that relates to that subcategory.

80 Basis of apportionment

- (1) An apportionment for the purposes of section 78 or 79 must be made:
 - (a) on an equitable basis; and
 - (b) according to generally accepted accounting principles.
- (2) Before an apportionment is made, the directors of the company concerned must obtain the appointed actuary's written advice whether the basis of the proposed apportionment is appropriate.
- (3) An apportionment is not effective unless a report given by the principal auditor of the life company for the purposes of the *Financial Sector (Collection of Data) Act 2001* states that the apportionment has been made equitably and in accordance with generally accepted accounting principles.

81 Treatment of appreciation and depreciation of assets

If a life company treats an asset as having appreciated or depreciated, the company must, for the purposes of this Part, treat the amount of the appreciation or depreciation as an amount of income or outgoing, as the case may be.

83 Requirement for life company to have an auditor

- (1) A life company must have an auditor appointed by the life company (the *principal auditor*) to perform the functions of an auditor set out in the prudential standards.
- (2) Within 6 weeks after a person stops being the principal auditor of a life company, the life company must appoint another person to be the principal auditor.
- (3) The principal auditor must perform the functions of an auditor set out in:
 - (a) the prudential standards; and
 - (b) the reporting standards determined by APRA under the *Financial Sector (Collection of Data) Act 2001*.

Section 83A

83A Additional auditors

- (1) APRA may, by written notice, require a life company to appoint a person who is specified in the notice to be an auditor for a purpose that is specified in the notice.

Example: APRA may require a life company to appoint an auditor who has specialist qualifications or experience to perform a special purpose audit.

- (2) The specified person may be:
- (a) the principal auditor; or
 - (b) another auditor.

83B Compliance with prudential standards

An auditor appointed by a life company must comply with the prudential standards in performing his or her duties or exercising his or her powers.

84 Appointment of auditor

A life company must not appoint a person as an auditor of the life company unless:

- (a) the life company is reasonably satisfied that the person meets the eligibility criteria set out in the prudential standards for appointment as an auditor of a life company; and
- (b) no order is in force under section 245A that the person is disqualified from being or acting as an auditor of the life company.

85 Ending an appointment as auditor

- (1) A life company must end the appointment of a person as an auditor of the life company if:
- (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as an auditor of a life company; or

- (b) the life company is satisfied that the person has, in relation to the company, failed to perform adequately and properly the functions and duties of an auditor under this Act; or
 - (c) an order takes effect under section 245A that the person is disqualified from being or acting as an auditor of the life company.
- (2) If:
- (a) a life company is required under subsection (1) to end the appointment of a person as an auditor of the company; and
 - (b) the power to appoint an auditor of the company is not vested in the directors of the company or is not vested in the directors of the company alone;
- the directors may appoint a person who satisfies the requirements in paragraphs 84(a) and (b) to be an auditor of the company until an appointment is made in accordance with the constitution or other rules of the life company.

86 Life company must enable auditors

A life company must make any arrangements that are necessary to enable an auditor to perform the auditor's functions or exercise the auditor's powers.

87 Notification of appointment etc. of auditor

- (1) When a life company appoints a person as an auditor of the company, the company must give APRA written notice of:
 - (a) the name of the person; and
 - (b) the date of the appointment; and
 - (c) any other matter specified in the prudential standards.
- (2) Notice under subsection (1) must be given within 14 days after the day of the appointment.
- (3) If a person ceases to be the principal auditor of a life company, the company must give APRA written notice that the person has so ceased and of the day on which he or she so ceased.

Section 88

- (4) Notice under subsection (3) must be given within 14 days after the day on which the person ceased to be the principal auditor of the company.

88 Obligations of auditors of certain bodies to report to bodies and APRA

- (1) An auditor of a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC must draw to the attention of the body, or of the directors or an officer of the body, any matter that comes to the attention of the auditor and that the auditor thinks requires action to be taken by the body or its directors:
- (a) to avoid a contravention of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) to avoid prejudice to the interests of the owners of policies issued by the body, if it is a life company, or by a life company that is related to the body.
- (2) If an auditor of a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC thinks:
- (a) that there are reasonable grounds for believing that the body or a director of the body may have contravened this Act or any other law; and
 - (b) that the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the body, if it is a life company, or by a life company that is related to the body;
- the auditor must immediately inform APRA in writing of:
- (c) his or her opinion; and
 - (d) the information on which it is based.
- (2A) Subsection (2) does not apply to an auditor of a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC in relation to a contravention if:

Section 88

- (a) a director or senior manager of the body informs the auditor that the body has informed APRA in writing of the contravention; and
 - (b) the auditor has no reason to disbelieve the director or senior manager.
- (2B) A person commits an offence if:
- (a) the person is a director or senior manager of a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC; and
 - (b) the person knows that:
 - (i) there are reasonable grounds for believing that the body or a director of the body may have contravened this Act or any other Act; and
 - (ii) the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the body, if it is a life company, or by a life company that is related to the body; and
 - (c) the person informs an auditor of the body that the body has informed APRA in writing of the contravention; and
 - (d) the body has not done so.

Penalty: Imprisonment for 12 months.

- (3) If:
- (a) an auditor of a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC has drawn to the attention of the body, or of the directors or an officer of the body, a matter that the auditor thinks requires action to be taken by the body or its directors:
 - (i) to avoid a contravention of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (ii) to avoid prejudice to the interests of the owners of policies issued by the body, if it is a life company, or by a life company that is related to the body; and

Section 88A

- (b) the auditor is satisfied that there has been reasonable time for the taking of the action but the action has not been taken; the auditor must inform APRA in writing of the matter referred to in paragraph (a).
- (4) If:
 - (a) a person becomes subject to an obligation under subsection (2) or (3) to inform APRA of anything; and
 - (b) before the person informs APRA, the person ceases to be an auditor of the body concerned;the person remains subject to the obligation as if he or she were still an auditor of the body.

88A Auditor may give information to APRA

A person who is or was an auditor of a body corporate that is or was a life company, a registered NOHC or a subsidiary of a life company or registered NOHC may give information, or produce books, accounts or documents, about the body to APRA if the person considers that doing so will assist APRA in performing its functions under this Act or under the *Financial Sector (Collection of Data) Act 2001*.

88B Duty of auditor to give information when required

- (1) APRA may, by written notice given to a person who is, or was, an auditor of a life company, require the person:
 - (a) to give APRA information about the life company; or
 - (b) to produce books, accounts or documents about the life company;if APRA considers that the giving of the information, or the production of the books, accounts or documents, will assist APRA in performing APRA's functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.
- (2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 6 months or 100 penalty units, or both.

- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

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

89 Qualified privilege of auditors

- (1) This section applies to a person who is, or has been, an auditor of a body corporate that is or was a life company, a registered NOHC or a subsidiary of a life company or registered NOHC.
- (2) A person to whom this section applies has qualified privilege in respect of:
- (a) any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; and
 - (b) the answer to any question he or she is required by the audit committee of the body to answer.
- (3) The privilege conferred by this section is in addition to any privilege conferred on a person by the *Corporations Act 2001*.

90 Auditor must notify APRA of attempts to unduly influence etc. the auditor

- (1) If an auditor of a life company or registered NOHC is aware of circumstances that amount to:
- (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor's functions or duties; or

Section 91

(b) an attempt by any person to otherwise interfere with the performance of the auditor's functions or duties;
the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

91 Giving auditor false or misleading information

Offence—person knows the information is false or misleading etc.

- (1) A person commits an offence if:
- (a) the person is an employee or officer of a life company or registered NOHC; and
 - (b) the person gives information, or allows information to be given, to an auditor of the life company or registered NOHC; and
 - (c) the information relates to the affairs of the life company or registered NOHC; and
 - (d) the person knows that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

Offence—person fails to ensure the information is not false or misleading etc.

- (2) A person commits an offence if:
- (a) the person is an employee or officer of a life company or registered NOHC; and

Section 91

- (b) the person gives information, or allows information to be given, to an auditor of the life company or registered NOHC; and
- (c) the information relates to the affairs of the life company or registered NOHC; and
- (d) the information:
 - (i) is false or misleading in a material particular; or
 - (ii) is missing something that makes the information misleading in a material respect; and
- (e) the person did not take reasonable steps to ensure that the information:
 - (i) was not false or misleading in a material particular; or
 - (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

Determining whether information is false or misleading

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

Division 3—Appointed actuaries

93 Appointment

- (1) Subject to subsection (2), a life company must have an actuary appointed by the company.
- (2) Within 6 weeks after a person ceases to be the appointed actuary of a life company, the company must appoint another person to be the actuary of the company.
- (3) A life company must not appoint a person as the actuary of the life company unless:
 - (a) the life company is reasonably satisfied that the person meets the eligibility criteria set out in the prudential standards for appointment as the actuary of a life company; and
 - (b) no order is in force under section 245A that the person is disqualified from being or acting as an actuary of the life company.
- (7) An appointment of a person as actuary of a life company cannot take effect while there is in force an appointment of another person as the company's actuary.

94 Ending an appointment as actuary

- (1) A life company must end the appointment of a person as actuary of the life company if:
 - (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as the actuary of a life company; or
 - (b) the life company is satisfied that the person has, in relation to the company, failed to perform adequately and properly the duties and functions of an appointed actuary under this Act; or

- (c) an order takes effect under section 245A that the person is disqualified from being or acting as an actuary of the life company.
- (2) If:
 - (a) a life company is required under subsection (1) to end the appointment of a person as actuary of the company; and
 - (b) the power to appoint the actuary of the company is not vested in the directors of the company or is not vested in the directors of the company alone;the directors may appoint a person who satisfies the requirements in paragraphs 93(3)(a) and (b) to be the actuary of the company until an appointment is made in accordance with the constitution or other rules of the life company.

95 Notification of appointment etc.

- (1) A life company that appoints a person under section 93 must give APRA written notice of:
 - (a) the name of the person; and
 - (b) details of the actuarial qualifications and experience of the applicant; and
 - (c) the date of the appointment; and
 - (d) any other matter specified in the prudential standards.
- (2) Notice under subsection (1) must be given within 14 days after the day of the appointment.
- (3) If a person ceases to be the appointed actuary of a life company, the company must give APRA written notice that the person has so ceased and of the date on which he or she so ceased.
- (4) Notice under subsection (3) must be given within 14 days after the day on which the person ceased to be the appointed actuary of the company.

Section 96

96 Compliance with prudential standards

The appointed actuary of a life company, in the performance of his or her duties and the exercise of his or her powers, must comply with the prudential standards.

97 Role of actuary

- (1) The appointed actuary of a life company must perform for the company the functions of an actuary set out in the prudential standards and in reporting standards made by APRA under the *Financial Sector (Collection of Data) Act 2001*.
- (2) The life company must make any arrangements necessary to enable the appointed actuary to perform those functions. These arrangements may include (without limitation) the following:
 - (a) providing access to documents and information in the company's control;
 - (b) requiring officers or employees of the company to answer questions;
 - (c) allowing the actuary to attend meetings of directors of the company, annual general meetings or any other meetings of members of the company;
 - (d) allowing the actuary to speak at meetings of directors of the company on matters under consideration that relate to the functions and duties of the actuary.

98 Actuary's obligation to report to APRA

- (1) The appointed actuary of a life company must draw to the attention of the company, or of the directors or an officer of the company, any matter that comes to the attention of the actuary and that the actuary thinks requires action to be taken by the company or its directors:
 - (a) to avoid a contravention of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) to avoid prejudice to the interests of the owners of policies issued by the company.

- (2) If the appointed actuary of a life company thinks:
- (a) that there are reasonable grounds for believing that the company or a director of the company may have contravened this Act or any other law; and
 - (b) that the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company;
- the appointed actuary must immediately inform APRA in writing of:
- (c) his or her opinion; and
 - (d) the information on which it is based.
- (2A) Subsection (2) does not apply to the appointed actuary of a life company in relation to a contravention if:
- (a) a director or senior manager of the life company informs the actuary that the life company has informed APRA in writing of the contravention; and
 - (b) the actuary has no reason to disbelieve the director or senior manager.
- (2B) A person commits an offence if:
- (a) the person is a director or senior manager of a life company; and
 - (b) the person knows that:
 - (i) there are reasonable grounds for believing that the life company or a director of the life company may have contravened this Act or any other Act; and
 - (ii) the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company; and
 - (c) the person informs the appointed actuary of the life company that the life company has informed APRA in writing of the contravention; and
 - (d) the life company has not done so.

Penalty: Imprisonment for 12 months.

Section 98A

(3) If:

- (a) the appointed actuary of a life company has drawn to the attention of the company, or of the directors or an officer of the company, a matter that the actuary thinks requires action to be taken by the company or its directors:
 - (i) to avoid a contravention of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (ii) to avoid prejudice to the interests of owners of policies issued by the company; and
- (b) the appointed actuary is satisfied that there has been reasonable time for the taking of the action but the action has not been taken;

the appointed actuary must inform APRA in writing of the matter referred to in paragraph (a).

(5) If:

- (a) a person becomes subject to an obligation under subsection (2) or (3) to inform APRA of anything; and
- (b) before the person informs APRA, the person ceases to be the appointed actuary of the life company concerned;

the person remains subject to the obligation as if he or she were still the appointed actuary of the company.

98A Appointed actuary may give information to APRA

A person who is or was the appointed actuary of a life company may give information, or produce books, accounts or documents, about the life company to APRA if the person considers that doing so will assist APRA in performing its functions under this Act or under the *Financial Sector (Collection of Data) Act 2001*.

98B Duty of appointed actuary to give information when required

- (1) APRA may, by written notice given to a person who is, or was, the appointed actuary of a life company, require the person:
 - (a) to give APRA information about the life company; or

- (b) to produce books, accounts or documents about the life company;
if APRA considers that the giving of the information, or the production of the books, accounts or documents, will assist APRA in performing APRA's functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.
- (2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.
- (3) A person commits an offence if the person contravenes subsection (2).
- Penalty: Imprisonment for 6 months or 100 penalty units, or both.
- (4) A person commits an offence if the person contravenes subsection (2).
- Penalty: 60 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.

99 Qualified privilege of appointed actuary

- (1) A person who is, or has been, the appointed actuary of a life company has qualified privilege in respect of any statement, whether written or oral, made by him or her for the purpose of the performance of his or her functions as appointed actuary of the company.
- (2) In particular (and without limiting subsection (1)), a person who is or has been the appointed actuary of a life company has qualified privilege in respect of:
- (a) any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Act; and
 - (b) the answer to any question he or she is required by the audit committee of the life company to answer.

Section 99

- (3) The privilege conferred by this section is in addition to any privilege conferred on a person by any other law.

Division 8—Miscellaneous

114 Method of valuing policy liabilities

- (1) This section applies to a valuation of policy liabilities made for the purposes of any provision of this Act, other than a provision of Division 2 of Part 8.
- (2) A valuation of the policy liabilities referable to a statutory fund must be made in accordance with the prudential standards.

124 Policy owner's right to copy of reporting documents

- (1) The owner of a policy issued by a life company is entitled to be provided by the company with a copy of a reporting document (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) relating to the company, or part of that document, if:
 - (a) a reporting standard determined under section 13 of that Act specifies that a copy of that document, or part of that document, is to be provided under this section on the request of an owner of the policy; and
 - (b) the owner of the policy requests a copy of that document or part of that document.
- (2) Copies provided under subsection (1) are to be provided free of charge.

125 Referring matters to professional associations for auditors and actuaries

- (1) If APRA is of the opinion that an auditor of a life company:
 - (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an auditor under:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth, a State or a Territory; or

Section 125A

- (b) is otherwise not a fit and proper person to be an auditor of a life company;

APRA may refer the details of the matter to either or both of the following:

- (c) the Companies Auditors Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
 - (d) those members of the professional association of the auditor whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the auditor.
- (2) If APRA is of the opinion that an appointed actuary of a life company:
- (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an actuary under:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth, a State or a Territory; or
 - (b) is otherwise not a fit and proper person to be the actuary of a life company;
- APRA may refer the details of the matter to those members of the professional association of the actuary whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the actuary.
- (3) If APRA refers details of a matter under this section, APRA must also give written notice of the referral (including the nature of the matter) to the auditor or actuary.

125A APRA may direct removal of auditor or actuary

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

- (2) The grounds for giving a direction to end a person's appointment are:
- (a) either:
 - (i) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as an auditor or actuary of the body; or
 - (ii) otherwise—the person is a disqualified person; or
 - (b) the person is not a fit and proper person to hold the appointment; or
 - (c) the person has failed to perform adequately and properly the duties or functions of the appointment under this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*.
- (3) Before directing a body corporate to end a person's appointment, APRA must:
- (a) give written notice to:
 - (i) the body corporate; and
 - (ii) the person; and
 - (b) give the body corporate and the person a reasonable opportunity to make submissions on the matter.
- (4) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (5)(b).
- (5) If a submission is made in response to the notice, APRA:
- (a) must have regard to the submission; and
 - (b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.
- (6) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.

Section 125A

- (7) If APRA directs a body corporate to end a person's appointment, APRA must give the body corporate and the person a copy of the direction.
- (8) A direction to end a person's appointment is not a legislative instrument.
- (9) A body corporate commits an offence if:
 - (a) the body corporate does or fails to do an act; and
 - (b) by doing or failing to do the act, the body corporate fails to comply with a direction under this section.

Penalty: 60 penalty units.

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

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

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

Division 1—Preliminary

126 Interpretation

In this Part:

authorised person means a person appointed under section 127.

officer, in relation to a body corporate, means:

- (a) a person who is, or has been, an officer of the body, and includes a person who is, or has been:
 - (i) a director, secretary or employee of the body; or
 - (ii) the appointed actuary of the body, if it is a life company; or
 - (iii) an auditor of the body; or
 - (iv) a shareholder of the body; or
- (b) a person who, in the capacity of an insurance intermediary (other than an insurance broker) within the meaning of the *Insurance Contracts Act 1984*, is, or has been, an agent of the body.

relevant business, in relation to a body corporate, means the business of the body corporate to which a show cause notice relates.

relevant person, in relation to a body corporate, means:

- (a) a director, secretary or employee of the body; or
- (b) the appointed actuary of the body, if it is a life company; or
- (c) an auditor of the body.

Section 127

show cause notice means a notice given under subsection 135(1).

127 Appointment of authorised persons

- (1) The Regulator may appoint:
 - (a) a member of its own staff; or
 - (b) a member of the other Regulator's staff;as an authorised person for the purposes of a specified provision of this Act.
- (2) An appointment must be in writing.
- (3) A person who is authorised under subsection (1) for the purposes of a provision of this Act may:
 - (a) exercise any power of the Regulator or an authorised person under that provision; and
 - (b) perform any functions of the Regulator or an authorised person under that provision.

128 Associated body corporate

For the purposes of this Part, a body corporate (the *first body*) is associated with another body corporate if the 2 bodies are related to each other and:

- (a) the first body carries on life insurance business or is a registered NOHC; or
- (b) either of those bodies is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other body or its directors.

129 Related bodies corporate

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

Section 129

- (a) the reference to a body corporate that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another body corporate were a reference to a body corporate that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and
- (b) the reference to a body corporate holding more than one-half of the issued share capital of another body corporate were a reference to a body corporate holding more than one-quarter of the issued share capital of another body corporate.

Division 2—Monitoring life companies and registered NOHCs

130 Purpose of Division

It is the purpose of this Division to provide the means whereby the Regulator may monitor the extent of compliance by a body corporate that is a life company or registered NOHC with:

- (a) this Act; and
- (b) directions given under this Act; and
- (c) conditions on the registration of the body.

131 Requirement to give information to Regulator

- (1) For the purposes of this Act, the Regulator may give a body corporate that is a life company or a registered NOHC a written notice requiring the body to give the Regulator, in writing:
 - (a) information about any matter relating to the body's business; or
 - (b) information about any matter relating to the business of a subsidiary of the body; or
 - (c) a copy of any document relating to such a matter held by the body.
- (2) The notice must specify a period within which the information or copy is to be given to the Regulator. The period specified must be a period ending not earlier than 7 days, and not later than one month, after the day on which the notice is given to the body.
- (3) A body corporate that is a life company or a registered NOHC must comply with a notice under this section.
- (4) A body is entitled to be paid reasonable compensation for making copies for the purpose of complying with a notice requiring that a copy of a document be given to the Regulator.

132 Requirement to produce records

- (1) For the purposes of this Act, the Regulator may give a body corporate that is a life company or a registered NOHC a written notice requiring the body to produce to the Regulator or a specified authorised person, at a reasonable time and place specified in the notice, any records relating to the affairs of the body.
- (2) The Regulator or the authorised person may inspect, take extracts from and make copies of any record produced under this section.
- (3) A body corporate that is a life company or a registered NOHC must comply with a notice under this section.
- (4) If:
 - (a) a requirement is made under subsection (1); and
 - (b) the information that constitutes the records to which the requirement relates is stored, in whole or in part, by electronic means;the body to which the requirement is directed does not comply with the requirement unless it produces all of the records in documentary form.

132A Requirement to notify APRA of certain matters

Matters requiring immediate notice

- (1) If:
 - (a) a life company becomes aware that the life company has breached or will breach a provision of this Act; and
 - (b) the provision relates to financial obligations the life company has to the owners of policies issued by it or to the life company's minimum capital requirements;the life company must immediately notify APRA in writing of the breach.

Section 132A

Offence in relation to matters requiring immediate notice

- (2) A life company commits an offence if the life company contravenes subsection (1).

Penalty: 200 penalty units.

Defence if matter already notified

- (3) Subsection (2) does not apply to a life company in relation to a breach referred to in subsection (1) if:
- (a) the life company becomes aware of the breach because it is informed of it by an auditor or the appointed actuary of the life company; and
 - (b) the auditor or appointed actuary informs the life company that the auditor or actuary has notified APRA in writing of the breach; and
 - (c) the life company has no reason to disbelieve the auditor or appointed actuary.

Note 1: Auditors and appointed actuaries must give APRA certain information under sections 88, 88B, 98 and 98B, and may give APRA information under sections 88A and 98A.

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

Matters requiring notice as soon as practicable

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

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

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

Offence in relation to matters requiring notice as soon as practicable

- (6) A body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC commits an offence if the body contravenes subsection (4).

Penalty: 200 penalty units.

Defence if auditor or actuary notifies breach

- (7) Subsection (6) does not apply to a body corporate in relation to a breach or matter referred to in subsection (4) if:
- (a) an auditor of the body, or its appointed actuary if it is a life company, gives APRA a written report about the breach or matter; and

Section 133

- (b) the report is given before, or within 10 business days after, the life company becomes aware of the breach or matter.

Note 1: Auditors and appointed actuaries must give APRA certain information under sections 88, 88B, 98 and 98B, and may give APRA information under sections 88A and 98A.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

Ancillary offences

- (8) If an individual:
- (a) commits an offence under subsection (2) or (6) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence under subsection (2) or (6);
- the individual is punishable on conviction by a fine not exceeding 40 penalty units.

Limits on information to be provided

- (9) A notice or report given under subsection (1) or (4) must not include information, books, accounts or documents with respect to the affairs of an individual insured person, unless the information, books, accounts or documents are in respect of prudential matters relating to the body corporate giving the notice or report.

133 Access to premises

- (1) For the purposes of this Act, an authorised person may enter, at any reasonable time, any premises at which the authorised person has reasonable cause to believe records relating to the affairs of a body corporate that is a life company or a registered NOHC are kept.
- (2) The authorised person may:
- (a) inspect any records found on the premises that the authorised person believes on reasonable grounds to relate to the affairs of the body; and
 - (b) take extracts from, or make copies of, such records.

- (3) The authorised person may not enter premises under subsection (1) except with the consent of the occupier of the premises.

133A Enforceable undertakings

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a power or function under this Act.
- (2) The person may, with APRA's consent, vary or withdraw the undertaking.
- (3) If APRA considers that a person who has given an undertaking has breached any of the terms of the undertaking, APRA may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that a person who has given an undertaking has breached any of the terms of the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

Division 3—Investigation by APRA

135 Giving of show cause notice

- (1) The Regulator may give a body corporate that is a life company or a registered NOHC a written notice inviting the body to give the Regulator:
 - (a) a written statement of reasons why the Regulator should not investigate:
 - (i) the life insurance business, or a specified part of the life insurance business, of the body, if it is a life company; or
 - (ii) the business of the body, if it is a registered NOHC; and
 - (b) any other written material the body wishes to put forward in support of its statement.
- (2) A show cause notice must:
 - (a) specify the ground or grounds on which it is given; and
 - (b) specify the period within which the statement and written material referred to in subsection (1) must be given to the Regulator.
- (3) The period specified under paragraph (2)(b) must be a period of at least 14 days commencing on the day on which the show cause notice is given.

136 Grounds for giving of show cause notice

The following are the grounds on which a show cause notice may be given to a body corporate that is a life company or a registered NOHC:

- (a) that the body is, or is likely to become, unable to meet its policy or other liabilities as they become due;
- (b) that the body may have contravened:
 - (i) this Act or the *Life Insurance Act 1945* or the *Financial Sector (Collection of Data) Act 2001*; or

- (ii) a direction given to the body under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
- (iii) a condition imposed, under Part 3, on the registration of the body;
- (c) that the body has not complied with a requirement of a notice given to the body under section 131 or 132;
- (ca) that a term of an undertaking referred to in section 133A that relates to the body has been breached by a person who is subject to the undertaking;
- (d) if the body is a life company—that the ratio, for the most recent financial year of the company, of the expenses of conducting any life insurance business of the life company to the income derived from premiums is unduly high;
- (e) if the body is a life company—that the method used by the life company to apportion income or expenditure between classes of life insurance business or between life insurance business and other business is inequitable;
- (f) if the body is a life company—that the ratio, for the most recent financial year of the company, of the total amount of premiums falling due but not paid to the total premium income is unduly high;
- (g) if the body is a life company—that information in the possession of the Regulator calls for the investigation of the whole or any part of the life insurance business of the life company;
- (h) if the body is a registered NOHC—that information in the possession of the Regulator calls for the investigation of the business of the NOHC.

137 Decision to investigate

- (1) The Regulator may investigate life insurance business of a body corporate that is a life company, or business of a body corporate that is a registered NOHC, if:
 - (a) the Regulator has given the body a show cause notice in respect of the business; and

Section 138

- (b) the body has consented to an investigation under this Division of that business.
- (2) The Regulator may investigate life insurance business of a body corporate that is a life company, or business of a body corporate that is a registered NOHC, if:
 - (a) the Regulator has given the body a show cause notice in respect of the business; and
 - (b) the period specified in the notice for the purpose of paragraph 135(2)(b) has expired; and
 - (c) either:
 - (i) the body has not given the Regulator a statement in accordance with the notice; or
 - (ii) after having considered the statement given to the Regulator by the body, the Regulator is satisfied of the existence of the ground, or a ground, set out in the show cause notice; and
 - (d) the Regulator is satisfied that:
 - (i) if the body is a life company—it is in the best interests of owners of policies issued by the company that the business be investigated under this Division; or
 - (ii) if the body is a registered NOHC—it is in the public interest that the business be investigated under this Division.
- (3) To avoid doubt, this section applies to a life company that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as the section applies to any other life company.

138 Investigation of associated body corporate

If:

- (a) the Regulator has decided under section 137 to investigate business of a body corporate (the ***first body***) that is a life company or a registered NOHC; and

- (b) another body corporate (the *associated body*) is, or at some relevant time has been, associated with the first body; and
 - (c) the Regulator believes on reasonable grounds that it is necessary for the purposes of the investigation to investigate all or any part of the business of the associated body;
- the Regulator may investigate all or any part of that business.

139 Investigation procedure

- (1) Before starting to investigate the relevant business of a body corporate under section 137 or 138, the Regulator must give the body corporate a written notice stating that the Regulator proposes to investigate that business.
- (2) Before starting to investigate the relevant business of a body corporate, an authorised person must give to the body corporate a copy of the person's identity card.

140 Access to premises for purposes of investigation

If the Regulator has reasonable grounds for believing that it is necessary to enter premises for the purposes of an investigation of business of a body corporate, an authorised person, with such assistance as is necessary and reasonable, may, at any reasonable time, enter the premises and:

- (a) inspect any record found on the premises that the authorised person believes on reasonable grounds to relate to the affairs of the body corporate; and
- (b) take extracts from, or make copies of, any such record.

141 Requirement to produce records

- (1) For the purposes of an investigation of business of a body corporate, the Regulator may give a person who is a relevant person in relation to the body corporate written notice requiring the person to produce to the Regulator or a specified authorised person, at a reasonable time and place specified in the notice, any records relating to that business.

Section 142

(2) If:

- (a) a requirement is made under subsection (1); and
- (b) the information that constitutes the records to which the requirement relates is stored, in whole or in part, by electronic means;

the person to whom the requirement is directed does not comply with the requirement unless he or she produces all of the records in documentary form.

142 Regulator's power to require assistance

When the Regulator is investigating, or has decided to investigate, business of a body corporate, the Regulator may give a person who is a relevant person in relation to the body corporate written notice requiring the person to do either or both of the following:

- (a) to give the Regulator all reasonable assistance in connection with the investigation;
- (b) to attend before a specified authorised person and answer questions concerning matters relevant to the investigation.

143 Application for warrant to seize records not produced

(1) If:

- (a) the Regulator is investigating, or has decided to investigate, business of a body corporate; and
- (b) the Regulator has reasonable grounds for suspecting that there are, or may be within the next 3 days, on particular premises records:
 - (i) whose production has been required under this Division; and
 - (ii) that have not been produced in compliance with that requirement;

the Regulator may:

- (c) lay before a magistrate an information or complaint on oath setting out those grounds; and

- (d) apply for the issue of a warrant to search the premises for those records.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

144 Grant of warrant

- (1) This section applies if, on an application under section 143, the magistrate is satisfied that there are reasonable grounds for suspecting that there are, or may be within the next 3 days, on particular premises, particular records:
 - (a) whose production has been required under this Division; and
 - (b) that have not been produced in compliance with that requirement.
- (2) The magistrate may issue a warrant authorising:
 - (a) a member of the Australian Federal Police named in the warrant; or
 - (b) that member together with an authorised person; with such assistance, and by such force, as is necessary and reasonable, to do the acts set out in subsection (3).
- (3) The acts are:
 - (a) entering on or into the premises; and
 - (b) searching the premises; and
 - (c) breaking open and searching anything, whether a fixture or not, in or on the premises; and
 - (d) taking possession of, or securing against interference, records that appear to be any or all of those records.
- (4) If the magistrate issues such a warrant, he or she must set out on the information or complaint laid before him or her under subsection 143(1) for the purposes of the application:
 - (a) which of the grounds set out in the information; and
 - (b) particulars of any other grounds;

Section 145

he or she has relied on to justify the issue of the warrant.

- (5) A warrant under this section must:
- (a) specify the premises and records referred to in subsection (1); and
 - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
 - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

145 Powers if records produced or seized

- (1) This section applies if:
- (a) records are produced to a person under a requirement made under this Division; or
 - (b) under a warrant issued under section 144, a person:
 - (i) takes possession of records; or
 - (ii) secures records against interference.
- (2) If paragraph (1)(a) applies, the person may take possession of any of the records.
- (3) The person may inspect, and may make copies of, or take extracts from, any of the records.
- (4) The person may use, or permit the use of, any of the records for the purposes of a proceeding.
- (5) The person may retain possession of any of the records for so long as is necessary:
- (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
 - (b) for the purposes of the investigation; or
 - (c) for a decision to be made about whether or not a proceeding to which the records concerned would be relevant should be begun; or
 - (d) for such a proceeding to be begun and carried on.

- (6) No-one is entitled, as against the person, to claim a lien on any of the records, but such a lien is not otherwise prejudiced.
- (7) While the records are in the person's possession, the person must permit another person to inspect at all reasonable times such (if any) of the records as the other person would be entitled to inspect if they were not in the first-mentioned person's possession.

146 Powers if records not produced

If a person (the *record holder*) fails to produce particular records in accordance with a requirement made under this Division, the person who made the requirement may require the record holder to state, to the best of his or her knowledge and belief:

- (a) where the records may be found; and
- (b) who last had possession, custody or control of the records and where that person may be found.

147 Offences related to investigations

- (1) A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a requirement of the Regulator or an authorised person under this Division.

Penalty: 30 penalty units.

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

- (2) A person who knows that the Regulator or an authorised person is investigating, or is about to investigate, business of a body corporate under this Division must not, with intent to delay or obstruct the investigation or proposed investigation:
 - (a) conceal, destroy, mutilate or alter a record relating to the business of the body corporate; or
 - (b) if a record relating to that business is in a particular State or Territory—take or send the record out of that State or Territory or out of Australia.

Section 149

- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

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

149 Regulator must give body corporate written summary of conclusions

After an investigation under this Division in respect of a body corporate has finished, the Regulator must give the body corporate a written summary of the conclusions the Regulator has reached as a result of the investigation.

151 Identity cards

- (1) The Regulator may cause an identity card to be issued to an authorised person.
- (2) An identity card must:
- (a) contain a recent photograph of the authorised person to whom it is issued; and
 - (b) be in a form approved by the Regulator.
- (3) If an authorised person proposes to enter premises otherwise than in accordance with a warrant, the authorised person must produce his or her identity card to the occupier of the premises for the occupier's inspection. If the authorised person fails to do so, the authorised person is not entitled to enter the premises under subsection 133(1).

Section 151

- (4) If a person to whom an identity card has been issued ceases to be an authorised person, the person must immediately return the identity card to the Regulator.
- (5) A person must not contravene subsection (4) without reasonable excuse.

Penalty: 1 penalty unit.

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

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

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

Section 151A

**Division 3A—Life companies required to comply with
determinations of the Superannuation
Complaints Tribunal**

**151A Life companies must comply with determinations of the
Superannuation Complaints Tribunal**

- (1) A life company must comply with any determination made in respect of it by the Superannuation Complaints Tribunal:
- (a) as a result of it being joined under section 18 of the *Superannuation (Resolution of Complaints) Act 1993* as a party to a complaint under section 14 of that Act against a trustee in respect of a decision relating to a death benefit or a disability benefit; or
 - (b) as a result of it being joined as a party to a complaint under section 14A of that Act; or
 - (c) as a result of it being a party to a complaint under section 15A or 15B of that Act;
 - (d) as a result of it being joined as a party to a complaint under section 15E or 15F of that Act, concerning insurance benefits under a contract of insurance, where the premiums are paid from an RSA (within the meaning of the *Retirement Savings Accounts Act 1997*); or
 - (e) as a result of it being a party to a complaint under section 15H or 15J of that Act, concerning insurance benefits under a contract of insurance, where the premiums are paid from an RSA (within the meaning of the *Retirement Savings Accounts Act 1997*).
- (2) In this section:

Superannuation Complaints Tribunal means the Superannuation Complaints Tribunal established under section 6 of the *Superannuation (Resolution of Complaints) Act 1993*.

Division 4—Special provisions relating to the execution of warrants

152 Interpretation

In this Division:

body concerned means:

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

executing officer, in relation to a warrant, means:

- (a) a person named in the warrant as a person authorised to do the acts set out in subsection 144(3); or
- (b) a person assisting a person referred to in paragraph (a).

warrant means a warrant under section 144.

153 Use of equipment to examine or process things

- (1) The executing officer may bring to the premises to which a warrant relates any equipment reasonably necessary for the examination or processing of things found at the premises to determine whether they constitute records that may be seized under the warrant.
- (2) If:
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the body concerned consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they constitute records that may be seized under the warrant.
- (3) If things containing electronically stored information are moved to another place for the purpose of examination or processing under

Section 154

subsection (2), the executing officer must, if it is practicable to do so:

- (a) inform the body concerned of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow a person nominated by the body to be present during the examination or processing.
- (4) The executing officer may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it constitutes a record or records that may be seized under the warrant if the executing officer has reasonable grounds for believing that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or thing.

154 Use of electronic equipment at premises

- (1) If there are reasonable grounds for believing that information constituting the whole or part of a record or records that may be seized under a warrant is stored at the premises by electronic means, the executing officer may operate electronic equipment at the premises to see whether the information is accessible by doing so.
- (2) The executing officer may only operate the electronic equipment if he or she has reasonable grounds for believing that the operation of the equipment can be carried out without damage to the equipment.
- (3) If the executing officer, after operating the equipment, finds that the information is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the information can, by using facilities at the premises, be put in documentary form—operate the facilities to put the

- information in that form and seize the documents so produced; or
- (c) if the information can be transferred to a disk, tape or other storage device that:
- (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the body concerned;
- operate the equipment or other facilities to copy the information to the storage device and take the storage device from the premises.
- (4) An executing officer may seize equipment under paragraph (3)(a) only if it is not practicable to put the information in documentary form as mentioned in paragraph (3)(b) or to copy the information as mentioned in paragraph (3)(c).
- (5) If the executing officer has reasonable grounds for believing that:
- (a) information may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (6) The executing officer must give notice to the body concerned of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (7) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;
- whichever happens first.
- (8) If the executing officer has reasonable grounds for believing that the expert assistance will not be available within 24 hours, he or

Section 155

she may apply to the magistrate who issued the warrant for an extension of that period.

- (9) The executing officer must give notice to the body concerned of his or her intention to apply for an extension, and the body is entitled to be heard in relation to the application.
- (10) The provisions of this Division relating to the grant of warrants apply, with such modifications as are necessary, to the grant of an extension.

155 Compensation for damage to electronic equipment

- (1) If:
 - (a) damage is caused to equipment as a result of it being operated as mentioned in section 153 or 154; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the body concerned and its employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

156 Copies of seized things to be provided

- (1) Subject to subsection (2), if an executing officer seizes, under a warrant relating to premises:

- (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;
- the executing officer must, if requested to do so by an officer of the body concerned who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if the thing that has been seized was seized under paragraph 154(3)(b) or (c).

Division 5—Protections in relation to information

Subdivision A—Protection for whistleblowers

156A Disclosures qualifying for whistleblower protection

- (1) This section applies to a disclosure of information by a person (the **discloser**) who is, in relation to a body corporate that is a life company or a registered NOHC, any of the following:
 - (a) an officer of the body;
 - (b) an employee of the body;
 - (c) a person who has a contract for the supply of services or goods to the body;
 - (d) an employee of a person who has a contract for the supply of services or goods to the body.
- (2) The disclosure of information by the discloser qualifies for protection under this Subdivision if:
 - (a) the disclosure is made to any of the following:
 - (i) APRA;
 - (ii) an auditor of the body, or a member of an audit team conducting an audit of the body;
 - (iii) the appointed actuary of the body, if the body is a life company;
 - (iv) a director or senior manager of the body;
 - (v) a person authorised by the body to receive disclosures of the kind made; and
 - (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
 - (c) both:
 - (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the body; and

Section 156B

- (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties in relation to the body; and
 - (d) the discloser makes the disclosure in good faith.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

156B Whistleblower protection for disclosures that qualify

- (1) If a person makes a disclosure that qualifies for protection under this Subdivision:
 - (a) the person is not subject to any civil or criminal liability for making the disclosure; and
 - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection (1):
 - (a) the person has qualified privilege in respect of the disclosure; and
 - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
 - (a) a person (the **employee**) is employed in a particular position under a contract of employment with another person (the **employer**); and
 - (b) the employee makes a disclosure that qualifies for protection under this Subdivision; and
 - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;the court may order that the employee be reinstated in that position or a position at a comparable level.

Section 156C

- (4) If an individual makes a disclosure of information that qualifies for protection under this Subdivision, the information is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

156C Victimisation of whistleblowers prohibited

Actually causing detriment to another person

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct causes any detriment to another person; and
 - (c) the person intends that his or her conduct cause detriment to the other person; and
 - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Threatening to cause detriment to another person

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because a person:
 - (i) made a disclosure that qualifies for protection under this Subdivision; or

Section 156D

- (ii) may make a disclosure that would qualify for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Threats

- (3) For the purposes of subsection (2), a threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Definition

- (5) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to do an act.

156D Right to compensation

If:

- (a) a person:
 - (i) commits an offence under subsection 156C(1) or (2); or
 - (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 156C(1) or (2); and
 - (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;
- the person is liable to compensate the other person for the damage.

Section 156E

156E Confidentiality requirement for body and its officers, employees and auditors

- (1) A person (the *offender*) commits an offence under this subsection if:
- (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Subdivision; and
 - (b) the disclosure is made to:
 - (i) an auditor of the body, or a member of an audit team conducting an audit of the body; or
 - (ia) the body's appointed actuary, if the body is a life company; or
 - (ii) a director or senior manager of the body; or
 - (iii) a person authorised by the body to receive disclosures of that kind; and
 - (c) the offender is:
 - (i) an auditor of the body, or a member of an audit team conducting an audit of the body; or
 - (ia) the body's appointed actuary, if the body is a life company; or
 - (ii) a director or senior manager of the body; or
 - (iii) a person authorised by the body to receive disclosures of that kind; or
 - (iv) the body; or
 - (v) an officer or employee of the body; and
 - (d) the offender discloses any of the following information (the *confidential information*):
 - (i) the information referred to in paragraph (a);
 - (ii) the identity of the discloser;
 - (iii) information that is likely to lead to the identification of the discloser; and
 - (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
 - (f) either:

Section 156F

- (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
- (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
 - (a) it is made to APRA; or
 - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
 - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

Subdivision B—Self-incrimination

156F Self-incrimination

- (1) A person is not excused from complying with a requirement under this Act or under the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:

Section 156F

- (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
- (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

Part 8—Judicial management, other external administration and winding up

Division 1—Judicial management

157 Application for order for judicial management

- (1) APRA may apply to the Court for an order that a life company, or part of the business of a life company, be placed under judicial management.
- (2) Subject to subsection (3), a life company may apply to the Court for an order that the company, or part of the business of the company, be placed under judicial management.
- (3) A life company may only apply if it has given APRA at least one month's notice in writing of its intention to apply.
- (4) On an application by APRA, the life company is entitled to be heard.
- (5) On an application by the life company, APRA is entitled to be heard.

158 Order for judicial management after investigation

On an application under section 157, the Court may make an order that a life company, or part of the business of a life company, be placed under judicial management if the Court is satisfied:

- (a) that the life insurance business of the company has been investigated under Division 3 of Part 7; and
- (b) that, having regard to the results of the investigation, it is in the interests of owners of policies issued by the company that the order be made.

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 16ZE(3) of the

Section 159

business and management of an eligible foreign life insurance company.

159 Order for judicial management on other grounds

- (1) On an application under section 157, the Court may make an order that a life company, or part of the business of a life company, be placed under judicial management if the Court is satisfied:
- (a) that:
- (i) in the absence of external support, the company is, or is likely to become, unable to meet its policy or other liabilities as they become due; or
 - (ii) the company has failed to comply with the prudential standards in relation to solvency; or
 - (iii) the company has failed to comply with a direction under section 230B in relation to solvency; or
 - (iiia) an external administrator has been appointed to a holding company of the company (or a similar appointment has been made in a foreign country in respect of such a holding company), and the requirement in subsection (2) is satisfied; or
 - (iiib) if the company is an eligible foreign life insurance company—an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in a foreign country; or
 - (iiic) if the company is an eligible foreign life insurance company—an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country; or
 - (iv) there are reasonable grounds for believing that the financial position or management of the company may be unsatisfactory; and

- (b) that the time needed to make or complete an investigation of the life insurance business of the company under Division 3 of Part 7 would be likely to be such as to prejudice the interests of owners of policies issued by the company.
- (2) For the purposes of subparagraph (1)(a)(iia), the requirement in this subsection is that the appointment mentioned in that subparagraph poses a significant threat to:
 - (a) the operation or soundness of the life company; or
 - (b) the interests of owners of policies issued by the life company; or
 - (c) the stability of the financial system in Australia.
- (3) The regulations may specify that a particular form of support for a company is not to be considered external support for the purposes of subparagraph (1)(a)(i).

160 Commencement of judicial management

The judicial management of a life company, or part of the business of a life company, commences:

- (a) at the time specified in the order for judicial management as the time at which the judicial management is to commence; or
- (b) if no time is so specified, when the order is made.

161 Moratorium—effect of judicial management on court and tribunal proceedings

- (1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (9) in respect of a life company if the life company is under judicial management.
- (2) Subsection (1) does not apply if:
 - (a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and

Section 161

- (b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.
- (3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).
- (4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
 - (a) whether to grant leave under paragraph (2)(a); and
 - (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
 - (c) if the court or tribunal decides to impose such terms—the nature of those terms.
- (5) The judicial manager may apply to the court or tribunal to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the court or tribunal must have regard to the judicial manager's views in deciding:
 - (a) whether to grant leave under paragraph (2)(a); and
 - (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
 - (c) if the court or tribunal decides to impose such terms—the nature of those terms.
- (6) Subsection (1) also does not apply if the judicial manager, after considering APRA's views, consents to the proceedings beginning or continuing.
- (7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).
- (8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

Section 161A

- (9) A proceeding in a court or tribunal is covered by this subsection in respect of a life company if it is any of the following:
 - (a) a proceeding against the life company (including a cross-claim or third party claim against the life company);
 - (b) a proceeding in relation to property of the life company;
 - (c) a proceeding to enforce any security (including a mortgage or charge) granted by the life company, or by a related body corporate of the life company, over any property that the life company owns, uses, possesses, occupies or in which the life company otherwise has an interest.
- (10) Subsection (9) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.
- (11) In this section, a reference to a tribunal includes a reference to the following:
 - (a) an industrial tribunal;
 - (b) an arbitral tribunal.

161A Moratorium—effect of judicial management on enforcement process regarding property

- (1) No enforcement process in relation to property of a life company can be begun or proceeded with if the life company is under judicial management.
- (2) Subsection (1) does not apply if:
 - (a) the 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
 - (b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.
- (3) A person intending to apply for leave of the Court under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the

Section 161B

Court considers that exceptional circumstances make this necessary).

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

161B Moratorium—effect of judicial management on disposal of property

- (1) A person must not dispose of property if:
 - (a) the property is owned by another person; and
 - (b) the other person is a life company; and

Section 161C

(c) the life company is under judicial management.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

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

161C Moratorium—Restrictions on exercise of third party property rights

- (1) Section 440B of the *Corporations Act 2001* applies during a period in which a life company is under judicial management in the same way it applies during the administration of a company.
- (2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to the judicial manager's written consent.
- (3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).
- (4) This section applies despite sections 161, 161A and 161B.

161D Moratorium—effect of judicial management on supply of essential services

- (1) If:
 - (a) a life company is under judicial management; and
 - (b) the judicial manager requests, or authorises someone else to request, a person or authority (the *supplier*) to supply an essential service to the life company in Australia; and
 - (c) the life company owes an amount to the supplier in respect of the supply of the essential service before the day on which

Section 161E

the judicial manager took control of the life company's business;

the supplier must not:

- (d) refuse to comply with the request for the reason only that the amount is owing; or
- (e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

(2) In this section:

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

161E Moratorium—effect of judicial management on annual general meeting

- (1) This section applies to a life company that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.
- (2) Despite section 250N and section 601BR of that Act, if the life company is under judicial management at the end of that period, the life company need not hold that annual general meeting.
- (3) To avoid doubt, subsection (2) does not apply if only part of the business of the life company is under judicial management.

163 Appointment of judicial manager

- (1) If the Court orders the judicial management of a company, or of part of the business of a company, the Court must, by its order, appoint a judicial manager of the company, or of that part of the company's business, as the case requires.
- (1A) If, subsequent to that order, a situation arises where there is no judicial manager of the company, or it appears to the Court that it

is likely that such a situation will arise, the Court may appoint another judicial manager of the company.

- (1B) If the Court appoints 2 or more judicial managers of a company, or appoints one or more additional judicial managers of a company:
- (a) except to the extent (if any) specified in a declaration by the Court under paragraph (b), the functions and powers under this Act of a judicial manager of the company may be performed or exercised by:
 - (i) all of the judicial managers of the company acting jointly; or
 - (ii) each of the judicial managers of the company acting individually; and
 - (b) at the time of appointment, the Court may make a declaration for the purposes of paragraph (a), specifying limits or conditions on the judicial managers' ability to perform functions and exercise powers jointly or individually; and
 - (c) treat a reference in this Act to a judicial manager as being a reference to whichever one or more of those judicial managers the case requires.
- (2) The Court may cancel the appointment of a judicial manager and appoint another person as judicial manager:
- (a) on application by APRA; or
 - (b) of its own motion.
- (3) APRA is entitled to be heard in proceedings before the Court for the cancellation of the appointment.

164 Remuneration of judicial manager

- (1) The Court may give directions about:
- (a) the remuneration and allowances that a judicial manager is to receive; and
 - (b) who is to pay the remuneration and allowances.
- (2) The Court may charge the judicial manager's remuneration and allowances on the property of the company under judicial

Section 165

management in such order of priority in relation to any existing charges on that property as the Court thinks fit.

165 Effect of judicial management on powers of officers etc.

- (1) Subject to subsection (4), if the Court has made an order placing a company under judicial management:
 - (a) at the time the judicial management commences:
 - (i) a person with the powers and functions of an officer of the company immediately before that time ceases to have those powers and functions; and
 - (ii) if the company is an eligible foreign life insurance company and there is a person with the powers and functions of a member of the Compliance Committee of the company immediately before that time—the person ceases to have those powers and functions; and
 - (iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)); and
 - (b) while the company is under judicial management:
 - (i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to the company's business, the purported act is invalid and of no effect; and
 - (ii) the judicial manager has the powers and functions of the members of the board of directors of the company (collectively and individually), including the board's powers of delegation.
- (2) Subject to subsection (4), if the Court has made an order placing part of the business of a company under judicial management:
 - (a) at the time the judicial management commences:
 - (i) a person with the powers and functions of an officer of the company in relation to that part of the business immediately before that time ceases to have those powers and functions in relation to that part of the business; and

- (ii) if the company is an eligible foreign life insurance company and there is a person with the powers and functions of a member of the Compliance Committee of the company immediately before that time in relation to that part of the business—the person ceases to have those powers and functions in relation to that part of the business; and
 - (iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)) in relation to that part of the business; and
- (b) while the company is under judicial management:
 - (i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to that part of the business, the purported act is invalid and of no effect; and
 - (ii) the judicial manager has the powers and functions of the members of the board of directors of the company (collectively and individually), including the board's powers of delegation, in relation to that part of the business.
- (3) Subsections (1) and (2) do not remove an officer or member of the Compliance Committee of the company from office.
- (4) A life company may not issue policies without the leave of the Court if the company, or any part of the business of the company, is under judicial management.
- (5) Subsection (4) does not prevent the variation of a policy under section 209.
- (6) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 16ZE(3) of the business and management of an eligible foreign life insurance company.

Section 165A

**165A Effect on external administrator of judicial manager
managing company**

- (1) The appointment of an external administrator of a company is terminated when the judicial management of the company commences.
- (2) An external administrator of a company must not be appointed while the company is under judicial management.
- (3) If:
 - (a) a person who ceased to be the external administrator of a company under subsection (1); or
 - (b) a purported external administrator of a company appointed in contravention of subsection (2);purports to act in relation to the company's business while the company is under judicial management, the purported act is invalid and of no effect.
- (4) As soon as possible after the Court orders the judicial management of a company and appoints a judicial manager, the judicial manager must inform the external administrator (if any) of the company that the company is under judicial management. However, failure to inform the external administrator does not affect the operation of this section.

165B Judicial management not ground for denial of obligations

- (1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
 - (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
 - (a) deny any obligations under the contract;

- (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.
- (3) The matters are as follows:
 - (a) the making by the Court of an order that the body corporate, or part of the business of the body corporate, be placed under judicial management;
 - (b) the commencement of the judicial management of the body corporate, or of part of the business of the body corporate;
 - (c) if the body corporate is a member of a relevant group of bodies corporate:
 - (i) the making by the Court of an order that another member of the group, or part of the business of another member of the group, be placed under judicial management; or
 - (ii) the commencement of the judicial management of another member of the group, or part of the business of another member of the group.

166 Continued application of other Parts of Act

- (1) None of the matters mentioned in subsection (2) affect the continued operation of other Parts of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a life company or the obligation of a life company to comply with provisions of other Parts of this Act or the provisions of the *Financial Sector (Collection of Data) Act 2001*.
- (2) The matters are as follows:
 - (a) the making by the Court of an order that the life company be placed under judicial management;
 - (b) the commencement of the judicial management of the life company.

Section 167

167 Court's control of judicial manager

- (1) A judicial manager is subject to the control of the Court.
- (2) In addition to duties imposed by this Division, a judicial manager has such duties as the Court directs.
- (3) A judicial manager may apply to the Court at any time for instructions:
 - (a) as to the way in which the judicial management should be conducted; or
 - (b) in relation to any matter arising during the judicial management.
- (4) Before applying to the Court for instructions, the judicial manager must:
 - (a) inform APRA that he or she intends to make the application; and
 - (b) give APRA written details of the application.
- (5) APRA is entitled to be heard on the application.

168 Powers of judicial manager

- (1) The judicial manager of a life company, or of part of the business of a life company, has the following powers:
 - (a) to bring or defend any legal proceedings in the name and on behalf of the company;
 - (b) to appoint a legal practitioner to help him or her in the performance of his or her duties;
 - (c) to appoint an actuary (other than the appointed actuary) to help him or her in the performance of his or her duties;
 - (d) to sell or otherwise dispose of all or any of the property of the company;
 - (e) to do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents;
 - (f) for the purpose of paragraph (d), to use the company's common or official seal;

- (g) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any debtor of the company or under any deed executed under that Act;
 - (h) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
 - (i) to obtain credit, whether on the security of the company or otherwise;
 - (j) to take out letters of administration of the estate of a deceased debtor, and to do anything necessary for obtaining payment of any money due from a debtor, or his or her estate, that cannot conveniently be done in the name of the company;
 - (k) to appoint an agent to do anything that it is not practicable for the judicial manager to do personally or that it is unreasonable to expect him or her to do personally;
 - (l) such other powers as the Court directs.
- (2) The powers conferred by this section are in addition to powers conferred on a judicial manager by any other provision of this Division.

168A Judicial manager's additional powers to facilitate recapitalisation

Powers

- (1) A judicial manager of a life company that has a share capital and is registered under the *Corporations Act 2001* may do one or more of the following acts on terms determined by the judicial manager:
- (a) issue shares, or rights to acquire shares, in the company;
 - (b) cancel shares, or rights to acquire shares, in the company;
 - (c) reduce the company's share capital by cancelling any paid-up share capital that is not represented by available assets;
 - (d) sell shares, or rights to acquire shares, in the company;
 - (e) vary or cancel rights or restrictions attached to shares in a class of shares in the company.

Note: Before doing such an act, the judicial manager will usually need to get and consider a report on the fair value of each share or right concerned

Section 168B

(see section 168B), and will need to report to the Court and obtain the Court's order for the act (see sections 175 and 176).

Giving company members notice of exercise of powers

- (2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the judicial 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.
- (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).

Exercise of powers despite other laws etc.

- (4) A judicial manager may do an act under subsection (1) despite:
 - (a) the *Corporations Act 2001* (without limiting the scope of section 251AA of this Act); 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.

168B Considering report before acting under section 168A

Getting and considering report on fair value of shares or rights

- (1) Before determining terms for an act under subsection 168A(1), the judicial manager must:
 - (a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned from an expert who is not an associate of the judicial manager, or of the company, under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
 - (b) consider the report;

Section 168B

unless APRA determines under subsection (8) that this subsection does not apply in relation to that act relating to those shares or rights.

Content of report

- (2) The report must set out:
- (a) the amount that is, in the expert's opinion, the fair value for each share or right concerned; and
 - (b) the reasons for forming the opinion; and
 - (c) any relationship between the expert and any of the following persons:
 - (i) the judicial manager;
 - (ii) a person who is an associate of the judicial manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;
 - (iii) the company;
 - (iv) a person who is an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*;including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; and
 - (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.

Determining fair value of shares

- (3) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each share concerned, the expert must:
- (a) first, assess the value of the company as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the company; and

Section 168B

- (b) then allocate that value among the classes of shares in the company that either have been issued or that the judicial manager proposes to issue (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
- (c) then allocate the value of each class pro rata among the shares in that class that either have been issued or that the judicial manager proposes to issue (without allowing a premium or applying a discount for particular shares in that class).

Assumptions for valuation of company

- (4) The Minister may give the expert written notice of assumptions for the valuation of the company. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Determining fair value of rights

- (5) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each right concerned, the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the right.

Assumptions for valuation of rights

- (6) The Minister may give the expert written notice of assumptions for the valuation of the rights concerned. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Contravention does not invalidate act

- (7) A contravention of subsection (1), (2), (3), (5) or (9) does not affect the validity of anything done under section 168A.

Exemption from subsection (1)

- (8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:
 - (a) policy owners of the life company concerned; and
 - (b) financial system stability in Australia.
- (9) APRA must:
 - (a) publish a copy of a determination under subsection (8) in the *Gazette*; and
 - (b) give a copy of a determination under subsection (8) to the judicial manager concerned.
- (10) A determination made under subsection (8) is not a legislative instrument.

168C Act under section 168A not ground for denial of obligations

- (1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
 - (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
 - (a) deny any obligations under the contract;
 - (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.
- (3) The matters are as follows:
 - (a) a judicial manager doing an act under subsection 168A(1) relating to the body corporate;

Section 169

- (b) if the body corporate is a member of a relevant group of bodies corporate—a judicial manager of another member of the group doing an act under subsection 168A(1) relating to that other member.

169 Application by APRA for instructions to judicial manager

- (1) APRA may apply to the Court for an order that the Court give instructions to the judicial manager relating to the conduct of the judicial management of a life company, or of part of the business of a life company.
- (2) The judicial manager is entitled to be heard on the application.

170 Request by APRA for information

- (1) APRA may ask a judicial manager for information about the conduct of the judicial management.
- (2) The judicial manager must comply with APRA's request.

171 Duration of judicial management

If the Court orders that a life company, or part of the business of a life company, be placed under judicial management, the company, or that part of its business, as the case requires, remains under judicial management until:

- (a) the judicial management is cancelled; or
- (b) the Court orders that the company be wound up.

172 Cancellation of judicial management

- (1) A judicial manager appointed to manage a life company or part of the business of a life company may apply to the Court for an order cancelling the judicial management.
- (2) Any other interested person may apply to the Court for an order cancelling the judicial management of a life company or of part of the business of a life company.

- (3) On an application under subsection (1) or (2), the Court may cancel the order for the judicial management of the company, or of that business, if it appears to the Court:
 - (a) that the purpose of the order has been fulfilled; or
 - (b) that for any reason it is undesirable that the order remain in force.
- (4) Before applying to the Court under subsection (1) or (2), the judicial manager or interested person must:
 - (a) inform APRA that he or she intends to make the application; and
 - (b) give APRA written details of the application.
- (5) At the time when an order cancelling the judicial management of the life company comes into force:
 - (a) the judicial manager ceases to have the powers and functions of an officer of the life company; and
 - (b) the board of directors or other governing body of the life company starts to have those powers; and
 - (c) if the company is an eligible foreign life insurance company and there is a committee of the company that satisfies the requirements mentioned in subsections 16ZF(1) and (2)—the members of the committee start to have the powers mentioned in that section.
- (6) APRA is entitled to be heard on any application made under subsection (1) or (2).

173 Judicial manager must conduct management efficiently and economically

The judicial manager of a company must conduct the judicial management as efficiently and economically as possible.

Section 174

174 Disclaimer of onerous property

- (1) A judicial manager has the same power to disclaim property of a life company as a liquidator of the company would have under the *Corporations Act 2001*.
- (2) For the purpose of subsection (1), Division 7A of Part 5.6 of the *Corporations Act 2001* is to be read as if:
 - (a) any reference to a liquidator were a reference to a judicial manager; and
 - (b) subsection 568(10) of that Act were omitted; and
 - (c) a reference in subsection 568B(3) or 568E(5) to the company's creditors were a reference to the owners of policies issued by the company.
- (3) A disclaimer by a judicial manager has the same effect, and the judicial manager is under the same obligations, as if the disclaimer had been made under Division 7A of Part 5.6 of the *Corporations Act 2001*.

175 Report by judicial manager

- (1) As soon as possible after starting to manage a company or part of the business of a company, a judicial manager must file with the Court a report that:
 - (a) recommends the course of action listed in subsection (2) that is, in his or her opinion, most advantageous to the general interest of the policy owners of the company while promoting financial system stability in Australia; and
 - (b) sets out the reasons for that recommendation.
- (2) The following are the possible courses of action:
 - (a) to transfer the business, or part of the business, of the company to another company under Part 9 (whether the policies issued by the company continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);

- (aa) to transfer the business, or part of the business, of the company to another company under section 25 of the *Financial Sector (Transfer and Restructure) Act 1999*;
 - (ab) to transfer shares in the company to another company under section 25AA of the *Financial Sector (Transfer and Restructure) Act 1999*;
 - (b) to allow the company to carry on its business after a period of judicial management (whether the policies issued by the company continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
 - (ba) to do one or more of the acts described in subsection 168A(1) (which is about various measures to recapitalise the life company);
 - (c) to wind up the company;
 - (d) to take such other course of action as the judicial manager considers desirable, which may, for example, be a course of action that includes either or both of the following:
 - (i) altering the constitution, rules or other arrangements for governance of the company, if it is registered under the *Corporations Act 2001*, to enable or facilitate the performance of the judicial manager's functions and duties, the exercise of the judicial manager's powers or a course of action described in paragraph (a), (b), (ba) or (c);
 - (ii) one or more of the courses of action described in paragraphs (a), (b), (ba) and (c).
- (3) A report may recommend different courses of action in respect of different parts of a life company's business.
- (4) If the Court makes an order under section 176 giving effect to a course or courses referred to in paragraph (2)(a), (b), (ba) or (d), the judicial manager may file with the Court a further report or further reports dealing with matters to which a report under subsection (1) may relate.

Section 176

- (5) A report under subsection (4) must set out the reasons for any recommendation made in the report.
- (6) As soon as possible after filing a report under this section, the judicial manager must:
 - (a) give a copy of it to APRA; and
 - (b) apply to the Court for an order to give effect to the course or courses of action stated in the report.
- (7) A report, or a copy of a report, under this section must be available for inspection by any person:
 - (a) at the Registry of the Court in which the report is filed during the business hours of that Registry; and
 - (b) at such other place (if any) as APRA determines.

176 Order of Court on report of judicial manager

- (1) On an application for an order to give effect to a course or courses of action recommended in a report under section 175:
 - (a) APRA and any other person interested is entitled to be heard; and
 - (b) the Court may make an order giving effect to such course or courses of action as it considers in the circumstances to be most advantageous to the general interest of the owners of policies issued by the life company concerned, while promoting financial system stability in Australia.
- (2) The course or courses of action to which an order may give effect may be one or more of the following:
 - (a) one or more of the courses of action set out in subsection 175(2);
 - (b) one or more other courses of action.
- (3) An order under this section:
 - (a) is binding on all persons; and
 - (b) takes effect despite anything in any of the following:
 - (i) the *Corporations Act 2001* (without limiting the scope of section 251AA of this Act);

- (ii) the constitution or other rules of the company;
- (iii) any contract or arrangement to which the company is party;
- (iv) any listing rules of a financial market in whose official list the company is included.

177 Transfer of business to another company

- (1) If the Court orders the transfer of the business, or part of the business, of a company to another company, the judicial manager must prepare a scheme for the transfer in accordance with Part 9.
- (2) Until the Court confirms the scheme under that Part, the company continues to be under judicial management.

178 Resignation

A judicial manager appointed under this Division may resign the appointment as judicial manager by filing with the Court a signed notice of resignation.

179 Immunity

- (1) A judicial manager, or a person acting on behalf of a judicial manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the judicial manager by or under this Act.
- (2) Subsection (1) does not apply to an act or omission in bad faith.
- (3) A judicial manager is not liable under section 588G of the *Corporations Act 2001*. This subsection does not limit the scope of subsection (1).

Section 179A

Signpost to secrecy obligations

- (4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by judicial managers under this Act.

179A Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

- (a) the acquisition of assets in:
- (i) a sale or disposal of property of a life company under this Division by a judicial manager of the life company or part of the business of the life company; or
 - (ii) a transfer of insurance business of a life company under a scheme prepared by a judicial manager of the life company, or part of the business of the life company, and confirmed (with or without modifications) by the Court under Part 9;
- (whether the assets are shares in another body corporate or other assets);
- (b) an agreement or deed for carrying out a transfer described in subparagraph (a)(ii);
- (c) arrangements necessary to give effect to a scheme described in subparagraph (a)(ii);
- (d) the acquisition of shares in a life company as a direct result of:
- (i) the issue or sale of the shares under this Division by a judicial manager of the life company; or
 - (ii) the exercise of a right to acquire shares that was issued or sold under this Division by a judicial manager of the life company.

Division 1AA—Statutory management of life company

Subdivision A—General provisions relating to statutory management

179AA Consequences of inability or failure of life company etc. to meet certain requirements

Appointment of administrator or control by APRA

- (1) APRA may take control of a life company's business or appoint an administrator to take control of the life company's business if both of the following requirements are met:
 - (a) APRA is satisfied of the matters of which the Court is required to be satisfied for the purposes of section 158 or 159;
 - (b) subsection (2) applies.
- (2) This subsection applies if APRA is satisfied that at least one of the following situations exists:
 - (a) both:
 - (i) an AFS statutory manager has taken control of a body corporate under this Act, the *Banking Act 1959* or the *Insurance Act 1973* (or APRA intends for that to occur); and
 - (ii) the life company and the body corporate are related bodies corporate;
 - (b) both:
 - (i) the life company's financial position is deteriorating rapidly, or is likely to deteriorate rapidly; and
 - (ii) failure to respond quickly to the deterioration would be likely to prejudice the interests of policy owners of the life company;

Section 179AA

- (c) it is likely that the life company will be unable to carry on life insurance business in Australia consistently with the stability of the financial system in Australia;
 - (d) an external administrator has been appointed to a holding company of the life company (or a similar appointment has been made in a foreign country in respect of such a holding company), and the appointment poses a significant threat to:
 - (i) the operation or soundness of the life company; or
 - (ii) the interests of policy owners of the life company; or
 - (iii) the stability of the financial system in Australia;
 - (e) if the life company is an eligible foreign life insurance company:
 - (i) an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in a foreign country; or
 - (ii) an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country.
- (3) APRA may take any of the actions mentioned in subsection (4) in relation to a body corporate (the **target body corporate**) if:
- (a) the target body corporate is a body corporate that is any of the following:
 - (i) a registered NOHC of a life company (the **relevant life company**);
 - (ii) a subsidiary of a registered NOHC of a life company (also the **relevant life company**);
 - (iii) a subsidiary of a life company (also the **relevant life company**); and
 - (b) the condition in subsection (5), (6) or (7) is satisfied; and
 - (c) the target body corporate is incorporated in Australia; and

- (d) the target body corporate is not a body corporate of a kind specified in regulations (if any) made for the purposes of this paragraph.
- (4) The actions are as follows:
 - (a) taking control of the business of the target body corporate;
 - (b) appointing an administrator to take control of the business of the target body corporate.
- (5) The condition in this subsection is satisfied if:
 - (a) either:
 - (i) a Life Insurance Act statutory manager has taken control of the relevant life company; or
 - (ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant life company, and APRA intends that a Life Insurance Act statutory manager will take control of the relevant life company; and
 - (b) APRA considers that the target body corporate provides services that are, or conducts business that is, essential to the capacity of the relevant life company to maintain its operations.
- (6) The condition in this subsection is satisfied if:
 - (a) either:
 - (i) a Life Insurance Act statutory manager has taken control of the relevant life company; or
 - (ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant life company, and APRA intends that a Life Insurance Act statutory manager will take control of the relevant life company; and
 - (b) APRA considers that it is necessary for a Life Insurance Act statutory manager to take control of the target body corporate, in order to facilitate the resolution of any of the following:
 - (i) the relevant life company;
 - (ii) a registered NOHC of the relevant life company;

Section 179AA

- (iii) a relevant group of bodies corporate of which the relevant life company is a member;
 - (iv) a particular member or particular members of such a group.
- (7) The condition in this subsection is satisfied if:
 - (a) there is an external administrator of the target body corporate, or APRA considers that, in the absence of external support:
 - (i) the target body corporate may become unable to meet its obligations; or
 - (ii) the target body corporate may suspend payment; and
 - (b) APRA considers that it is necessary to take an action mentioned in subsection (4) in respect of the target body corporate in order to enable the relevant life company to maintain its operations, or in order to facilitate the resolution of any of the following:
 - (i) the relevant life company;
 - (ii) a registered NOHC of the relevant life company;
 - (iii) a relevant group of bodies corporate of which the relevant life company is a member;
 - (iv) a particular member or particular members of such a group.
- (8) If:
 - (a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Life Insurance Act statutory manager*** of the body corporate; or
 - (b) an administrator appointed by APRA is in control of a body corporate's business under this Subdivision—the administrator is the ***Life Insurance Act statutory manager*** of the body corporate.

Note: This section and other provisions relating to statutory management do not apply to the aspects described in subsection 16ZE(3) of the business and management of an eligible foreign life insurance company.

- (9) If APRA appoints 2 or more Life Insurance Act statutory managers of a body corporate, or appoints one or more additional Life Insurance Act statutory managers of a body corporate:
- (a) the functions and powers under this Act of a Life Insurance Act statutory manager of the body corporate may be performed or exercised by:
 - (i) all of the Life Insurance Act statutory managers of the body corporate acting jointly; or
 - (ii) each of the Life Insurance Act statutory managers of the body corporate acting individually (except to the extent (if any) specified in a notice given by APRA under paragraph (b)); and
 - (b) at the time of appointment, APRA may give all of the Life Insurance Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii), specifying limits or conditions on their ability to perform functions and exercise powers individually; and
 - (c) treat a reference in this Act to a Life Insurance Act statutory manager as being a reference to whichever one or more of those Life Insurance Act statutory managers the case requires.

179AB Start of control of body corporate's business by Life Insurance Act statutory manager

- (1) After the decision that a Life Insurance Act statutory manager will take control of a body corporate's business is made, APRA must give the body corporate written notice that the Life Insurance Act statutory manager will take, or is taking, control of the business.

Note: Subsections 179AQ(4) and 179AZA(3) also require APRA to give notice of the taking of control.

- (2) A Life Insurance Act statutory manager takes control of a body corporate's business:
- (a) at the time specified in a notice under this section as the time when the Life Insurance Act statutory manager takes control

Section 179AC

- of the business (which must not be earlier than the notice is given); or
 - (b) if a notice under this section does not specify a time as the time when the Life Insurance Act statutory manager takes control of the business—at the time the notice is given.
- (3) A notice under subsection (1) is not a legislative instrument.

179AC Life Insurance Act statutory managers—termination of control

Conditions necessary for termination of control

- (1) If APRA assumes control of a body corporate's business or appoints an administrator of a body corporate's business, APRA must ensure that either it or an administrator of the body corporate's business has control of the body corporate's business until:
- (a) APRA considers that it is no longer necessary for it or an administrator to remain in control of the body corporate's business; or
 - (b) APRA has applied for the body corporate to be wound up.

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

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

Events to precede termination

- (2) Before making an ultimate termination of control by a Life Insurance Act statutory manager of a body corporate's business, APRA must:
- (a) do both of the following:
 - (i) ensure that directors of the body corporate have been appointed or elected under the body corporate's constitution at a meeting called by the statutory manager in accordance with the body corporate's constitution;

Section 179AC

- (ii) if the body corporate is an eligible foreign life insurance company—ensure that a Compliance Committee of the body corporate is established and operating for the purpose of section 16ZF; or
- (b) do both of the following:
 - (i) appoint directors of the body corporate by instrument in writing;
 - (ii) if the body corporate is an eligible foreign life insurance company—ensure that a Compliance Committee of the body corporate is established and operating for the purpose of section 16ZF; or
- (c) ensure that a liquidator has been appointed:
 - (i) unless subparagraph (ii) applies—for the body corporate; or
 - (ii) if the body corporate is an eligible foreign life insurance company—for the body corporate in relation to its Australian business assets and liabilities.

Power to terminate control

- (3) If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of a body corporate's business by a Life Insurance Act statutory manager.
- (4) If the Life Insurance Act statutory manager at the time of the termination is an administrator, the instrument of termination also operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

Period of director's appointment

- (5) If a director is elected or appointed under subsection (2), the director takes office on the termination of the Life Insurance Act statutory manager's control of the body corporate's business. If the director was appointed by APRA, the director holds office until the

Section 179AD

body corporate's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the body corporate's constitution, the constitution governs the appointment.

Note: For further information about what happens when a Life Insurance Act statutory manager is in control of a body corporate's business, see Subdivision B.

Subdivision B—Provisions dealing with control of a body corporate's business by a Life Insurance Act statutory manager

179AD Life Insurance Act statutory manager's powers and functions

Life Insurance Act statutory manager's powers and functions include powers and functions of board

- (1) A Life Insurance Act statutory manager has the powers and functions of the members of the board of directors of the body corporate (collectively and individually), including the board's powers of delegation.

Note: When a Life Insurance Act statutory manager takes control of the business of a body corporate, the directors of the body corporate cease to hold office (see section 179AP).

Life Insurance Act statutory manager's power to obtain information

- (2) A Life Insurance Act statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the body corporate to give the Life Insurance Act statutory manager any information relating to the business of the body corporate that the Life Insurance Act statutory manager requires. A requirement to give information may include a requirement to produce books, accounts or documents.

- (3) A person who is or has been an officer of a body corporate commits an offence if:
- (a) there is a Life Insurance Act statutory manager in relation to the body corporate; and
 - (b) under subsection (2), the Life Insurance Act statutory manager requires the person to give information or to produce books, accounts or documents; and
 - (c) the person fails to comply with the requirement.

Penalty: Imprisonment for 12 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

- (4) An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (5) If:
- (a) before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
 - (b) giving the information might in fact tend to incriminate the individual or make the individual so liable;
- the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.
- (6) Subsections (4) and (5) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

Section 179AD

Life Insurance Act statutory manager's power to sell whole or part of body corporate's business

- (7) A Life Insurance Act statutory manager may sell or otherwise dispose of the whole or any part of the body corporate's business. The sale or disposal may occur on any terms and conditions that the Life Insurance Act statutory manager considers appropriate.

Life Insurance Act statutory manager's powers to alter body corporate's constitution etc.

- (8) A Life Insurance Act statutory manager may, if the body corporate concerned is registered under the *Corporations Act 2001*, alter the body corporate's constitution, rules or other arrangements for governance if the alteration:
- (a) is necessary or convenient for enabling or facilitating the performance of the Life Insurance Act statutory manager's functions and duties, or the exercise of the Life Insurance Act statutory manager's other powers, under this Division in relation to the body corporate; and
 - (b) promotes:
 - (i) the protection of the policy owners of the body corporate; and
 - (ii) financial system stability in Australia.
- (9) A Life Insurance Act statutory manager may do an act under subsection (7) or (8) despite:
- (a) the *Corporations Act 2001*; and
 - (b) the body corporate's constitution; and
 - (c) any contract or arrangement to which the body corporate is party; and
 - (d) any listing rules of a financial market in whose official list the body corporate is included.

Interpretation

- (10) In this section:

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

179AE Safeguards on exercise of Life Insurance Act statutory manager's powers and functions

- (1) Despite anything else in this Subdivision, a Life Insurance Act statutory manager of a body corporate (the ***body corporate under management***) may not perform a function or exercise a power under section 179AD if:
 - (a) either or both of subsections (2) and (3) apply; and
 - (b) the performance of the function or the exercise of the power is not for the purposes of:
 - (i) an act of the Life Insurance Act statutory manager under subsection 179AF(1); or
 - (ii) Part 3 or 4 of the *Financial Sector (Transfer and Restructure) Act 1999*.
- (2) This subsection applies if:
 - (a) the body corporate under management is not a life company; and
 - (b) the performance or the exercise would result in:
 - (i) the provision of services by the body corporate under management to a related body corporate of the body corporate under management; or
 - (ii) the provision of services by a related body corporate of the body corporate under management to the body corporate under management; or
 - (iii) subject to subsection (4), the transfer of assets between the body corporate under management and another body corporate (otherwise than in the ordinary course of business); and
 - (c) the performance or the exercise is not required or permitted by a binding arrangement that was in existence immediately before the Life Insurance Act statutory manager started to be in control of the business of the body corporate under management; and

Section 179AF

- (d) the provision or transfer is not for fair value.
- (3) This subsection applies if:
 - (a) the body corporate under management is a registered NOHC of a life company; and
 - (b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to increase the level of capital of the life company to a specified level; and
 - (c) the shareholders of the body corporate have not agreed, by ordinary resolution, to that use of the funds.
- (4) Treat the requirement in subparagraph (2)(b)(iii) as not being met if:
 - (a) the body corporate under management is a registered NOHC of a life company; and
 - (b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the life company to a specified level; and
 - (c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

179AF Life Insurance Act statutory manager's additional powers to facilitate recapitalisation

Powers

- (1) A Life Insurance Act statutory manager of a body corporate that is a company that has a share capital and is registered under the *Corporations Act 2001* may do one or more of the following acts on terms determined by the Life Insurance Act statutory manager:
 - (a) issue shares, or rights to acquire shares, in the company;
 - (b) cancel shares, or rights to acquire shares, in the company;
 - (c) reduce the company's share capital by cancelling any paid-up share capital that is not represented by available assets;
 - (d) sell shares, or rights to acquire shares, in the company;

- (e) vary or cancel rights or restrictions attached to shares in a class of shares in the company.

Note: Before doing such an act, the Life Insurance Act statutory manager will usually need to get and consider a report on the fair value of each share or right concerned: see section 179AG.

Giving company members notice of exercise of powers

- (2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the Life 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.
- (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).

Exercise of powers despite other laws etc.

- (4) A Life Insurance Act statutory manager may do an act under subsection (1) despite:
 - (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.

Section does not apply to EFLICs etc.

- (5) This section does not apply in relation to a body corporate that is:
 - (a) an eligible foreign life insurance company; or
 - (b) a subsidiary of an eligible foreign life insurance company; or
 - (c) a registered NOHC of an eligible foreign life insurance company.

Section 179AG

179AG Considering report before acting under section 179AF

Getting and considering report on fair value of shares or rights

- (1) Before determining terms for an act under subsection 179AF(1), the Life Insurance Act statutory manager must:
- (a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned from an expert who is not an associate of the statutory manager, or of the company, under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
 - (b) consider the report;
- unless APRA determines under subsection (8) that this subsection does not apply in relation to that act relating to those shares or rights.

Content of report

- (2) The report must set out:
- (a) the amount that is, in the expert's opinion, the fair value for each share or right concerned; and
 - (b) the reasons for forming the opinion; and
 - (c) any relationship between the expert and any of the following persons:
 - (i) the Life Insurance Act statutory manager;
 - (ii) a person who is an associate of the Life Insurance Act statutory manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;
 - (iii) the body corporate;
 - (iv) a person who is an associate of the body corporate under Division 2 of Part 1.2 of the *Corporations Act 2001*;including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; and
 - (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the

expert's ability to give an unbiased opinion in relation to the matter being reported on.

Determining fair value of shares

- (3) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each share concerned, the expert must:
- (a) first, assess the value of the company as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the company; and
 - (b) then allocate that value among the classes of shares in the company that either have been issued or that the Life Insurance Act statutory manager proposes to issue (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
 - (c) then allocate the value of each class pro rata among the shares in that class that either have been issued or that the Life Insurance Act statutory manager proposes to issue (without allowing a premium or applying a discount for particular shares in that class).

Assumptions for valuation of company

- (4) The Minister may give the expert written notice of assumptions for the valuation of the company. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Determining fair value of rights

- (5) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each right concerned, the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the right.

Section 179AH

Assumptions for valuation of rights

- (6) The Minister may give the expert written notice of assumptions for the valuation of the rights concerned. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Contravention does not invalidate act

- (7) A contravention of subsection (1), (2), (3), (5) or (9) does not affect the validity of anything done under section 179AF.

Exemption from subsection (1)

- (8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:
- (a) policy owners with:
 - (i) if the company is a life company—the life company; or
 - (ii) if the company is not a life company—the relevant life company mentioned in subsection 179AA(3); and
 - (b) financial system stability in Australia.
- (9) APRA must:
- (a) publish a copy of a determination under subsection (8) in the *Gazette*; and
 - (b) give a copy of a determination under subsection (8) to the Life Insurance Act statutory manager concerned (unless that manager is APRA).
- (10) A determination made under subsection (8) is not a legislative instrument.

179AH Act under section 179AF not ground for denying obligation

- (1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
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Section 179AI

- (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
 - (a) deny any obligation under the contract;
 - (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.
- (3) The matters are as follows:
 - (a) a Life Insurance Act statutory manager of the body corporate doing an act under subsection 179AF(1) relating to the body corporate;
 - (b) if the body corporate is a member of a relevant group of bodies corporate—a Life Insurance Act statutory manager of another member of the group doing an act under subsection 179AF(1) in relation to that other member.

179AI APRA may require a person to give information etc. for the purposes of this Division

APRA may require person to give information etc.

- (1) APRA may require a person, by written notice given to the person, to give APRA information, or documents containing information, relating to the business of a body corporate that has a Life Insurance Act statutory manager if:
 - (a) in a case where the Life Insurance Act statutory manager is APRA:
 - (i) APRA believes, on reasonable grounds, that the person has such information or documents; and
 - (ii) APRA requires the information or documents for the purposes of this Division; and

Section 179AI

- (b) in a case where the Life Insurance Act statutory manager is not APRA:
 - (i) the Life Insurance Act statutory manager requests, in writing, that APRA require the person to give the information or documents under this subsection; and
 - (ii) APRA believes, on reasonable grounds, that the person has such information or documents; and
 - (iii) APRA is satisfied that the Life Insurance Act statutory manager requires the information or documents for the purposes of this Division.
- (2) The notice:
 - (a) must specify a period within which the information or documents must be given to APRA; and
 - (b) may specify the form and manner in which the information or documents must be given to APRA.
- (3) The period specified under paragraph (2)(a) must be reasonable in all the circumstances.

Offence

- (4) A person commits an offence if:
 - (a) APRA requires the person to give APRA information or documents under subsection (1); and
 - (b) the person refuses or fails to give the information or documents as required.

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

Self-incrimination

- (5) A person is not excused from complying with a requirement under subsection (1) to give information or documents on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (6) However, in the case of an individual:
 - (a) the information or document given; and

Section 179AJ

- (b) giving the information or document; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or document;
- are not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information or document.

Section 179AD not limited

- (7) This section does not limit section 179AD.

179AJ Administrator in control—additional powers to recommend action by APRA

Types of recommendation

- (1) An administrator of a body corporate's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:
- (a) that APRA make a particular direction under subsection 179AM(3) or Subdivision B of Division 2 of Part 10A in respect of the body corporate;
 - (b) that APRA apply for the body corporate to be wound up;
 - (c) if the body corporate is a life company—that APRA revoke the life company's registration under section 21;
 - (d) if the body corporate is a registered NOHC—that APRA revoke the registered NOHC's registration under section 28A.

Effect of recommendation

- (2) If an administrator of a body corporate's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

Section 179AK

179AK Life Insurance Act statutory manager's liabilities and duties

Immunity

- (1) A Life Insurance Act statutory manager, or a person acting on behalf of a Life Insurance Act statutory manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Life Insurance Act statutory manager by or under this Act.
- (2) Subsection (1) does not apply to an act or omission in bad faith.
- (3) To avoid doubt, a Life Insurance Act statutory manager is not liable under section 588G of the *Corporations Act 2001* in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Life Insurance Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

- (4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by Life Insurance Act statutory managers under this Act.

179AL Transaction by Life Insurance Act statutory manager not voidable under section 588FE of the *Corporations Act 2001*

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

- (a) the transaction was entered into at a time when a Life Insurance Act statutory manager was in control of the body corporate's business; and
- (b) the transaction is:

- (i) an uncommercial transaction (within the meaning of that Act) of the body corporate; or
- (ii) an unfair preference (within the meaning of that Act) given by the body corporate to a creditor of the company; or
- (iii) an insolvent transaction (within the meaning of that Act) of the body corporate.

179AM Administrator in control—additional duties

Duty to report to APRA on request

- (1) A person who is an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business is being carried out if APRA requests that such a report be provided to it. The report must be given to APRA within a reasonable time after the request.

Duty to report to APRA on termination of appointment

- (2) A person who was an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business was carried out over the period of the administrator's appointment if the administrator's appointment has been terminated. The report must be given to APRA within a reasonable time of the termination.

Duty to follow directions by APRA

- (3) APRA may give an administrator of a body corporate's business a direction relating to the control of the body corporate's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:
 - (a) act in accordance with the direction; or
 - (b) immediately provide to APRA information relating to the control of the body corporate's business and request APRA to alter the direction.

Section 179AN

- (4) If an administrator of a body corporate's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

179AN Administrator in control—additional duties where action may affect financial system stability in Australia

- (1) If an administrator of a body corporate's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia, the administrator must:
 - (a) notify APRA as soon as practicable; and
 - (b) obtain APRA's written consent before taking the action.
- (2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.
- (3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.

179AO Termination of Life Insurance Act statutory manager's appointment

- (1) APRA may terminate the appointment of an administrator of a body corporate's business and either appoint another person as administrator of the body corporate's business or itself take control of the body corporate's business if:
 - (a) the administrator contravenes a requirement of this Division; or
 - (b) APRA considers such action necessary to:
 - (i) facilitate the resolution of the body corporate, a relevant group of bodies corporate of which the body corporate is a member, or another member of such a group; or
 - (ii) if the body corporate is a life company—protect the interests of policy owners of the life company; or

(iii) promote financial system stability in Australia.

(2) If:

(a) APRA is the statutory manager of a body corporate; and

(b) the requirement in paragraph (1)(b) is satisfied;

it may cease to be the statutory manager of the body corporate and appoint a person as administrator of the body corporate's business.

(3) This section has effect subject to section 179AC.

179AP Effect on directors of Life Insurance Act statutory manager taking control of a body corporate's business

(1) The directors of a body corporate cease to hold office when a Life Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of *director*, see subsection (4).

(2) A director of a body corporate must not be appointed or elected while a Life Insurance Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 179AC(2).

(3) The appointment of a person as a member of the Compliance Committee of an eligible foreign life insurance company under section 16ZF ceases to have effect when a Life Insurance Act statutory manager takes control of the eligible foreign life insurance company's business.

(4) A person must not be appointed as a member of the Compliance Committee of an eligible foreign life insurance company under section 16ZF while a Life Insurance Act statutory manager is in control of the eligible foreign life insurance company's business unless the appointment is made under subsection 179AC(2).

(5) If a person who ceased to hold office as a director of a body corporate under subsection (1), or a purported director of a body corporate appointed or elected in contravention of subsection (2), purports to act in relation to the body corporate's business while a

Section 179AP

Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

- (6) If a person whose appointment as a member of the Compliance Committee of a body corporate under section 16ZF ceased to have effect under subsection (3) purports to act in relation to the body corporate's business while a Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.
- (7) Subsections (1), (2) and (5) do not apply in relation to a body corporate that is an eligible foreign life insurance company.
- (8) Subsection (9) applies if:
 - (a) subsections (1), (2) and (5) do not apply in relation to a body corporate because of subsection (7); and
 - (b) a Life Insurance Act statutory manager takes control of the body corporate's business; and
 - (c) a director of the body corporate acts, or purports to act in relation to the body corporate's business while the Life Insurance Act statutory manager has control of the body corporate's business.
- (9) Those acts are invalid and of no effect to the extent that they relate to:
 - (a) the Australian business assets and liabilities of the body corporate; or
 - (b) the management of the body corporate, to the extent that the management relates to the Australian business assets and liabilities of the body corporate.
- (10) For the purposes of this section, **director** has the same meaning as it has in the *Corporations Act 2001*.

179AQ Effect on external administrator of Life Insurance Act statutory manager taking control of a body corporate's business

- (1) The appointment of an external administrator of a body corporate is terminated when a Life Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of *external administrator*, see the Schedule.

- (2) An external administrator of a body corporate must not be appointed while a Life Insurance Act statutory manager is in control of the body corporate's business unless APRA approves the appointment.
- (3) If a person who ceased to be the external administrator of a body corporate under subsection (1), or a purported external administrator of the body corporate appointed in contravention of subsection (2), purports to act in relation to the body corporate's business while a Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.
- (4) APRA must inform the external administrator of a body corporate that a Life Insurance Act statutory manager will take control of the body corporate's business as soon as possible after the decision that a Life Insurance Act statutory manager will take control of the body corporate's business is made. However, failure to inform the external administrator does not affect the operation of this section.

179AR Moratorium—effect of Life Insurance Act statutory management on court and tribunal proceedings

- (1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (8) in respect of a body corporate if a Life Insurance Act statutory manager is in control of the body corporate's business.
- (2) Subsection (1) does not apply if:

Section 179AR

- (a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and
 - (b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.
- (3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).
- (4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
 - (a) whether to grant leave under paragraph (2)(a); and
 - (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
 - (c) if the court or tribunal decides to impose such terms—the nature of those terms.
- (5) Subsection (1) also does not apply if:
 - (a) APRA consents in writing to the proceedings beginning or continuing; or
 - (b) the Life Insurance Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.
- (6) APRA (or the Life Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).
- (7) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).
- (8) A proceeding in a court or tribunal is covered by this subsection in respect of a body corporate if it is any of the following:
 - (a) a proceeding against the body corporate (including a cross-claim or third party claim against the body corporate);

Section 179AS

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

179AS Moratorium—effect of Life Insurance Act statutory management on enforcement process regarding property

- (1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if a Life Insurance Act statutory manager is in control of the body corporate's business.
- (2) Subsection (1) does not apply if:
 - (a) the 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
 - (b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.
- (3) A person intending to apply for leave of the Court under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Court considers that exceptional circumstances make this necessary).
- (4) APRA may apply to the Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Court must have regard to APRA's views in deciding:
 - (a) whether to grant leave under paragraph (2)(a); and

Section 179AT

- (b) if the Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
 - (c) if the Court decides to impose such terms—the nature of those terms.
- (5) Subsection (1) also does not apply if:
 - (a) APRA consents to the process beginning or continuing; or
 - (b) the Life Insurance Act statutory manager consents to the process beginning or continuing.
- (6) APRA (or the Life Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).
- (7) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

179AT Moratorium—effect of Life Insurance Act statutory management on disposal of property

- (1) A person must not dispose of property if:
 - (a) the property is owned by another person; and
 - (b) the other person is a body corporate; and
 - (c) a Life Insurance Act statutory manager is in control of the body corporate's business.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

- (2) Subsection (1) does not apply if:
 - (a) APRA consents to the disposal; or
 - (b) the Life Insurance Act statutory manager consents to the disposal.
- (3) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

179AU Moratorium—Restrictions on exercise of third party property rights

- (1) Section 440B of the *Corporations Act 2001* applies during a period in which a Life Insurance Act statutory manager is in control of a body corporate's business in the same way it applies during the administration of a company.
- (2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to:
 - (a) the Life Insurance Act statutory manager's written consent; or
 - (b) APRA's written consent.
- (3) Neither APRA nor a Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).
- (4) This section applies despite sections 179AR, 179AS and 179AT.

179AV Moratorium—effect of Life Insurance Act statutory management on supply of essential services

- (1) If:
 - (a) a Life Insurance Act statutory manager is in control of a body corporate's business; and
 - (b) the Life Insurance Act statutory manager requests, or authorises someone else to request, a person or authority (the **supplier**) to supply an essential service to the body corporate in Australia; and
 - (c) the body corporate owes an amount to the supplier in respect of the supply of the essential service before the day on which the Life Insurance Act statutory manager took control of the body corporate's business;the supplier must not:
 - (d) refuse to comply with the request for the reason only that the amount is owing; or

Section 179AW

- (e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

- (2) In this section:

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

179AW Moratorium—effect of Life Insurance Act statutory management on annual general meeting

- (1) This section applies to a body corporate that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.
- (2) Despite section 250N and section 601BR of that Act, if a Life Insurance Act statutory manager is in control of the body corporate's business at the end of that period, the body corporate need not hold that annual general meeting.

179AX Life Insurance Act statutory manager being in control not grounds for denial of obligations

- (1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
 - (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
 - (a) deny any obligation under the contract;
 - (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.

- (3) The matters are as follows:
- (a) a Life Insurance Act statutory manager being in control, or being appointed to take control, of the business of the body corporate;
 - (b) if the body corporate is a member of a relevant group of bodies corporate—a Life Insurance Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

179AY Application of other provisions

- (1) None of the matters mentioned in subsection (2) affect:
- (a) the continued operation of other provisions of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a body corporate; or
 - (b) the obligation of a body corporate to comply with those other provisions and that Act.
- (2) The matters are as follows:
- (a) the appointment of a Life Insurance Act statutory manager of the body corporate's business under this Division;
 - (b) the fact that a Life Insurance Act statutory manager is in control of the body corporate's business.
- (3) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate that has a Life Insurance Act statutory manager.

179AZ Costs of statutory management

- (1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of a body corporate's business, or of having an administrator in control of a body corporate's business, are payable from the body corporate's funds and are a debt due to APRA.
- (2) Despite anything contained in any law relating to the winding-up of companies, debts due to APRA by a body corporate under

Section 179AZA

subsection (1) have priority in a winding-up of the body corporate over all other unsecured debts.

- (3) If the body corporate is a life company, subsection (2) does not apply the extent that a debt due to APRA by the life company is referable to the business of a statutory fund of the life company.

Note: APRA may be able to recover a debt that is referable to the business of a statutory fund of the life company that is being wound up, in accordance with paragraph 187(3)(c).

179AZA APRA must report to Treasurer and publish information about statutory management

Reports to the Treasurer

- (1) If the Treasurer requests APRA to give him or her a written report concerning the activities of Life Insurance Act statutory managers in respect of specified body corporates or in respect of a specified period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.
- (2) If a Life Insurance Act statutory manager takes control of a body corporate's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all Life Insurance Act statutory managers and each ultimate termination of control that occurred during that financial year.

Requirement to publish notices in Gazette

- (3) If APRA:
- (a) takes control of a body corporate's business; or
 - (b) appoints an administrator of a body corporate's business; or
 - (c) makes an ultimate termination of control in respect of a body corporate's business;

APRA must publish notice of that fact in the *Gazette*. However, mere failure to publish such a notice does not affect the validity of the act.

179AZB Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

- (a) the acquisition of assets in:
 - (i) a sale or disposal of the whole or part of the business of a body corporate under this Division by a Life Insurance Act statutory manager in control of the body corporate's business; or
 - (ii) a transfer of life insurance business of a life company under a scheme prepared by a Life Insurance Act statutory manager in control of the life company's business and confirmed (with or without modifications) by the Court under Part 9;(whether the assets are shares in another body corporate or other assets);
- (b) the acquisition of shares in a body corporate as a direct result of:
 - (i) the issue or sale of the shares under this Division by a Life Insurance Act statutory manager in control of the body corporate's business; or
 - (ii) the exercise of a right to acquire shares that was issued or sold under this Division by a Life Insurance Act statutory manager in control of the body corporate's business.

Division 1A—Other external administration

179B Relationship of this Division with Chapter 5 of the *Corporations Act 2001*

This Division applies in relation to a life company in addition to Chapter 5 of the *Corporations Act 2001*.

179C Involving APRA in proposed appointment of external administrators of life companies and NOHCs

- (1) At least one week before a person other than APRA:
 - (a) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or
 - (b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or
 - (c) appoints an external administrator of a life company or of a registered NOHC of a life company (otherwise than as the result of an application made by another person);the person must give APRA written notice that the person proposes to make the application or appointment.
- (2) If there is an approved form for the notice, the person must give the notice in the approved form.
- (3) Subsection (1) does not apply if APRA gives the person written notice, before the person makes the application or appointment, that APRA consents to the person making the application or appointment.
- (4) APRA is entitled to be heard on the application.
- (5) After receiving the notice, APRA may request the person to provide details of the proposed application.

Offence

- (6) A person (other than APRA) commits an offence if:
- (a) the person:
 - (i) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or
 - (ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or
 - (iii) appoints an external administrator of a life company or of a registered NOHC of a life company (otherwise than as the result of an application made by another person); and
 - (b) APRA did not give the person written notice, before the person made the application or appointment, of APRA's consent to the person making the application or appointment, in accordance with subsection (3); and
 - (c) at least one week before making the application or appointment:
 - (i) if there is an approved form for the purposes of this paragraph—the person did not give APRA notice in the approved form indicating that the person proposed to make the application or appointment; or
 - (ii) otherwise—the person did not give APRA written notice indicating that the person proposed to make the application or appointment.

Penalty: 60 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

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

Division 2—Winding-up

180 Winding-up of life companies

- (1) Subject to subsection (2), a life company is not to be wound up except by order of the Court on an application under subsection 175(6) or section 181.
- (2) A life company may be wound up voluntarily if:
 - (a) the company is a friendly society; and
 - (b) each person with an interest in a benefit fund of the society is a member of the society; and
 - (c) each member of the society has only one vote on a special resolution to wind up the society (whether the resolution is decided on a show of hands or on a poll).

For this purpose, a **member** of the society is a person who is a member of the society for the purposes of the *Corporations Act 2001*.

- (3) If a special resolution to wind up a friendly society is passed, the society must lodge a copy of the special resolution with APRA.

Note: Under the *Corporations Act 2001*, a copy of the resolution must also be lodged with ASIC.

- (4) A friendly society commits an offence if it does not comply with subsection (3) within 7 days after the day on which the special resolution was passed.

Penalty for contravention of this subsection: 30 penalty units.

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

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

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

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

181 Order on application by APRA

- (1) Subject to subsection (2), APRA is entitled to apply for an order that a life company be wound up.
- (2) APRA may only make an application if any of the following requirements are met:
 - (a) APRA is satisfied that it is necessary or proper that the application be made, having regard to the conclusions reached by APRA as a result of any of the following situations:
 - (i) APRA investigating the business of the life company under Division 3 of Part 7;
 - (ii) APRA taking control of the life company's business under subsection 179AA(1);
 - (iii) an administrator of the life company's business recommending to APRA under section 179AJ that APRA apply for the life company to be wound up;
 - (b) if the life company is an eligible foreign life insurance company—APRA considers that any of the following requirements are met:
 - (i) an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in one or more foreign countries;
 - (ii) an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country.
- (3) On an application under subsection (1), the Court may make an order that a life company be wound up if the Court is satisfied that it is in the interests of the owners of policies issued by the company that such an order be made.
- (4) To avoid doubt, subsection (1) applies whether or not a Life Insurance Act statutory manager is in control of:

Section 182

- (a) unless paragraph (b) applies—the life company’s business; or
- (b) if the life company is an eligible foreign life insurance company—the Australian business assets and liabilities of the eligible foreign life insurance company.

182 Operation of Corporations Act

Subject to this Division, the winding-up of a life company is to be conducted in accordance with the *Corporations Act 2001*, being the law under which the company is incorporated or is taken to be incorporated.

183 Notification to APRA regarding applications by liquidator

- (1) Before making an application to the Court in relation to a matter arising under the winding-up of an entity covered by subsection (4), or the proposed winding-up of an entity covered by subsection (4), a liquidator must give APRA written notice that the liquidator proposes to make the application.
- (2) The notice must include details of the proposed application.
- (3) APRA is entitled to be heard on the application.
- (4) This subsection covers the following entities:
 - (a) a life company;
 - (b) a registered NOHC;
 - (c) a subsidiary of a life company or registered NOHC.

183A Application by liquidator for directions—voluntary winding up of friendly society

A liquidator may apply to the Court for directions regarding any matter arising under the voluntary winding-up of a friendly society.

Note: The liquidator must give APRA written notice under section 183 that the liquidator intends to make the application.

183B Application by APRA—voluntary winding up of friendly society

- (1) This section applies to a friendly society that may be wound up voluntarily under subsection 180(2).
- (2) APRA may apply to the Court:
 - (a) to determine any question arising in the winding up of the friendly society, or the proposed winding up of the friendly society; or
 - (b) to exercise all or any of the powers that the Court might exercise if the friendly society were being wound up by the Court.
- (3) The Court may make any orders on the application that it thinks fit.

184 Application by APRA for directions

- (1) APRA may apply to the Court for directions regarding any matter arising under:
 - (a) the winding-up of an entity covered by subsection 183(4); or
 - (b) the proposed winding-up of an entity covered by subsection 183(4).
- (2) APRA must give the liquidator written notice that APRA intends to make the application.
- (3) The notice must include details of the proposed application.
- (4) The liquidator is entitled to be heard on the application.

185 APRA's power to ask for information

- (1) APRA may ask a liquidator for specified information in writing about:
 - (a) the winding-up of an entity covered by subsection 183(4) and the other affairs of the entity; or
 - (b) the proposed winding-up of an entity covered by subsection 183(4) and the other affairs of the entity.

Section 186

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

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

186 Determination of amounts to be treated as liabilities of life company

- (1) In relation to each person who, according to the company's records, appears to be:
- (a) the owner of a policy issued by the company; or
 - (b) interested in a policy issued by the company;
- the liquidator must determine:
- (c) whether the company has a policy liability to the person; and
 - (d) if the company has such a liability, the amount that represents the value of that policy liability.
- (2) Determinations under subsection (1) are to be made in accordance with any directions of the Court.
- (2A) If the company is a friendly society, the liquidator must take account of the approved benefit fund rules of the society in making determinations under subsection (1), to the extent that those rules are consistent with any directions of the Court.
- (3) The liquidator must notify each person referred to in subsection (1) of the amount determined under that subsection in respect of each policy of which the person is the owner or in which the person is interested.
- (4) If the liquidator determines an amount under subsection (1), then, for the purposes of the winding-up:
- (a) the company is to be taken to have a liability under the relevant policy in that amount to the person to whom the determination relates; and
 - (b) subject to subsection (5), that person is bound by the liquidator's determination.

- (5) A person who is notified of an amount under subsection (3) may dispute the amount:
- (a) in accordance with the Rules of Court; or
 - (b) as the Court otherwise directs in the particular case.

187 Application of statutory fund assets

- (1) Subject to this section, in the winding-up of a life company, the assets of a statutory fund (*the primary fund*) must first be applied in accordance with the *Corporations Act 2001* in discharging debts and claims referred to in subsection 556(1) of that Act.
- (2) Subsection (1) has effect only to the extent that debts or claims are liabilities that are referable to the business of the primary fund.
- (3) If any assets remain after the application of subsection (1), the assets must be applied according to the following rules:
- (a) the assets are to be applied first in discharge of policy liabilities of the company referable to the primary fund;
 - (b) if any assets remain, they are to be applied in discharge of other liabilities that are referable to the business of the fund;
 - (c) if, after the application of assets according to paragraphs (a) and (b), any assets of the primary fund remain, those assets are to be applied in such manner as the Court directs;
 - (d) directions given for the purpose of paragraph (c) are to be such directions as the Court considers equitable, having regard to:
 - (i) the interests of the owners of policies referable to the primary fund;
 - (ii) the interests of the owners of policies referable to statutory funds of the company other than the primary fund; and
 - (iii) the interests of creditors of the company whose debts have not been discharged by the application of assets according to paragraph (b); and
 - (iv) the interests of shareholders of the company.

Section 188

- (4) The reference in subparagraph (3)(d)(iii) to creditors of a company is not limited to creditors to whom amounts are due in relation to the business of a statutory fund. The reference is intended to include all creditors of a company, whatever the nature of the liabilities involved.
- (5) If a liability of the company:
 - (a) is referable to 2 or more statutory funds; or
 - (b) is referable in part to a statutory fund but is also related to business, other than life insurance business, carried on by the company;the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund, as the case may be.
- (6) In making an apportionment under subsection (5), the liquidator must comply with any directions of the Court.
- (7) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the company that is referable to the business of the fund.

188 Liability of directors for loss to statutory fund

- (1) If:
 - (a) a life company contravenes this Act in relation to a statutory fund; and
 - (b) the contravention results in a loss to the statutory fund; and
 - (c) either:
 - (i) the Court orders that the company be wound up; or
 - (ii) for a company that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up;the persons who were the directors of the company when the contravention occurred are jointly and severally liable to pay to the company an amount equal to the amount of the loss.

Section 188

- (2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to prevent the occurrence of such a contravention.
- (3) On application by the liquidator of the company, the Court may order any person liable under subsection (1) to pay to the company the whole or any part of the loss.
- (4) A person cannot be made liable both under this section and under Division 2 of Part 4 in respect of the same contravention.

Part 9—Transfers and amalgamations of life insurance business

189 Interpretation

A reference in this Part to a company affected by a scheme is a reference to a company that is a party or proposed party to an agreement or deed by which the transfer or amalgamation provided for by the scheme is, or is to be, carried out.

190 Transfer or amalgamation of life insurance business

- (1) No part of the life insurance business of a life company may be:
 - (a) transferred to another life company; or
 - (b) amalgamated with the business of another life company;except under a scheme confirmed by the Court.
- (2) The reference in paragraph (1)(a) to a life company includes a reference to a company that is registered under section 21 but has not begun to carry on life insurance business in Australia.
- (3) A scheme must set out:
 - (a) the terms of the agreement or deed under which the proposed transfer or amalgamation is to be carried out; and
 - (b) particulars of any other arrangements necessary to give effect to the scheme.
- (4) Subsection (1) does not require that a transfer or amalgamation of life insurance business be made under a scheme approved by the Court if:
 - (a) immediately before the transfer or amalgamation, the business is referable to a statutory fund that relates only to life insurance business carried on outside Australia; and

- (b) the transfer or amalgamation will result in the business becoming referable to a statutory fund that relates only to life insurance business carried on outside Australia.
- (5) Subsection (1) does not require that a transfer of life insurance business be made under a scheme approved by the Court if the transfer is a transfer of business made under the *Financial Sector (Transfer and Restructure) Act 1999*.

191 Steps to be taken before application for confirmation

- (1) In this section:

affected policy owner means the owner of a policy that is referable to a statutory fund affected by a scheme.

approved summary means a summary approved by APRA.

- (2) An application for confirmation of a scheme may not be made unless:
 - (a) a copy of the scheme and any actuarial report on which the scheme is based have been given to APRA in accordance with the regulations; and
 - (b) notice of intention to make the application has been published by the applicant in accordance with the regulations; and
 - (c) an approved summary of the scheme has been given to every affected policy owner.
- (3) Without limiting the provision that may be made by the regulations for the purposes of paragraph (2)(b), the notice referred to in that paragraph must include, in relation to each company affected by the scheme, details of the place and time at which an affected policy owner may obtain a copy of the scheme.
- (4) An affected policy owner is entitled, on his or her request, to be provided by the company with one copy of the scheme free of charge.

Section 192

- (5) The Court may dispense with the need for compliance with paragraph (2)(c) in relation to a particular scheme if it is satisfied that, because of the nature of the scheme or the circumstances attending its preparation, it is not necessary that the paragraph be complied with.

192 Actuarial report on scheme

- (1) When a copy of a scheme has been given to APRA for the purpose of paragraph 191(2)(a), APRA may arrange for an independent actuary to make a written report on the scheme.
- (2) APRA may give a copy of the report to each company affected by the scheme.

193 Application to Court

- (1) Any of the companies affected by a scheme may apply to the Court for confirmation of the scheme.
- (2) An application for confirmation must be made in accordance with the regulations.
- (3) APRA is entitled to be heard on an application.

194 Confirmation of scheme

- (1) The Court may:
 - (a) confirm a scheme without modification; or
 - (b) confirm the scheme subject to such modifications as it thinks appropriate; or
 - (c) refuse to confirm the scheme.
- (2) In deciding whether to confirm a scheme (with or without modifications), the Court must have regard to:
 - (a) the interests of the policy owners of a company affected by the scheme; and
 - (b) if a report relevant to all or part of the scheme has been filed with the Court under section 175—that report; and

- (c) any other matter the Court considers relevant.

195 Effect of confirmation etc.

When a scheme is confirmed:

- (a) it becomes binding on all persons; and
- (b) it has effect in spite of anything in the constitution of any company affected by the scheme; and
- (c) the company on whose application the scheme was confirmed must cause a copy of the scheme to be lodged at an office of ASIC in every State and Territory in which a company affected by the scheme carried on business.

196 Costs of actuary's report

- (1) When a scheme is confirmed, the company that applied for the confirmation becomes liable to pay to the Commonwealth an amount equal to the expenses reasonably incurred by APRA in obtaining a report under section 192 in relation to the scheme.
- (2) An amount due under subsection (1) may be recovered by the Commonwealth as a debt in any court of competent jurisdiction.

197 Documents to be lodged in case of transfer or amalgamation

- (1) If any part of the life insurance business carried on by a life company is transferred to, or amalgamated with the life insurance business of, another company, the latter company must give APRA such documents as are required by the regulations.
- (2) The documents must be lodged within the time fixed by the regulations or within such further time as APRA, in accordance with the regulations, allows.

Part 10—Provisions relating to policies

Division 1—Issue of policies

198 Alteration of proposal and policy forms

- (1) ASIC may give a life company written notice requiring the company to submit to ASIC any form of proposal or policy document ordinarily used by the company in Australia.
- (2) If ASIC thinks that a form submitted in answer to a notice under subsection (1) does not comply with this Act or is likely to mislead, ASIC may give the life company written notice:
 - (a) setting out particulars of the way in which the form fails to comply with this Act or is likely to mislead; and
 - (b) inviting the life company to make submissions to ASIC on any matter set out in the notice.
- (3) If:
 - (a) at least 14 days have elapsed since ASIC gave notice to the life company; and
 - (b) either:
 - (i) the company has not made any submissions to ASIC; or
 - (ii) having taken into account the submissions made by the life company, ASIC is satisfied that the form in question fails to comply with this Act or is likely to mislead;ASIC may give the life company a written direction to change the form in the way specified in the direction.
- (4) A life company must not make use of a form in respect of which ASIC has given a direction under subsection (3), or allow such a form to be used by a representative of the company, unless the form has been changed in accordance with the direction.

199 Capacity of young persons to insure etc.

- (1) A person who is at least 10 but has not reached 16 may, with the written consent of a parent or a person who stands in the place of a parent:
 - (a) enter into a policy (including a life policy on his or her own life or on another life); or
 - (b) take an assignment of a policy.
- (2) A person who has reached 16 but has not reached 18 has the same capacity to exercise rights or powers in relation to a policy of which he or she is the owner as a person who has reached 18.

Division 2—Assignments and mortgages

200 Assignment of policy

- (1) The rights of a person as owner of a policy may only be assigned at law under this section.
- (2) An assignment is not effective at law unless the following requirements have been satisfied:
 - (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the form prescribed by the regulations;
 - (b) the memorandum must be endorsed on the policy document or on an annexure to the policy document that is referred to in the policy document or in another annexure to the policy document;
 - (c) the memorandum must be signed by the transferor and the transferee;
 - (d) the assignment must be registered in a register of assignments kept by the life company concerned;
 - (e) the date of registration must be inserted in the memorandum;
 - (f) the memorandum must be signed by the principal executive officer of the life company or by a person authorised by the principal executive officer to sign such memoranda.
- (3) If all the requirements of subsection (2) are satisfied, an assignment has the following effects at law:
 - (a) the transferee has all the rights and powers, and is subject to all the liabilities, of the transferor under the policy;
 - (b) the transferee may sue in his or her own name on the policy;
 - (c) payment to the transferee of money due under the policy discharges the life company from all liability under the policy in respect of the money;
 - (d) the memorandum of transfer is conclusively presumed to have been registered in accordance with subsection (2) on the date shown in the memorandum;

- (e) as between the life company and a person claiming money under the policy, the transferee is conclusively presumed, for all purposes, to have been the absolute owner of the policy at the time of registration of the assignment, free from all trusts, rights, equities and interests, and entitled to receive the money and give a good discharge for it;
 - (f) any security over the policy given by the transferee is effective in spite of any trust or any right, equity or interest of another person;
 - (g) the surrender of the policy by the transferee is effective in spite of any trust or any right, equity or interest of another person;
 - (h) the life company, in respect of any dealing it has with the transferee, is not required or concerned to inquire as to the circumstances in which, or the consideration for which, the policy was assigned to the transferee or any previous transferee;
 - (i) subject to section 202, the life company, in respect of any dealing it has with the transferee, is not affected by express, implied or constructive notice of any trust, right, equity or interest.
- (4) An assignment under this section does not:
- (a) make the transferee a member of the life company; or
 - (b) deprive the transferor of membership of the company in respect of the policy;
- except in accordance with the company's constitution.
- (5) This section does not:
- (a) impose on a person under 16 any liability to which he or she would not be subject apart from this section; or
 - (b) confer on a person under 16 any power or capacity he or she would not have apart from this section; or
 - (c) render effective a receipt, security or surrender given by a person under 16 if it would not be effective apart from this section.

Section 201

- (6) The rights and liabilities under a policy are not merged or extinguished, either at law or in equity, merely because the policy is assigned, whether at law or in equity, to the life company that issued the policy.
- (7) A life company is not obliged to register an assignment under paragraph (2)(d) if the company is required or permitted, by another law of the Commonwealth, to refuse to register the assignment.
- (8) This section:
 - (a) does not prejudice the effect in equity of an assignment of the rights of a person as owner of a policy that is made otherwise than under this section; and
 - (b) has effect subject to section 203.

201 Mortgages and trusts

- (1) If a policy is assigned by way of mortgage or on trust:
 - (a) the mortgage or trust is not effective unless:
 - (i) it is created by some means other than the memorandum of transfer; and
 - (ii) the memorandum of transfer does not contain any provisions about the rights and duties of the assignor, the assignee or any other person in respect of the mortgage or trust; and
 - (b) no notice of the mortgage or trust is to be entered on the memorandum of transfer or endorsed on the policy; and
 - (c) subject to section 202, the life company is not affected by express, implied or constructive notice of the mortgage or trust.
- (2) In spite of subsection (1), the transferee under an assignment may be described in the memorandum of transfer as the trustee or trustees of a superannuation fund.

202 Effect of notice of trust etc.

- (1) A life company is not entitled to rely on section 200 or subsection 201(1) in relation to a matter in which the company has not acted in good faith.
- (2) A life company is not entitled to rely on section 200 or subsection 201(1) in relation to any trust, right, equity or interest of which the company has received express notice in writing.
- (2A) A life company is not taken, for the purposes of subsection (2), to have received express notice in writing of a trust, right, equity or interest merely because the transferee under an assignment is described in the memorandum of transfer as the trustee or trustees of a superannuation fund.
- (3) If a life company has received express notice in writing of a trust, right, equity or interest claimed in relation to money payable under a policy, the company may pay the money into the Court.
- (4) Payment of the money into the Court discharges the company from liability to any person in respect of the money.
- (5) The money is to be paid out in accordance with an order of the Court.

203 Transfer of policy after change of trustee

- (1) If:
 - (a) either:
 - (i) a policy has been issued or assigned to a person as trustee; or
 - (ii) a policy has become vested in a person as trustee in some other way; and
 - (b) the person is no longer the trustee under the relevant trust; another person may give the life company written notice that the person giving the notice is now the trustee under the trust.
- (2) A notice is to be given in accordance with the regulations.

Section 203

- (3) The regulations may require that a notice be in the form of, or be verified by, a statutory declaration.
- (4) If notice is given in accordance with this section, the life company may record the name of the person who gave the notice as the owner of the policy.
- (5) When the person's name is recorded under subsection (4), the person becomes the owner of the policy by force of this section.

Division 2A—Restriction on assignment or commutation of payments under structured settlements and structured orders

203A Definitions

In this Division:

structured order has the same meaning as it has in Division 54 of the *Income Tax Assessment Act 1997*.

structured settlement has the same meaning as it has in Division 54 of the *Income Tax Assessment Act 1997*.

tax-exempt annuity has the meaning given by paragraph 203B(a).

tax-exempt lump sum has the meaning given by paragraph 203B(b).

203B Application of Division to tax-exempt annuities and lump sums

This Division applies, at a particular time, to:

- (a) an annuity (a **tax-exempt annuity**) payable (now or in the future) by:
 - (i) a company that is registered under section 21; or
 - (ii) a body that carries on State insurance, within the meaning of paragraph 51(xiv) of the Constitution;if, at that time, the requirements of sections 54-20 to 54-40 of the *Income Tax Assessment Act 1997* are satisfied in relation to the annuity; and
- (b) a lump sum (a **tax-exempt lump sum**) payable (now or in the future) by:
 - (i) a company that is registered under section 21; or
 - (ii) a body that carries on State insurance, within the meaning of paragraph 51(xiv) of the Constitution;

Part 10 Provisions relating to policies

Division 2A Restriction on assignment or commutation of payments under structured settlements and structured orders

Section 203C

if, at that time, the requirements of sections 54-45 to 54-60 of the *Income Tax Assessment Act 1997* are satisfied in relation to the lump sum.

Note 1: The application of this Division to bodies that carry on State insurance is subject to section 5.

Note 2: Division 54 of the *Income Tax Assessment Act 1997* provides a tax exemption for certain payments under structured settlements and structured orders.

203C Assignments or commutations of tax-exempt annuities are generally not effective

- (1) A purported assignment or commutation of an annuity that is, at the time of the purported assignment or commutation, a tax-exempt annuity is not effective at law (subject to subsection (2)).
- (2) However, the annuity can be commuted as mentioned in section 54-35 of the *Income Tax Assessment Act 1997*.

203D Assignments or commutations of tax-exempt lump sums are not effective

- (1) A purported assignment of the right to receive a lump sum that is, at the time of the purported assignment, a tax-exempt lump sum is not effective at law.
- (2) A purported commutation, or other early cashing-out, of the right to receive a lump sum that is, at the time of the purported commutation or cashing-out, a tax-exempt lump sum is not effective at law.

203E Relationship with Division 2

Division 2 has effect subject to this Division.

Division 3—Protection of policies**204 Protection of interest of insured**

- (1) The rights and interests of a person under:
 - (a) a life policy effected on his or her life; or
 - (b) a life policy effected on the life of the person's spouse or de facto partner;are not liable to be applied or made available by any judgment, order or process of a court in discharge of a debt owed by the person.
- (2) Subsection (1) applies:
 - (a) regardless of when a policy was issued; and
 - (b) in the case of a policy referred to in paragraph (1)(a)—whether or not the policy is owned by the person.
- (3) This section has effect subject to the *Bankruptcy Act 1966*.

205 Protection of policy money on person's death

- (1) If, on the death of a person, money becomes payable to the person's estate under a policy effected on the person's life, the following provisions apply:
 - (a) except as permitted by paragraph (b), the money is not liable to be applied or made available:
 - (i) under any judgment, order or process of a court; or
 - (ii) in any other manner whatsoever;in payment of the person's debts;
 - (b) the money may be applied in payment of a debt of the person if:
 - (i) the person had entered into a contract that provided expressly for the money to be so applied; or
 - (ii) the person had charged the money with the payment of the debt; or

Section 205

- (iii) the person gave an express direction, in his or her will or other testamentary document signed by the person, that the money be so applied;
- (c) none of the following constitutes an express direction for the purposes of subparagraph (b)(iii):
 - (i) a mere direction that debts be paid;
 - (ii) a charge of debts on the whole or a part of the person's estate;
 - (iii) the creation of a trust for the payment of debts.
- (2) This section has effect regardless of when a policy was issued.
- (3) This section has effect subject to the *Bankruptcy Act 1966*.

Division 4—Surrender values, paid-up policies and non-forfeiture of policies

206 Application of Division

- (1) Subject to subsections (2) and (3), this Division applies to all policies.
- (2) This Division does not apply to policies declared by the regulations to be excluded from the operation of this Division.
- (3) The regulations may provide that this Division applies to a class of policies subject to specified modifications. If such provision is made, this Division applies to the class of policies accordingly.

207 Surrender of policies

- (1) The owner of:
 - (a) a policy in respect of which there is no contractual obligation on the owner to make any payments of premiums after the first year for which the policy is in force; or
 - (b) a policy (other than a policy referred to in paragraph (a)) that has been in force for at least 3 years;may request the company that issued the policy to surrender the policy.
- (2) A request under subsection (1) must be in writing.
- (3) Subject to section 208, if the policy owner makes a request under subsection (1), the company must pay to the policy owner an amount equal to the surrender value of the policy less the amount of any debt owed to the company under, or secured by, the policy.
- (4) Subject to subsection (6), if apart from this subsection, the surrender value of a policy at a particular time would be less than an amount calculated, for the purposes of this subsection, in accordance with the prudential standards, the last-mentioned amount is the surrender value of the policy at that time.

Section 208

- (5) Subsection (6) applies to a life policy issued before the commencement of this Act and still in force immediately after that commencement.
- (6) If, apart from this subsection, the surrender value of a policy under this Act would at any time be less than the adjusted pre-1 July 1995 surrender value of the policy, the adjusted pre-1 July 1995 surrender value of the policy is the surrender value of the policy for the purposes of this Act.
- (7) In subsection (6):

adjusted pre-1 July 1995 surrender value, in relation to a policy to which that subsection applies, means the surrender value of the policy immediately before 1 July 1995, adjusted for any transactions entered into on or after that date in relation to the policy that affected its surrender value.

208 Relaxation of company's obligations to surrender

- (1) A life company may apply to APRA for the suspension or variation of its obligation to make payments under section 207.
- (2) If APRA thinks that such payments would prejudice:
 - (a) the financial stability of the company; or
 - (b) the interests of the policy owners of the company;APRA may, in writing, suspend or vary the company's obligation to pay the surrender values for such period as APRA thinks fit.
- (3) A suspension or variation may be subject to such conditions as APRA thinks fit.

209 Paid-up policies

- (1) If premiums under a policy have been paid in respect of a period of at least 3 years, the owner of the policy may request the life company concerned:
 - (a) to vary the policy so that no further premiums are payable;and

- (b) to treat the policy as a paid-up policy.
- (2) A request under subsection (1) must be in writing.
- (3) On receiving the request, the life company must vary the policy by reducing the amount payable under the policy to an amount calculated in accordance with the prudential standards.
- (4) The policy, as varied, is to be taken to be a paid-up policy.
- (5) If, when a request is made under subsection (1):
 - (a) the policy owner owes a debt to the life company under the policy; or
 - (b) a debt owed by the policy owner to the life company is secured by the policy;the company may either:
 - (c) treat the debt as a debt secured by the paid-up policy; or
 - (d) in calculating the reduced amount payable under the policy, take the debt into account in accordance with the prudential standards.
- (6) If a debt is taken into account in accordance with paragraph (5)(d), the debt is discharged.

210 Non-forfeiture of policies in certain cases of non-payment of premiums

- (1) A policy is not liable to be forfeited only because of the non-payment of a premium (the *overdue premium*) if:
 - (a) at least 3 years' premiums have been paid on the policy; and
 - (b) the surrender value of the policy exceeds the total of:
 - (i) the amount of the overdue premium; and
 - (ii) the total of any other amounts owed to the company under, or secured by, the policy.
- (2) For the purposes of paragraph (1)(b), the surrender value of the policy is to be worked out as at the day immediately before the day on which the overdue premium falls due.

Part 10 Provisions relating to policies

Division 4 Surrender values, paid-up policies and non-forfeiture of policies

Section 210

- (3) Until the overdue premium is paid, the company may charge interest on it on terms not less favourable to the policy owner than such terms (if any) as are prescribed by the regulations.
- (4) The overdue premium and any unpaid interest charged on it are taken, for the purposes of this Act, to be a debt owing to the company under the policy.
- (5) A life company may only forfeit a policy because of the non-payment of a premium if:
 - (a) the company has given the policy owner a written notice:
 - (i) setting out the amount of the premium and the day on which it became, or will become, due; and
 - (ii) stating that the policy will be forfeited at the end of 28 days after the giving of the notice or 28 days after the day on which the premium became, or will become, due, whichever is the later if the amount due to the company has not been paid; and
 - (b) at least 28 days have elapsed since:
 - (i) the day on which the notice was given; or
 - (ii) the day on which the premium became due;whichever is the later.

Division 5—Payment of policy money

211 Probate or administration not necessary in certain cases—a single policy

- (1) If:
- (a) there is only a single policy under which money is payable by a particular life company to the personal representative of a deceased person; and
 - (b) the money does not exceed \$50,000 or such other amount as is prescribed for the purposes of this paragraph;
- the company may pay the money to:
- (c) the spouse, de facto partner, parent, child, brother, sister, niece or nephew of the deceased person; or
 - (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:
 - (i) under the deceased person's will; or
 - (ii) under the law relating to the disposition of the property of deceased persons; or
 - (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person's estate.
- (1A) For the purposes of paragraph (1)(c), if one person is the child of another person because of the definition of *child* in this Act, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.
- (2) A company may pay the money without requiring the production of any probate or letters of administration.
- (3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policy.
- (4) A person to whom a company makes a payment under this section must apply the money in due course of administration.

Section 212

- (5) In this section **money**, in relation to a policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

212 Probate or administration not necessary in certain cases—2 or more policies

- (1) If:
- (a) there are 2 or more policies under which money is payable by a particular life company to the personal representative of a deceased person; and
 - (b) the total of the money payable under the policies does not exceed the amount of \$50,000 or such other amount as is prescribed for the purposes of this paragraph;
- the company may pay the money to:
- (c) the spouse, de facto partner, parent, child, brother, sister, niece or nephew of the deceased person; or
 - (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:
 - (i) under the deceased person's will; or
 - (ii) under the law relating to the disposition of the property of deceased persons; or
 - (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person's estate.
- (1A) For the purposes of paragraph (1)(c), if one person is the child of another person because of the definition of **child** in this Act, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.
- (2) A company may pay the money without requiring the production of any probate or letters of administration.
- (3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policies.

- (4) A person to whom a company makes a payment under this section must apply the money in due course of administration.
- (5) In this section, **money**, in relation to a policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

213 Death of policy owner who is not the life insured

- (1) This section applies:
 - (a) if the owner of a life policy dies before the person whose life is insured by the policy; and
 - (b) either:
 - (i) the adjusted surrender value of the policy is less than the prescribed amount; or
 - (ii) the policy is one of 2 or more policies owned by the deceased owner and issued by the same company the total adjusted surrender values of which are less than the prescribed amount.
- (2) If a person (the **applicant**) satisfies the company that issued the policy:
 - (a) that he or she is entitled, under the will or on the intestacy of the deceased owner, to the benefit of the policy; or
 - (b) that he or she is entitled to obtain probate of the will or to take out letters of administration of the estate of the deceased owner;the company may endorse on the policy a declaration that the applicant has so satisfied the company and is the owner of the policy.
- (3) The company may endorse the policy without requiring the production of any probate or letters of administration.
- (4) If subsection (2) applies, the applicant becomes, subject to subsection (5), the owner of the policy.
- (5) Subsection (4) does not:

Section 214

- (a) confer on the applicant any beneficial interest in the policy that he or she would not otherwise have had; or
 - (b) affect any right or interest of a person other than the applicant in relation to the policy.
- (6) For the purposes of this section, the adjusted surrender value of a policy is the surrender value of the policy as at the day on which the owner died, less any debt due to the company under, or secured by, the policy.
- (7) In this section, *prescribed amount* means \$25,000 or such other amount as is prescribed by the regulations for the purposes of this section.

214 Company not bound to see to the application of money paid by it

A company is not, in any circumstances, bound to see to the application of any money it pays in respect of a policy.

215 Power to pay money into Court

- (1) A life company may pay into the Court any money payable by the company in respect of a policy for which, in the company's opinion, no sufficient discharge can otherwise be obtained.
- (2) Payment of the money into the Court discharges the company from any liability under the policy in relation to the money.
- (3) Any money paid into the Court under this section is to be dealt with according to the order of the Court.
- (4) This section has effect subject to the Rules of the Court.

216 Unclaimed money

- (1) Within 3 months after the end of each calendar year, a life company must give to ASIC a statement in the form prescribed by the regulations of all unclaimed money, other than unclaimed

money held in RSAs (within the meaning of the *Retirement Savings Accounts Act 1997*), as at the end of that year.

- (2) A life company must not intentionally or recklessly fail to comply with subsection (1).

Penalty: 50 penalty units.

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

- (3) When the company gives the statement to ASIC, it must at the same time pay to the Commonwealth an amount equal to the amount of unclaimed money worked out under subsection (6).
- (4) If, between the end of the calendar year and the date on which the statement is given to ASIC, the company has paid any money to persons to whom the amounts were due by the company, the company must give ASIC, with the statement under subsection (1), a statement in the form prescribed by the regulations relating to the amounts so paid.
- (5) A life company must not intentionally or recklessly fail to comply with subsection (3) or (4).

Penalty: 50 penalty units.

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

- (6) For the purposes of subsection (3), the amount to be paid to the Commonwealth is an amount worked out in accordance with the formula:

Statement amount – Money paid

where:

Statement amount means the total of unclaimed money shown in the statement referred to in subsection (1).

Money paid means the total of any amounts paid to persons to whom the amounts were due by the company between the end of

Section 216

the calendar year and the date on which the statement referred to in subsection (1) is given to ASIC.

(7) If:

- (a) unclaimed money has been paid by a company to the Commonwealth under this section; and
- (b) ASIC or an authorised officer certifies in writing that, apart from this section, the company or a successor company would have paid that money to a person;

the Treasurer must:

- (c) cause the unclaimed money to be paid to that company; and
- (d) direct the company to pay the money to the person specified in the direction.

(7A) If an amount is paid to a company under subsection (7) on or after 1 July 2013, the Treasurer must also:

- (a) cause to be paid to the company the amount of interest (if any) worked out in accordance with the regulations; and
- (b) direct the company to pay the amount to the person specified in the direction.

(7B) Regulations made for the purposes of paragraph (7A)(a) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(7C) Interest under paragraph (7A)(a) does not accrue in relation to a period before 1 July 2013.

(8) A direction must be in writing.

(9) The company must not intentionally or recklessly fail to comply with a direction under paragraph (7)(d) or (7A)(b).

Penalty: 50 penalty units.

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

(10) If a company satisfies ASIC or an authorised officer that an amount paid to the Commonwealth under this section is more than

Section 216

the amount that would have been payable under the policy to the policy owner, an amount equal to the excess is to be refunded to the company.

- (11) Subject to subsection (7), if a company pays an amount to the Commonwealth under this section, the company is, upon that payment, discharged from further liability in respect of that amount.
- (12) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of this section.
- (13) ASIC must keep a register that contains:
 - (a) particulars of each amount of unclaimed money specified in a statement given to ASIC for the purposes of subsection (1); and
 - (b) particulars of the persons to whom, if this section had not been enacted, the money would have been payable.
- (14) The particulars referred to in paragraph (13)(b) may include a person's tax file number.
- (14A) It is the intention of the Parliament that a law of a State or Territory has no effect to the extent to which it requires a life company to:
 - (a) pay unclaimed money to, or to an authority of, a State or Territory; or
 - (b) lodge a return relating to unclaimed money with, or with an authority of, a State or Territory.
- (15) In this section:

authorised officer means a member of staff authorised by ASIC for the purposes of this section.

successor company, in relation to another company (the ***first company***), means the company to which the life insurance business of the first company has been transferred.

Section 216A

unclaimed money means:

- (a) all sums of money that have become legally payable by a company in respect of policies; but
- (b) in respect of which the time within which proceedings may be taken for their recovery has expired;

and includes:

- (c) sums of money payable on the maturity of a policy which are not claimed within:
 - (i) 7 years; or
 - (ii) if a greater number of years is specified in the regulations—that greater number of years; after the maturity date of the policy; and
- (d) any money that the company considers should be treated as unclaimed money.

216A Disclosure of information relating to unclaimed money

- (1) This section applies if an amount of unclaimed money is specified on a register kept by ASIC under subsection 216(13).
- (2) A person must not disclose:
 - (a) particulars of the amount of unclaimed money; or
 - (b) particulars of the person to whom the money is payable (the ***payee***);to a person other than the payee or an agent of the payee.

Note: This subsection is specified in Schedule 3 to the *Freedom of Information Act 1982* with the effect that a document containing particulars protected from disclosure by this subsection is an exempt document under that Act.

- (3) Subsection (2) does not apply if the disclosure is authorised by section 216.

217 No deduction in respect of other policies

- (1) Subject to subsection (2), if a claim arising under a policy is paid, no deductions are to be made on account of premiums or debts due

Section 217

to the company under any other policy, except with the written consent of the claimant.

- (2) The claimant may give written consent to any deductions.

Division 6—Children's advancement policies

218 Interpretation

- (1) In this Division:

child's advancement policy means a policy issued, before a child has reached full age, by a person other than the child, which contains one or both of the following:

- (a) provision for payment of a sum to the executors, administrators or assigns of the child on the child's death after the child reaches the vesting age; or
- (b) provision for payment of a sum to the child or his or her assigns on the child reaching an age that is at least the vesting age.

full age means:

- (a) in relation to a policy issued before 18 May 1989—the age of 21 years; and
- (b) in relation to a policy issued on or after 18 May 1989 but before the commencement of this Act—the age of 18 years; and
- (c) in relation to a policy issued after the commencement of this Act—the age of 16 years.

vesting age, in relation to a child and a policy, means:

- (a) an age of 10 years or more specified in the policy for the purpose of defining the time at which money becomes payable under the policy; or
- (b) the age of 25 years;

whichever is the earlier.

- (2) For the purposes of the definition of ***vesting age*** in subsection (1), if a policy specifies a date without specifying the age of the child at that date, the policy is to be taken to specify the age that is the age of the child at that date.

219 Property in child's advancement policy

- (1) Subject to subsection (2), this section applies to every child's advancement policy, whether effected before or after the commencement of this Act.
- (2) This section does not apply to a child's advancement policy effected by a parent, or a person who stands in the place of a parent, of a child in which it is expressly provided that this section does not apply to it.
- (3) Subject to section 220 and unless and until the child reaches the vesting age:
 - (a) the policy is the absolute property, both at law and in equity, of the person effecting the policy or his or her assigns; and
 - (b) that person or his or her assigns:
 - (i) in the case of a policy effected after the commencement of the *Life Insurance Act 1945* and before the commencement of this Act—is taken to have had the power to assign, mortgage, charge, surrender, vary or otherwise deal with the policy; or
 - (ii) in any other case—may assign, mortgage, charge, surrender, vary or otherwise deal with the policy.
- (4) If a child whose life is insured under a child's advancement policy reaches the vesting age, the policy is taken, from the day on which the child reaches that age, to be the absolute property of the child, both at law and in equity, subject:
 - (a) to any debt owing to the company under, or secured by, the policy; and
 - (b) to any dealing done by the policy owner before the child reaches the vesting age.

220 Death or bankruptcy of policy owner

- (1) This section applies if the person who effects a child's advancement policy dies or becomes bankrupt:
 - (a) during the child's lifetime; and

Section 220

- (b) before the child reaches the vesting age.
- (2) Subject to any dealings in relation to the policy effected by the policy owner before his or her death or bankruptcy, the representative of the policy owner holds the policy in trust for the child until:
 - (a) the child reaches the vesting age; or
 - (b) the child dies before reaching the vesting age.
- (3) The representative of the policy owner may:
 - (a) assign, mortgage, charge, surrender, vary or otherwise deal with the policy; and
 - (b) apply the proceeds as he or she thinks fit for the maintenance or benefit of the child and the payment of premiums in respect of the policy.
- (4) The company which issued the policy is under no obligation to see to the application of the proceeds of the policy.
- (5) If the child dies before reaching the vesting age, the money payable in respect of the policy is to be applied in the way in which it would be applied apart from this section.
- (6) In this section:

dealings does not include any testamentary dealings.

representative, in relation to a policy owner, means:

- (a) if the policy owner has died—the executor or administrator of the policy owner; or
- (b) if the policy owner is bankrupt—the Official Receiver or the trustee of the policy owner's estate.

Division 7—Lost or destroyed policy documents

221 Lost or destroyed policy—issue of replacement policy document

- (1) This section applies if:
 - (a) the owner of a policy; or
 - (b) a person claiming the benefit of section 211, 212 or 213 in respect of a policy;claims that the policy document is lost or has been destroyed.
- (2) A person referred to in subsection (1) may ask the company liable under the policy to issue to the person a replacement policy document in substitution for the lost document.
- (3) The company may issue a replacement policy document to the policy owner if it is satisfied that there is sufficient evidence of the loss or destruction of the original policy document.
- (4) The company may only issue a replacement policy document to a person referred to in paragraph (1)(b) if the company is satisfied that section 211, 212 or 213, as the case may be, should be applied in favour of the person in relation to the policy.
- (5) If the company does not issue a replacement policy document within 6 months after it receives a request from a policy owner, the policy owner may apply to a court of summary jurisdiction of a State or Territory for an order under subsection (6).
- (6) If, on an application under subsection (5), a court is satisfied that an original policy document is lost or has been destroyed, the court may order the company concerned to issue a replacement policy document to the applicant on such terms (if any), and within such period, as the court thinks fit.
- (7) A request under subsection (2) must be in writing.
- (8) This section is subject to sections 222, 223, 224 and 225.

Section 222

- (9) The courts of summary jurisdiction of the States are invested with federal jurisdiction to hear and determine applications under subsection (5).
- (10) Subject to the Constitution, jurisdiction is conferred on the courts of summary jurisdiction of the Territories to hear and determine applications under subsection (5).

222 Form of replacement policy document

A replacement policy document:

- (a) must, as far as possible:
 - (i) be a copy of the original policy document; and
 - (ii) contain a copy of every endorsement on the original policy document; and
- (b) must state the reason why the replacement policy document was issued.

223 Notice before issuing replacement policy document

- (1) This section applies if the amount of the net claim value of a policy at the date the replacement policy document is issued is more than \$25,000 or such other amount as is prescribed.
- (2) For the purposes of subsection (1), the net claim value of a policy at a particular time is the amount calculated according to the regulations.
- (3) At least 10 days before issuing the replacement policy document, the company must give notice of its intention to do so:
 - (a) in a newspaper circulating in the district in which the owner of the policy resides; or
 - (b) if a person claiming the benefit of section 211, 212 or 213 applies for the replacement policy document—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or

- (c) in a newspaper circulating in the district in which the company considers the original policy document to have been lost or destroyed.
- (4) The applicant for a replacement policy document must meet all the expenses of the advertisement and of the issue of the replacement policy document. The expenses must be paid at the time the person asks the company to issue the replacement policy document.
- (5) After a replacement policy document has been issued, the company must arrange for the following details to be entered in the appropriate register kept under Division 8:
 - (a) the fact that a replacement policy document has been issued;
 - (b) the reason for the issue of the replacement policy document.

224 Claim under policy where policy document lost or destroyed

- (1) If:
 - (a) a person claiming to be the owner of a policy or claiming the benefit of section 211, 212 or 213 in respect of a policy:
 - (i) claims that the original policy document is lost or has been destroyed; and
 - (ii) gives to the company evidence of the loss or destruction that the company considers sufficient; and
 - (iii) makes a claim under the policy or makes any other request or claim in respect of it that would result in the termination of the policy; and
 - (b) the company liable under the policy:
 - (i) has given at least 10 days notice of its intention to satisfy the claim or comply with the request; and
 - (ii) after giving notice, satisfies the claim or complies with the request; and
 - (iii) records details of its action in the appropriate register kept under Division 8;
- the company is discharged from all liability to any person under the policy.

Section 225

- (2) A notice under subparagraph (1)(b)(i) is to be given:
- (a) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims to be the owner of the policy—in a newspaper circulating in the district in which the person resides; or
 - (b) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims the benefit of section 211, 212 or 213 in respect of the policy—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or
 - (c) in a newspaper circulating in a district in which the company considers the original policy to have been lost or destroyed.
- (3) The expenses of the advertisement are to be paid by the person who made the claim or the request referred to in subparagraph (1)(a)(iii).

225 Application of sections 221, 222, 223 and 224 to replacement policy document

If the owner of a policy or a person claiming the benefit of section 211, 212 or 213 in respect of a policy claims that a replacement policy document is lost or has been destroyed, sections 221, 222, 223 and 224 apply to the replacement policy document as if it were an original policy document.

Division 8—General

226 Registers

- (1) A life company must have a register of policies for each State and Territory in which it carries on life insurance business.
- (2) A life company may have such other registers as it thinks fit.

227 Registration of policies

- (1) A life company must register each policy issued by the company in Australia:
 - (a) in the register for the State or Territory in which the policy owner lives; or
 - (b) if there is no such register or the policy owner has requested that the policy be registered in some other register—in the register chosen by the policy owner.
- (2) A life company must register each policy issued by the company outside Australia in a register for policies issued outside Australia.
- (3) The owner of a policy issued in Australia may, in writing, ask the company that issued the policy to transfer the policy from a register to another register.
- (4) The company must comply with a request under subsection (3).
- (5) A policy may be transferred:
 - (a) from a register for policies issued outside Australia to any other register; or
 - (b) to a register for policies issued outside Australia from any other register:if the policy owner makes a written request for the transfer and the life company concerned agrees to the transfer.

Section 228

- (6) The owner of a policy is liable to pay to a life company an amount equal to the total of the expenses incurred by the company in connection with a transfer of the policy under subsection (3) or (4).

228 Effect of suicide on policy

A life company may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide if the policy expressly excludes liability in case of suicide.

229 Condition as to war risk void

- (1) Subject to subsection (2), any term or condition of a life policy is void if it limits, to an amount less than the total of the sum insured and bonuses, the amount payable under the policy if the life insured by the policy dies on war service.
- (2) Subsection (1) does not apply if there is written on the policy document an acknowledgment signed by the person to whom the policy was issued that the policy is subject to the term or condition.

230 Policies not invalidated by contraventions of the Act

A life company's failure to comply with this Act does not invalidate any policy issued by the company.

Part 10A—Prudential standards and directions

Division 1—Prudential standards

230A APRA may make prudential standards for life companies, registered NOHCs and subsidiaries

- (1) APRA may, in writing, determine standards in relation to prudential matters to be complied with by:
- (a) all life companies, registered NOHCs or subsidiaries of life companies or registered NOHCs; or
 - (b) a specified class of life companies, registered NOHCs or subsidiaries of life companies or registered NOHCs; or
 - (c) one or more specified life companies, registered NOHCs or subsidiaries of life companies or registered NOHCs;
- in order to protect the interests of policy owners or prospective policy owners of the life companies that are to comply with the standards or that are related to bodies corporate that are to comply with the standards.

Note: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 230B.

- (1A) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may provide for matters relating to:
- (a) the appointment of auditors; or
 - (b) the conduct of audits.
- (2) A standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (3) A standard is of no effect to the extent that it conflicts with this Act or the *Financial Sector (Collection of Data) Act 2001*.

Section 230A

- (3A) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may require:
- (a) each life company or registered NOHC; or
 - (b) each life company or registered NOHC included in a specified class of life companies or registered NOHCs; or
 - (c) a specified life company or registered NOHC; or
 - (d) each of 2 or more specified life companies or registered NOHCs; or
 - (e) each subsidiary of a life company or of a registered NOHC; or
 - (f) each subsidiary of a life company or of a registered NOHC, included in a specified class of subsidiaries;
- to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters.
- (4) A standard may provide for APRA to exercise powers and discretions under the standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified life companies, registered NOHCs or subsidiaries of a life company or registered NOHC.
- (5) APRA may, in writing, vary or revoke a standard.
- (5A) A standard referred to in paragraph (1)(c), or an instrument varying or revoking such a standard, has effect:
- (a) from the day on which the standard, variation or revocation is made; or
 - (b) if the standard, variation or revocation specifies a later day—from that later day.
- (7) If APRA determines or varies a standard referred to in paragraph (1)(c) it must, as soon as practicable, give a copy of the standard or variation to:
- (a) if the standard applies to one or more life companies that are not subsidiaries of a registered NOHC—each of those life companies; and

Section 230A

- (b) if the standard applies to one or more registered NOHCs—each of those registered NOHCs; and
 - (c) if the standard applies to one or more subsidiaries of a life company or registered NOHC—each of those subsidiaries or, if they are specified as subsidiaries of the life company or registered NOHC, the life company or registered NOHC (as appropriate).
- (9) If APRA revokes a standard referred to in paragraph (1)(c) it must, as soon as practicable, give notice of the revocation to:
 - (a) if the standard applied to one or more life companies that are not subsidiaries of a registered NOHC—each of those life companies; and
 - (b) if the standard applied to one or more registered NOHCs—each of those registered NOHCs; and
 - (c) if the standard applied to one or more subsidiaries of a life company or registered NOHC—each of those subsidiaries or, if they are specified as subsidiaries of the life company or registered NOHC, the life company or registered NOHC (as appropriate).
- (12) A failure to comply with subsection (7) or (9) does not affect the validity of the action concerned.
- (12A) The following instruments made under this section are not legislative instruments:
 - (a) a standard referred to in paragraph (1)(c);
 - (b) an instrument varying or revoking a standard referred to in paragraph (1)(c).
- (12B) Otherwise, an instrument made under this section is a legislative instrument.
- (12C) A standard may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:
 - (a) section 46AA of the *Acts Interpretation Act 1901*; and

Part 10A Prudential standards and directions

Division 1 Prudential standards

Section 230AAA

(b) section 14 of the *Legislation Act 2003*.

230AAA Obligation to comply with the prudential standards

A life company, registered NOHC or a subsidiary of a life company or registered NOHC to which a prudential standard applies must comply with the standard.

Division 1A—Conversion and write-off provisions

230AAB Definitions

In this Division:

clearing and settlement facility has the meaning given by Division 6 of Part 7.1 of the *Corporations Act 2001*.

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

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

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

- (a) the instrument is issued by another entity, or another entity is a party to the instrument; and
- (b) the instrument converts, in accordance with the terms of the instrument, into one or more ordinary shares of the first entity.

converts: an instrument **converts** into one or more ordinary shares of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares.

operating rules has the meaning given by section 761A of the *Corporations Act 2001*.

related subsidiary of a life company means a subsidiary of a holding company of the life company.

specified law means any of the following:

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

Section 230AAC

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

230AAC Conversion and write-off provisions

Application

- (1) This section applies in relation to an instrument that contains terms that are for the purposes of the conversion and write-off provisions and is issued by, or to which any of the following is a party:
 - (a) a life company;
 - (b) a holding company of a life company;
 - (c) a subsidiary or related subsidiary of a life company;
 - (d) an entity of a kind prescribed by the regulations for the purposes of this paragraph.

Conversion of instrument despite other laws etc.

- (2) The instrument may be converted in accordance with the terms of the instrument despite:
 - (a) any Australian law or any law of a foreign country or a part of a foreign country, other than a specified law; and
 - (b) the constitution of any of the following entities (the **relevant entity**):
 - (i) the entity issuing the instrument;
 - (ii) any entity that is a party to the instrument;
 - (iii) any conversion entity for the instrument; and
 - (c) any contract or arrangement to which a relevant entity is a party; and
 - (d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and
 - (e) any operating rules of a clearing and settlement facility through which the instrument is traded.

Write-off of instrument despite other laws etc.

- (3) The instrument may be written off in accordance with the terms of the instrument despite:
- (a) any Australian law or any law of a foreign country or a part of a foreign country; and
 - (b) the constitution of either of the following entities (the **relevant entity**):
 - (i) the entity issuing the instrument;
 - (ii) any entity that is a party to the instrument; and
 - (c) any contract or arrangement to which a relevant entity is a party; and
 - (d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and
 - (e) any operating rules of a clearing and settlement facility through which the instrument is traded.

230AAD Conversion or write-off etc. not grounds for denial of obligations

- (1) This section applies if an entity (the **first entity**) is party to a contract, whether the proper law of the contract is:
- (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the first entity), to do any of the following:
- (a) deny any obligation under the contract;
 - (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.
- (3) The matters are as follows:
- (a) a relevant instrument being converted in accordance with the terms of the instrument;

Section 230AAD

- (b) a relevant instrument being written off in accordance with the terms of the instrument;
 - (c) the making of a determination (however described) by APRA that results in a relevant instrument being required to be converted or written off in accordance with the terms of the instrument.
- (4) In this section:

relevant instrument means:

- (a) an instrument to which section 230AAC applies:
 - (i) that is issued by the first entity; or
 - (ii) to which the first entity is a party; or
 - (iii) for which the first entity is a conversion entity; or
- (b) if the first entity is a body corporate that is a member of a relevant group of bodies corporate—an instrument to which section 230AAC applies:
 - (i) that is issued by another member of the group; or
 - (ii) to which another member of the group is a party; or
 - (iii) for which another member of the group is a conversion entity.

Division 2—Directions**Subdivision A—Recapitalisation directions****230AA Who this Subdivision applies to**

- (1) This Subdivision applies to a life company that:
 - (a) is a company that:
 - (i) is registered under the *Corporations Act 2001*; and
 - (ii) has a share capital; and
 - (b) does not have a judicial manager.
- (2) Subsections (3) and (4) apply if:
 - (a) APRA has given a recapitalisation direction to the life company under subsection 230AB(1) (the ***primary recapitalisation direction***); and
 - (b) the life company is a subsidiary of a NOHC/NOHC subsidiary; and
 - (c) the NOHC/NOHC subsidiary is a company that:
 - (i) is registered under the *Corporations Act 2001*; and
 - (ii) has a share capital; and
 - (d) the NOHC/NOHC subsidiary does not have a Life Insurance Act statutory manager.
- (3) This Subdivision applies to the NOHC/NOHC subsidiary in the same way that it does to a life company.
- (4) However, disregard the following provisions in applying this Subdivision to the NOHC/NOHC subsidiary:
 - (a) subsection 230AB(1);
 - (b) subsection 230AC(1).
- (5) In this section:

NOHC/NOHC subsidiary means a body corporate that is any of the following:

Section 230AB

- (a) a registered NOHC;
- (b) a subsidiary of a registered NOHC.

230AB Recapitalisation direction by APRA

- (1) APRA may give a life company a direction (a ***recapitalisation direction***) that requires the company to increase the company's level of capital to the level specified in the direction, if:
 - (a) the company informs APRA that:
 - (i) the company considers that the company is likely to become unable to meet the company's obligations; or
 - (ii) the company is about to suspend payment; or
 - (b) APRA considers that, in the absence of external support:
 - (i) the company may become unable to meet the company's obligations; or
 - (ii) the company may suspend payment; or
 - (iii) it is likely that the company will be unable to carry on insurance business in Australia consistently with the interests of the company's policy owners; or
 - (iv) it is likely that the company will be unable to carry on insurance business in Australia consistently with the stability of the financial system in Australia; or
 - (c) the company:
 - (i) becomes unable to meet the company's obligations; or
 - (ii) suspends payment.
- (1A) Subsection (1B) applies if subsections 230AA(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to a life company (as mentioned in subsection 230AA(2)).
- (1B) For the purposes of facilitating compliance with the primary recapitalisation direction, APRA may give the NOHC/NOHC subsidiary a direction (also a ***recapitalisation direction***) that requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

Section 230AC

- (2) In deciding whether to give a recapitalisation direction, APRA must consult with the Australian Competition and Consumer Commission (the **ACCC**), unless the ACCC notifies APRA, in writing, that the ACCC does not wish to be consulted about:
 - (a) the direction; or
 - (b) a class of directions that includes the direction.
- (2A) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).
- (3) A recapitalisation direction is not a legislative instrument.
- (4) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.
- (5) APRA may, by notice in writing to the life company, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (6) The direction has effect until APRA revokes it by notice in writing to the life company. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

230AC Additional contents of a recapitalisation direction

- (1) A recapitalisation direction may direct a life company to issue:
 - (a) shares, or rights to acquire shares, in the company; or
 - (b) other capital instruments of a kind specified in the direction.
- (1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:
 - (a) issue:
 - (i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or
 - (ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;
 - (b) acquire:

Section 230AC

- (i) shares, or rights to acquire shares, in the life company mentioned in subsection 230AB(1A); or
 - (ii) other capital instruments in the life company mentioned in subsection 230AB(1A) of a kind specified in the direction;
 - (c) acquire:
 - (i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or
 - (ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.
- (1B) This subsection covers a body corporate if:
- (a) the body corporate is a subsidiary of the NOHC/NOHC subsidiary; and
 - (b) the life company is a subsidiary of the body corporate.
- (1C) Without limiting the generality of subsections (1), (1A) and (2), but subject to subsection (3), a direction referred to in those subsections may:
- (a) deal with some only of the matters referred to in those subsections; or
 - (b) deal with a particular class or particular classes of those matters; or
 - (c) make different provision with respect to different matters or different classes of matters.
- (2) A direction for the purposes of paragraph (1)(a) or subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i) may specify that the shares or rights must:
- (a) be of a kind specified in the direction; or
 - (b) have the characteristics specified in the direction.
- (3) A direction for the purposes of paragraph (1)(b) or subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii):
- (a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and

Section 230AD

- (b) may specify that the capital instruments must have the characteristics specified in the direction.

230AD Compliance with a recapitalisation direction

Giving members of the life company notice of share issue etc.

- (1) As soon as practicable after a life company issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the company must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the issue.
- (2) The notice must:
- (a) identify the issue; and
 - (b) explain the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.

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

- (3) A life company may issue or acquire shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction despite:
- (a) the *Corporations Act 2001* (without limiting the scope of section 251AA of this Act); and
 - (b) the company's constitution; and
 - (c) any contract or arrangement to which the company is a party; and
 - (d) any listing rules of a financial market in whose official list the company is included.

230AE APRA must obtain expert's report on the fair value of shares etc.

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a life company to issue shares, or rights to acquire shares, in the company, unless APRA is

Section 230AE

satisfied that compliance with the section would detrimentally affect:

- (a) the policy owners of the company; or
- (b) the stability of the financial system in Australia.

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), treat the reference in paragraph (1)(a) to “the policy owners of the company” as being a reference to “the policy owners of the life company mentioned in subsection 230AB(1A)”.

(2) APRA must:

- (a) obtain a report on the fair value of the shares, or rights to acquire shares, in the company from an expert who is not an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
- (b) consider the report.

(3) The report must set out:

- (a) the amount that is, in the expert’s opinion, the fair value for each of those shares or rights; and
- (b) the reasons for forming the opinion; and
- (c) any relationship between the expert and:
 - (i) the company; or
 - (ii) a person who is an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; including any circumstances in which the expert gives the company or person advice, or acts on behalf of the company or person, in the proper performance of the functions attaching to the expert’s professional capacity or business relationship with the company or person; and
- (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert’s ability to give an unbiased opinion in relation to the matter being reported on.

Section 230AF

- (4) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), treat the references in paragraph (3)(c) to “the company” as being a reference to “the NOHC/NOHC subsidiary mentioned in subsection 230AB(1B)”.

230AF Determination of the fair value of shares by an expert

- (1) In determining the fair value for each share in a life company for the purposes of paragraph 230AE(3)(a), the expert must:
- (a) first, assess the value of the company as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the company; and
 - (b) then, allocate that value among the classes of shares in the company that:
 - (i) have been issued; or
 - (ii) APRA proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
 - (c) then, allocate the value of each class pro rata among the shares in that class that:
 - (i) have been issued; or
 - (ii) APRA proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).
- (2) The Minister may give the expert written notice of assumptions for the valuation of the company.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

230AG Determination of the fair value of rights by an expert

- (1) In determining the fair value for each right to acquire shares in a life company for the purposes of paragraph 230AE(3)(a), the

Section 230AH

expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of that right.

- (2) The Minister may give the expert written notice of assumptions for the valuation of such rights.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

230AH Ascertaining the fair value of other capital instruments

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a life company to issue capital instruments other than shares, or rights to acquire shares, in the company.
- (2) APRA must comply with any requirements of the regulations relating to ascertaining the fair value of the capital instruments.
- (3) Regulations made for the purposes of this section may specify different requirements in relation to different kinds of capital instruments.

230AI Contravention of certain provisions does not affect the validity of recapitalisation direction etc.

A contravention of:

- (a) section 230AE or subsection 230AF(1) or 230AG(1); or
- (b) subsection 230AH(1) or regulations made for the purposes of that subsection;

does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

230AJ Recapitalisation direction not grounds for denial of obligations

- (1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
 - (a) Australian law (including the law of a State or Territory); or
 - (b) law of a foreign country (including the law of part of a foreign country).
- (2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
 - (a) deny any obligations under the contract;
 - (b) accelerate any debt under the contract;
 - (c) close out any transaction relating to the contract;
 - (d) enforce any security under the contract.
- (3) The matters are as follows:
 - (a) the body corporate being subject to a recapitalisation direction;
 - (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a recapitalisation direction.

230AK Supply of information about issue and revocation of recapitalisation directions

Power to publish notice of recapitalisation directions in Gazette

- (1) APRA may publish in the *Gazette* notice of a recapitalisation direction.
- (2) The notice must include:
 - (a) the name of the life company that is given the direction; and
 - (b) a summary of the direction.

Section 230AK

Requirement to publish notice of revocation of certain recapitalisation directions in Gazette

- (3) If APRA publishes notice of a recapitalisation direction and later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation.
- (4) Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about recapitalisation direction to Minister and Reserve Bank

- (5) If the Minister or the Reserve Bank requests APRA to provide information about:
 - (a) any recapitalisation directions in respect of a particular life company; or
 - (b) any recapitalisation directions made during a specified period in respect of any life companies;APRA must comply with the request.

Power to inform Minister and Reserve Bank of recapitalisation direction

- (6) APRA may provide any information that APRA considers appropriate to the Minister or the Reserve Bank about any recapitalisation directions, or revocations of recapitalisation directions, in respect of any life company, at any time.

Requirement to inform Minister and Reserve Bank of revocation of recapitalisation direction if informed of making of direction

- (7) If APRA:
 - (a) provides the Minister or the Reserve Bank with information about a recapitalisation direction; and
 - (b) later revokes the direction;APRA must notify that person of the revocation of the direction as soon as practicable after the revocation.

Section 230AL

- (8) Failure to notify the person does not affect the validity of the revocation.

230AL Non-compliance with a recapitalisation direction

- (1) A life company commits an offence if:
- (a) the company does, or refuses or fails to do, an act; and
 - (b) doing, or refusing or failing to do, the act results in a contravention of a recapitalisation direction given to the company.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the company made reasonable efforts to comply with the recapitalisation direction; and
 - (b) the company's contravention is due to circumstances beyond the company's control.

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

- (3) If a life company does, or refuses or fails to do, an act in circumstances that give rise to the company committing an offence against subsection (1), the company commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the company committing the offence continue (including the day of conviction for any such offence or any later day).

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

- (4) An officer of a life company commits an offence if:
- (a) the officer refuses or fails to take reasonable steps to ensure that the company complies with a recapitalisation direction given to the company; and

Section 230AM

- (b) the officer's duties include ensuring that the company complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

- (5) If an officer of a life company refuses or fails to take reasonable steps to ensure that the company complies with a recapitalisation direction given to the company in circumstances that give rise to the officer committing an offence against subsection (4), the officer commits an offence against that subsection in respect of:
 - (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

230AM Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

- (a) the acquisition of shares in a life company as a direct result of:
 - (i) the issue of the shares in compliance with a recapitalisation direction given to the company; or
 - (ii) the exercise of a right to acquire shares that was issued in compliance with such a recapitalisation direction;
- (b) the acquisition of other capital instruments as a direct result of the issue of the other capital instruments in compliance with a recapitalisation direction given to a life company.

Subdivision B—Other directions**230B APRA may give directions in certain circumstances**

- (1) APRA may give a body corporate that is a life company or a registered NOHC a direction of a kind specified in subsection (2) if APRA has reason to believe that:
- (a) the body corporate has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) the body corporate is likely to contravene this Act or the *Financial Sector (Collection of Data) Act 2001*, and the direction is reasonably necessary for one or more prudential matters relating to the body corporate; or
 - (c) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (d) the direction is necessary in the interests of:
 - (i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or
 - (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC; or
 - (e) the body corporate is, or is about to become, unable to meet its liabilities; or
 - (f) there is, or there might be, a material risk to the security of the body corporate's assets; or
 - (g) there has been, or there might be, a material deterioration in the body corporate's financial condition; or
 - (h) the body corporate is conducting its affairs in an improper or financially unsound way; or
 - (i) the failure to issue a direction would materially prejudice the interests of:
 - (i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or

Section 230B

- (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC; or
 - (j) the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system.
- (1AA) APRA may give a body corporate that is a life company or is a registered NOHC a direction of a kind specified in subsection (2) if APRA has reason to believe that:
- (a) a subsidiary of the body corporate has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) a subsidiary of the body corporate is likely to contravene this Act or the *Financial Sector (Collection of Data) Act 2001*; or
 - (c) the direction is in respect of a subsidiary of the body corporate and is necessary in the interests of:
 - (i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or
 - (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC; or
 - (d) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or
 - (e) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or
 - (f) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or
 - (g) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or
 - (h) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause or promote instability in the Australian financial system; or

Section 230B

- (j) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause it to be unable to continue to supply services to:
 - (i) if the body corporate is a life company—the life company; or
 - (ii) if the body corporate is a registered NOHC—any life company that is a subsidiary of the NOHC; or
 - (k) the direction is in respect of a subsidiary of the body corporate and the failure to issue a direction would materially prejudice the interests of:
 - (i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or
 - (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC.
- (1AB) However, APRA can only make a direction as a result of a ground referred to in paragraph (1AA)(a), (b), (d), (e), (f), (g) or (j) if APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.
- (1AC) APRA may give a body corporate that is a subsidiary of a life company or of a registered NOHC a direction of a kind specified in subsection (3) if:
- (a) APRA has given the life company or registered NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or
 - (b) APRA may give the life company or registered NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary.
- (1AD) APRA cannot give a direction under subsection (1AC) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.
- (1AE) Subsections (1), (1AA) and (1AC) do not limit each other.
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Section 230B

- (1A) The direction must:
- (a) be given by notice in writing to the body corporate; and
 - (b) specify:
 - (i) in the case of a direction under subsection (1AC)—the ground referred to in subsection (1AA) as a result of which the direction is given; or
 - (ii) otherwise—the ground referred to in subsection (1) or (1AA) as a result of which the direction is given.
- (1B) In deciding whether to give a direction under subsection (1), (1AA) or (1AC) to a body corporate, APRA may disregard any external support for the body corporate.
- (1C) The regulations may specify that a particular form of support is not external support for the purposes of subsection (1B).
- (2) The kinds of direction that the body corporate may be given are directions to do, or to cause a body corporate that is its subsidiary to do, any one or more of the following:
- (a) to comply with the whole or a part of this Act or the *Financial Sector (Collection of Data) Act 2001*;
 - (b) to comply with a condition or direction referred to in paragraph (1)(c);
 - (c) to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;
 - (d) to remove a director or senior manager from office;
 - (e) to ensure a director or senior manager of the body corporate does not take part in the management or conduct of the business of the body corporate except as permitted by APRA;
 - (f) to appoint a person or persons as a director or senior manager of the body corporate for such term as APRA directs;
 - (g) to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;
 - (h) to terminate the appointment of the appointed actuary of the body corporate and to appoint another actuary to hold office

Section 230B

for such term as APRA directs, if the body corporate is a life company;

- (i) not to give financial accommodation to any person;
- (j) not to issue or renew any policy, undertake any liability under any policy or collect any premium;
- (k) not to borrow any amount;
- (l) not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (m) not to repay any amount paid on shares;
- (n) not to pay a dividend on any shares;
- (o) not to discharge any policy or other liability;
- (p) not to transfer any asset of a statutory fund;
- (q) not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;
- (r) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- (s) to hold, or otherwise deal in a specified way, with a specified amount of capital;
- (t) to provide, or further provide, in its accounts for the purposes of this Act, a specified amount or an amount determined in a specified way in respect of its liabilities or the value of a specified asset of the body corporate;
- (u) to order an actuarial investigation of the affairs of the body corporate, at the expense of the body corporate, by an actuary chosen by APRA;
- (v) to make changes to the body corporate's systems, business practices or operations;
- (w) to reconstruct, amalgamate or otherwise alter all or part of any of the following:
 - (i) the business, structure or organisation of the body corporate;
 - (ii) the business, structure or organisation of the group constituted by the body corporate and its subsidiaries;

Section 230B

(x) to do, or to refrain from doing, anything else in relation to the affairs of the body corporate.

A direction under paragraph (q) not to pay or transfer any amount does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

(3) Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:

- (a) deal with some only of the matters referred to in the paragraph; or
- (b) deal with a particular class or particular classes of those matters; or
- (c) make different provision with respect to different matters or different classes of matters.

(3A) Without limiting the generality of paragraph (2)(x), a direction under that paragraph to an eligible foreign life insurance company may be any one or more of the following:

- (a) a direction that the company act in a way so as to ensure that:
 - (i) a particular asset, or a particular class of assets, of the company is returned to the control (however described) of the part of the company's life insurance business that is carried on in Australia; or
 - (ii) a particular liability, or a particular class of liabilities, of the company ceases to be the responsibility (however described) of the part of the company's life insurance business that is carried on in Australia;
- (b) a direction that the company not act in a way that has the result that:
 - (i) a particular asset, or a particular class of assets, of the company ceases to be under the control (however described) of the part of the company's life insurance business that is carried on in Australia; or
 - (ii) a particular liability, or a particular class of liabilities, of the company becomes the responsibility (however described) of the part of the company's life insurance business that is carried on in Australia.

Section 230B

- (3B) The kinds of direction that may be given as mentioned in subsection (2) are not limited by any other provision in this Part.
- (3C) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (2) are not limited by any other paragraph of that subsection.
- (4) The direction may deal with the time by which, or period during which, it is to be complied with.
- (5) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (6) APRA may, by notice in writing to the body corporate, vary the direction if, at the time of the variation, it considers that the variation is necessary or appropriate.
- (6A) If the direction requires the body corporate to cause a subsidiary to do, or to refrain from doing, an act or thing:
 - (a) the body corporate has power to cause the subsidiary to do, or to refrain from doing, the act or thing; and
 - (b) the subsidiary has power to do, or to refrain from doing, the act or thing;despite anything in the subsidiary's constitution or any contract or arrangement to which the subsidiary is a party.
- (7) APRA may, by notice in writing to the body corporate, revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.
- (8) The direction ceases to have effect if:
 - (a) APRA revokes it under subsection (7); or
 - (b) the Court orders that the company be wound up; or
 - (c) for a body corporate that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up.

Section 230C

- (9) APRA must not give a direction under this section in relation to any part of the business of a life company if:
- (a) that part of that business is under the control of a judicial manager; or
 - (b) the Court has ordered that the company be wound up; or
 - (c) for a company that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up.

- (10) In this section:

director, in relation to a life company that is an eligible foreign life insurance company, means a member of the Compliance Committee of the company.

230C Direction not grounds for denial of obligations

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

- (1A) None of the matters mentioned in subsection (1B) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

- (a) deny any obligations under the contract;
- (b) accelerate any debt under the contract;
- (c) close out any transaction relating to the contract;
- (d) enforce any security under the contract.

This subsection has effect subject to subsections (2) and (3).

- (1B) The matters are as follows:

- (a) the body corporate being subject to a direction by APRA under section 230B;

Section 230D

- (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a direction by APRA under section 230B.
- (2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under section 230B, other than a direction under paragraph 230B(2)(o), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the body corporate under the contract.
- (3) A party to a contract to which subsection (2) applies may apply to the Court for an order relating to the effect on the contract of a direction under section 230B. The order may deal with matters including (but not limited to):
 - (a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);
 - (b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under section 230B.

230D Supply of information about issue and revocation of directions*Power to publish notice of directions in Gazette*

- (1) APRA may publish in the *Gazette* notice of any direction made under section 230B. The notice must include the name of the life company, registered NOHC or other body corporate given the direction and a summary of the direction.

Requirement to publish notice of revocation of certain directions in Gazette

- (2) If APRA publishes notice of a direction made under section 230B and then later revokes the direction, APRA must publish in the

Section 230F

Gazette notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about direction to Treasurer

- (3) If the Treasurer requests APRA to provide information about:
- (a) any directions under section 230B in respect of a particular life company, registered NOHC or other body corporate; or
 - (b) any directions made during a specified period under section 230B in respect of any life companies, registered NOHCs or other bodies corporate;
- APRA must comply with the request.

Power to inform Treasurer of direction

- (4) APRA may provide any information that it considers appropriate to the Treasurer about any directions, or revocations of directions, made under section 230B, in respect of any life company, registered NOHC or other body corporate, at any time.

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

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

230F Non-compliance with a direction

- (1) A life company, registered NOHC or other body corporate commits an offence if:
- (a) it does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 230B.

Penalty: 50 penalty units.

Section 230F

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

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

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

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

- (2) If a life company, registered NOHC or other body corporate does or fails to do an act in circumstances that give rise to the life company, NOHC or other body corporate committing an offence against subsection (1), the life company, NOHC or other body corporate commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the life company, NOHC or other body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

- (3) An officer of a life company, registered NOHC or other body corporate commits an offence if:
- (a) the officer fails to take reasonable steps to ensure that the life company, NOHC or other body corporate complies with a direction given to it under section 230B; and
 - (b) the officer's duties include ensuring that the life company, NOHC or other body corporate complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

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

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

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

Section 231

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

- (4) If an officer of a life company, registered NOHC or other body corporate fails to take reasonable steps to ensure that the life company, NOHC or other body corporate complies with a direction given to it under section 230B in circumstances that give rise to the officer committing an offence against subsection (3), the officer commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

Note: **Officer** would include a member of the Compliance Committee of an eligible foreign life insurance company.

Subdivision C—Secrecy and disclosure provisions relating to all directions

231 APRA may determine that a direction is covered by secrecy provision

- (1) This section applies if APRA has given an entity (the **directed entity**) a direction under this Act.
- (2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the policy owners of any life company or to promote financial system stability in Australia.

Note: For repeal of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 231A

- (3) APRA must give the directed entity a copy of the determination as soon as practicable after making it.
- (4) An instrument under subsection (2) is not a legislative instrument.
- (5) If APRA makes a determination under subsection (2), APRA must consider whether it is appropriate in the circumstances to also make a determination under either or both of subsections 231C(2) and 231C(5).

231A 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 231(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; or
 - (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:

Section 231B

- (a) the disclosure is authorised by section 231B, 231C, 231D, 231E, 231F or 231G; 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*).

231B Disclosure of publicly available information

A person covered by subsection 231A(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.

231C Disclosure allowed by APRA

- (1) A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
 - (a) a determination under subsection (2) allows the disclosure by the person; and
 - (b) if APRA has included conditions in the determination—those conditions are satisfied.

Determinations relating to specified person

- (2) APRA may, in writing, make a determination allowing:
 - (a) a specified person covered by subsection 231A(2) in relation to a specified direction; or
 - (b) a specified person covered by subsection 231A(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 specified class of persons covered by subsection 231A(2) in relation to a direction that is in a specified class of directions to disclose:
 - (a) specified kinds of information in relation to the direction; or
 - (b) any kind of 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.

231D Disclosure to legal representative for purpose of seeking legal advice

A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

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

231E Disclosure allowed by APRA Act secrecy provision

- (1) A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
 - (a) the person is:

Section 231F

- (i) an APRA member (within the meaning of subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*); or
 - (ii) an APRA staff member (within the meaning of that subsection); or
 - (iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who is covered by paragraph (c) of the definition of **officer** in subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*; and
- (b) the information is protected information (within the meaning of subsection 56(1) of that Act), or is contained in a protected document (within the meaning of that subsection); and
- (c) the disclosure is in accordance with subsection 56(3), (4), (5), (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

Relationship to APRA Act secrecy provision

- (2) Disclosure of information in relation to a direction is not an offence under section 56 of the *Australian Prudential Regulation Authority Act 1998* if the disclosure is authorised by section 231B, 231C, 231D, 231F or 231G.

231F Disclosure in circumstances set out in the regulations

A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, if the disclosure is made in circumstances (if any) set out in the regulations.

231G Disclosure for purpose

A person covered by subsection 231A(2) (the **relevant person**) in relation to a direction may disclose information that reveals the fact that the direction was made if:

- (a) another person covered by subsection 231A(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 231C,

Section 231H

231D, 231E or 231F, or in accordance with a previous operation of this section; and

(b) the disclosure by the relevant person is for the same purpose.

231H Exceptions operate independently

Sections 231B, 231C, 231D, 231E, 231F and 231G do not limit each other.

Part 11—Miscellaneous

233 Operation of State and Territory laws

- (1) Except as provided by subsections (2) and (3), it is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.
- (2) Subject to subsection (3), the Parliament intends that, in relation to life insurance business (including State life insurance extending beyond the limits of the State concerned), this Act is to apply to the exclusion of:
 - (a) a superseded State Act; and
 - (b) any State Act amending a superseded State Act; and
 - (c) any State Act enacted in substitution for a superseded State Act.
- (3) Nothing in this section is intended to affect prejudicially the rights, powers or privileges of the owner, or a person entitled to the benefit, of a policy issued before 20 June 1946 (the date of commencement of the *Life Insurance Act 1945*).
- (4) In this section, ***superseded State Act*** means a State Act referred to in subsection 8(1) of the *Life Insurance Act 1945*, as in force immediately before the commencement of this Act, that is still in operation.

233A Transfer by life insurance company to statutory fund

This section authorises any share capital reduction that occurs because a life company appropriates or transfers an amount to a statutory fund established and maintained under this Act.

Note: Section 256B of the *Corporations Act 2001* permits share capital reductions authorised by law to be carried out without shareholder approval.

234 Prohibition of mixed insurance business

- (1) A life company must not intentionally carry on any insurance business other than life insurance business.

Penalty: 300 penalty units.

- (2) Subsection (1) does not prohibit an existing life company from carrying on general insurance business if the company was carrying on general insurance business immediately before the commencement of this Act.

235 Injunctions*Restraining injunctions*

- (1) If a person (the **perpetrator**) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
- (a) a contravention of this Act, a condition imposed or specified under this Act (including a condition mentioned in subsection 208(3)) or a direction by APRA or ASIC under this Act; or
 - (b) attempting to contravene the Act, condition or direction; or
 - (c) aiding, abetting, counselling or procuring a person to contravene the Act, condition or direction; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the Act, condition or direction; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the Act, condition or direction; or
 - (f) conspiring with others to contravene the Act, condition or direction;
- the Court may grant an injunction in accordance with subsection (2).

Section 235

Nature of injunction

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

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

Performance injunctions

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

Consent injunctions

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

Interim injunctions

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

Variation or discharge of injunctions

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

Restraining injunctions

- (7) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

Performance injunctions

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

Damages undertakings

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

Damages orders

- (10) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may,

Section 236

either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

This section extends Federal Court's powers

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

236 Review of certain decisions

- (1) In this section:

reviewable decision means any of the following decisions:

- (aaa) a decision under section 7A that applies to a particular person;
 - (a) a declaration under subsection 12(2);
- (aa) a declaration under subsection 12A(1) or 12B(2);
- (b) a declaration under subsection 14(5);
- (c) a declaration under subsection 15(4);
- (ca) a determination under subsection 16C(2);
- (cb) a variation or revocation, under subsection 16C(3), of a determination under subsection 16C(2);
- (cc) a decision under section 16E;
- (cd) a refusal to give an approval under subsection 16L(3) or 16Q(3);
- (ce) a decision under subsection 16R(2) to give a notice;
- (cf) a determination of an amendment, or a refusal to approve an amendment, under subsection 16R(4);
- (cg) a refusal to give an approval under subsection 16U(3);
- (ch) a decision under subsection 16V(2) to give a notice;
- (ci) a refusal to approve consequential amendments under subsection 16V(4);
- (cj) a determination of consequential amendments under subsection 16V(5);
- (ck) a refusal to register a company under section 21;
- (d) a decision under subsection 22(1);

Section 236

- (e) a decision to vary a condition under subsection 22(3) or (4);
- (f) a refusal to revoke or vary a condition under subsection 22(4);
- (g) a decision to revoke registration under subsection 26(1);
- (ga) a refusal to revoke the registration of a company under section 27;
- (gaa) a decision to give a direction under subsection 27A(1);
- (gab) a refusal to approve a proposed assignment under subsection 27A(4);
- (gac) a decision to impose conditions on an approval under subsection 27A(4);
- (gb) a refusal of an application for registration of a body corporate under section 28A;
- (gc) a decision to impose conditions, or additional conditions, on a NOHC registration;
- (gd) a decision to vary conditions imposed on a NOHC registration;
- (ge) a decision to revoke under section 28C a NOHC registration;
- (gf) a decision to give a notice under subsection 28AA(2);
- (h) a refusal to give an approval under paragraph 31(c);
- (ha) a refusal to give an approval under subsection 40(1);
- (hb) a decision to impose conditions on an approval granted under subsection 40(1);
- (hc) a refusal to give an approval under paragraph 43(3)(c);
- (hd) a refusal to give an approval under paragraph 48(8)(b);
- (k) a refusal to give an approval under prudential standards referred to in section 52;
- (l) a refusal to give an approval under prudential standards referred to in section 53;
- (la) a refusal to give an approval under paragraph 62(1)(c);
- (m) a refusal to give an approval under subsection 62(4);
- (n) a refusal to give an approval under subsection 63(2);
- (o) a refusal to give an approval under paragraph 76A(1)(b);

Section 236

- (p) a decision to give an approval under paragraph 76A(1)(b) subject to conditions;
 - (u) a refusal to give an approval under subsection 77(6);
 - (v) a decision under section 86 to make a declaration that a person is ineligible to hold an appointment as an auditor of a life company;
 - (w) a decision under section 94A to make a declaration that a person is ineligible to hold an appointment as actuary of a life company;
 - (za) a decision to give a direction under section 125A;
 - (zh) a requirement under subsection 131(1);
 - (zi) a requirement under subsection 132(1);
 - (zn) a direction under subsection 198(3);
 - (zna) a refusal under section 208 to suspend or vary a life company's obligation to make payments;
 - (zo) a decision under subsection 216(10);
 - (zp) a decision under section 230A to make, vary or revoke a standard referred to in paragraph 230A(1)(c);
 - (zq) a decision to give a direction under section 230B as a result of the ground referred to in paragraph 230B(1)(a), (b), (c) or (d);
 - (zr) a decision to give a direction under subsection 230B(1AA) as a result of the ground referred to in paragraph 230B(1AA)(a), (b) or (c);
 - (zs) a decision to give a direction under subsection 230B(1AC) as a result of the ground referred to in paragraph 230B(1AC)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph 230B(1AA)(a), (b) or (c).
- (2) A person affected by a reviewable decision may request the Regulator to reconsider the decision.
 - (3) The request must be made by written notice given to the Regulator 21 days after the person first receives notice of the decision, or within such further period as the Regulator allows.
 - (4) The request must set out the reasons for making the request.
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Section 237

- (5) On receipt of the request, the Regulator must reconsider the decision and may, subject to subsection (6), confirm or revoke the decision or vary the decision in such manner as the Regulator thinks fit.
- (6) If the Regulator does not confirm, revoke or vary a decision within 60 days after the Regulator received the request under subsection (2) to reconsider the decision, the Regulator is taken to have confirmed the decision under subsection (5) on the last day of that period.
- (7) If the Regulator confirms, revokes or varies a decision before the end of the period referred to in subsection (6), the Regulator must give written notice to the person telling the person:
 - (a) the result of the reconsideration of the decision; and
 - (b) the reasons for confirming, revoking or varying the decision, as the case may be.
- (8) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Regulator that has been confirmed or varied under subsection (5).
- (9) If a decision is taken to be confirmed because of subsection (6), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.
- (10) If a request is made under subsection (3) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

237 Constitution and procedure of Tribunal

- (3) A non-presidential member of the Administrative Appeals Tribunal must not sit as a member of the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, or for the

Section 240

purposes of a request under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of such decision, if he or she is a director or employee of a company or body carrying on life insurance business or insurance business (whether in Australia or elsewhere) or of a NOHC of such a company or body.

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

240 Register of Life Companies and Non-Operating Holding Companies

- (1) APRA must keep a register to be known as the Register of Life Companies and Non-Operating Holding Companies.
- (2) Subject to this section and the regulations, the Register is to be kept in such form and manner as APRA determines.
- (3) The Register must contain the prescribed information in relation to each company, or body corporate, that is registered under this Act.
- (4) The Register may be kept by means of a computer.

241 Inspection of Register etc.

- (1) APRA must ensure that the Register is available for inspection by any person during normal business hours.
- (2) A person who has paid the prescribed fee is entitled to inspect the Register.
- (3) If the Register is kept wholly or partly by means of a computer, subsection (1) is taken to be complied with, so far as the Register is kept in that way, by giving persons access to computer terminals that they can use to inspect the Register, either by viewing a screen display or by obtaining a computer print-out.

242 Non-shareholder members of life company—voting by post

- (1) This section applies to any life company that is not a company limited only by shares.
- (1A) This section does not apply in relation to an eligible foreign life insurance company.
- (2) Within one year after it is registered under section 21, a life company to which this section applies must make arrangements for:
 - (a) the establishment of a postal voters' roll in relation to:
 - (i) voting in contested elections of directors of the company; and
 - (ii) voting on questions relating to the alteration of the company's constitution;
 - (b) the enrolment on the postal voters' roll of any member of the company who is not a shareholder, who applies to be enrolled and who is entitled to vote:
 - (i) in elections referred to in subparagraph (a)(i); or
 - (ii) on questions referred to in subparagraph (a)(ii); and
 - (c) the voting by post in such elections or on such questions by members so enrolled; and
 - (d) the inspection of the postal voters' roll, and the taking of copies of, or extracts from, the roll, after the close of nominations and before the close of the voting in any election of a director of the company by any candidate in the election.
- (3) All regular votes cast under any arrangements referred to in subsection (1) are valid for all purposes.
- (4) If a member of a life company who is enrolled on the postal voters' roll does not exercise his or her right to vote by post on 3 consecutive occasions when he or she is entitled to vote, the company may remove his or her name from the roll. However, he or she is eligible to be re-enrolled on his or her request.

Section 245

245 Disqualified persons not to be directors, principal executive officers etc. of life companies

- (1) For the purposes of this Act, a person is a disqualified person if, at any time:
- (a) the person has been convicted of an offence against this Act or the *Life Insurance Act 1945*; or
 - (b) the person has been convicted of an offence against any other law of the Commonwealth or a law of a State, a Territory or a foreign country, being an offence in respect of:
 - (i) conduct relating to insurance; or
 - (ii) dishonest conduct; or
 - (c) the person has:
 - (i) become bankrupt; or
 - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with his or her creditors; or
 - (d) the Federal Court of Australia has disqualified the person under section 245A.
- (2) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person is or acts as:
 - (i) a director of a company, or body corporate, registered under this Act; or
 - (ii) a principal executive officer of a company, or body corporate, registered under this Act; or
 - (iii) an appointed actuary of a company registered under section 21; or
 - (iv) an auditor of a company, or body corporate, registered under this Act; and
 - (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person is or acts as:
 - (i) a director of a company, or body corporate, registered under this Act; or
 - (ii) a principal executive officer of a company, or body corporate, registered under this Act; or
 - (iii) an appointed actuary of a company registered under section 21; or
 - (iv) an auditor of a company, or body corporate, registered under this Act; and
 - (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 60 penalty units.

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

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

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

Section 245

executive officer, actuary or auditor (as the case requires);
and

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

Penalty: 250 penalty units.

(5A) A company or body corporate commits an offence if:

- (a) the company or body corporate is registered under this Act;
and
- (b) a person is a disqualified person; and
- (c) the person is or acts as:
 - (i) a director of the company or body corporate; or
 - (ii) a principal executive officer of the company or body corporate; or
 - (iii) an appointed actuary of the company; or
 - (iv) an auditor of the company or body corporate; and
- (d) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires);
and
- (e) in any case—the company or body corporate allows the person to be or act as a director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 60 penalty units.

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

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

- (6) A failure to comply with this section does not affect the validity of an appointment or transaction.
- (7) A reference in subsection (1) to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*,

Section 245A

or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence.

(8) In this section:

director, in relation to a life company that is an eligible foreign life insurance company, means a member of the Compliance Committee of the company.

245A Court power of disqualification

- (1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from being or acting as someone referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied that:
 - (a) the person is not a fit and proper person to be or act as such a person; and
 - (b) the disqualification is justified.
- (2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as a director, principal executive officer, appointed actuary or auditor of:
 - (a) a particular company, or body corporate, registered under this Act; or
 - (b) a class of companies, or bodies corporate, registered under this Act; or
 - (c) any company, or body corporate, registered under this Act.
- (3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:
 - (a) any matters specified in the regulations for the purposes of this paragraph; and
 - (b) any criteria for fitness and propriety specified in the prudential standards; and
 - (c) any other matters the Court considers relevant.
- (4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

Section 245B

- (a) if the application is for the person to be disqualified from being or acting as a director or principal executive officer—the person’s conduct in relation to the management, business or property of any corporation; and
 - (b) if the application is for the person to be disqualified from being or acting as an appointed actuary or auditor—the person’s conduct in relation to the functions or duties of an actuary or auditor under this Act; and
 - (c) in any case—any other matters the Court considers relevant.
- (5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:
 - (a) if the person is, or is acting as, a director, principal executive officer, appointed actuary or auditor of a company, or body corporate, registered under this Act—to be given to the company, or body corporate, concerned; and
 - (b) to be published in the *Gazette*.

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

- (1) A disqualified person, or APRA, may apply to the Federal Court of Australia for:
 - (a) if the person is a disqualified person only because he or she was disqualified under section 245A—a variation or a revocation of the order made under that section; or
 - (b) otherwise—an order that the person is not a disqualified person.
- (2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 245, the person is not a ***disqualified person***.
- (3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:
 - (a) if the disqualified person makes the application—by the person with APRA; or
 - (b) if APRA makes the application—by APRA with the disqualified person.

Section 245C

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

245C Privilege against exposure to penalty—disqualification under section 245A

Proceedings

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
- (a) to answer a question or give information; or
 - (b) to produce books, accounts or other documents; or
 - (c) to do any other act;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 245A.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

Statutory requirements

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
- (a) to answer a question or give information; or
 - (b) to produce books, accounts or other documents; or
 - (c) to do any other act;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 245A.

Section 246

Admissibility

- (4) Subsection 156F(2) does not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 245A.

Other provisions

- (5) Subsections (1) and (3) of this section have effect despite anything in:
 - (a) any other provision of this Act; or
 - (b) the *Administrative Appeals Tribunal Act 1975*.

Definition

- (6) In this section:

penalty includes forfeiture.

246 Principal executive officer

- (1) Subject to subsection (3), the principal executive officer of a life company, for the purposes of this Act, is the person nominated for the purposes of section 20 or under subsection (2) of this section.
- (2) An existing life company must give APRA written notice specifying the person who is to be the principal executive officer of the life company for the purposes of this Act.
- (3) Notice under subsection (2) must be given within 3 months after the commencement of this Act.
- (4) A life company may, at any time, give APRA written notice specifying a person who is to be the principal executive officer of the life company for the purposes of this Act.
- (5) On the giving by a life company of a notice under subsection (4), the person specified in the notice becomes the principal executive officer of the life company for the purposes of this Act.

Section 246A

246A Protection from liability—general

- (1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.
- (2) To avoid doubt, any information provided by a person to APRA under section 88A or 98A is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.
- (3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

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) in relation to a direction under this Act given by APRA to a body corporate; 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, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;
 - (ii) an employee or agent of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

Section 246C

- (iii) the body corporate or a member of a relevant group of bodies corporate of which the body corporate is also a member.
- (2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.
- (3) In this section:
 - 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 179AK;
- (b) subsection 50(2);
- (c) section 89;
- (d) section 99;
- (e) section 156A;
- (f) section 156B;
- (g) section 179;
- (h) section 246A;
- (i) section 246B;
- (j) section 247;
- (k) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

247 Protection of person who discloses information etc. under compulsion

A person who:

- (a) discloses information; or
 - (b) produces records;
- in accordance with a requirement or direction of a person apparently acting under this Act is not liable to anyone else in respect of the disclosure or production, regardless of whether the requirement or direction was lawfully made or given.

248 Offences

- (1) No proceedings for an offence against this Act may be instituted after the end of the period of 3 years after the commission of the offence.
- (2) The institution of proceedings against a company for an offence against this Act or the *Financial Sector (Collection of Data) Act 2001* does not prevent the institution of proceedings for:
 - (a) the judicial management; or
 - (b) the winding-up;of the company, or of part of the business of the company, on a ground that relates to the matter that constitutes the offence.

250 Conduct by directors, employees and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

Section 250

- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by an employee or agent of the individual within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of an individual by an employee or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
 - (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or a Territory.
- (7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (8) A reference in this section to an offence against this Act includes a reference to an offence created by section 6 of the *Crimes Act 1914*, being an offence that relates to this Act.
- (9) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

251 Compensation for acquisition of property

(1) If:

- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay to the person compensation of a reasonable amount as agreed on between the Commonwealth and the person. If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

(2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(3) In this section:

acquisition of property and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

251AA Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

Section 251A

251A Authorising contracts etc. for protecting policy owners' interests and financial system stability

Authorising the making of contracts and arrangements

- (1) With the Finance Minister's written approval, the Minister may authorise the making of contracts and arrangements by the Commonwealth for the purposes of:
- (a) protecting the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry; or
 - (b) protecting financial system stability in Australia.

Specifying amounts to be credited to special account

- (2) The authorisation must specify the amount (if any) to be credited to the Financial System Stability Special Account, so that the total described in subsection (3) does not exceed by more than \$10,000,000,000 the total described in subsection (4).

Note: This ensures that the balance of the special account directly attributable to authorisations under this section cannot exceed \$10,000,000,000 at any time.

- (3) The total described in this subsection is the total of all the amounts specified under subsection (2) in authorisations made under this section (taking account of any amendments of those authorisations).
- (4) The total described in this subsection is the total of all the amounts taken under subsection 80(3) of the *Public Governance, Performance and Accountability Act 2013* to be debited from the Financial System Stability Special Account for expenditure for the purpose described in paragraph 70G(c) of the *Banking Act 1959*.

Note: That purpose is making a payment under a contract or arrangement whose making was authorised under this section.

Section 251B

Amending specification of amount to be credited

- (5) The Minister may amend an authorisation made under this section, but only to change the specification of an amount under subsection (2), within the limit set out in that subsection.

Authorisation cannot be revoked

- (6) The Minister cannot revoke an authorisation made under this section.

Authorisation or amendment not disallowable

- (7) An authorisation or amendment made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the authorisation or amendment.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the authorisation or amendment: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

When authorisation or amendment commences

- (8) The authorisation or amendment commences from the time it is made, despite subsection 12(1) of the *Legislation Act 2003*.
- (9) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the authorisation or amendment.

251B Borrowing funds for payments under authorised contracts etc.

- (1) Subsection (2) applies if the Minister has determined under section 251A an amount to be credited to the Financial System Stability Special Account.
- (2) On behalf of the Commonwealth, the Minister may, with the Finance Minister's written approval, borrow money for not more than 24 months on terms and conditions specified in, or consistent

Section 253

with, the approval, so that the total unrepaid borrowing under this section is not more than \$10,000,000,000 at any time.

- (3) The Finance Minister may delegate, in writing, to an SES employee or acting SES employee in the Department that is administered by the Finance Minister, the Finance Minister's power of approval for the purposes of subsection (2).

- (4) In this section:

borrow includes raise money or obtain credit, whether by dealing in securities or otherwise, but does not include obtain credit in a transaction forming part of the day-to-day operations of the Commonwealth.

253 Regulations

- (1) The Governor-General may make regulations:
- (a) prescribing matters required or permitted by this Act to be prescribed; or
 - (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
- (a) prescribe the time within which any appeal to the Court provided for by this Act will lie; and
 - (b) prescribe penalties not exceeding 10 penalty units for any contravention of the regulations.

Part 12—How this Act affects existing life companies etc.

254 Companies registered under *Life Insurance Act 1945*

- (1) An existing life company is taken, for the purposes of this or any other Act, to be registered under section 21.
- (2) An existing life company that is incorporated outside Australia is taken, for the purposes of this Act, to be a company within the meaning of this Act.
- (3) If, immediately before this Act commenced, an existing life company was subject to a condition imposed under section 20 of the *Life Insurance Act 1945*, the condition has effect as if it were a condition imposed under section 22 of this Act.
- (5) Section 26 of this Act applies to an existing life company as if the period of 12 months referred to in paragraph (1)(g) of that section began on the day on which the company was registered under the *Life Insurance Act 1945*.
- (7) The following provisions of this Act do not apply to an existing life company that is incorporated outside Australia:
 - (b) section 242;
 - (c) section 245.
- (8) This Act does not apply in relation to life insurance business carried on outside Australia by an existing life company that is incorporated outside Australia.

264 Saving provision: sections 83, 84 and 94 of the *Life Insurance Act 1945*

In spite of section 6 of the *Life Insurance (Consequential Amendments and Repeals) Act 1995*, sections 83, 84 and 94 of the *Life Insurance Act 1945*, as in force immediately before the

Section 264

commencement of this Act, continue to apply to policies to which those sections applied immediately before the commencement of this Act as if the *Life Insurance Act 1945* had not been repealed.

Schedule—Dictionary

Section 8

administrator, of a body corporate's business, means an administrator appointed under subsection 179AA(1) to take control of the body corporate's business.

appointed actuary, in relation to a life company or anything done, or to be done, by a life company, means the person holding an appointment by the company under section 93.

approved form means a form approved, in writing, by APRA.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

Australian business assets and liabilities, of an eligible foreign life insurance company, has the meaning given by subsection 16ZE(6).

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

- (a) a Banking Act statutory manager (within the meaning of the *Banking Act 1959*); or
- (b) an Insurance Act statutory manager (within the meaning of the *Insurance Act 1973*); or
- (c) a Life Insurance Act statutory manager.

Australian fund has the meaning given by section 74.

Australian/overseas fund has the meaning given by section 74.

Australian participating business has the meaning given by section 56.

Australian policy means a policy issued in Australia.

Australian policy owners' retained profits has the meaning given by section 61.

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

business day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

business of a statutory fund has the meaning given by section 13.

child: without limiting who is a child of a person for the purposes of this Act, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

class of life insurance business has the meaning given by section 12.

company means:

- (a) a company incorporated under the *Corporations Act 2001*; or
- (b) a body corporate incorporated, or continued in existence, by or under any law of a State or Territory; or
- (c) an eligible foreign life insurance company.

Compliance Committee, in relation to an eligible foreign life insurance company, has the meaning given by subsection 16ZF(1).

constitution, in relation to a company, includes:

- (a) the documents under which the company is constituted; and
- (b) any other document governing activities or conduct of the company or its members.

continuous disability policy has the meaning given by section 9A.

Court means the Federal Court of Australia.

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

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

- (a) section 27A;
- (b) section 125A;
- (c) section 230AB;

(d) section 230B.

director, in relation to an eligible foreign life insurance company, includes a member of the Compliance Committee of the company.

eligible foreign life insurance company has the meaning given by section 16ZD.

executive officer, in relation to a company, means a person, whatever his or her title and whether or not a director of the company, who is concerned, or takes part, in the day-to-day management of the company.

existing life company means a body corporate that, immediately before the commencement of this Act, was registered under the *Life Insurance Act 1945*.

external administrator means any of the following:

- (a) a liquidator;
- (b) a receiver, manager, managing controller, receiver and manager or other controller (other than a judicial manager or Life Insurance Act statutory manager);
- (c) a voluntary administrator or administrator of a deed of a company arrangement or a scheme manager.

Expressions used in this definition have the same meanings as they have in the *Corporations Act 2001*.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

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

Financial System Stability Special Account means the Financial System Stability Special Account established by section 70E of the *Banking Act 1959*.

friendly society has the meaning given by section 16C.

Note: Other expressions relevant to friendly societies are defined in section 16B.

health insurance business has the same meaning as in Division 121 of the *Private Health Insurance Act 2007*.

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

investment account benefits has the meaning given by section 14.

investment account contract has the meaning given by section 14.

investment-linked benefits has the meaning given by section 14.

investment-linked contract has the meaning given by section 14.

issue, in relation to a policy, has the meaning given by section 10.

life business means business that consists of:

- (a) the issuing of life policies or the undertaking of liability under life policies; or
- (b) any business that relates to business referred to in paragraph (a).

life company means a company that is carrying on life insurance business in Australia.

Life Insurance Act statutory manager has the meaning given by subsection 179AA(8).

life insurance business has the meaning given by section 11.

life policy has the meaning given by section 9.

liquidator includes a provisional liquidator.

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

member of staff means:

- (a) in relation to APRA—a person who is an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*; and

- (b) in relation to ASIC—a person who is a staff member within the meaning of the *Australian Securities and Investments Commission Act 2001*.

NOHC: see *Non-Operating Holding Company*.

NOHC/NOHC subsidiary has the meaning given by subsection 230AA(5).

NOHC registration has the meaning given by section 28A.

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

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

non-participating business means life insurance business that consists of the provision of non-participating benefits under policies.

ordinary business means life insurance business other than superannuation business.

ordinary policy means a policy other than a superannuation policy.

overseas fund has the meaning given by section 74.

overseas participating business has the meaning given by section 56.

overseas policy means a policy issued outside Australia.

overseas policy owners' retained profits has the meaning given by section 61.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this section.

participating business means life insurance business that consists of the provision of participating benefits under policies.

person affected by a reviewable decision has the meaning given by section 236.

policy means a life policy, a sinking fund policy or a section 12A or 12B policy.

policy document means a document that sets out, or the documents that together set out, the terms of a contract that is a life policy, a sinking fund policy or a section 12A or 12B policy, and includes an endorsement on such a document.

policy liability, in relation to a life company, means:

- (a) a liability that has arisen under a policy; or
- (b) a liability that, subject to the terms and conditions of a policy, will arise on the happening of an event, or at a time, specified in the policy.

premium includes an instalment of premium.

principal auditor, of a life company, means an auditor appointed by the life company under subsection 83(1).

produce includes permit access to.

prudential matters means matters relating to:

- (a) the conduct of any part of the affairs of, or the structuring or organising of, a life company, a registered 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 life company, NOHC, group or member or members of the group in a sound financial position; or
 - (ii) to facilitate resolution of the life company, NOHC, group or member or members of the group; or
 - (iii) to protect the interests of policy owners of any life company; 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 life company, a registered NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

prudential standards means standards made under Division 1 of Part 10A.

recapitalisation direction means a direction given by APRA under subsection 230AB(1) or (1B).

Register means the Register of Life Companies and Non-Operating Holding Companies kept under section 240.

registered NOHC means a body corporate that:

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

Regulator means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC.

related body corporate:

- (a) in Part 7—has the meaning given by section 129; and
- (b) otherwise—has the meaning given by section 16.

relevant group of bodies corporate has the meaning given by section 15A.

reporting document has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

resolution means the process by which APRA or other relevant persons manage or respond to an entity:

- (a) being unable to meet its obligations; or

- (b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or
- (c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

reviewable decision has the meaning given by section 236.

section 12A or 12B policy means a policy, other than a life policy or a sinking fund policy, issued, or taken to be issued, in the course of carrying on business covered by a declaration under section 12A or 12B.

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

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

shareholders' capital has the meaning given by section 61.

shareholders' retained profits (Australian participating) has the meaning given by section 61.

shareholders' retained profits (overseas and non-participating) has the meaning given by section 61.

sinking fund business means business that consists of:

- (a) the issuing of sinking fund policies or the undertaking of liability under sinking fund policies; or
- (b) any business that relates to business referred to in paragraph (a).

sinking fund policy means a contract that has the following features:

- (a) the company issuing the policy undertakes to pay money on one or more specified dates;

- (b) neither the payment of that money nor the payment of premiums is dependent on the death or survival of the person to whom the policy is issued or of any other person.

starting amount has the meaning given by section 61.

subsidiary has the meaning given by section 16.

superannuation business means life business that consists of:

- (a) the issuing of superannuation policies or the undertaking of liability under superannuation policies; or
- (b) any business that relates to business referred to in paragraph (a).

superannuation policy means:

- (a) a life policy that is maintained for the purposes of a superannuation or retirement scheme and is owned by the trustee under the scheme; or
- (b) a life policy of a kind prescribed by the regulations for the purposes of this paragraph.

this Act includes:

- (a) the regulations and prudential standards; and
- (b) the *Life Insurance Act 1995*, and the instruments made under that Act referred to in paragraph (a), as they have effect because of Part 2A of that Act.

trade union means an association registered under a law of a State or Territory providing for the registration of trade unions.

value, in relation to an asset, means the market value of the asset less the costs likely to be incurred in realising the asset.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Life Insurance Act 1995	4, 1995	23 Feb 1995	1 July 1995 (gaz 1995, No GN24)	
Superannuation Industry (Supervision) Legislation Amendment Act 1995	144, 1995	12 Dec 1995	Sch 2: Royal Assent (a)	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 19 (item 25): Royal Assent (b)	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	2 June 1997 (s 2 and gaz 1997, No S202)	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Sch 12: Royal Assent (c)	—
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 6 (item 6): 30 June 1997 (d)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (item 116): 1 July 1998 (gaz 1998, No S316) (e)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 13 (items 1–187): 1 July 1998 (gaz 1998, No. S316) (f) Sch 13 (items 188–197): Royal Assent (f)	Sch 13 (item 197)

Life Insurance Act 1995

331

Compilation No. 53

Compilation date: 5/3/18

Registered: 27/3/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 6 (item 10): (g)	—
Company Law Review Act 1998	61, 1998	29 June 1998	Sch 4 (items 13–25): 1 July 1998 (s 2(2) and gaz 1998, No S317) Sch 5 (items 34–36): 1 July 1998 (s 2(5))	
as amended by				
Taxation Laws Amendment (Company Law Review) Act 1998	63, 1998	29 June 1998	Sch 7: 1 July 1998 (s 2(1) and gaz 1998, No S325)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 4: 1 July 1999 (s 3(2)(c), (16) and gaz 1999, No S283) Sch 8 (items 10–20, 22, 23): 17 June 1999 (s 3(1))	Sch 8 (items 10–20, 22, 23)
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 5 (items 22–25): 13 Mar 2000 (s 2(2)(b) and gaz 2000, No S114)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Sch 6: 1 July 1999 (s 2(6)) Sch 12 (items 1–3, 8): 3 Apr 2000 (s 2(1), (12), (13))	Sch 12 (items 1–3, 8)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 268, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	Sch 1 (items 1–4) and Sch 2: Royal Assent Sch 1 (items 171, 172): 18 Jan 2001 (s 2(2)) Remainder: 15 Dec 2001 (s 2(4))	—
as amended by Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	Sch 2 (items 2–5): 15 Dec 2001 (s 2(4))	—
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 305–334): 15 July 2001 (s 2(1),(3) and gaz 2001, No. S285)	s 4–14
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	s 1–3: Royal Assent Remainder: 1 July 2002 (s. 2(2) and gaz 2002, No GN24)	Sch 2 (item 75)
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (items 257, 258): 11 Mar 2002 (s 2(1), (6))	—
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 6: 27 June 2002	—

Life Insurance Act 1995

333

Compilation No. 53

Compilation date: 5/3/18

Registered: 27/3/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Sch 3 (item 54): 12 May 2003 (s 2 and gaz 2002, No GN49)	—
Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002	139, 2002	19 Dec 2002	19 Dec 2002	Sch 1 (item 17)
US Free Trade Agreement Implementation Act 2004	120, 2004	16 Aug 2004	Sch 4: 1 Jan 2005	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Sch 1 (items 224, 225): 16 May 2005	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 29): 6 July 2005 (s 2(1) item 18)	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (item 17): 23 Mar 2006 (s 2(1) item 11)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 1 (item 17): 1 July 1999 (s 2(1) item 14) Sch 1 (item 18): 1 July 1999 (s 2(1) item 15)	—
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Sch 2 (items 55, 56): 1 Apr 2007 (s. 2(1) item 7)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Restructures) Act 2007	117, 2007	28 June 2007	28 June 2007 (s 2)	—
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Sch 1 (items 67–135, 290, 293, 296): 24 Sept 2007 (s 2(1) item 2) Sch 1 (items 189–237): 1 Jan 2008 (s 2(1) item 3) Sch 1 (items 256–273, 276–289): 1 July 2011 (s 2(1) item 5)	Sch 1 (items 290, 293, 296)
as amended by				
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 4 (item 26): 27 July 2010 (s 2(1) item 14)	—
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 1 (items 22–34), Sch 2 (items 17–25), Sch 3 (items 28–31) and Sch 4 (items 28–37, 43): 26 May 2008 (s 2(1) items 2, 5, 6, 11)	Sch 1 (item 34), Sch 2 (item 25) and Sch 4 (item 43)
as amended by				
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 2 (item 10): 26 May 2008 (s 2(1) item 13)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
First Home Saver Accounts (Consequential Amendments) Act 2008 as amended by Statute Law Revision Act 2010	45, 2008	25 June 2008	Sch 3 (items 16–27): 26 June 2008 (s 2)	—
First Home Saver Accounts (Further Provisions) Amendment Act 2008	92, 2008	30 Sept 2008	Sch 2 (items 39, 40): 1 Oct 2008 (s 2(1) item 2)	—
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008	105, 2008	17 Oct 2008	Sch 4: 18 Oct 2008 (s 2(1) item 3)	Sch 4 (items 5, 7, 12, 14, 22, 24, 30)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 14 (items 120–129): 10 Dec 2008 (s 2(1) item 36)	Sch 14 (item 129)
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 18 (item 12): 1 July 2009 (s 2(1) item 41)	—
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (items 1–187): 27 Feb 2010 (s 2(1) item 2) Sch 2 (items 8, 14): 28 Aug 2009 (s 2(1) item 3)	Sch. 1 (items 14, 16, 81, 88, 117, 126, 135, 145, 180) and Sch 2 (item 14)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 3 (items 1–51, 53–63) and Sch 6 (items 1, 43–50): 27 July 2010 (s 2(1) items 8, 10, 17) Sch 3 (item 52): 1 Jan 2011 (s 2(1) item 52)	Sch 3 (items 62, 63)
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 15): 27 July 2010 (s 2(1) item 15)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 73): 1 Jan 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (item 755) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012	176, 2012	4 Dec 2012	Sch 3 (items 1–3): 1 July 2013 (s 2(1) item 6) Sch 3 (item 4): 5 Dec 2012 (s 2(1) item 7)	Sch 3 (item 4)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 9 (items 216–219) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				

Life Insurance Act 1995

337

Compilation No. 53

Compilation date: 5/3/18

Registered: 27/3/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 112–116): 25 Mar 2015 (s 2(1) item 10)	—
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 1 (items 118–128, 195–205): 1 July 2015 (s 2(1) items 3, 6)	Sch 1 (items 195–205)
Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015	87, 2015	26 June 2015	Sch 1 (item 34): 1 July 2015 (s 2(1) item 2) Sch 2: 27 June 2015 (s 2(1) item 9)	Sch 2
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 328–330): 5 Mar 2016 (s 2(1) item 2)	—
Banking Laws Amendment (Unclaimed Money) Act 2015	129, 2015	16 Sept 2015	Sch 1 (items 8, 9): 31 Dec 2015 (s 2(1) item 1)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 206): 10 Mar 2016 (s 2(1) item 6)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (items 284–286): 1 Mar 2017 (s 2(1) item 5)	—
Financial System Legislation Amendment (Resilience and Collateral Protection) Act 2016	43, 2016	4 May 2016	Sch 1 (items 45, 46, 48): 1 June 2016 (s 2(1) item 2)	Sch 1 (item 48)
Treasury Laws Amendment (Banking Measures No. 1) Act 2018	9, 2018	5 Mar 2018	Sch 4 (items 5, 6): 5 Mar 2018 (s 2(1) item 4)	—
Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018	10, 2018	5 Mar 2018	Sch 3: 5 Mar 2018 (s 2(1) item 2)	Sch 3 (items 118–128)
Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 3 (items 7, 32): <u>awaiting commencement</u> (s 2(1) item 8)	s 4 and <u>Sch 3 (item 32)</u>

(a) The *Life Insurance Act 1995* was amended by Schedule 2 only of the *Superannuation Industry (Supervision) Legislation Amendment Act 1995*, subsection 2(1) of which provides as follows:

- (1) Sections 1, 2 and 3, subsection 4(1), section 5, Schedules 1 and 2, items 1, 6, 10, 22 to 27, 30 to 33, 71 to 75 and 86 of Schedule 4 and items 1 to 7, 10 to 12, 25 to 71, 73 to 78, paragraphs (a), (b) and (c) of item 95, paragraphs (a) and (b) of item 96 and items 97 to 102 of Schedule 5 commence on the day on which this Act receives the Royal Assent.

Endnotes

Endnote 3—Legislation history

- (b) The *Life Insurance Act 1995* was amended by Schedule 19 (item 25) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Life Insurance Act 1995* was amended by Schedule 12 only of the *Financial Laws Amendment Act 1997* subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Financial Laws Amendment Act 1997* was amended by Schedule 6 (item 6) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsection 3(7) of which provides as follows:
- (7) Item 6 of Schedule 6 is taken to have commenced on the commencement of Schedule 12 to the *Financial Laws Amendment Act 1997*.
- (e) The *Life Insurance Act 1995* was amended by Schedule 1 (item 116) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (f) The *Life Insurance Act 1995* was amended by Schedule 13 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsections 2(2)(k) and (13) of which provide as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (k) Parts 1 to 6 of Schedule 13;
- (13) Part 7 of Schedule 13 commences on the day on which this Act receives the Royal Assent.
- (g) The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* was amended by Schedule 6 (item 10) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsection 3(8) of which provides as follows:
- (8) Item 10 of Schedule 6 is taken to have commenced immediately before the commencement of Part 1 of Schedule 13 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*.

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 54, 1998; No 44, 1999; No 105, 2008; No 82, 2010; No 9, 2018
s 4	am No 75, 2009; No 10, 2018
s 7	rs No 54, 1998
	am No 10, 2018
s 7A	ad No 154, 2007
	am No 10, 2018
s 7B	ad No 154, 2007
Part 2	
s 9A	ad No 107, 1997
	am No 44, 1999
s 11	am No 60, 1996; No 44, 1999; No 105, 2002; SLI 2006 No 50; No 54, 2009
s 12	am No 54, 1998; No 44, 1999
s 12A	ad No 44, 1999
	am No 154, 2007; No 75, 2009
s 12B	ad No 44, 1999
	am No 55, 2001; No 154, 2007; No 75, 2009
s 14	am No 54, 1998; No 45, 2008; No 70, 2015
s 15	am No 54, 1998; No 154, 2007
s 15A	ad No 10, 2018
s 16	am No 55, 2001; No 75, 2009; No 10, 2018
Part 2A	
Part 2A	ad No 44, 1999
Division 1	
s 16A	ad No 44, 1999
	am No 154, 2007
s 16B	ad No 44, 1999

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 154, 2007
Division 2	
s 16C	ad No 44, 1999
	am No 55, 2001; No 154, 2007
s 16D	ad No 44, 1999
s 16E.....	ad No 44, 1999
	am No 31, 2001; No 82, 2010 (as am by No 136, 2012); No 4, 2016
Division 3	
s 16F.....	ad No 44, 1999
Division 4	
Subdivision 1	
s 16G	ad No 44, 1999
s 16H	ad No 44, 1999
	am No 154, 2007
s 16I.....	ad No 44, 1999
s 16J.....	ad No 44, 1999
	am No 154, 2007
s 16K	ad No 44, 1999
Subdivision 2	
s 16L.....	ad No 44, 1999
	am Nos. 31 and 55, 2001; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 16M.....	ad No 44, 1999
	am No 31, 2001
	rep No 154, 2007
s 16N	ad No 44, 1999
	am No 154, 2007
s 16O, 16P	ad No 44, 1999
s 16Q	ad No 44, 1999
	am No 31, 2001; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016

Endnote 4—Amendment history

Provision affected	How affected
s 16R	ad No 44, 1999 am No 31, 2001; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 16S	ad No 44, 1999 am No 31, 2001 rep No 154, 2007
s 16T	ad No 44, 1999 am No 154, 2007
s 16U	ad No 44, 1999 am No 31, 2001; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 16V	ad No 44, 1999 am No 31, 2001; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 16W	ad No 44, 1999 am No 31, 2001 rep No 154, 2007
s 16X	ad No 44, 2007 am No 154, 2007
s 16Y, 16Z	ad No 44, 1999
Division 5	
s 16ZA	ad No 44, 1999 am No 24, 2000
s 16ZB	ad No 44, 1999 am No 32, 2007; No 87, 2015
s 16ZC	ad No 44, 1999 am No 46, 2011
Part 2B	
Part 2B	ad No 120, 2004
s 16ZD	ad No 120, 2004 am No 75, 2009; No 126, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 16ZE	ad No 120, 2004
	rs No 10, 2018
s 16ZF	ad No 120, 2004
s 16ZG	ad No 120, 2004
Part 3	
Part 3 heading	rs No 75, 2009
Division 1	
Division 1 heading	ad No 75, 2009
s 17	am No 44, 1999; No 75, 2009
s 20	am No 54, 1998
	rs No 154, 2007
	am No 75, 2009; No 82, 2010
s 21	am No 54, 1998; No 44, 1999; No 121, 2001; No 154, 2007; No 25, 2008; No 75, 2009
s 22	am No 54, 1998; No 75, 2009
	rs No 10, 2018
s 23	am No 54, 1998; No 61, 1998
	rep No 44, 1999
	ad No 10, 2018
s 24	am No 54, 1998
	rep No 44, 1999
	rep No 154, 2007
s 25	am No 54, 1998
	rep No 154, 2007
s 26	am No 54, 1998; No 75, 2009
	rs No 10, 2018
s 27	am No 54, 1998; No 75, 2009; No 10, 2018
s 27A	ad No 10, 2018
Division 2	
Division 2	ad No 75, 2009
s 28A	ad No 75, 2009

Endnote 4—Amendment history

Provision affected	How affected
	am No 82, 2010
s 28B	ad No 75, 2009
	am No 10, 2018
s 28BA.....	ad No 10, 2018
s 28C	ad No 75, 2009
	am No 10, 2018
s 28D	ad No 75, 2009
s 28E.....	ad No 82, 2010
s 28	am No 54, 1998; No 31, 2001
	rep No 154, 2007
	ad No 82, 2010
	am No 10, 2018
s 28AA	ad No 10, 2018
Part 4	
Division 1	
s 30	am No 54, 1998; No 44, 1999
s 31	am No 54, 1998; No 120, 2004
s 33	am No 54, 1998
s 34	am No 54, 1998; No 154, 2007
s 35	ad No 44, 1999
s 38	am No 107, 1997; No 54, 1998; No 82, 2010
s 39	am No 154, 2007
s 40	am No 54, 1998; No 154, 2007; No 25, 2008
s 41	am No 107, 1997
s 41A	ad No 107, 1997
	am No 54, 1998
s 42	am No 154, 2007
s 43	am No 54, 1998; No 55, 2001; No 10, 2018
s 44	am No 54, 1998; No 154, 2007
	rep No 82, 2010
s 46	am No 54, 1998; No 44, 1999

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 47	am No 154, 2007
Division 2	
s 48	am No 54, 1998
s 49	am No 107, 1997; No 54, 1998; No 25, 2008
s 50	am No 54, 1998
s 51	am No 54, 1998
Division 3	
Division 3	rs No 44, 1999
ss 52, 53	am No 54, 1998
	rs No 44, 1999
	am No 154, 2007
s 54	am No 54, 1998
	rs No 44, 1999
	rep No 154, 2007
Division 4	
Division 4 heading	rs No 44, 1999
s 55	am No 54, 1998; No 44, 1999; No 154, 2007
Division 5	
s 57	am No 54, 1998; No 121, 2001; No 154, 2007
s 60	am No 61, 1998
Division 6	
s 61	am No 54, 1998; No 154, 2007
s 62, 63	am No 107, 1997; No 54, 1998; No 154, 2007; No 25, 2008
Part 5 heading	rs No 44, 1999
	rep No 154, 2007
Part 5	rep No 154, 2007
s 64	rep No 154, 2007
s 65	am No 54, 1998
	rep No 154, 2007
s 66, 67	rep No 154, 2007
s 68	am No 107, 1997; No 54, 1998

Endnote 4—Amendment history

Provision affected	How affected
	rep No 154, 2007
s 69	rep No 154, 2007
s 70	am No 54, 1998; No 44, 1999
	rep No 154, 2007
s 71, 72	rep No 154, 2007
	rep No 154, 2007
s 73	am No 107, 1997; No 54, 1998; No 44, 1999
	rep No 154, 2007
Division 3	ad No 44, 1999
	rep No 154, 2007
s 73A–73E	ad No 44, 1999
	rep No 154, 2007
s 73F	ad No 44, 1999
	am No 8, 2007
	rep No 154, 2007
Part 6	
Part 6 heading	rs No 75, 2009
Division 1	
s 74	am No 45, 2008; No 82, 2010; No 70, 2015
Division 2	
s 76	am No 120, 2004
s 76A	ad No 82, 2010
s 77	am No 54, 1998; No 154, 2007
s 80	am No 154, 2007; No 82, 2010
s 82	am No 107, 1997; No 54, 1998
	rep No 121, 2001
s 83	am No 54, 1998; No 121, 2001
	rs No 154, 2007; No 82, 2010
s 83A, 83B	ad No 82, 2010
s 84	am No 61, 1998; No 44, 1999
	rs No 154, 2007

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 25, 2008; No 82, 2010
s 85	am No 54, 1998; No 44, 1999; No 55, 2001
	rs No 154, 2007
	am No 25, 2008; No 82, 2010
s 86	am No 54, 1998; No 55, 2001
	rs No 154, 2007
	rep No 25, 2008
	ad No 82, 2010
s 87	am No 54, 1998; No 154, 2007; No 82, 2010
	rs No 75, 2009
s 88	am No 54, 1998; No 121, 2001; No 154, 2007; No 75, 2009; No 82, 2010
s 88A	ad No 154, 2007
	am No 75, 2009; No 10, 2018
s 88B	ad No 82, 2010
s 89	am Nos. 55 and 121, 2001; No 75, 2009; No 82, 2010
s 90	rep No 154, 2007
	ad No 82, 2010
s 91	am No 54, 1998
	rep No 154, 2007
	ad No 82, 2010
s 92	am No 121, 2001; No 120, 2004
	rep No 154, 2007
Division 3	
s 93	am No 54, 1998; No 154, 2007; No 25, 2008
s 94	am No 54, 1998
	rs No 154, 2007
	am No 25, 2008
s 94A	ad No 154, 2007
	rep No 25, 2008
s 95	am No 54, 1998; No 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
s 96	am No 154, 2007
s 97	rs No 154, 2007
s 98	am No 54, 1998; No 121, 2001; No 154, 2007
s 98A	ad No 154, 2007
	am No 10, 2018
s 98B	ad No 82, 2010
Division 4	rep No 154, 2007
s 100–111	rep No 154, 2007
s 112	am No 54, 1998
	rep No 154, 2007
Division 5	rep No 154, 2007
s 113	am No 120, 2004
	rep No 154, 2007
Division 6	rep No 154, 2007
Division 7	rep No 154, 2007
Division 8	
Division 8	ad No 44, 1999
	rs No 154, 2007
s 114	rs No 154, 2007
s 115	am No 54, 1998
	rep No 154, 2007
s 116	rep No 154, 2007
s 117, 118	am No 54, 1998
	rep No 121, 2001
s 119, 120	am No 54, 1998
	rep No 154, 2007
s 121	am No 54, 1998
	rep No 121, 2001
s 122	am No 54, 1998; No 121, 2001
	rep No 154, 2007
s 123	am No 54, 1998

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rep No 154, 2007
s 124	am No 54, 1998; No 121, 2001
	rs No 154, 2007
	am No 82, 2010
s 125	am No 54, 1998
	rs No 154, 2007
	am No 82, 2010; No 11, 2016
s 125A	ad No 44, 1999
	am No 121, 2001
	rep No 154, 2007
	ad No 25, 2008
	am No 75, 2009; No 82, 2010
s 125B	ad No 44, 1999
	am No 121, 2001
	rep No 154, 2007
Part 7	
Part 7 heading	rs No 75, 2009
Division 1	
s 126	am No 123, 2001; No 45, 2008; No 75, 2009; No 82, 2010; No 70, 2015
s 127	am No 54, 1998
s 128	am No 75, 2009
s 129	am No 55, 2001; No 75, 2009
Division 2	
Division 2 heading	rs No 75, 2009
s 130	am No 54, 1998; No 75, 2009
s 131, 132	am No 54, 1998; No 75, 2009
s 132A	ad No 154, 2007
	am No 75, 2009; No 82, 2010
s 133	am No 54, 1998; No 75, 2009
s 133A	ad No 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Division 3 heading.....	rs No 154, 2007
s 134.....	am No 107, 1997; No 54, 1998 rep No 25, 2008
s 135.....	am No 54, 1998; No 75, 2009
s 136.....	am No 54, 1998; No 121, 2001; No 154, 2007; No 75, 2009
s 137.....	am No 54, 1998; No 75, 2009; No 82, 2010; No 11, 2016
s 138–141.....	am No 54, 1998; No 75, 2009
s 142, 143.....	am No 54, 1998; No 75, 2009
s 144.....	am No 54, 1998
s 147.....	am No 107, 1997; No 54, 1998; No 31, 2001 (as rep by No 117, 2001); No 75, 2009; No 4, 2016
s 148.....	am No 54, 1998 rep No 154, 2007
s 149.....	am No 54, 1998; No 75, 2009
s 150.....	am No 107, 1997; No 54, 1998; No 31, 2001 (as rep by No 117, 2001); No 121, 2001 rep No 25, 2008
s 151.....	am No 54, 1998; No 31, 2001; No 8, 2007
Division 3A	
Division 3A.....	ad No 144, 1995 rep <u>No 13, 2018</u>
s 151A.....	ad No 144, 1995 am No 62, 1997 rep <u>No 13, 2018</u>
Division 4	
s 152–156.....	am No 75, 2009
Division 5	
Subdivision A	
s 156A.....	ad No 154, 2007 am No 75, 2009; No 82, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 156B–156D	ad No 154, 2007
s 156E	ad No 154, 2007
	am No 75, 2009; No 82, 2010
Subdivision B	
s 156F	ad No 154, 2007
Part 8	
Part 8 heading	rs No 105, 2008
Division 1	
s 157	am No 54, 1998
s 158	am No 10, 2018
s 159	am No 154, 2007; No 10, 2018
s 160	am No 105, 2008
s 161	am No 105, 2008
	rs No 10, 2018
s 161A	ad No 10, 2018
s 161B	ad No 10, 2018
s 161C	ad No 10, 2018
s 161D	ad No 10, 2018
s 161E	ad No 10, 2018
s 162	rep No 10, 2018
s 163	am No 105, 2008; No 82, 2010; No 10, 2018
s 165	am No 120, 2004; No 9, 2006; No 105, 2008; No 82, 2010
	rs No 10, 2018
s 165A	ad No 105, 2008
	am No 10, 2018
s 165B	ad No 105, 2008
	am No 43, 2016
	rs No 10, 2018
s 166	am No 121, 2001; No 10, 2018
s 167	am No 54, 1998
s 168A	ad No 105, 2008

Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2018
s 168B	ad No 105, 2008
s 168C	ad No 105, 2008
	am No 43, 2016
	rs No 10, 2018
s 169	am No 54, 1998
s 170	am No 54, 1998
s 172	am No 54, 1998; No 10, 2018
s 174	am No 55, 2001
s 175	am No 54, 1998; No 105, 2008; No 82, 2010; No 10, 2018
s 176	am No 54, 1998; No 61, 1998; No 105, 2008; No 10, 2018
s 177	am No 10, 2018
s 179	rs No 10, 2018
s 179A	ad No 105, 2008
	am No 103, 2010
Division 1AA	
Division 1AA	ad No 10, 2018
Subdivision A	
s 179AA	ad No 10, 2018
s 179AB	ad No 10, 2018
s 179AC	ad No 10, 2018
Subdivision B	
s 179AD	ad No 10, 2018
s 179AE	ad No 10, 2018
s 179AF	ad No 10, 2018
s 179AG	ad No 10, 2018
s 179AH	ad No 10, 2018
	ed C53
s 179AI	ad No 10, 2018
s 179AJ	ad No 10, 2018
s 179AK	ad No 10, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 179AL.....	ad No 10, 2018
s 179AM.....	ad No 10, 2018
s 179AN	ad No 10, 2018
s 179AO	ad No 10, 2018
s 179AP	ad No 10, 2018
s 179AQ	ad No 10, 2018
s 179AR.....	ad No 10, 2018
s 179AS.....	ad No 10, 2018
s 179AT.....	ad No 10, 2018
s 179AU	ad No 10, 2018
s 179AV	ad No 10, 2018
s 179AW.....	ad No 10, 2018
s 179AX	ad No 10, 2018
s 179AY	ad No 10, 2018
s 179AZ.....	ad No 10, 2018
s 179AZA.....	ad No 10, 2018
s 179AZB.....	ad No 10, 2018
Division 1A	
Division 1A	ad No 105, 2008
s 179B	ad No 105, 2008
s 179C	ad No 105, 2008
	am No 82, 2010
	rs No 10, 2018
Division 2	
s 180	am No 44, 1999; Nos. 31 and 55, 2001; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 181	am No 54, 1998; No 10, 2018
s 182.....	am No 55, 2001
s 183	am No 54, 1998; No 105, 2008; No 10, 2018
s 183A	ad No 44, 1999
s 183B	ad No 11, 2016

Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2018
s 184	am No 54, 1998; No 10, 2018
s 185	am No 54, 1998, No 105, 2008; No 10, 2018
s 186	am No 44, 1999
s 187	am No 55, 2001
s 188	am No 44, 1999
Part 9	
s 190	am No 44, 1999; No 117, 2007; No 75, 2009; No 10, 2018
s 191–193	am No 54, 1998
s 194	am No 105, 2008
s 195	am Nos. 54 and 61, 1998
s 196, 197	am No 54, 1998
Part 10	
Division 1	
s 198	am No 54, 1998
s 199	am No 44, 1999
Division 2	
s 200	am No 107, 1997; No 61, 1998; No 44, 1999
s 201, 202	am No 107, 1997
Division 2A	
Division 2A	ad No 139, 2002
s 203A	ad No 139, 2002
s 203B	ad No 139, 2002
	am No 75, 2009
s 203C, 203D	ad No 139, 2002
s 203E (prev s 230E)	ad No 139, 2002
	renum No 100, 2005
Division 3	
s 204	am No 144, 2008
Division 4	
s 206	am No 44, 1999

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 207	am No 107, 1997; No 154, 2007
s 208	am No 54, 1998
s 209	am No 154, 2007; No 82, 2010
s 210	am No 44, 1999
Division 5	
s 211, 212	am No 44, 1999; No 144, 2008
s 216	am No 62, 1997; No 54, 1998; No 44, 1999; No 31, 2001 (as rep by No 117, 2001); No 92, 2008; No 176, 2013; No 70, 2015; No 129, 2015
s 216A	ad No 129, 2015
Division 6	
s 218	am No 44, 1999
Division 8	
s 226	am No 44, 1999
s 227	am No 44, 1999
s 230	am No 44, 1999
Part 10A	
Part 10A	ad No 44, 1999
Division 1	
s 230A	ad No 44, 1999
	am No 121, 2001; No 154, 2007; No 45, 2008; No 75, 2009; No 82, 2010; No 70, 2015; No 126, 2015; No 10, 2018
s 230AAA	ad No 10, 2018
Division 1A	
Division 1A	ad No 10, 2018
s 230AAB	ad No 10, 2018
s 230AAC	ad No 10, 2018
s 230AAD	ad No 10, 2018
Division 2	
Subdivision A	
Subdivision A	ad No 82, 2010

Endnote 4—Amendment history

Provision affected	How affected
s 230AA	ad No 82, 2010 am No 10, 2018
s 230AB.....	ad No 82, 2010 am No 10, 2018
s 230AC.....	ad No 82, 2010 am No 10, 2018
s 230AD	ad No 82, 2010 am No 10, 2018
s 230AE.....	ad No 82, 2010 am No 10, 2018
s 230AF	ad No 82, 2010
s 230AG	ad No 82, 2010
s 230AH	ad No 82, 2010
s 230AI.....	ad No 82, 2010
s 230AJ.....	ad No 82, 2010 am No 43, 2016 rs No 10, 2018
s 230AK	ad No 82, 2010 am No 10, 2018
s 230AL.....	ad No 82, 2010
s 230AM.....	ad No 82, 2010 am No 82, 2010
Subdivision B	
Subdivision B heading.....	ad No 82, 2010
s 230B	ad No 44, 1999 am No 121, 2001; No 120, 2004; No 154, 2007; No 25, 2008; No 45, 2008; No 75, 2009; No 82, 2010; No 70, 2015; No 10, 2018
s 230C	ad No 44, 1999 am No 105, 2008; No 75, 2009; No 43, 2016; No 10, 2018
s 230D	ad No 44, 1999 am No 75, 2009; No 10, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 230E.....	ad No 44, 1999 rep No 10, 2018
s 230F.....	ad No 44, 1999 am No 31, 2001; No 55, 2001; No 120, 2004; No 75, 2009; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 10, 2018
Subdivision C	
Subdivision C.....	ad No 10, 2018
s 231.....	rep No 54, 1998 ad No 10, 2018
s 231A.....	ad No 10, 2018
s 231B.....	ad No 10, 2018
s 231C.....	ad No 10, 2018
s 231D.....	ad No 10, 2018
s 231E.....	ad No 10, 2018
s 231F.....	ad No 10, 2018
s 231G.....	ad No 10, 2018
s 231H.....	ad No 10, 2018
s 232.....	rep No 54, 1998
Part 11	
s 233A.....	ad No 61, 1998 am No 55, 2001
s 235.....	am No 54, 1998; No 120, 2004 rs No 75, 2009
s 236.....	am No 107, 1997; No 54, 1998; No 44, 1999; No 121, 2001; No 37, 2002; No 154, 2007; No 25, 2008; No 45, 2008 (as am by No 8, 2010); No 75, 2009; No 82, 2010; No 70, 2015; No 10, 2018
s 237.....	am No 38, 2005; No 25, 2008; No 75, 2009
s 238.....	am No 54, 1998; No 156, 1999; No 55, 2001 rep No 154, 2007
s 239.....	am No 54, 1998; No 156, 1999; No 55, 2001 rep No 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
s 240	am No 54, 1998; No 75, 2009
s 241	am No 54, 1998
s 242	am No 61, 1998; No 120, 2004; No 75, 2009
s 243	am No 54, 1998 rep No 121, 2001
s 244	am No 107, 1997; No 54, 1998 rep No 121, 2001
s 245	am No 107, 1997; No 31, 2001 (as am by No 117, 2001); No 120, 2004; No 25, 2008; No 75, 2009
s 245A	ad No 25, 2008 am No 75, 2009
s 245B	ad No 25, 2008
s 245C	ad No 82, 2010
s 246	am No 54, 1998; No 154, 2007
s 246A	ad No 10, 2018
s 246B	ad No 10, 2018
s 246C	ad No 10, 2018
s 248	am No 121, 2001
s 249	am No 107, 1997 rep No 137, 2000
s 250	am No 31, 2001; No 5, 2015
s 251	am No 107, 1997 rep No 54, 1998 ad No 44, 1999
s 251AA	ad No 10, 2018
s 251A	ad No 105, 2008 am No 62, 2014; No 126, 2015
s 251B	ad No 105, 2008
s 252	am No 54, 1998; No 154, 2007 rep No 154, 2007
s 253	am No 54, 1998; No 154, 2007

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part 12	
s 254	am No 44, 1999; No 154, 2007; No 75, 2009; No 10, 2018
s 255	rep No 44, 1999
s 256, 257	am No 54, 1998
	rep No 154, 2007
s 258–263	rep No 154, 2007
Schedule	
Schedule	am No 107, 1997; No 48, 1998; No 54, 1998; No 61, 1998; No 44, 1999; No 55, 2001; No 121, 2001; No 123, 2001; No 120, 2004; No 32, 2007; No 154, 2007; No 105, 2008; No 144, 2008; No 75, 2009; No 82, 2010; No 62, 2014; No 10, 2018

Endnote 5—Editorial changes

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Paragraph 179AH(3)(b)**Kind of editorial change**

Change to grammar, syntax or the use of conjunctives or disjunctives

Details of editorial change

Schedule 3 item 52 of the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018* instructs to insert Division 1AA after Division 1 of Part 8.

Paragraph 179AH(3)(b) of the newly inserted Division 1AA reads as follows:

- (b) if the body corporate is a member of a relevant group of bodies corporate—a Life Insurance Act statutory manager of another member of the group doing an act under subsection 179AF(1) in relation that other member.

This compilation was editorially changed to omit the words “in relation that” and substitute the words “in relation to that” to correct the grammatical error.