

EXPOSURE DRAFT

2025-2026

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Payment Entities (Prudential Regulation) Bill 2026

No. , 2026

(Treasury)

**A Bill for an Act about the prudential regulation of
payment entities, and for related purposes**

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1 **A Bill for an Act about the prudential regulation of**
2 **payment entities, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Introduction**

5 **Division 1—Preliminary**

6 **1 Short title**

7 This Act is the *Payment Entities (Prudential Regulation) Act 2026*.

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Part 1 Introduction
Division 1 Preliminary

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as Division 1 of Part 8 of Schedule 1 to the <i>Treasury Laws Amendment Act 2026</i> commences. However, the provisions do not commence at all if that Division does not commence.	

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

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

13 **3 Objects of this Act**

14 *to be drafted*

15 **4 Simplified outline of this Act**

16 *to be drafted*

17 **5 Extension to external Territories**

- 18 Each of the following extends to the external Territories:
19 (a) this Act;

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1 (b) Parts 4, 5 and 6 of the Regulatory Powers Act, as each of
2 those Parts applies as described in Part 12 of this Act.

3 **6 Act binds the Crown**

- 4 (1) This Act binds the Crown in each of its capacities.
- 5 (2) None of the following make the Crown liable to be prosecuted for
6 an offence or liable to a pecuniary penalty:
- 7 (a) this Act;
- 8 (b) Parts 4, 5, 6 and 7 of the Regulatory Powers Act, as each of
9 those Parts applies as described in Part 12 of this Act.

10 **7 Act not to apply to State banking within that State**

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

13 **8 Extra-territorial application**

- 14 The following extend to acts, omissions, matters and things outside
15 Australia.
- 16 (a) this Act;
- 17 (b) Parts 4, 5, 6 and 7 of the Regulatory Powers Act, as each of
18 those Parts applies as described in Part 12 of this Act.

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Part 1 Introduction

Division 2 Definitions

Section 9

1 **Division 2—Definitions**

2 **9 Dictionary**

3 (1) In this Act:

4 ***action that is likely to have a detrimental effect on financial***
5 ***system stability in New Zealand*** includes an action that prevents or
6 interferes with an arrangement for:

7 (a) the business of a registered bank (as defined in section 2 of
8 the *Banking (Prudential Supervision) Act 1989* of New
9 Zealand) that carries on a business in New Zealand; or

10 (b) functions relating to such business;
11 to be carried on by an entity other than the bank.

12 ***ADI*** means an authorised deposit-taking institution within the
13 meaning of the *Banking Act 1959*.

14 ***administrator***, of a body corporate's business, means an
15 administrator appointed under subsection 69(1) to take control of
16 the body corporate's business.

17 ***advance*** includes loan.

18 ***appointed auditor*** means an auditor appointed in accordance with
19 the prudential standards.

20 ***approved form*** has a meaning affected by section 188.

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

22 ***APRA member*** has the same meaning as in the *Australian*
23 *Prudential Regulation Authority Act 1998*.

24 ***APRA staff member*** has the same meaning as in the *Australian*
25 *Prudential Regulation Authority Act 1998*.

26 ***ASIC*** means the Australian Securities and Investments
27 Commission.

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1 **Australia**, when used in a geographical sense, includes the external
2 Territories.

3 **Australian business assets and liabilities**, of a foreign regulated
4 entity, means the following:

- 5 (a) the assets and liabilities of the entity in Australia;
6 (b) any other assets and liabilities of the entity that:
7 (i) are related to its operations in Australia; and
8 (ii) if rules are made for the purposes of this
9 subparagraph—are of a kind specified in those rules.

10 For this purpose, **asset** and **liability** have the same meanings as
11 they have in the *Financial Sector (Transfer and Restructure) Act*
12 *1999*.

13 **Australian financial services licence** has the same meaning as in
14 the *Corporations Act 2001*.

15 **Chapter 5 body corporate** has the same meaning as in the
16 *Corporations Act 2001*.

17 **civil penalty provision** has the same meaning as in the Regulatory
18 Powers Act.

19 **constitutional corporation** means a corporation to which
20 paragraph 51(xx) of the Constitution applies.

21 **customer**:

- 22 (a) of a stored value facility provider—means:
23 (i) the holder of a stored value facility issued by the
24 provider; or
25 (ii) a person who may exercise a right to redeem an amount
26 standing to the credit of such a facility; and
27 (b) of a payment facilitation service provider—means a person
28 with whom the provider has an arrangement under which a
29 payment facilitation service is provided.

30 **designated payment entity** has the meaning given subsection 13(1).

31 **disqualified person** has the meaning given by section 107.

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Part 1 Introduction
Division 2 Definitions

Section 9

1 **end user**, of relevant PS money, has the meaning given by section
2 44.

3 **external administrator** means any of the following:

- 4 (a) a liquidator;
5 (b) a receiver, manager, managing controller, receiver and
6 manager or other controller (other than a Banking Act
7 statutory manager);
8 (c) a voluntary administrator or administrator of a deed of
9 company arrangement or a scheme manager.

10 Expressions used in this definition have the same meanings as they
11 have in the *Corporations Act 2001*.

12 **Federal Court** means the Federal Court of Australia.

13 **financial market** has the same meaning as in the *Corporations Act*
14 *2001*.

15 **financial product** has the same meaning as in the *Corporations Act*
16 *2001*.

17 **foreign regulated entity** means a regulated entity that:

- 18 (a) is a foreign corporation within the meaning of
19 paragraph 51(xx) of the Constitution; and
20 (b) is authorised to carry on regulated business in a foreign
21 country.

22 **funds**, when used in connection with a transfer of funds, has the
23 same meaning as in the *Corporations Act 2001*.

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

26 **insolvent**, in relation to a body corporate, means that the body
27 corporate is not able to pay all its debts as and when they become
28 due and payable.

29 **internal reviewer**, for a reviewable APRA decision, has the
30 meaning given by subsection 172(4).

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1 **investigator** means a person APRA appoints under
2 subsection 143(1), 143(3) or 145(1).

3 **issue** has the same meaning as in the *Corporations Act 2001*.

4 **lawyer** means a duly qualified legal practitioner and, in relation to
5 a person, means such a practitioner acting for the person.

6 **liquidator** includes a provisional liquidator.

7 **listing rules** has the same meaning as in the *Corporations Act*
8 *2001*.

9 **major stored value facility provider** or **major SVF provider** has
10 the meaning given by section 12.

11 **NOHC/NOHC subsidiary** has the meaning given by
12 subsection 115(5).

13 **non-operating holding company** or **NOHC** means, in relation to a
14 body corporate, a body corporate:

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

20 **payment entity** has the meaning given by section 10.

21 **payment facilitation service** has the same meaning as in the
22 *Corporations Act 2001*.

23 **payment facilitation service provider** has the meaning given by
24 section 11.

25 **prescribed New Zealand authority** means the following:

- 26 (a) the Reserve Bank of New Zealand;
27 (b) an authority of the government of New Zealand that:
28 (i) has statutory responsibilities relating to prudential
29 regulation or financial system stability; and

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Part 1 Introduction
Division 2 Definitions

Section 9

1 (ii) is prescribed by the rules for the purposes of this
2 definition.

3 ***prudential matters*** means matters relating to:

4 (a) the conduct of any part of the affairs of, or structuring or
5 organising of, a regulated entity, registered NOHC, a relevant
6 group of bodies corporate, or a particular member or
7 members of such a group, in such a way as:

8 (i) to keep the entity, NOHC, group or members of the
9 group in a sound financial position; or

10 (ii) to facilitate resolution of the entity, NOHC, group or
11 members of the group; or

12 (iii) to protect the interests of customers of stored value
13 facility providers; or

14 (iv) to protect the interests of end users of relevant PS
15 money of regulated entities; or

16 (v) not to cause or promote instability in the Australian
17 financial system; or

18 (b) the conduct of any part of the affairs of a regulated entity,
19 registered NOHC, a relevant group of bodies corporate, or a
20 particular member or members of such a group, with
21 integrity, prudence and professional skill.

22 ***prudential requirement rule*** means a rule under section 35.

23 ***prudential standard*** means a standard under section 33.

24 ***recapitalisation direction*** means a direction given by APRA under
25 subsection 116(1) or (3).

26 ***Register*** means the register of registered entities and registered
27 NOHCs kept under subsection 27(1).

28 ***registered entity*** means a payment entity that is registered under
29 Division 2 of Part 3.

30 ***registered NOHC*** means a body corporate:

31 (a) that is registered as a NOHC under section 22; and

32 (b) that is a NOHC of a payment entity.

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registration:

- (a) of a payment entity—means registration of the entity under Division 2 of Part 3; and
- (b) of a NOHC—means registration of the NOHC under Division 3 of Part 3.

regulated business of a payment entity means:

- (a) if the entity is a stored value facility provider—business carried on by the entity to the extent that it consists of either or both of the following:
 - (i) issuing stored value facilities;
 - (ii) receiving funds to the credit of stored value facilities for which the entity is the issuer; or
- (b) if the entity is a payment facilitation service provider—business carried on by the entity to the extent that it consists of providing payment facilitation services.

regulated entity means:

- (a) a registered entity; or
- (b) an ADI that is both:
 - (i) a major SVF provider; and
 - (ii) a constitutional corporation.

regulated facility means a stored value facility in relation to which the following conditions are satisfied:

- (a) the facility is a financial product;
- (b) amounts standing to the credit of the facility can be redeemed in Australian currency;
- (c) the facility’s issuer was required to hold an Australian financial services licence covering the issuing of the facility.

Note: An Australian financial services licence would not have been required if the issuing of the facility was covered by an exemption under subsection 911A(2), 926A(2) or 926B(1) of the *Corporations Act 2001*.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

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Part 1 Introduction

Division 2 Definitions

Section 9

1 **related body corporate**, in relation to a body corporate, means a
2 body corporate that is related to the first-mentioned body, as
3 determined in accordance with subsection (3).

4 **relevant group of bodies corporate** has the meaning given by
5 subsection (4).

6 **relevant PS money** has the meaning given by section 43.

7 **Reserve Bank** means the Reserve Bank of Australia.

8 **resolution** means the process by which APRA or other relevant
9 persons manage or respond to an entity:

- 10 (a) being unable to meet its obligations; or
11 (b) being considered likely to be unable, or being considered
12 likely to become unable, to meet its obligations; or
13 (c) suspending payment, or being considered likely to suspend
14 payment;

15 including through the exercise of powers and functions under this
16 Act or another law.

17 **reviewable APRA decision** means any of the following decisions:

- 18 (a) a decision under paragraph 18(3)(b) to refuse to register an
19 entity under Division 2 of Part 3;
20 (b) a decision under section 19 to:
21 (i) impose conditions, or to impose additional conditions,
22 on an entity's registration; or
23 (ii) vary conditions imposed on an entity's registration;
24 (c) a decision under subsection 21(1) to refuse to cancel an
25 entity's registration;
26 (d) a decision under subsection 21(2) to cancel an entity's
27 registration, unless APRA has determined, under subsection
28 21(4), that the procedures in subsection 21(3) do not apply;
29 (e) a refusal under subsection 22(3) to register a NOHC under
30 Division 3 of Part 3;
31 (f) a decision under section 23 to:
32 (i) impose conditions, or to impose additional conditions,
33 on the registration of a NOHC; or

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- 1 (ii) vary conditions imposed on the registration of a NOHC;
2 (g) a decision under subsection 25(1) to refuse to cancel the
3 registration of a NOHC;
4 (h) a decision under subsection 25(2) to cancel the registration of
5 a NOHC, unless APRA has determined, under subsection
6 25(4), that the procedures in subsection 25(3) do not apply;
7 (i) a decision under subsection 26(2) to give a notice requiring a
8 body corporate to ensure that the body, or a subsidiary of the
9 body, become a registered NOHC;
10 (j) a decision under section 33 to:
11 (i) determine a standard referred to in paragraph 33(1)(e);
12 or
13 (ii) vary such a standard;
14 (k) a decision under paragraph 67(1)(b) to:
15 (i) refuse to give an approval; or
16 (ii) give an approval subject to conditions specified under
17 subsection 67(2);
18 (l) a decision under subsection 112(1) to give a direction on a
19 ground referred to in paragraph 112(1)(a), (b), (c), (d) or (e);
20 (m) a decision under subsection 112(2) to give a direction on a
21 ground referred to in paragraph 112(2)(a), (b), (c) or (d);
22 (n) a decision under subsection 112(4) to give a direction on a
23 ground referred to in paragraph 112(4)(a) or (b), to the extent
24 that the paragraph relates to a ground referred to in paragraph
25 112(2)(a), (b), (c) or (d);
26 (o) a decision under subsection 127(2) to give a direction on a
27 ground referred to in paragraph 127(2)(a) or (b);
28 (p) a decision under subsection 128(1) to give a direction on a
29 ground referred to in paragraph 128(1)(a) or (b);
30 (q) a decision under subsection 130(2) to give a direction on a
31 ground referred to in paragraph 130(2)(a), (b) or (c);
32 (r) a decision under section 176 to:
33 (i) refuse to determine that one or more provisions of this
34 Act do not apply to a particular person; or
35 (ii) vary or revoke an order under that section that applies to
36 a particular person.
-

EXPOSURE DRAFT

Part 1 Introduction

Division 2 Definitions

Section 9

- 1 **senior manager** of:
- 2 (a) a regulated entity; or
- 3 (b) a registered NOHC; or
- 4 (c) the Australian operations of a foreign regulated entity;
- 5 means a person who has or exercises any of the senior management
- 6 responsibilities (within the meaning of the prudential standards) for
- 7 the entity or NOHC or for the Australian operations of the foreign
- 8 regulated entity, as the case may be.
- 9 **statutory manager** has the meaning given by subsection 69(8).
- 10 **stored value facility** has the same meaning as in the *Corporations*
- 11 *Act 2001*.
- 12 **stored value facility provider** has the same meaning as in the
- 13 *Corporations Act 2001*.
- 14 **subsidiary** has the meaning given by subsection (2).
- 15 **tokenised stored value facility** has the same meaning as in the
- 16 *Corporations Act 2001*.
- 17 **tokenised SVF**: see **tokenised stored value facility**.
- 18 **transfer** of funds has the same meaning as in the *Corporations Act*
- 19 *2001*.
- 20 **ultimate termination of control** has the meaning given by
- 21 subsection 71(1).
- 22 *Subsidiary*
- 23 (2) For the purposes of this Act, the question whether a body corporate
- 24 is a subsidiary of another body corporate is to be determined in the
- 25 same way as that question is determined for the purposes of the
- 26 *Corporations Act 2001*.
- 27 *Related bodies corporate*
- 28 (3) For the purposes of this Act, the question whether a body corporate
- 29 is related to another body corporate is to be determined in the same

EXPOSURE DRAFT

1 way as that question is determined for the purposes of the
2 *Corporations Act 2001*.

3 *Relevant group of bodies corporate*

- 4 (4) For the purposes of this Act:
- 5 (a) a regulated entity and its subsidiaries together constitute a
 - 6 relevant group of bodies corporate; and
 - 7 (b) a registered NOHC and its subsidiaries together also
 - 8 constitute a relevant group of bodies corporate.

9 **10 Meaning of *payment entity***

10 A person is a *payment entity* if:

- 11 (a) the person is:
 - 12 (i) a stored value facility provider; or
 - 13 (ii) a payment facilitation service provider; and
- 14 (b) the person is a constitutional corporation.

15 **11 Meaning of *payment facilitation service provider***

16 A person is a *payment facilitation service provider* if:

- 17 (a) the person is a body corporate; and
- 18 (b) the person carries on a business that consists wholly or partly
- 19 of providing payment facilitation services.

20 **12 Meaning of *major SVF provider***

- 21 (1) A person becomes a *major SVF provider* if both of the following
- 22 apply in relation to the person at a particular time:
- 23 (a) the person is a stored value facility provider;
 - 24 (b) the total of the following amounts:
 - 25 (i) the amounts standing to the credit of regulated facilities
 - 26 issued by the provider;
 - 27 (ii) the amounts standing to the credit of regulated facilities
 - 28 issued by related bodies corporate of the provider;

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Part 1 Introduction

Division 2 Definitions

Section 13

- 1 is more than the amount specified in the rules for the
2 purposes of this paragraph.
- 3 (2) A person stops being a *major SVF provider* if the person's
4 registration under Division 2 of Part 3 is cancelled.
- 5 (3) Subsection (2) does not prevent a person from again becoming a
6 major stored value facility provider if the conditions in
7 paragraphs (1)(a) and (b) both become satisfied after the
8 cancellation of the person's registration.
- 9 (4) Despite subsections (1) and (2), a person is not a *major SVF*
10 *provider* in the circumstances prescribed by the rules.
- 11 (5) The Minister must consult with APRA and ASIC before making
12 rules for the purposes of paragraph (1)(b) or subsection (4).

13 **13 Meaning of *designated payment entity***

- 14 (1) A payment entity is a *designated payment entity* if the entity is
15 designated under subsection (2).
- 16 (2) The Minister may, by notifiable instrument, designate a payment
17 entity, other than an ADI, if the Minister is satisfied that:
18 (a) the entity materially contributes to the risk of instability in
19 the Australian financial system; and
20 (b) it is necessary to designate the entity to mitigate that risk.
- 21 (3) In deciding whether to designate the entity, the Minister:
22 (a) must have regard to APRA's purpose in subsection 8(1) of
23 the *Australian Prudential Regulation Authority Act 1998*; and
24 (b) may have regard to any other matters the Minister considers
25 relevant.
- 26 (4) The Minister must consult APRA and ASIC before designating the
27 entity.
- 28 (5) The designation comes into force on the day specified in the
29 designation, which must be at least 6 months after the day the
30 designation is made.

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- 1 (6) The designation must set out the following:
- 2 (a) the name of the entity;
- 3 (b) the entity's ACN (within the meaning of the *Corporations*
- 4 *Act 2001*);
- 5 (c) whether the entity is a stored value facility provider or a
- 6 payment facilitation service provider.
- 7 (7) The designation may also set out any other information the
- 8 Minister considers relevant.

EXPOSURE DRAFT

Part 2 Local incorporation and registration requirements

Division 1 Simplified outline

Section 14

1 **Part 2—Local incorporation and registration**
2 **requirements**

3 **Division 1—Simplified outline**

4 **14 Simplified outline of this Part**

5

<i>to be drafted</i>

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Local incorporation and registration requirements **Part 2**
Major SVF providers must be incorporated in Australia **Division 2**

Section 15

1 **Division 2—Major SVF providers must be incorporated in**
2 **Australia**

3 **15 Major SVF providers must be incorporated in Australia**

- 4 (1) A body corporate commits an offence if:
5 (a) the body is a major SVF provider; and
6 (b) the body is not incorporated in Australia; and
7 (c) the body:
8 (i) issues a regulated facility; or
9 (ii) receives funds to the credit of a regulated facility for
10 which the body is the issuer; and
11 (d) there is no determination in force under section 176 that this
12 subsection does not apply to the body.

13 Note: An individual can commit an ancillary offence that is either an offence
14 against this subsection or an offence relating to this subsection (see
15 Part 2.4 of the *Criminal Code*).

16 Penalty:

- 17 (a) for a body corporate—1,000 penalty units; or
18 (b) for an individual—200 penalty units.
- 19 (2) Absolute liability applies to paragraph (1)(b).

20 *Indictable offence*

- 21 (3) An offence against subsection (1) is an indictable offence.

22 *Geographical jurisdiction*

- 23 (4) Section 15.2 of the *Criminal Code* (extended geographical
24 jurisdiction—category B) applies to an offence against
25 subsection (1).

EXPOSURE DRAFT

Part 2 Local incorporation and registration requirements

Division 2 Major SVF providers must be incorporated in Australia

Section 15

- 1 *Offence committed on a daily basis*
- 2 (5) If a body corporate does, or fails to do, an act in circumstances that
- 3 give rise to the body corporate committing an offence against
- 4 subsection (1), the body corporate commits an offence against that
- 5 subsection in respect of:
- 6 (a) the first day on which the offence is committed; and
- 7 (b) each subsequent day (if any) on which the circumstances that
- 8 gave rise to the body corporate committing the offence
- 9 continue (including the day of conviction for any such
- 10 offence or any later day).
- 11 Note: This subsection is not intended to imply that section 4K of the *Crimes*
- 12 *Act 1914* does not apply to offences against this Act.
- 13 (6) However, a body corporate does not commit more than one offence
- 14 against subsection (1) in respect of any particular day.

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Local incorporation and registration requirements **Part 2**
Major SVF providers and designated SVF providers must register **Division 3**

Section 16

1 **Division 3—Major SVF providers and designated SVF**
2 **providers must register**

3 **16 Major SVF providers and designated entities must register**

4 *Stored value facility providers*

- 5 (1) A body corporate commits an offence if:
6 (a) the body is:
7 (i) a major SVF provider; or
8 (ii) a designated payment entity that is a stored value
9 facility provider; and
10 (b) the body:
11 (i) issues a regulated facility; or
12 (ii) receives funds to the credit of a regulated facility for
13 which the body is the issuer; and
14 (c) the body is a constitutional corporation; and
15 (d) the body is not an ADI; and
16 (e) the registration requirements under subsection (3) are not
17 satisfied; and
18 (f) there is no determination in force under section 176 that this
19 subsection does not apply to the body.

20 Note: An individual can commit an ancillary offence that is either an offence
21 against this subsection or an offence relating to this subsection (see
22 Part 2.4 of the *Criminal Code*).

23 **Penalty:**

- 24 (a) for a body corporate—1,000 penalty units; or
25 (b) for an individual—200 penalty units.

26 *Payment facilitation service providers*

- 27 (2) A body corporate commits an offence if:
28 (a) the body is both:
29 (i) a designated payment entity; and

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Part 2 Local incorporation and registration requirements

Division 3 Major SVF providers and designated SVF providers must register

Section 16

- 1 (ii) a payment facilitation service provider; and
2 (b) the body provides a payment facilitation service; and
3 (c) the body is a constitutional corporation; and
4 (d) the body is not an ADI; and
5 (e) the registration requirements under subsection (3) are not
6 satisfied; and
7 (f) there is no determination in force under section 176 that this
8 subsection does not apply to the body.

9 Note: An individual can commit an ancillary offence that is either an offence
10 against this subsection or an offence relating to this subsection (see
11 Part 2.4 of the *Criminal Code*).

12 Penalty:

- 13 (a) for a body corporate—1,000 penalty units; or
14 (b) for an individual—200 penalty units.

15 *Registration requirements*

- 16 (3) The registration requirements under this subsection are satisfied if:
17 (a) the body is a registered entity; or
18 (b) both:
19 (i) the body has never before been registered under
20 Division 2 of Part 3; and
21 (ii) the body requests APRA under section 18 to register the
22 body before the end of 2 business days after the day on
23 which the body became a major SVF provider or a
24 designated payment entity (as the case requires).
- 25 (4) Absolute liability applies to paragraphs (1)(c) and (2)(c).

26 *Indictable offence*

- 27 (5) An offence against subsection (1) or (2) is an indictable offence.

EXPOSURE DRAFT

Local incorporation and registration requirements **Part 2**
Major SVF providers and designated SVF providers must register **Division 3**

Section 16

1

Geographical jurisdiction

2

- (6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) or (2).

3

4

5

Offence committed on a daily basis

6

- (7) 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 (1), the body corporate commits an offence against that subsection in respect of:

7

8

9

10

(a) the first day on which the offence is committed; and

11

(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).

12

13

14

15

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

16

17

- (8) However, a body corporate does not commit more than one offence against subsection (1) in respect of any particular day.

18

EXPOSURE DRAFT

Part 3 Registration of payment entities and their NOHCs

Division 1 Simplified outline

Section 17

1 **Part 3—Registration of payment entities and their**
2 **NOHCs**

3 **Division 1—Simplified outline**

4 **17 Simplified outline of this Part**

5

<i>to be drafted</i>

EXPOSURE DRAFT

Registration of payment entities and their NOHCs **Part 3**

Registration of payment entities **Division 2**

Section 18

1 **Division 2—Registration of payment entities**

2 **18 Registering payment entities**

- 3 (1) A payment entity may, in the approved form, request APRA to
4 register the entity under this section if:
5 (a) the entity is a stored value facility provider; or
6 (b) the entity is both:
7 (i) a payment facilitation service provider; and
8 (ii) designated under subsection 13(2) (whether or not the
9 designation has come into force).

10 Note: For more on approved forms, see section 188.

- 11 (2) APRA must, on receiving such a request, register the entity if:
12 (a) the entity is either:
13 (i) a major SVF provider; or
14 (ii) designated under subsection 13(2) (even if the
15 designation has not come into force); and
16 (b) the entity has never before been registered under this section.
- 17 (3) Otherwise, APRA must, on receiving such a request, either:
18 (a) register the entity under this section; or
19 (b) refuse to register the entity.
- 20 (4) APRA may, by legislative instrument, determine criteria to which
21 APRA must have regard in deciding whether to register, or refuse
22 to register, a payment entity under subsection (3).
- 23 (5) Without limiting the circumstances in which APRA may refuse to
24 register a payment entity under subsection (3), the circumstances
25 include:
26 (a) that the entity is a subsidiary of another body corporate that
27 is a NOHC that is not registered under Division 3; or
28 (b) that the entity is not incorporated in Australia.

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Part 3 Registration of payment entities and their NOHCs

Division 2 Registration of payment entities

Section 19

19 Conditions on registration

(1) APRA may, by giving written notice to a registered entity:

(a) impose conditions, or additional conditions, on the entity's registration; or

(b) vary or revoke conditions imposed on the entity's registration.

A condition must relate to prudential matters.

(2) A condition may be expressed to have effect despite anything in the prudential standards or the rules.

(3) The conditions that APRA may impose include (without limitation) a condition that a NOHC of the registered entity become a registered NOHC.

20 Breach of registration conditions

A body corporate commits an offence of strict liability if:

(a) the body 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's registration under this Division; and

(c) there is no determination in force under section 176 that this subsection does not apply to the body.

Note: An individual can commit an ancillary offence that is either an offence against this section or an offence relating to this section (see Part 2.4 of the *Criminal Code*).

Penalty:

(a) for a body corporate—300 penalty units; or

(b) for an individual—60 penalty units.

21 Cancellation of registration

Mandatory grounds for cancellation

(1) APRA must cancel a payment entity's registration if:

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Registration of payment entities and their NOHCs **Part 3**

Registration of payment entities **Division 2**

Section 21

- 1 (a) the entity, by notice in writing, requests APRA to cancel the
2 registration; and
3 (b) APRA is satisfied that cancelling the registration would not
4 be contrary to:
5 (i) the national interest; and
6 (ii) the stability of the financial system in Australia.

7 *Discretionary grounds for cancellation*

- 8 (2) APRA may cancel a payment entity's registration, in writing, if
9 APRA is satisfied that:
10 (a) the entity has provided, in connection with its request for
11 registration, information that was false or misleading in a
12 material particular; or
13 (b) the entity has failed to comply with any of the following:
14 (i) a requirement of this Act;
15 (ii) a requirement of the *Financial Sector (Collection of*
16 *Data) Act 2001*;
17 (iii) a requirement of the *Financial Accountability Regime*
18 *Act 2023*;
19 (iv) a requirement of the rules or any other instrument made
20 under this Act;
21 (v) a requirement of a provision of another law of the
22 Commonwealth specified in the rules;
23 (vi) a direction under Part 9 of this Act;
24 (vii) a condition on registration; or
25 (c) it would be contrary to the national interest for the
26 registration to continue; or
27 (d) it would be contrary to financial system stability in Australia
28 for the registration to continue; or
29 (e) it would be contrary to the interests of customers of the entity
30 for the registration to continue; or
31 (f) the entity has failed to pay:
32 (i) an amount of levy or late penalty to which the *Financial*
33 *Institutions Supervisory Levies Collection Act 1998*
34 applies; or

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Part 3 Registration of payment entities and their NOHCs

Division 2 Registration of payment entities

Section 21

- 1 (ii) an amount of charge fixed under section 51 of the
2 *Australian Prudential Regulation Authority Act 1998*; or
- 3 (g) the entity is insolvent and is unlikely to return to solvency
4 within a reasonable period of time; or
- 5 (h) the entity has ceased to carry on any regulated business in
6 Australia; or
- 7 (i) the entity is a foreign corporation within the meaning of
8 paragraph 51(xx) of the Constitution, and:
- 9 (i) the entity is unlikely to be able to meet its liabilities in
10 Australia and is unlikely to be able to do so within a
11 reasonable period of time; or
- 12 (ii) the entity has failed to cooperate with APRA for the
13 purposes of APRA determining whether the entity has
14 complied with a requirement or direction mentioned in
15 paragraph (b) of this subsection; or
- 16 (iii) an authority (however described) for the entity to carry
17 on regulated business in a foreign country has been
18 revoked or otherwise withdrawn in that foreign country;
19 or
- 20 (j) the entity:
- 21 (i) has ceased to satisfy the condition in paragraph 12(1)(b)
22 (meaning of *major SVF provider*); and
- 23 (ii) has adequate measures in place to ensure that it will not
24 again satisfy that condition before becoming registered
25 under this Division.

26 *Entity's right to make submissions*

- 27 (3) APRA must not cancel a payment entity's registration unless:
- 28 (a) APRA has given the entity a notice in writing advising the
29 entity:
- 30 (i) that APRA is considering cancelling the registration for
31 the reasons specified in the notice; and
- 32 (ii) that the entity may make submissions to APRA, in
33 accordance with the notice, about the possible
34 cancellation; and

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Registration of payment entities and their NOHCs **Part 3**

Registration of payment entities **Division 2**

Section 21

- 1 (iii) of the date by which any submissions must be made;
2 and
3 (b) APRA has considered any submissions that were made by
4 the entity by the specified date.
- 5 (4) However, APRA may determine that the procedures in
6 subsection (3) do not apply if APRA is satisfied that following
7 those procedures could result in a delay in cancelling the
8 registration that would:
9 (a) be contrary to the national interest; or
10 (b) be contrary to the interests of the entity's customers; or
11 (c) present a material risk to the financial stability of the
12 Australian financial system.
- 13 (5) The date mentioned in subparagraph (3)(a)(iii) must be at least 90
14 days after the notice under paragraph (3)(a) is given.
- 15 *Notice of cancellation*
- 16 (6) APRA must give the entity written notice of the cancellation of
17 their registration.
- 18 (7) The notice of cancellation under subsection (6) may state that the
19 registration continues in effect in relation to a specified matter or
20 specified period, as though the cancellation had not happened, for
21 the purposes of:
22 (a) a specified provision of this Act or the rules; or
23 (b) a specified provision of another law of the Commonwealth
24 that is administered by APRA; or
25 (c) a specified provision of the prudential standards.
26 The statement has effect accordingly.
- 27 (8) A failure to comply with subsection (6) does not affect the validity
28 of a cancellation.

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Part 3 Registration of payment entities and their NOHCs

Division 3 Registration of NOHCs

Section 22

1 **Division 3—Registration of NOHCs**

2 **22 Registering NOHCs**

3 (1) A NOHC may request APRA to register the NOHC under this
4 Division.

5 Note: A NOHC may want registration:

6 (a) because APRA refuses or may refuse to grant a subsidiary of the
7 NOHC registration unless the NOHC is registered under this
8 Division (see subsection 18(5)); or

9 (b) because it is a condition of the registration of a subsidiary of the
10 NOHC that the NOHC become registered under this Division
11 (see subsection 19(3)); or

12 (c) for a purpose connected with the *Financial Sector*
13 (*Shareholdings*) Act 1998.

14 (2) APRA may, by legislative instrument, set criteria for the
15 registration of a NOHC under this section.

16 (3) APRA may register the NOHC if it considers it is appropriate to do
17 so.

18 **23 Conditions on registration**

19 (1) APRA may, at any time, by giving written notice to a registered
20 NOHC:

21 (a) impose conditions, or additional conditions, on the NOHC's
22 registration; or

23 (b) vary or revoke conditions imposed on the NOHC's
24 registration.

25 The conditions must relate to prudential matters.

26 (2) A condition may be expressed to have effect despite anything in
27 the prudential standards or the rules.

28 (3) If APRA imposes, varies or revokes the conditions on the NOHC's
29 registration, APRA must give written notice to the NOHC.

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- 1 (4) The taking of an action is not invalid merely because of a failure to
2 comply with subsection (3).

3 **24 Breach of registration conditions**

4 A body corporate commits an offence of strict liability if:

- 5 (a) the body does an act or fails to do an act; and
6 (b) doing the act or failing to do the act results in a contravention
7 of a condition of the body's registration under this Division;
8 and
9 (c) there is no determination in force under section 176 that this
10 subsection does not apply to the body.

11 Note: An individual can commit an ancillary offence that is either an offence
12 against this section or an offence relating to this section (see Part 2.4
13 of the *Criminal Code*).

14 Penalty:

- 15 (a) for a body corporate—300 penalty units; or
16 (b) for an individual—60 penalty units.

17 **25 Cancellation of registration**

18 *Mandatory grounds for cancellation*

- 19 (1) APRA must cancel a NOHC's registration if:
20 (a) the NOHC, by notice in writing, requests APRA to cancel the
21 registration; and
22 (b) APRA is satisfied that cancelling the registration would not
23 be contrary to:
24 (i) the national interest; and
25 (ii) the stability of the financial system in Australia; and
26 (iii) the interests of customers of any payment entity that is a
27 subsidiary of the NOHC.

28 *Discretionary grounds for cancellation*

- 29 (2) APRA may cancel a NOHC's registration if APRA is satisfied that:

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Part 3 Registration of payment entities and their NOHCs

Division 3 Registration of NOHCs

Section 25

- 1 (a) the NOHC has provided, in connection with its request for
2 registration, information that was false or misleading in a
3 material particular; or
4 (b) the NOHC has failed to comply with any of the following:
5 (i) a requirement of this Act;
6 (ii) a requirement of the *Financial Sector (Collection of*
7 *Data) Act 2001*;
8 (iii) a requirement of the *Financial Accountability Regime*
9 *Act 2023*;
10 (iv) a requirement of the rules or any other instrument made
11 under this Act;
12 (v) a requirement of a provision of another law of the
13 Commonwealth, if the provision is specified in the
14 rules;
15 (vi) a direction under Part 9 of this Act;
16 (vii) a condition of its registration; or
17 (c) there are no payment entities of which the body is a NOHC;
18 or
19 (d) it would be contrary to the national interest for the
20 registration to continue; or
21 (e) it would be contrary to financial system stability in Australia
22 for the registration to continue; or
23 (f) it would be contrary to the interests of customers of any
24 payment entity that is a subsidiary of the NOHC for the
25 registration to continue; or
26 (g) the NOHC has failed to pay:
27 (i) an amount of levy or late penalty to which the *Financial*
28 *Institutions Supervisory Levies Collection Act 1998*
29 applies; or
30 (ii) an amount of charge fixed under section 51 of the
31 *Australian Prudential Regulation Authority Act 1998*.

32 *NOHC's right to make submissions*

- 33 (3) Subject to subsection (4), APRA must not, under subsection (2),
34 cancel a NOHC's registration unless:

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- 1 (a) APRA has given the NOHC a notice in writing advising the
2 NOHC:
- 3 (i) that APRA is considering cancelling the registration for
4 the reasons specified in the notice; and
- 5 (ii) that the NOHC may make submissions to APRA, in
6 accordance with the notice, about the possible
7 cancellation; and
- 8 (iii) of the date by which any submissions must be made
9 (being a date at least 90 days after the giving of the
10 notice); and
- 11 (b) APRA has considered any submissions that were made by
12 the NOHC by the specified date.
- 13 (4) APRA may determine that the procedures in subsection (3) do not
14 apply if APRA is satisfied that following those procedures could
15 result in a delay in cancellation that would be contrary to:
- 16 (a) the national interest; or
17 (b) the stability of the financial system in Australia; or
18 (c) the interests of customers of any payment entity that is a
19 subsidiary of the NOHC.
- 20 *Notice of cancellation*
- 21 (5) A cancellation of a NOHC's registration under subsection (1) or
22 (2) must be in writing, and APRA must give the NOHC written
23 notice of the cancellation.
- 24 (6) The notice of the cancellation of the registration may state that the
25 registration continues in effect in relation to a specified matter or
26 specified period, as though the cancellation had not happened, for
27 the purposes of:
- 28 (a) a specified provision of this Act or the rules; or
29 (b) a specified provision of another law of the Commonwealth
30 that is administered by APRA; or
31 (c) a specified provision of the prudential standards.
32 The statement has effect accordingly.

EXPOSURE DRAFT

Part 3 Registration of payment entities and their NOHCs

Division 3 Registration of NOHCs

Section 26

- 1 (7) A failure to comply with subsection (5) (so far as it requires a body
2 corporate to be given written notice of a cancellation) does not
3 affect the validity of a cancellation.

4 **26 APRA may give notice to ensure that a registered entity has a**
5 **NOHC that is registered**

- 6 (1) This section applies if:
7 (a) a body corporate is a holding company of a registered entity;
8 and
9 (b) the registered entity is not a subsidiary of a registered
10 NOHC.
- 11 (2) APRA may, by notice in writing to the body corporate, require it to
12 ensure, in accordance with the conditions (if any) specified in the
13 notice, that either of the following occurs:
14 (a) the body corporate becomes a registered NOHC of the
15 registered entity;
16 (b) a subsidiary of the body corporate becomes a registered
17 NOHC of the registered entity.
- 18 Note: See Part 4A of the *Financial Sector (Transfer and Restructure) Act*
19 *1999* for other provisions that deal with a restructure arrangement to
20 make an operating body a subsidiary of a NOHC.
- 21 (3) The notice may deal with the time by which, or period during
22 which, it is to be complied with.
- 23 (4) The body corporate has power to comply with the notice despite
24 anything in its constitution or any contract or arrangement to which
25 it is a party.
- 26 (5) APRA may, by notice in writing to the body corporate, vary the
27 notice mentioned in subsection (2) if, at the time of the variation, it
28 considers that the variation is necessary and appropriate.
- 29 (6) The notice mentioned in subsection (2) has effect until APRA
30 revokes it by notice in writing to the body corporate. APRA may
31 revoke the notice mentioned in subsection (2) if, at the time of

EXPOSURE DRAFT

Registration of payment entities and their NOHCs **Part 3**

Registration of NOHCs **Division 3**

Section 26

- 1 revocation, it considers that the notice is no longer necessary or
2 appropriate.
- 3 (7) Section 131 applies in relation to a notice to a body corporate
4 under subsection (2) in the same way in which it applies to a
5 direction given to a registered entity under Part 9, other than a
6 recapitalisation direction.
- 7 (8) However, section 131 does not apply to a contravention by a body
8 corporate of a requirement in a notice under subsection (2) if:
- 9 (a) the contravention happens merely because APRA refuses to
10 grant the body corporate (or its subsidiary) registration under
11 subsection 22(3); and
- 12 (b) APRA's reasons for that refusal do not include the reason
13 that one or more conditions specified in the notice are not
14 satisfied.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 3 Registration of payment entities and their NOHCs

Division 4 The Register

Section 27

1 **Division 4—The Register**

2 **27 APRA must keep Register**

3 (1) APRA must establish and keep a register of registered entities and
4 registered NOHCs.

5 (2) The Register may be kept by electronic means.

6 (3) The Register is not a legislative instrument.

7 **28 Register must contain certain information**

8 (1) The Register must contain the following information for each body
9 corporate that is a registered entity or registered NOHC:

10 (a) the body's name;

11 (b) the body's date of registration;

12 (c) the details of any of the following actions APRA takes under
13 this Act (if any):

14 (i) taking control of the body's business;

15 (ii) appointing an administrator of the body's business;

16 (iii) making an ultimate termination of control in respect of
17 the body's business;

18 (iv) giving a direction under Division 2 of Part 9 to the
19 body;

20 (v) revoking a direction that has been given under
21 Division 2 of Part 9 to the body;

22 (vi) issuing a recapitalisation direction to the body;

23 (vii) revoking a recapitalisation direction to the body;

24 (viii) imposing, varying, adding or revoking a condition on
25 the body's registration;

26 (ix) cancelling the body's registration, including the date of
27 that cancellation;

28 (d) any other information prescribed by the rules for the
29 purposes of this paragraph.

EXPOSURE DRAFT

- 1 (2) APRA may also include on the Register any other information that:
2 (a) APRA considers appropriate to include in the Register; and
3 (b) is relevant to a body corporate's registration.

4 **29 Publishing information contained in the register**

- 5 (1) APRA may publish any of the information contained in the
6 Register on the internet or in any other way APRA considers
7 appropriate.
- 8 (2) However, if APRA publishes information about a body corporate
9 that is:
- 10 (a) information mentioned in subparagraph 28(1)(c)(iv)—APRA
11 must also publish any information mentioned in
12 subparagraph 28(1)(c)(v) about the body corporate; or
13 (b) information mentioned in subparagraph 28(1)(c)(vi)—APRA
14 must also publish any information mentioned in
15 subparagraph 28(1)(c)(vii) about the body corporate.

16 **30 Administration of the Register**

- 17 (1) APRA may correct or update information on the Register.
- 18 (2) APRA must take reasonable steps to ensure that information on the
19 Register is accurate.

20 **31 Admissibility of information on the Register**

- 21 (1) APRA may certify, in writing, as to any matter relating to the
22 contents of the Register.
- 23 (2) A certificate is, in a court proceeding, prima facie evidence of the
24 matters certified.
- 25 (3) In this section, *court* includes a Federal court and a court of a State
26 or Territory and all persons authorised by a law of the
27 Commonwealth, of a State or of a Territory or by consent of parties
28 to receive evidence.

EXPOSURE DRAFT

Part 4 Prudential supervision

Division 1 Simplified outline

Section 32

1 **Part 4—Prudential supervision**

2 **Division 1—Simplified outline**

3 **32 Simplified outline of this Part**

4

to be drafted

EXPOSURE DRAFT

1 **Division 2—Prudential standards**

2 **33 APRA may make prudential standards**

3 *APRA may determine prudential standards*

- 4 (1) APRA may, in writing, determine standards in relation to
5 prudential matters to be complied with by:
6 (a) all regulated entities; or
7 (b) all registered NOHCs; or
8 (c) the subsidiaries of regulated entities or registered NOHCs; or
9 (d) a specified class of regulated entities, registered NOHCs or
10 subsidiaries of regulated entities or registered NOHCs; or
11 (e) one or more specified regulated entities, registered NOHCs
12 or subsidiaries of regulated entities or registered NOHCs.

13 *Standards that may be imposed*

- 14 (2) A standard may impose different requirements to be complied
15 with:
16 (a) in different situations; or
17 (b) in respect of different activities;
18 including requirements to be complied with by different classes of
19 regulated entities, registered NOHCs, or subsidiaries of regulated
20 entities or registered NOHCs.
- 21 (3) Without limiting the prudential matters in relation to which APRA
22 may determine a standard, a standard may require:
23 (a) each regulated entity or registered NOHC; or
24 (b) each regulated entity or registered NOHC included in a
25 specified class of regulated entities or registered NOHCs; or
26 (c) each subsidiary of a regulated entity or of a registered
27 NOHC; or
28 (d) each subsidiary of a regulated entity or of a registered
29 NOHC, included in a specified class of subsidiaries; or
30 (e) a specified regulated entity or registered NOHC; or

EXPOSURE DRAFT

Part 4 Prudential supervision

Division 2 Prudential standards

Section 33

- 1 (f) each of 2 or more specified regulated entities or registered
2 NOHCs; or
- 3 (g) a specified subsidiary of a regulated entity or registered
4 NOHC; or
- 5 (h) each of 2 or more specified subsidiaries of regulated entities
6 or registered NOHCs;
- 7 to ensure that its subsidiaries (or particular subsidiaries) or it and
8 its subsidiaries (or particular subsidiaries), collectively satisfy
9 particular requirements in relation to prudential matters.
- 10 (4) Without limiting the prudential matters in relation to which APRA
11 may determine a standard, a standard may provide for matters
12 relating to:
- 13 (a) the appointment of auditors; or
14 (b) the conduct of audits.
- 15 (5) A standard may provide for APRA to exercise powers and
16 discretions under the standard, including (but not limited to)
17 discretions to approve, impose, adjust or exclude specific
18 prudential requirements in relation to one or more specified
19 regulated entities or registered NOHCs, or one or more specified
20 subsidiaries of regulated entities or registered NOHCs.
- 21 *Varying or revoking a standard*
- 22 (6) APRA may, in writing, vary or revoke a standard.
- 23 *Commencement*
- 24 (7) A standard, or an instrument varying or revoking such a standard,
25 has effect:
- 26 (a) from the day on which the standard, variation or revocation is
27 made; or
- 28 (b) if the standard, variation or revocation specifies a later day—
29 from that later day.

EXPOSURE DRAFT

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Notification

2

- (8) If APRA determines or varies a standard it must, as soon as practicable:

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4

- (a) give a copy of the standard, or of the variation, to the regulated entity, registered NOHC or subsidiary, or to each regulated entity, registered NOHC or subsidiary, to which the standard applies; and

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- (b) give a copy of the standard, or of the variation, to the Minister.

10

- (9) If APRA revokes a standard it must, as soon as practicable:

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13

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- (a) give a copy of the revocation to the regulated entity, registered NOHC or subsidiary, or to each regulated entity, registered NOHC or subsidiary, to which the standard applied; and

- (b) give a copy of the revocation to the Minister.

16

Validity not affected

17

- (10) A failure to comply with subsection (8) or (9) does not affect the validity of the action concerned.

18

19

Non-legislative instruments

20

- (11) The following instruments made under this section are not legislative instruments:

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23

24

- (a) a standard referred to in paragraph (1)(e);
(b) an instrument varying or revoking a standard referred to in paragraph (1)(e).

25

Legislative instruments

26

- (12) Otherwise, an instrument made under this section is a legislative instrument.

27

EXPOSURE DRAFT

Part 4 Prudential supervision

Division 2 Prudential standards

Section 34

1 *Incorporation by reference*

2 (13) Despite subsection 14(2) of the *Legislation Act 2003*, a standard
3 may make provision in relation to a matter by applying, adopting
4 or incorporating, with or without modification, any matter
5 contained in an instrument or other writing as in force or existing
6 from time to time.

7 *Relationship with the rules*

8 (14) If there is an inconsistency between a standard and the rules, the
9 rules prevail to the extent of the inconsistency.

10 **34 Obligation to comply with prudential standards**

11 A regulated entity, registered NOHC or a subsidiary of a regulated
12 entity or registered NOHC to which a prudential standard applies
13 must comply with the standard.

EXPOSURE DRAFT

Prudential supervision **Part 4**
Prudential requirements **Division 3**

Section 35

1 **Division 3—Prudential requirements**

2 **35 Prudential requirements may also be prescribed by rules**

3 The rules may make provision for and in relation to requiring
4 regulated entities, registered NOHCs, subsidiaries of regulated
5 entities and subsidiaries of registered NOHCs to observe such
6 requirements in relation to prudential matters as are specified in, or
7 ascertained in accordance with, the rules.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 4 Prudential supervision

Division 4 Other matters

Section 36

1 **Division 4—Other matters**

2 **36 APRA to monitor prudential matters**

3 The functions of APRA include the following:

4 (a) the collection and analysis of information in respect of
5 prudential matters relating to regulated entities and registered
6 NOHCs;

7 (b) the encouragement and promotion of the carrying out by
8 regulated entities and registered NOHCs of sound practices
9 in relation to prudential matters;

10 (c) the evaluation of the effectiveness and carrying out of those
11 practices.

12 **37 Part does not limit the rest of this Act**

13 This Part does not limit the operation of any other provision of this
14 Act.

EXPOSURE DRAFT

Promoting stability in the Australian financial system and protecting customers and end users **Part 5**
Simplified outline **Division 1**

Section 38

1 **Part 5—Promoting stability in the Australian**
2 **financial system and protecting customers**
3 **and end users**

4 **Division 1—Simplified outline**

5 **38 Simplified outline of this Part**

6

<i>to be drafted</i>

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 2 General provisions

Section 39

1 **Division 2—General provisions**

2 **39 APRA to promote stability in the Australian financial system**

3 (1) It is the duty of APRA to exercise its powers and perform its
4 functions under the relevant provisions for promoting stability in
5 the Australian financial system.

6 (2) In exercising its powers and performing its functions under the
7 relevant provisions in relation to a regulated entity, APRA must
8 have regard to whether the entity's carrying on of regulated
9 business materially contributes to risks of instability in the
10 Australian financial system.

11 (3) To avoid doubt, section 8A of the *Australian Prudential*
12 *Regulation Authority Act 1998* (which deals with trans-Tasman
13 cooperation) applies to the performance of functions and the
14 exercise of powers by APRA under the relevant provisions.

15 (4) In this section:

16 *relevant provisions* means each of the following:

- 17 (a) this Part;
18 (b) Division 2 of Part 7;
19 (c) section 101;
20 (d) Division 3 of Part 9;
21 (e) sections 143 and 144.

22 **40 Regulated entities and registered NOHC's to cause information**
23 **to be supplied to APRA**

24 *APRA's power to obtain information*

25 (1) APRA may, by notice in writing to a body corporate that is a
26 regulated entity or a registered NOHC, require the body to ensure
27 that APRA is supplied, within the time specified in the notice, with

EXPOSURE DRAFT

1 such information relating to the financial stability of the following
2 as is specified in the notice:

- 3 (a) if the body is a regulated entity—the entity;
4 (b) if the body is a registered NOHC—one or more regulated
5 entities that are subsidiaries of the body.

6 (2) Without limiting subsection (1), the requirement to supply
7 information may include a requirement to supply books, accounts
8 or documents.

9 (3) The information supplied in compliance with such a requirement
10 must, if required by the notice, be verified by a statutory
11 declaration made by a person who:

- 12 (a) is an officer of the body that was given the notice; and
13 (b) is authorised by the body to make the declaration.

14 *Information to be supplied if regulated entity unable, or likely to be*
15 *unable, to meet obligations*

- 16 (4) A regulated entity commits an offence if:
17 (a) the entity considers that it is likely to become unable to meet
18 its obligations, or that it is about to suspend payment; and
19 (b) the entity does not immediately inform APRA of the
20 situation.

21 Note: An individual can commit an ancillary offence that is either an offence
22 against this subsection or an offence relating to this subsection (see
23 Part 2.4 of the *Criminal Code*).

24 Penalty:

- 25 (a) for a body corporate—1,000 penalty units; or
26 (b) for an individual—200 penalty units.

27 (5) An offence against subsection (4) is an indictable offence.

28 *Interpretation*

29 (6) In this section:

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 2 General provisions

Section 41

1 *officer*, in relation to a regulated entity, has the same meaning as in
2 section 131.

3 (7) To avoid doubt, this section applies to a regulated entity that is, or
4 becomes, a Chapter 5 body corporate (within the meaning of the
5 *Corporations Act 2001*) in the same way as this section applies to
6 any other regulated entity.

7 **41 Body’s assets must at least equal its liabilities**

8 *Regulated entities*

- 9 (1) A regulated entity commits an offence if:
- 10 (a) it does not hold assets in Australia of a value that is equal to
11 or greater than the total amount of its liabilities relating to its
12 regulated business; and
13 (b) APRA has not authorised the entity to hold assets of a lesser
14 value.

15 Note: An individual can commit an ancillary offence that is either an offence
16 against this subsection or an offence relating to this subsection (see
17 Part 2.4 of the *Criminal Code*).

18 Penalty:

- 19 (a) for a body corporate—1,000 penalty units; or
20 (b) for an individual—200 penalty units.

21 *Registered NOHCs*

- 22 (2) A registered NOHC commits an offence if:
- 23 (a) all subsidiaries of the NOHC that are regulated entities (when
24 considered together) do not hold assets in Australia of a value
25 that is equal to or greater than the total amount of their
26 liabilities relating to their regulated businesses; and
27 (b) APRA has not given an authorisation to the NOHC for those
28 subsidiaries to hold assets of a lesser value.

29 Note: An individual can commit an ancillary offence that is either an offence
30 against this subsection or an offence relating to this subsection (see
31 Part 2.4 of the *Criminal Code*).

EXPOSURE DRAFT

Promoting stability in the Australian financial system and protecting customers and end users **Part 5**
General provisions **Division 2**

Section 41

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Penalty:

- (a) for a body corporate—1,000 penalty units; or
- (b) for an individual—200 penalty units.

Disregard some assets for these offences

- (3) For the purposes of subsection (1) or (2), disregard any asset (or amount) that:
- (a) is goodwill; or
 - (b) is excluded by the prudential standards for the purposes of this subsection.

Continuing indictable offences

- (4) An offence against subsection (1) or (2) is an indictable offence.
- (5) If the circumstances relating to asset holdings are such that give rise to a body committing an offence against subsection (1) or (2), the body 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 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.

Chapter 5 bodies corporate

- (6) To avoid doubt, this section applies to a body corporate that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other body corporate.

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 3 Dealing with end users' money

Section 42

1 **Division 3—Dealing with end users' money**

2 **Subdivision A—Preliminary**

3 **42 Simplified outline of this Division**

4 Regulated entities must safeguard money paid to them:

- 5 (a) in connection with their regulated businesses or stored
6 value facilities they have issued; and
7 (b) that they hold for the benefit of end users.

8 One method for safeguarding the money involves segregating it
9 from other money. A regulated entity may use other safeguarding
10 methods unless APRA determines that the entity must not do so.
11 The entity may use a combination of methods to safeguard the
12 money.

13 Regulated entities must also comply with the prudential standards
14 in relation to their use of a safeguarding method, and more broadly
15 in relation to this Division.

16 The Court is given extra powers relating to safeguarding the
17 money.

18 **43 Meaning of *relevant PS money***

- 19 (1) Money is *relevant PS money*, of a regulated entity, if the money:
20 (a) is paid to or received by the entity in connection with a
21 regulated business of the entity; or
22 (b) is an amount credited to a stored value facility issued by the
23 entity; or
24 (c) is the proceeds paid under a method covered by paragraph
25 50(b) (such as the proceeds of an insurance policy or
26 guarantee) that the entity is using to safeguard other relevant
27 PS money;

EXPOSURE DRAFT

-
- 1 and the money is so paid, received or credited (and then held) for
2 the benefit of an end user of the money.
- 3 (2) Despite subsection (1), money is not (or ceases to be) **relevant PS**
4 **money** to the extent that:
- 5 (a) the money is for the regulated entity's remuneration, or the
6 regulated entity is entitled to deduct such remuneration from
7 the money; or
- 8 (b) the money is for any of the following:
- 9 (i) reimbursing the regulated entity for payments in
10 connection with carrying on the regulated business;
- 11 (ii) discharging a liability incurred by the regulated entity in
12 connection with carrying on the regulated business;
- 13 (iii) indemnifying the licensee in respect of such a liability;
14 or
- 15 (c) Subdivision B of Division 2 of Part 7.8 of the *Corporations*
16 *Act 2001* (about loan money) applies to the money; or
- 17 (d) the money relates to the provision of a financial service
18 (within the meaning of the *Corporations Act 2001*) for which
19 the regulated entity is exempt from the requirement to hold
20 an Australian financial services licence.
- 21 (3) Despite subsection (1), money is not **relevant PS money** to the
22 extent that:
- 23 (a) the money is paid by a person to an ADI in order for the
24 money to be deposited to the credit of a deposit product
25 (within the meaning of the *Corporations Act 2001*) held by a
26 person with the ADI; or
- 27 (b) the arrangement under which the money is paid, received or
28 credited (and then held) is a facility covered by
29 paragraph 765A(1)(i), (j) or (l) of the *Corporations Act 2001*.
- 30 (4) The rules may exempt money paid, received or credited in
31 specified circumstances from some or all of the provisions of this
32 Division.

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 3 Dealing with end users' money

Section 44

- 1 (5) An exemption in rules made for the purposes of subsection (4) may
2 be made subject to conditions specified in, or imposed in
3 accordance with, the rules.

44 Meaning of an *end user* of relevant PS money

5 A person is an *end user* of relevant PS money at a particular time if
6 the person:

- 7 (a) is entitled to the money at that time; and
8 (b) is not the provider of a payment system service (within the
9 meaning of the *Corporations Act 2001*) who, at that time, is
10 acting as an intermediary in a transfer of the relevant PS
11 money.

45 Relevant PS money taken to be held in trust

- 12 (1) Relevant PS money of a regulated entity that is paid, received or
13 credited (and then held) for the benefit of an end user of the money
14 is taken to be held in trust:
15 (a) by the entity; and
16 (b) for the benefit of the end user.
- 17 (2) The regulated entity may choose to enter into one or more
18 arrangements with other persons in relation to the relevant PS
19 money. However, such arrangements do not reduce the fiduciary
20 duties the entity has as trustee.
21
- 22 (3) Despite subsection (1), the rules may:
23 (a) provide that subsection (1) does not apply in relation to
24 money in specified circumstances; and
25 (b) provide for matters relating to the taking of money to be held
26 in trust (including, for example, terms on which the money is
27 taken to be held in trust and circumstances in which it is no
28 longer taken to be held in trust).

EXPOSURE DRAFT

Promoting stability in the Australian financial system and protecting customers and end users **Part 5**
Dealing with end users' money **Division 3**

Section 46

Subdivision B—Methods for safeguarding relevant PS money

46 Segregation method for safeguarding relevant PS money

- (1) A person contravenes this subsection if:
- (a) the person is a regulated entity; and
 - (b) money becomes relevant PS money of the person; and
 - (c) the person:
 - (i) is not using another method covered by paragraph 50(b) to safeguard the relevant PS money; or
 - (ii) is using such a method to safeguard the relevant PS money, but is contravening section 50 when doing so; and
 - (d) the person fails to ensure that:
 - (i) the money is paid into an account covered by subsection (2) by the end of the next business day after the day on which it becomes relevant PS money; or
 - (ii) if at a particular time after the money is paid into that account the money is still relevant PS money of the person—the money is held in that account in trust for the benefit of the end user of the money at that time; or
 - (iii) any money paid into the account that is not money covered by subsection (3) is identified, and removed, as soon as practicable from the account; or
 - (iv) money is paid from the account only in accordance with any requirements imposed in a prudential standard for the purposes of this subparagraph; or
 - (v) any requirement prescribed by the rules for the purposes of this subparagraph that relates to the account, or to money or investments referred to in subsection (3), is complied with; or
 - (vi) any requirement imposed by a prudential standard that relates to the account, or to money or investments referred to in subsection (3), is complied with.

Note 1: The person will contravene paragraph (d) if the person fails to comply with any of subparagraphs (d)(i) to (vi).

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 3 Dealing with end users' money

Section 46

1 Note 2: The person may use a combination of methods to safeguard all of the
2 person's relevant PS money (see paragraph (c)).

3 Civil penalty: 500,000 penalty units.

4 (2) An account is covered by this subsection if:

5 (a) the account is:

6 (i) with an Australian ADI (within the meaning of the
7 *Corporations Act 2001*); or

8 (ii) of a kind for which the requirements (if any) imposed
9 by a prudential standard for the purposes of this
10 subparagraph are met; and

11 (b) the requirements (if any) imposed by a prudential standard
12 for the purposes of this paragraph are met for the account;
13 and

14 (c) the account is designated as an account for the purposes of
15 this subsection.

16 Note: A requirement imposed for paragraph (b) includes one that must be
17 met by a person in relation to the account.

18 (3) Money is covered by this subsection if it is:

19 (a) relevant PS money of the regulated entity held in trust for the
20 benefit of an end user (which could include other relevant PS
21 money to that referred to in paragraph (1)(b)); or

22 (b) interest on the amount from time to time standing to the
23 credit of the account; or

24 (c) either:

25 (i) interest or other earnings on an investment of money
26 withdrawn from the account; or

27 (ii) the proceeds of the realisation of such an investment;
28 if the interest, earnings or proceeds are dealt with in
29 accordance with any requirements imposed by a prudential
30 standard for the purposes of paragraph (2)(b); or

31 (d) other money of a class for which the requirements (if any)
32 imposed by a prudential standard for the purposes of this
33 paragraph are met.

EXPOSURE DRAFT

Promoting stability in the Australian financial system and protecting customers and end users **Part 5**
Dealing with end users' money **Division 3**

Section 47

1 Note: A requirement imposed for paragraph (d) includes one that must be
2 met by a person in relation to the money.

3 (4) Subsection (1) does not apply to relevant PS money of the
4 regulated entity if circumstances exist of a kind provided by the
5 prudential standards for the purposes of this subsection.

6 (5) A regulated entity may, for the purposes of subsection (1),
7 maintain one or more accounts.

8 **47 Segregation method—related prudential standards and rules**

9 (1) For the purposes of (but without limiting) paragraph 46(2)(b), one
10 or more prudential standards may impose one or more of the
11 following as requirements that must be met for an account:
12 (a) the circumstances in which payments may be made out of the
13 account, including how an end user may authorise payment
14 transactions such as refunds, reversals and chargebacks;
15 (b) the minimum balance to be maintained in the account;
16 (c) how interest on the account is to be dealt with;
17 (d) how interest or other earnings on an investment of money
18 withdrawn from the account, or the proceeds of the
19 realisation of such an investment, are to be dealt with.

20 (2) For the purposes of (but without limiting) subparagraph
21 46(1)(d)(iv), one or more prudential standards may deal with one
22 or more of the following:
23 (a) the process for withdrawing money in order to invest it;
24 (b) the classes of investment that may be made;
25 (c) the process for the end user to authorise payments from the
26 account;
27 (d) the process for withdrawing money in order to pay fees or
28 charges incurred by the end user;
29 (e) the process for withdrawing money that has ceased to be
30 relevant PS money of the regulated entity;
31 (f) the process for making payments authorised by law.

EXPOSURE DRAFT

Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 3 Dealing with end users' money

Section 48

- 1 (3) For the purposes of (but without limiting) subparagraph
2 46(1)(d)(v), a requirement prescribed by the rules could cover how
3 money in an account covered by subsection 46(2), or an investment
4 of such money, is to be dealt with if the regulated entity that holds
5 the account:
- 6 (a) becomes a Chapter 5 body corporate; or
 - 7 (b) merges with another regulated entity; or
 - 8 (c) ceases to carry on a regulated business.

9 **48 Segregation method—protecting from attachment etc.**

- 10 Money covered by, and an investment referred to in, subsection
11 46(3) is not capable:
- 12 (a) of being attached or otherwise taken in execution; or
 - 13 (b) of being made subject to a set-off, security interest or
14 charging order, or to any process of a similar nature;
- 15 except at the suit of a person who is otherwise entitled to the
16 money or investment.

17 **49 Segregation method—account provider not liable merely because** 18 **of entity's contravention**

- 19 Nothing in this Division makes a body, that a regulated entity's
20 account covered by subsection 46(2) is with, subject to any liability
21 merely because of a failure by the entity to comply with a
22 provision of this Division.

23 **50 Other safeguarding methods—compliance**

- 24 A person contravenes this subsection if:
- 25 (a) the person is a regulated entity; and
 - 26 (b) the person is, or is purportedly, using one of the following
27 other methods to safeguard relevant PS money of the person:
 - 28 (i) insurance;
 - 29 (ii) a guarantee;
 - 30 (iii) a method permitted by the prudential standards for the
31 purposes of this subparagraph; and

EXPOSURE DRAFT

Promoting stability in the Australian financial system and protecting customers and end users **Part 5**
Dealing with end users' money **Division 3**

Section 51

- 1 (c) either or both of the following subparagraphs apply:
2 (i) a determination in force under subsection 51(1)
3 provides that the person is not permitted to use the
4 method to safeguard the relevant PS money;
5 (ii) there is a failure to meet a requirement in a prudential
6 standard relating to the person's use, or purported use,
7 of the method to safeguard the relevant PS money.

8 Civil penalty: 500,000 penalty units.

9 **51 Other safeguarding methods—removing permission**

- 10 (1) APRA may, by written notice given to a regulated entity,
11 determine that the entity is not permitted to use a specified method
12 covered by paragraph 50(b) to safeguard relevant PS money if
13 APRA is reasonably satisfied that:
14 (a) the entity is not meeting, or is unlikely to be able to meet, a
15 requirement in a prudential standard relating to the use of the
16 method; or
17 (b) one or more of the following have happened:
18 (i) a statutory manager has taken control of the person's
19 business;
20 (ii) the person has become a Chapter 5 body corporate;
21 (iii) the person has merged with another regulated entity;
22 (iv) the person has ceased to carry on a regulated business.
23 (2) The determination takes effect on the day specified in the
24 determination (which must be at least 30 days after the day notice
25 of the determination is so given).

26 **Subdivision C—Additional requirements for holding relevant** 27 **PS money**

28 **52 Guaranteed period for redemption rights**

- 29 (1) A person who possesses a right to redeem relevant PS money
30 credited to a facility that:
31 (a) is a stored value facility; and

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Section 53

- 1 (b) is issued by a regulated entity;
2 may redeem the relevant PS money during the 6-year period
3 starting on the first day the money can no longer be used under the
4 facility for making payments.
- 5 (2) Any fees for redeeming money under subsection (1) must be
6 proportionate and commensurate with the costs actually incurred
7 by the regulated entity.
- 8 (3) An arrangement has no effect to the extent that it is inconsistent
9 with subsection (1) or (2).
- 10 (4) Subsection (1) has effect subject to any contrary direction given
11 under section 112.

Subdivision D—Powers of the Court

53 Court may freeze certain accounts

- 14 (1) The Court may, by order, restrain dealings in respect of specified
15 accounts with financial institutions that a person holds or maintains
16 (whether in Australia or elsewhere), subject to such terms and
17 conditions as the Court imposes, if subsection (2) or (3) applies in
18 relation to the person.
- 19 (2) This subsection applies in relation to a person if, on application by
20 APRA or by a statutory manager of the person, the Court is
21 satisfied that:
22 (a) the person is or was a regulated entity; and
23 (b) there are reasonable grounds for believing that the person has
24 contravened, or is likely to contravene, subsection 46(1),
25 section 50 or subsection 58(1); and
26 (c) the contravention, or likely contravention, relates to:
27 (i) the account; or
28 (ii) money (or investments) in the account.
- 29 (3) This subsection applies to a person if, on application by APRA or
30 by a statutory manager of the person, the Court is satisfied that:
31 (a) the person is or was a regulated entity; and

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Section 54

- 1 (b) one or more of the following have happened:
2 (i) if APRA is the applicant—a statutory manager has
3 taken control of the person's business;
4 (ii) the person has become a Chapter 5 body corporate;
5 (iii) the person has merged with another regulated entity;
6 (iv) the person has ceased to carry on a regulated business.

7 **54 Interim order freezing accounts**

- 8 (1) Before considering an application under section 53, the Court may,
9 if it considers it desirable to do so, grant an interim order that is an
10 order of the kind applied for and is expressed to apply until the
11 application is determined.
12 (2) The Court must not require APRA or any other person, as a
13 condition of granting an order under subsection (1), to give an
14 undertaking as to damages.

15 **55 Duty of person to whom order directed to make full disclosure**

- 16 (1) A person contravenes this subsection if:
17 (a) the person is a financial institution; and
18 (b) an order under section 53 is directed to the financial
19 institution in relation to another person who is or was a
20 regulated entity; and
21 (c) the financial institution fails to:
22 (i) disclose to an authorised entity every account kept at the
23 institution in the name of the other person, and any
24 account that the institution reasonably suspects is held
25 or kept at the institution for the benefit of the other
26 person; or
27 (ii) permit an authorised entity to make a copy of, or to take
28 an extract from, such an account or any of the
29 institution's books relating to the other person.

30 Civil penalty: 500,000 penalty units.

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Part 5 Promoting stability in the Australian financial system and protecting customers and end users

Division 3 Dealing with end users' money

Section 56

- 1 (2) For the purposes of paragraph (1)(c), the following are *authorised*
2 *entities*:
3 (a) if the applicant for the order is a statutory manager of the
4 other person—the statutory manager and APRA;
5 (b) otherwise—APRA.

6 **56 Further orders and directions**

- 7 (1) If an order (the *original order*) is made under section 53 or 54, the
8 Court may, on application by an eligible person, make a further
9 order that does one or more of the following:
10 (a) deals with such ancillary matters as the Court thinks
11 necessary or desirable;
12 (b) directs that specified amounts in an account affected by the
13 original order be paid to APRA or a person nominated by
14 APRA;
15 (c) varies or discharges the original order or an order under this
16 section.
- 17 (2) An order may be made under subsection (1) subject to such terms
18 and conditions as the Court imposes.
- 19 (3) For the purposes of subsection (1), each of the following are
20 *eligible persons*:
21 (a) APRA;
22 (b) a statutory manager (if any) of a person to whom the original
23 order affects;
24 (c) a person to whom the original order affects.

25 **57 Power of Court to make order relating to payment of money**

- 26 (1) An order made under section 56 may include directions to a person
27 to whom money is ordered to be paid directing that the person:
28 (a) must pay the money into a separate account; or
29 (b) is authorised to prepare a scheme for distributing the money
30 to persons who claim, within 6 months after the person

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-
- 1 receives the money, to be entitled to the money and satisfy
2 the person that they are so entitled; or
3 (c) if the money received is insufficient to pay all proved claims,
4 may, despite any rule of law or equity to the contrary,
5 apportion the money among the claimants in proportion to
6 their proved claims and show in the scheme how the money
7 is so apportioned.
- 8 (2) If a person prepares a scheme for a distribution of money under
9 subsection (1), the person must apply to the Court for approval of
10 the scheme and for directions in respect of it.
- 11 (3) The Court may, in relation to money held in a separate account
12 under subsection (1), give such directions as the Court thinks fit as
13 to:
14 (a) the persons to whom that money is to be paid, and in what
15 amounts the whole or any portion of that money is to be paid;
16 and
17 (b) the payment of the balance of the money (if any) remaining
18 in the account.

19 Subdivision E—Other matters

20 58 Anti-avoidance

- 21 (1) A person must not, either alone or together with one or more other
22 persons, enter into, begin to carry out or carry out a scheme if:
23 (a) it would be concluded that the person, or any of the persons,
24 who entered into, began to carry out or carried out the
25 scheme or any part of the scheme did so for:
26 (i) the sole purpose; or
27 (ii) a purpose (that is not incidental);
28 of avoiding the application of any provision of this Division
29 in relation to any person or persons (whether or not a person
30 or persons who entered into, began to carry out or carried out
31 the scheme or any part of the scheme); and

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Section 58

- 1 (b) the scheme or the part of the scheme has achieved, or apart
2 from this section, would achieve, that purpose.
- 3 Civil penalty: 500,000 penalty units.
- 4 (2) The Court may set aside a scheme to which subsection (1) applies.
- 5 (3) Subsection (1) does not apply to a scheme to the extent that the
6 operation of the subsection would result in an acquisition of
7 property (within the meaning of paragraph 51(xxxi) of the
8 Constitution) from a person otherwise than on just terms (within
9 the meaning of that paragraph).

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Auditors and financial records **Part 6**
Simplified outline **Division 1**

Section 59

1 **Part 6—Auditors and financial records**

2 **Division 1—Simplified outline**

3 **59 Simplified outline of this Part**

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Part 6 Auditors and financial records

Division 2 Auditors

Section 60

1 **Division 2—Auditors**

2 **60 Appointed auditor’s functions and duties**

- 3 (1) This section applies if the prudential standards require an auditor to
4 be appointed.
- 5 (2) The appointed auditor must perform the functions and duties of an
6 auditor that are set out in the prudential standards.
- 7 (3) The appointed auditor must comply with the prudential standards
8 in performing the functions and duties.
- 9 (4) The regulated entity or registered NOHC, or subsidiary of a
10 regulated entity or registered NOHC, to whom the prudential
11 standards apply must make any arrangements that are necessary to
12 enable the appointed auditor to perform the functions and duties.

13 **61 Auditors to give information to APRA on request**

14 *Duty to give information when required*

- 15 (1) APRA may, by notice in writing, require a person who is, or has
16 been, an auditor of:
- 17 (a) a regulated entity; or
18 (b) a registered NOHC; or
19 (c) a subsidiary of a regulated entity or registered NOHC; or
20 (d) if a regulated entity is a subsidiary of a foreign corporation
21 (whether or not the entity is itself a foreign regulated entity):
- 22 (i) another subsidiary (a ***relevant Australian-incorporated***
23 ***subsidiary***) of the foreign corporation (other than a body
24 mentioned in paragraph (a), (b) or (c)), being a
25 subsidiary that is incorporated in Australia; or
26 (ii) another subsidiary (a ***relevant foreign-incorporated***
27 ***subsidiary***) of the foreign corporation (other than a body
28 mentioned in paragraph (a), (b) or (c)), being a

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1 subsidiary that is not incorporated in Australia and
2 carries on business in Australia;
3 to provide information, or to produce books, accounts or
4 documents, to APRA about the regulated entity, registered NOHC,
5 subsidiary of the regulated entity or registered NOHC, or relevant
6 Australian-incorporated subsidiary, or about the Australian
7 operations of the relevant foreign-incorporated subsidiary, if
8 APRA considers that the provision of the information, or the
9 production of the books, accounts or documents, will assist APRA
10 in performing its functions under this Act or the *Financial*
11 *Accountability Regime Act 2023*.

- 12 (2) A person commits an offence if:
- 13 (a) under subsection (1), APRA requires the person to provide
 - 14 information or to produce books, accounts or documents; and
 - 15 (b) the person fails to comply with the requirement.

16 Penalty: Imprisonment for 6 months.

17 **62 Requirement for auditors to give information about regulated** 18 **entities**

19 *Persons to whom requirements apply*

- 20 (1) This section applies to a person who is or has been an auditor of a
21 body corporate that is:
- 22 (a) a regulated entity; or
 - 23 (b) a registered NOHC; or
 - 24 (c) a subsidiary of a regulated entity or a registered NOHC; or
 - 25 (d) if a regulated entity is a subsidiary of a foreign corporation
26 (whether or not the entity is itself a foreign regulated entity):
 - 27 (i) another subsidiary (a ***relevant Australian-incorporated***
28 ***subsidiary***) of the foreign corporation (other than a body
29 mentioned in paragraph (a), (b) or (c)), being a
30 subsidiary that is incorporated in Australia; or
 - 31 (ii) another subsidiary (a ***relevant foreign-incorporated***
32 ***subsidiary***) of the foreign corporation (other than a body
33 mentioned in paragraph (a), (b) or (c)), being a

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Part 6 Auditors and financial records

Division 2 Auditors

Section 62

1 subsidiary that is not incorporated in Australia and
2 carries on business in Australia.

3 *Matters requiring immediate notice*

4 (2) If the person has reasonable grounds for believing that:

5 (a) the body corporate is insolvent or there is a significant risk
6 that the body corporate will become insolvent; or

7 (b) an existing or proposed state of affairs may materially
8 prejudice the interests of:

9 (i) if the body corporate is a regulated entity or a subsidiary
10 of a regulated entity—the customers of the entity; or

11 (ii) if the body corporate is a registered NOHC or a
12 subsidiary of a registered NOHC—the customers of any
13 regulated entity that is a subsidiary of the registered
14 NOHC; or

15 (iii) if the body corporate is a relevant
16 Australian-incorporated subsidiary or a relevant
17 foreign-incorporated subsidiary of a foreign
18 corporation—the customers of any regulated entity that
19 is a subsidiary of the foreign corporation;

20 the person must immediately notify APRA in writing of the matter.

21 *Offences in relation to matters requiring immediate notice*

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

24 Penalty: Imprisonment for 6 months.

25 (4) A person commits an offence of strict liability if the person
26 contravenes subsection (2).

27 Penalty: 60 penalty units.

28 *Defence if matter already notified*

29 (5) Subsections (3) and (4) do not apply to a person in relation to a
30 matter referred to in subsection (2) if:

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- 1 (a) the person becomes aware of the matter because the person is
2 informed of it by a director or senior manager of the body
3 corporate; and
4 (b) the director or senior manager informs the person that the
5 body corporate has notified APRA in writing of the matter;
6 and
7 (c) the person has no reason to disbelieve the director or senior
8 manager.

9 Note: The defendant bears an evidential burden in relation to the matters in
10 subsection (5). See subsection 13.3(3) of the *Criminal Code*.

11 *Matters requiring notice as soon as practicable*

- 12 (6) If the person has reasonable grounds for believing that:
13 (a) the body corporate has failed or will fail to comply with:
14 (i) a provision of this Act, the rules, the *Financial Sector*
15 *(Collection of Data) Act 2001* or the *Financial*
16 *Accountability Regime Act 2023*; or
17 (ii) if the body corporate is a regulated entity or registered
18 NOHC, or a subsidiary of a regulated entity or
19 registered NOHC—a prudential standard; or
20 (iii) if the body corporate is a regulated entity or registered
21 NOHC, or a subsidiary of a regulated entity or
22 registered NOHC—a direction under Division 2 of
23 Part 9; or
24 (iv) if the body corporate is a regulated entity—a condition
25 of the body corporate’s registration under Division 2 of
26 Part 3; or
27 (v) if the body corporate is a registered NOHC—a
28 condition of the body corporate’s registration under
29 Division 3 of Part 3; and
30 (b) the failure to comply is or will be significant (see
31 subsection (7));
32 the person must give APRA a written report about the failure as
33 soon as practicable, and in any event no later than 10 business
34 days.

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Part 6 Auditors and financial records

Division 2 Auditors

Section 62

- 1 (7) For the purposes of paragraph (6)(b), a failure to comply is or will
2 be **significant** if the failure is or will be significant having regard to
3 any one or more of the following:
4 (a) the number or frequency of similar failures;
5 (b) the impact the failure has or will have on the body
6 corporate's ability to conduct its business;
7 (c) the extent to which the failure indicates that the body
8 corporate's arrangements to ensure compliance with this Act,
9 the prudential standards or the rules might be inadequate;
10 (d) the actual or potential financial loss arising or that will arise
11 from the failure:
12 (i) if the body corporate is a regulated entity—to the
13 customers of the body corporate; or
14 (ii) to the body corporate;
15 (e) any matters prescribed by the rules for the purposes of this
16 paragraph.
- 17 *Offences in relation to matters requiring notice as soon as*
18 *practicable*
- 19 (8) A person commits an offence if the person contravenes
20 subsection (6).
21 Penalty: Imprisonment for 6 months.
- 22 (9) A person commits an offence of strict liability if the person
23 contravenes subsection (6).
24 Penalty: 60 penalty units.
- 25 *Defence if failure already notified*
- 26 (10) Subsections (8) and (9) do not apply to a person in relation to a
27 failure to comply referred to in subsection (6) if:
28 (a) a director or senior manager of the body corporate informs
29 the person that the body corporate has informed APRA in
30 writing of the failure; and
31 (b) the person has no reason to disbelieve the director or senior
32 manager.
-

EXPOSURE DRAFT

1 Note: The defendant bears an evidential burden in relation to the matters in
2 subsection (10). See subsection 13.3(3) of the *Criminal Code*.

3 *Offence in relation to subsections (5) and (10)*

- 4 (11) A person commits an offence if:
- 5 (a) the person is a director or senior manager of a body corporate
6 referred to in subsection (1); and
 - 7 (b) the person knows that there are reasonable grounds for
8 believing a thing referred to in subsection (2) or (6); and
 - 9 (c) the person informs an auditor of the body corporate that the
10 body corporate has informed APRA in writing of the thing;
11 and
 - 12 (d) the body corporate has not done so.

13 Penalty: Imprisonment for 12 months.

14 **63 Auditor may provide information to APRA**

15 A person who is, or has been, an auditor of:

- 16 (a) a regulated entity; or
- 17 (b) a registered NOHC; or
- 18 (c) a subsidiary of a regulated entity or registered NOHC; or
- 19 (d) if a regulated entity is a subsidiary of a foreign corporation
20 (whether or not the entity is itself a foreign regulated entity):
 - 21 (i) another subsidiary (a ***relevant Australian-incorporated***
22 ***subsidiary***) of the foreign corporation (other than a body
23 mentioned in paragraph (a), (b) or (c)), being a
24 subsidiary that is incorporated in Australia; or
 - 25 (ii) another subsidiary (a ***relevant foreign-incorporated***
26 ***subsidiary***) of the foreign corporation (other than a body
27 mentioned in paragraph (a), (b) or (c)), being a
28 subsidiary that is not incorporated in Australia and
29 carries on business in Australia;

30 may provide information, or produce books, accounts or
31 documents, to APRA about the entity, registered NOHC,
32 subsidiary of the entity or registered NOHC, or relevant
33 Australian-incorporated subsidiary, or about the Australian

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Part 6 Auditors and financial records

Division 2 Auditors

Section 64

1 operations of the relevant foreign-incorporated subsidiary, if the
2 person considers that the provision of the information, or the
3 production of the books, accounts or documents, to APRA will
4 assist APRA in performing its functions under this Act, the
5 *Financial Sector (Collection of Data) Act 2001* or the *Financial*
6 *Accountability Regime Act 2023*.

7 **64 Appointed auditor must notify APRA of attempts to unduly** 8 **influence etc. the appointed auditor**

9 (1) If an appointed auditor of a regulated entity or registered NOHC is
10 aware of circumstances that amount to:

11 (a) an attempt by any person to unduly influence, coerce,
12 manipulate or mislead the appointed auditor in connection
13 with the performance of the appointed auditor's functions or
14 duties; or

15 (b) an attempt by any person to otherwise interfere with the
16 performance of the appointed auditor's functions or duties;

17 the appointed auditor must notify APRA in writing of those
18 circumstances as soon as practicable, and in any case within 28
19 days, after the appointed auditor becomes aware of those
20 circumstances.

21 (2) An appointed auditor commits an offence if the appointed auditor
22 contravenes subsection (1).

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

24 **65 Giving false or misleading information to auditor**

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

26 (1) A person commits an offence if:

27 (a) the person is an employee or officer of a body corporate that
28 is a regulated entity or registered NOHC; and

29 (b) the person gives information, or allows information to be
30 given, to an auditor of the body corporate; and

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- 1 (c) the information relates to the affairs of the body corporate;
2 and
3 (d) the person knows that the information:
4 (i) is false or misleading in a material particular; or
5 (ii) is missing something that makes the information
6 misleading in a material respect.

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

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

- 10 (2) A person commits an offence if:
11 (a) the person is an employee or officer of a body corporate that
12 is a regulated entity or registered NOHC; and
13 (b) the person gives information, or allows information to be
14 given, to an auditor of the body corporate; and
15 (c) the information relates to the affairs of the body corporate;
16 and
17 (d) the information:
18 (i) is false or misleading in a material particular; or
19 (ii) is missing something that makes the information
20 misleading in a material respect; and
21 (e) the person did not take reasonable steps to ensure that the
22 information:
23 (i) was not false or misleading in a material particular; or
24 (ii) was not missing something that makes the information
25 misleading in a material respect.

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

27 *Determining whether information is false or misleading*

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

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Part 6 Auditors and financial records

Division 2 Auditors

Section 66

1 **66 Referring matters to professional associations for auditors**

- 2 (1) If APRA is of the opinion that an auditor of a relevant body
3 corporate (see subsection (2)):
- 4 (a) has failed, whether within or outside Australia, to perform
5 adequately and properly the auditor's duties or functions as
6 an auditor under:
- 7 (i) this Act, the rules or the prudential standards; or
8 (ii) any other law of the Commonwealth, a State or a
9 Territory; or
- 10 (b) is otherwise not a fit and proper person to be the auditor of a
11 relevant body corporate;
- 12 APRA may refer the details of the matter to either or both of the
13 following:
- 14 (c) the Companies Auditors Disciplinary Board established by
15 Division 1 of Part 11 of the *Australian Securities and*
16 *Investments Commission Act 2001*;
- 17 (d) those members of the professional association of the auditor
18 whom APRA believes will be involved in considering or
19 taking any disciplinary or other action concerning the matter
20 against the auditor.
- 21 (2) For the purposes of this section, each of the following is a **relevant**
22 **body corporate**:
- 23 (a) a regulated entity;
24 (b) a registered NOHC;
25 (c) a subsidiary of a regulated entity or registered NOHC;
26 (d) if a regulated entity is a subsidiary of a foreign corporation
27 (whether or not the entity is itself a foreign corporation)—a
28 subsidiary of that foreign corporation that is incorporated in,
29 or carries on business in, Australia.
- 30 (3) If APRA refers details of a matter under this section, APRA must
31 also give written notice of the referral (including the nature of the
32 matter) to the auditor.

EXPOSURE DRAFT

1 **Division 3—Financial records**

2 **67 Keeping of financial records**

3 *Financial records must be kept in Australia etc.*

- 4 (1) If a regulated entity is required, under section 286 of the
5 *Corporations Act 2001*, to keep financial records (within the
6 meaning of that Act), the entity must keep the records:
- 7 (a) in the English language, or in a form in which the records are
8 readily accessible and readily convertible into writing in the
9 English language; and
- 10 (b) either:
- 11 (i) in Australia; or
- 12 (ii) if APRA gives written approval and the entity meets the
13 conditions (if any) specified in the approval—in another
14 country specified in the approval.

- 15 (2) The approval may be given subject to specified conditions.

16 *Notification of address where financial records are kept*

- 17 (3) A regulated entity must notify APRA, in the approved form, of the
18 address where the entity's financial records are kept within 28 days
19 after the entity is registered under Division 2 of Part 3.

20 Note: For more on approved forms, see section 188.

- 21 (4) If:
- 22 (a) a regulated entity has notified APRA of the address where
23 the entity's financial records are kept; and
- 24 (b) the entity moves the financial records to a new address;
25 the entity must notify APRA, in the approved form, of the new
26 address where the financial records are kept.

27 Note: For more on approved forms, see section 188.

- 28 (5) The notification must be given within 28 days after the day on
29 which the financial records are moved to the new address.

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Part 6 Auditors and financial records

Division 3 Financial records

Section 67

1

Offence

2

- (6) A regulated entity commits an offence if the entity contravenes subsection (1).

3

4

Note: An individual can commit an ancillary offence that is either an offence against this subsection or an offence relating to this subsection (see Part 2.4 of the *Criminal Code*).

5

6

7

Penalty:

8

(a) for a body corporate—1,000 penalty units; or

9

(b) for an individual—200 penalty units.

EXPOSURE DRAFT

Statutory management and winding up **Part 7**
Simplified outline **Division 1**

Section 68

1 **Part 7—Statutory management and winding up**

2 **Division 1—Simplified outline**

3 **68 Simplified outline of this Part**

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Part 7 Statutory management and winding up

Division 2 Statutory management

Section 69

1 **Division 2—Statutory management**

2 **Subdivision A—When statutory management can occur**

3 **69 Statutory management**

- 4 (1) APRA may take control of a regulated entity's business or appoint
5 an administrator to take control of a regulated entity's business if:
6 (a) the entity informs APRA that the entity considers that it is
7 likely to become unable to meet its obligations or that it is
8 about to suspend payment; or
9 (b) APRA considers that, in the absence of external support:
10 (i) the entity may become unable to meet its obligations; or
11 (ii) the entity may suspend payment; or
12 (iii) it is likely that the entity will be unable to carry on
13 regulated business in Australia consistently with the
14 interests of its customers; or
15 (iv) it is likely that the entity will be unable to carry on
16 regulated business in Australia consistently with the
17 stability of the financial system in Australia; or
18 (c) the entity becomes unable to meet its obligations or suspends
19 payment; or
20 (d) an external administrator has been appointed to a holding
21 company of the entity (or a similar appointment has been
22 made in a foreign country in respect of such a holding
23 company), and APRA considers that the appointment poses a
24 significant threat to:
25 (i) the operation or soundness of the entity; or
26 (ii) the interests of customers of the entity; or
27 (iii) the interests of end users of relevant PS money of the
28 entity; or
29 (iv) the stability of the financial system in Australia; or
30 (e) if the entity is a foreign regulated entity:
31 (i) an application for the appointment of an external
32 administrator of the foreign regulated entity, or for a

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- 1 similar procedure in respect of the foreign regulated
2 entity, has been made in a foreign country; or
- 3 (ii) an external administrator has been appointed to the
4 foreign regulated entity, or a similar appointment has
5 been made in respect of the foreign regulated entity, in a
6 foreign country.
- 7 (2) The rules may specify that a particular form of support for a
8 regulated entity is not to be considered external support for the
9 purposes of paragraph (1)(b).
- 10 (3) APRA may take any of the actions mentioned in subsection (4) in
11 relation to a body corporate (the *target body corporate*) if:
- 12 (a) the target body corporate is any of the following:
- 13 (i) a registered NOHC of a regulated entity (the *relevant*
14 *entity*);
- 15 (ii) a subsidiary of a registered NOHC of a regulated entity
16 (also the *relevant entity*);
- 17 (iii) a subsidiary of a regulated entity (also the *relevant*
18 *entity*); and
- 19 (b) the condition in subsection (5), (6) or (7) is satisfied; and
- 20 (c) the target body corporate is incorporated in Australia; and
- 21 (d) the target body corporate is not a body corporate of a kind
22 specified in rules (if any) made for the purposes of this
23 paragraph.
- 24 (4) The actions are as follows:
- 25 (a) taking control of the business of the target body corporate;
- 26 (b) appointing an administrator to take control of the business of
27 the target body corporate.
- 28 (5) The condition in this subsection is satisfied if:
- 29 (a) either:
- 30 (i) a statutory manager has taken control of the relevant
31 entity; or
- 32 (ii) the conditions in any or all of paragraphs (1)(a), (b), (c),
33 (d) or (e) are satisfied in relation to the relevant entity,

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- 1 (ii) a registered NOHC of the relevant entity;
2 (iii) a relevant group of bodies corporate of which the
3 relevant entity is a member;
4 (iv) a particular member or particular members of such a
5 group.
- 6 (8) If:
7 (a) APRA is in control of a body corporate's business under this
8 Subdivision—APRA is the *statutory manager* of the body
9 corporate; or
10 (b) an administrator appointed by APRA is in control of a body
11 corporate's business under this Subdivision—the
12 administrator is the *statutory manager* of the body corporate.
- 13 (9) If APRA appoints 2 or more statutory managers of a body
14 corporate, or appoints one or more additional statutory managers of
15 a body corporate:
16 (a) the functions and powers under this Act of a statutory
17 manager of the body corporate may be performed or
18 exercised by:
19 (i) all of the statutory managers of the body corporate
20 acting jointly; or
21 (ii) each of the statutory managers of the body corporate
22 acting individually (except to the extent (if any)
23 specified in a notice given by APRA under
24 paragraph (b)); and
25 (b) at the time of appointment, APRA may give all of the
26 statutory managers of the body corporate a notice in writing
27 for the purposes of subparagraph (a)(ii), specifying limits or
28 conditions on their ability to perform functions and exercise
29 powers individually; and
30 (c) treat a reference in this Act to a statutory manager as being a
31 reference to whichever one or more of those statutory
32 managers the case requires.
- 33 (10) To avoid doubt, this section applies to a body corporate that is, or
34 becomes, a Chapter 5 body corporate (within the meaning of the

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1 *Corporations Act 2001*) in the same way as this section applies to
2 any other body corporate.

3 **Subdivision B—Start and end of statutory management**

4 **70 Start of control of body corporate’s business by statutory** 5 **manager**

6 (1) After the decision that a statutory manager will take control of a
7 body corporate’s business is made, APRA must give the body
8 corporate written notice that the statutory manager will take, or is
9 taking, control of the business.

10 Note: Subsections 86(4) and 96(3) also require APRA to give notice of the
11 taking of control.

12 (2) A statutory manager takes control of a body corporate’s business:
13 (a) at the time specified in a notice under this section as the time
14 when the statutory manager takes control of the business
15 (which must not be earlier than the notice is given); or
16 (b) if a notice under this section does not specify a time as the
17 time when the statutory manager takes control of the
18 business—at the time the notice is given.

19 (3) A notice under subsection (1) is not a legislative instrument.

20 **71 Statutory managers—termination of control**

21 *Conditions necessary for termination of control*

22 (1) If APRA assumes control of a body corporate’s business or
23 appoints an administrator of a body corporate’s business, APRA
24 must ensure that either it or an administrator of the body
25 corporate’s business has control of the body corporate’s business
26 until:

27 (a) APRA considers that it is no longer necessary for it or an
28 administrator to remain in control of the body corporate’s
29 business; or

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

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

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

6 *Events to precede termination*

- 7 (2) Before making an ultimate termination of control by a statutory
8 manager of a body corporate's business, APRA must:
- 9 (a) ensure that directors of the body corporate have been
10 appointed or elected under the body corporate's constitution
11 at a meeting called by the statutory manager in accordance
12 with the body corporate's constitution; or
 - 13 (b) appoint directors of the body corporate by instrument in
14 writing; or
 - 15 (c) ensure that a liquidator for the body corporate has been
16 appointed.

17 *Power to terminate control*

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

27 *Period of director's appointment*

- 28 (5) If a director is elected or appointed under subsection (2), the
29 director takes office on the termination of the statutory manager's
30 control of the body corporate's business. If the director was
31 appointed by APRA, the director holds office until the body
32 corporate's next annual general meeting, subject to any terms and

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1 conditions imposed by APRA on the director's appointment. If the
2 director was appointed or elected under the body corporate's
3 constitution, the constitution governs the appointment.

4 **Subdivision C—Control of body corporate's business by** 5 **statutory manager**

6 **72 Statutory manager's powers and functions**

7 *Statutory manager's powers and functions include powers and*
8 *functions of board*

9 (1) A statutory manager of a body corporate has the powers and
10 functions of the members of the board of directors of the body
11 corporate (collectively and individually), including the board's
12 powers of delegation.

13 Note: When a statutory manager takes control of the business of a body
14 corporate, the directors of the body corporate cease to hold office (see
15 section 85).

16 *Statutory manager's power to obtain information*

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

23 (3) A person who is or has been an officer of a body corporate
24 commits an offence if:
25 (a) there is a statutory manager of the body corporate; and
26 (b) under subsection (2), the statutory manager requires the
27 person to give information or to produce books, accounts or
28 documents; and
29 (c) the person fails to comply with the requirement.

30 Penalty: Imprisonment for 12 months.

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- 1 (4) An individual is not excused from complying with a requirement
2 under subsection (2) to give information on the ground that doing
3 so would tend to incriminate the individual or make the individual
4 liable to a penalty.
- 5 (5) If:
- 6 (a) before giving information in compliance with a requirement
7 under subsection (2), an individual claims that giving the
8 information might tend to incriminate the individual or make
9 the individual liable to a penalty; and
- 10 (b) giving the information might in fact tend to incriminate the
11 individual or make the individual so liable;
12 the information given in compliance with the requirement is not
13 admissible in evidence against the individual in a criminal
14 proceeding or a proceeding for the imposition of a penalty, other
15 than a proceeding in respect of the falsity of the information.
- 16 (6) Subsections (4) and (5) apply to the production of books, accounts
17 or documents in a corresponding way to the way in which they
18 apply to the giving of information.
- 19 *Statutory manager's power to sell whole or part of body*
20 *corporate's business*
- 21 (7) A statutory manager may sell or otherwise dispose of the whole or
22 any part of the body corporate's business. The sale or disposal may
23 occur on any terms and conditions that the statutory manager
24 considers appropriate.
- 25 *Statutory manager to alter body corporate's constitution etc.*
- 26 (8) A statutory manager may, if the body corporate concerned is
27 registered under the *Corporations Act 2001*, alter the body
28 corporate's constitution, rules or other arrangements for
29 governance if the alteration:
- 30 (a) is necessary or convenient for enabling or facilitating the
31 performance of the statutory manager's functions and duties,
32 or the exercise of the statutory manager's other powers,
33 under this Division in relation to the body corporate; and

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- 1 (b) promotes:
- 2 (i) the protection of customers of the relevant entity
- 3 mentioned in subsection 69(3); and
- 4 (ii) financial system stability in Australia.
- 5 (9) A statutory manager may do an act under subsection (7) or (8)
- 6 despite:
- 7 (a) the *Corporations Act 2001* (without limiting the scope of
- 8 section 184 of this Act); and
- 9 (b) the body corporate's constitution; and
- 10 (c) any contract or arrangement to which the body corporate is
- 11 party; and
- 12 (d) any listing rules of a financial market in whose official list
- 13 the body corporate is included.

14 *Interpretation*

- 15 (10) In this section:

16 *officer*, in relation to a body corporate, has the same meaning as in

17 section 131.

18 **73 Safeguards on exercise of statutory manager's powers and**

19 **functions**

- 20 (1) Despite anything else in this Subdivision, a statutory manager of a
- 21 body corporate (the *body corporate under management*) may not
- 22 perform a function or exercise a power under section 72 if:
- 23 (a) either or both of subsections (2) and (3) of this section apply;
- 24 and
- 25 (b) the performance of the function or the exercise of the power
- 26 is not for the purposes of:
- 27 (i) an act of the statutory manager under subsection 74(1);
- 28 or
- 29 (ii) Part 3 or 4 of the *Financial Sector (Transfer and*
- 30 *Restructure) Act 1999*.
- 31 (2) This subsection applies if:

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- 1 (a) the body corporate under management is not a regulated
2 entity; and
3 (b) the performance or the exercise would result in:
4 (i) the provision of services by the body corporate under
5 management to a related body corporate of the body
6 corporate under management; or
7 (ii) the provision of services by a related body corporate of
8 the body corporate under management to the body
9 corporate under management; or
10 (iii) subject to subsection (4), the transfer of assets between
11 the body corporate under management and another body
12 corporate (otherwise than in the ordinary course of
13 business); and
14 (c) the performance or the exercise is not required or permitted
15 by a binding arrangement that was in existence immediately
16 before the statutory manager started to be in control of the
17 business of the body corporate under management; and
18 (d) the provision or transfer is not for fair value.
- 19 (3) This subsection applies if:
20 (a) the body corporate under management is a registered NOHC
21 of a regulated entity; and
22 (b) the performance or the exercise requires using funds of the
23 body corporate or a subsidiary of the body corporate to
24 increase the level of capital of the entity to a specified level;
25 and
26 (c) the shareholders of the body corporate have not agreed, by
27 ordinary resolution, to that use of the funds.
- 28 (4) Treat the requirement in subparagraph (2)(b)(iii) as not being met
29 if:
30 (a) the body corporate under management is a registered NOHC
31 of a regulated entity; and
32 (b) the transfer of assets mentioned in that subparagraph is a
33 transfer of funds to increase the level of capital of the entity
34 to a specified level; and

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- 1 (c) the shareholders of the body corporate have agreed, by
2 ordinary resolution, to that use of the funds.

3 **74 Statutory manager's additional powers to facilitate** 4 **recapitalisation**

5 *Powers*

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

17 Note: Before doing such an act, the statutory manager will usually need to
18 get and consider a report on the fair value of each share or right
19 concerned: see section 75.

20 *Giving company members notice of exercise of powers*

- 21 (2) As soon as practicable after doing an act described in
22 paragraph (1)(a), (b), (c) or (e) or subsection (3), the statutory
23 manager must give written notice to the persons who were
24 members (under section 231 of the *Corporations Act 2001*) of the
25 company just before the act, identifying the act and explaining its
26 effect on their interests as members.
- 27 (3) One of the acts to which subsection (2) relates is the offering of
28 shares, or rights to acquire shares, in the company for sale under
29 paragraph (1)(d).

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1 *Exercise of powers despite other laws etc.*

- 2 (4) A statutory manager may do an act under subsection (1) despite:
3 (a) the *Corporations Act 2001* (without limiting the scope of
4 section 184 of this Act); and
5 (b) the company's constitution; and
6 (c) any contract or arrangement to which the company is party;
7 and
8 (d) any listing rules of a financial market in whose official list
9 the company is included.

10 **75 Considering report before acting under section 74**

11 *Getting and considering report on fair value of shares or rights*

- 12 (1) Before determining terms for an act under subsection 74(1), the
13 statutory manager must:
14 (a) obtain a report meeting the requirements in subsection (2) of
15 this section on the fair value of the shares or rights concerned
16 from an expert who is not an associate of the statutory
17 manager, or of the company, under Division 2 of Part 1.2 of
18 the *Corporations Act 2001*; and
19 (b) consider the report;
20 unless APRA determines under subsection (8) that this subsection
21 does not apply in relation to that act relating to those shares or
22 rights.

23 *Content of report*

- 24 (2) The report must set out:
25 (a) the amount that is, in the expert's opinion, the fair value for
26 each share or right concerned; and
27 (b) the reasons for forming the opinion; and
28 (c) any relationship between the expert and any of the following
29 persons:
30 (i) the statutory manager;

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- 1 (ii) a person who is an associate of the statutory manager
2 under Division 2 of Part 1.2 of the *Corporations Act*
3 *2001*;
- 4 (iii) the body corporate;
- 5 (iv) a person who is an associate of the body corporate under
6 Division 2 of Part 1.2 of the *Corporations Act 2001*;
7 including any circumstances in which the expert gives them
8 advice, or acts on their behalf, in the proper performance of
9 the functions attaching to the expert's professional capacity
10 or business relationship with them; and
- 11 (d) any financial or other interest of the expert that could
12 reasonably be regarded as being capable of affecting the
13 expert's ability to give an unbiased opinion in relation to the
14 matter being reported on.

15 *Determining fair value of shares*

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

32 *Assumptions for valuation of company*

- 33 (4) The Minister may give the expert written notice of assumptions for
34 the valuation of the company. The Minister may, by further written

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1 notice given to the expert, revoke, but not vary, notice of the
2 assumptions. A notice under this subsection is not a legislative
3 instrument.

4 *Determining fair value of rights*

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

9 *Assumptions for valuation of rights*

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

15 *Contravention does not invalidate act*

16 (7) A contravention of subsection (1), (2), (3), (5) or (9) does not
17 affect the validity of anything done under section 74.

18 *Exemption from subsection (1)*

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

23 (a) customers of:

24 (i) if the company is a regulated entity—the entity; or

25 (ii) if the company is not a regulated entity—the relevant
26 entity mentioned in subsection 69(3); and

27 (b) financial system stability in Australia.

28 (9) APRA must:

29 (a) publish a copy of a determination under subsection (8) in the
30 Gazette; and

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1 (b) give a copy of a determination under subsection (8) to the
2 statutory manager concerned (unless that manager is APRA).

3 (10) A determination made under subsection (8) is not a legislative
4 instrument.

5 **76 Act under section 74 not ground for denial of obligations**

6 (1) This section applies if a body corporate is party to a contract,
7 whether the proper law of the contract is:

- 8 (a) Australian law (including the law of a State or Territory); or
9 (b) law of a foreign country (including the law of part of a
10 foreign country).

11 (2) None of the matters mentioned in subsection (3) allows the
12 contract, or a party to the contract (other than the body corporate),
13 to do any of the following:

- 14 (a) deny any obligation under the contract;
15 (b) accelerate any debt under the contract;
16 (c) close out any transaction relating to the contract;
17 (d) enforce any security under the contract.

18 (3) The matters are as follows:

- 19 (a) a statutory manager of the body corporate doing an act under
20 subsection 74(1) relating to the body corporate;
21 (b) if the body corporate is a member of a relevant group of
22 bodies corporate—a statutory manager of another member of
23 the group doing an act under subsection 74(1) relating to that
24 other member.

25 **77 APRA may require a person to give information etc. for the** 26 **purposes of this Division**

27 *APRA may require person to give information etc.*

28 (1) APRA may require a person, by written notice given to the person,
29 to give APRA information, or documents containing information,

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- 1 relating to the business of a body corporate that has a statutory
2 manager if:
- 3 (a) in a case where the statutory manager is APRA:
- 4 (i) APRA believes, on reasonable grounds, that the person
5 has such information or documents; and
- 6 (ii) APRA requires the information or documents for the
7 purposes of this Division; and
- 8 (b) in a case where the statutory manager is not APRA:
- 9 (i) the statutory manager requests, in writing, that APRA
10 require the person to give the information or documents
11 under this subsection; and
- 12 (ii) APRA believes, on reasonable grounds, that the person
13 has such information or documents; and
- 14 (iii) APRA is satisfied that the statutory manager requires
15 the information or documents for the purposes of this
16 Division.
- 17 (2) The notice:
- 18 (a) must specify a period within which the information or
19 documents must be given to APRA; and
- 20 (b) may specify the form and manner in which the information or
21 documents must be given to APRA.
- 22 (3) The period specified under paragraph (2)(a) must be reasonable in
23 all the circumstances.
- 24 *Offence*
- 25 (4) A person commits an offence if:
- 26 (a) APRA requires the person to give APRA information or
27 documents under subsection (1); and
- 28 (b) the person refuses or fails to give the information or
29 documents as required.
- 30 Penalty: Imprisonment for 12 months or 50 penalty units, or both.

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1 *Self-incrimination*

2 (5) A person is not excused from complying with a requirement under
3 subsection (1) to give information or documents on the ground that
4 doing so would tend to incriminate the individual or make the
5 individual liable to a penalty.

6 (6) However, in the case of an individual:

7 (a) the information or document given; and

8 (b) giving the information or document; and

9 (c) any information, document or thing obtained as a direct or
10 indirect consequence of giving the information or document;

11 are not admissible in evidence against the individual in a criminal
12 proceeding or a proceeding for the imposition of a penalty, other
13 than a proceeding in respect of the falsity of the information or
14 document.

15 *Section 72 not limited*

16 (7) This section does not limit section 72.

17 **78 Administrator in control—additional powers to recommend** 18 **action by APRA**

19 *Types of recommendation*

20 (1) An administrator of a body corporate's business may make any of
21 the following recommendations to APRA, by instrument in writing
22 given to APRA:

23 (a) that APRA make a particular direction under Division 2 of
24 Part 9 or subsection 81(3) in respect of the body corporate;

25 (b) that APRA apply for the body corporate to be wound up;

26 (c) if the body corporate is a registered entity—that APRA
27 cancel the entity's registration under subsection 21(2);

28 (d) if the body corporate is a registered NOHC—that APRA
29 cancel the registered NOHC's registration under
30 subsection 25(2).

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1 *Effect of recommendation*

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

5 **79 Statutory manager's liabilities and duties**

6 *Immunity*

- 7 (1) A statutory manager, or a person acting on behalf of a statutory
8 manager, is not subject to any liability (whether civil or criminal)
9 in respect of anything done, or omitted to be done, in the exercise
10 or performance, or the purported exercise or performance, of
11 powers, functions or duties conferred or imposed on the statutory
12 manager by or under this Act.
- 13 (2) Subsection (1) does not apply to an act or omission in bad faith.
- 14 (3) To avoid doubt, a statutory manager is not liable under
15 section 588G, 588GAB or 588GAC of the *Corporations Act 2001*
16 in respect of anything done, or omitted to be done, in the exercise
17 or performance, or the purported exercise or performance, of
18 powers, functions or duties conferred or imposed on the statutory
19 manager by or under this Act. This subsection does not limit the
20 scope of subsection (1).

21 *Signpost to secrecy obligations*

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

25 **80 Transaction by statutory manager not voidable under** 26 **section 588FE of the *Corporations Act 2001***

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

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

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

11 **81 Administrator in control—additional duties**

12 *Duty to report to APRA on request*

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

18 *Duty to report to APRA on termination of appointment*

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

25 *Duty to follow directions by APRA*

- 26 (3) APRA may give an administrator of a body corporate's business a
- 27 direction relating to the control of the body corporate's business,
- 28 and may alter such a direction. If a direction (including an altered
- 29 direction) is given to an administrator by APRA, the administrator
- 30 must:
- 31 (a) act in accordance with the direction; or

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- 1 (b) immediately provide to APRA information relating to the
2 control of the body corporate's business and request APRA
3 to alter the direction.
- 4 (4) If an administrator of a body corporate's business requests APRA
5 to alter a direction and APRA considers the request then confirms
6 the direction, the administrator must act in accordance with the
7 direction.

8 **82 Administrator in control—additional duties where action may**
9 **affect financial system stability in Australia**

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

22 **83 Administrator in control—additional duties where action may**
23 **affect financial system stability in New Zealand**

- 24 (1) If an administrator of a body corporate's business has reasonable
25 cause to believe that an action that the administrator proposes to
26 take is an action that is likely to have a detrimental effect on
27 financial system stability in New Zealand, the administrator must:
28 (a) notify APRA as soon as practicable; and
29 (b) obtain APRA's written consent before taking the action.

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- 1 (2) The administrator is not required to comply with subsection (1) if
2 the administrator is satisfied that it is not reasonably practicable to
3 do so, having regard to urgency or other similar constraint.
- 4 (3) The performance of a function or the exercise of a power by an
5 administrator is not invalid merely because of a failure by the
6 administrator to comply with this section.
- 7 (4) If APRA receives a notice under paragraph (1)(a), it must provide
8 details of the notice to every prescribed New Zealand authority that
9 APRA considers to be relevant in the circumstances before
10 granting written consent to the administrator.
- 11 (5) APRA is not required to comply with subsection (4) if APRA is
12 satisfied that it is not reasonably practicable to do so, having regard
13 to urgency or other similar constraint.
- 14 (6) The performance of a function or the exercise of a power by APRA
15 is not invalid merely because of a failure by APRA to comply with
16 this section.
- 17 (7) An administrator of a body corporate's business may consult a
18 prescribed New Zealand authority about whether an action the
19 administrator proposes to take is likely to have a detrimental effect
20 on financial system stability in New Zealand.

21 **84 Termination of administrator's appointment**

- 22 (1) APRA may terminate the appointment of an administrator of a
23 body corporate's business and either appoint another person as
24 administrator of the body corporate's business or itself take control
25 of the body corporate's business if:
26 (a) the administrator contravenes a requirement of this Division;
27 or
28 (b) APRA considers such action necessary to:
29 (i) facilitate the resolution of the body corporate, a relevant
30 group of bodies corporate of which the body corporate
31 is a member, or another member of such a group; or

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Statutory management and winding up **Part 7**

Statutory management **Division 2**

Section 85

- 1 (ii) if the body corporate is a regulated entity—protect the
2 interests of customers of the entity; or
3 (iii) promote financial system stability in Australia.
- 4 (2) The terms and conditions of an administrator’s appointment may
5 provide for termination in circumstances in addition to those
6 mentioned in subsection (1).
- 7 (3) If:
8 (a) APRA is the statutory manager of a body corporate; and
9 (b) the requirement in paragraph (1)(b) is satisfied;
10 it may cease to be the statutory manager of the body corporate and
11 appoint a person as administrator of the body corporate’s business.
- 12 (4) This section has effect subject to section 71.

13 **85 Effect on directors of statutory manager taking control of a body** 14 **corporate’s business**

- 15 (1) The directors of a body corporate cease to hold office when a
16 statutory manager takes control of the body corporate’s business.
- 17 Note: For the definition of *director*, see subsection (7).
- 18 (2) A director of a body corporate must not be appointed or elected
19 while a statutory manager is in control of the body corporate’s
20 business unless the appointment is made under subsection 71(2).
- 21 (3) If a person who ceased to hold office under subsection (1), or a
22 purported director of the body corporate appointed or elected in
23 contravention of subsection (2), purports to act in relation to the
24 body corporate’s business while a statutory manager has control of
25 the body corporate’s business, those acts are invalid and of no
26 effect.
- 27 (4) Subsections (1), (2) and (3) do not apply in relation to a body
28 corporate that is a foreign regulated entity.
- 29 (5) Subsection (6) applies if:

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Part 7 Statutory management and winding up

Division 2 Statutory management

Section 86

- 1 (a) subsections (1), (2) and (3) do not apply in relation to a body
2 corporate because of subsection (4); and
- 3 (b) a statutory manager takes control of the body corporate's
4 business; and
- 5 (c) a director of the body corporate acts, or purports to act in
6 relation to the body corporate's business while the statutory
7 manager has control of the body corporate's business.
- 8 (6) Those acts are invalid and of no effect to the extent that they relate
9 to:
- 10 (a) the Australian business assets and liabilities of the body
11 corporate; or
- 12 (b) the management of the body corporate, to the extent that the
13 management relates to the Australian business assets and
14 liabilities of the body corporate.
- 15 (7) For the purposes of this section, *director* has the same meaning as
16 it has in the *Corporations Act 2001*.

86 Effect on external administrator of statutory manager taking control of a body corporate's business

- 17 (1) The appointment of an external administrator of a body corporate
18 is terminated when a statutory manager takes control of the body
19 corporate's business.
20
21
- 22 (2) An external administrator of a body corporate must not be
23 appointed while a statutory manager is in control of the body
24 corporate's business unless APRA approves the appointment.
- 25 (3) If a person who ceased to be the external administrator of a body
26 corporate under subsection (1), or a purported external
27 administrator of the body corporate appointed in contravention of
28 subsection (2), purports to act in relation to the body corporate's
29 business while a statutory manager has control of the body
30 corporate's business, those acts are invalid and of no effect.
- 31 (4) APRA must inform the external administrator of a body corporate
32 that a statutory manager will take control of the body corporate's

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1 business as soon as possible after the decision that a statutory
2 manager will take control of the body corporate's business is made.
3 However, failure to inform the external administrator does not
4 affect the operation of this section.

5 **87 Moratorium—effect of statutory management on court and**
6 **tribunal proceedings**

- 7 (1) A person cannot begin or continue a proceeding in a court or
8 tribunal covered by subsection (8) in respect of a body corporate if
9 a statutory manager is in control of the body corporate's business.
- 10 (2) Subsection (1) does not apply if:
11 (a) the court or tribunal grants leave for the proceedings to be
12 begun or continued on the ground that the person would be
13 caused hardship if leave were not granted; and
14 (b) the beginning or continuing of the proceedings is in
15 accordance with such terms (if any) as the court or tribunal
16 imposes.
- 17 (3) A person intending to apply for leave of the court or tribunal under
18 paragraph (2)(a) must give APRA at least 10 days notice of the
19 intention to apply (or a shorter period, if the court or tribunal
20 considers that exceptional circumstances make this necessary).
- 21 (4) APRA may apply to the court or tribunal to be joined as a party to
22 the proceedings for leave. If APRA is joined as a party, the court or
23 tribunal must have regard to APRA's views in deciding:
24 (a) whether to grant leave under paragraph (2)(a); and
25 (b) if the court or tribunal decides to grant the leave—whether to
26 impose terms as mentioned in paragraph (2)(b); and
27 (c) if the court or tribunal decides to impose such terms—the
28 nature of those terms.
- 29 (5) Subsection (1) also does not apply if:
30 (a) APRA consents in writing to the proceedings beginning or
31 continuing; or
32 (b) the statutory manager, after considering APRA's views,
33 consents to the proceedings beginning or continuing.

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Part 7 Statutory management and winding up

Division 2 Statutory management

Section 88

- 1 (6) APRA (or the statutory manager) cannot revoke a consent given
2 for the purposes of subsection (5).
- 3 (7) Neither APRA nor the statutory manager is liable to an action or
4 other proceedings for damages in respect of a refusal to give
5 consent under subsection (5).
- 6 (8) A proceeding in a court or tribunal is covered by this subsection in
7 respect of a body corporate if it is any of the following:
8 (a) a proceeding against the body corporate (including a
9 cross-claim or third party claim against the body corporate);
10 (b) a proceeding in relation to property of the body corporate;
11 (c) a proceeding to enforce any security (including a mortgage or
12 charge) granted by the body corporate, or by a related body
13 corporate of the body corporate, over any property that the
14 body corporate owns, uses, possesses, occupies or in which
15 the body corporate otherwise has an interest.
- 16 (9) Subsection (8) does not cover a proceeding in respect of an offence
17 or a contravention of a provision of a law for which a pecuniary
18 penalty (however described) may be imposed.
- 19 (10) In this section, a reference to a tribunal includes a reference to the
20 following:
21 (a) an industrial tribunal;
22 (b) an arbitral tribunal.

88 Moratorium—effect of statutory management on enforcement process regarding property

- 23
24
- 25 (1) No enforcement process in relation to property of a body corporate
26 can be begun or proceeded with if a statutory manager is in control
27 of the body corporate's business.
- 28 (2) Subsection (1) does not apply if:
29 (a) the Federal Court grants leave for the process to be begun or
30 continued on the ground that the person would be caused
31 hardship if leave were not granted; or

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- 1 (b) the beginning or continuing of the process is in accordance
2 with such terms (if any) as the Federal Court imposes.
- 3 (3) A person intending to apply for leave of the Federal Court under
4 paragraph (2)(a) must give APRA at least 10 days notice of the
5 intention to apply (or a shorter period, if the Federal Court
6 considers that exceptional circumstances make this necessary).
- 7 (4) APRA may apply to the Federal Court to be joined as a party to the
8 proceedings for leave. If APRA is joined as a party, the Federal
9 Court must have regard to APRA's views in deciding:
- 10 (a) whether to grant leave under paragraph (2)(a); and
11 (b) if the Federal Court decides to grant the leave—whether to
12 impose terms as mentioned in paragraph (2)(b); and
13 (c) if the Federal Court decides to impose such terms—the
14 nature of those terms.
- 15 (5) Subsection (1) also does not apply if:
- 16 (a) APRA consents to the process beginning or continuing; or
17 (b) the statutory manager consents to the process beginning or
18 continuing.
- 19 (6) APRA (or the statutory manager) cannot revoke a consent given
20 for the purposes of subsection (5).
- 21 (7) Neither APRA nor the statutory manager is liable to an action or
22 other proceedings for damages in respect of a refusal to give
23 consent under subsection (5).

24 **89 Moratorium—effect of statutory management on disposal of** 25 **property**

- 26 (1) A person must not dispose of property if:
- 27 (a) the property is owned by another person; and
28 (b) the other person is a body corporate; and
29 (c) a statutory manager is in control of the body corporate's
30 business.
- 31 (2) Subsection (1) does not apply if:

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Division 2 Statutory management

Section 90

- 1 (a) APRA consents to the disposal; or
2 (b) the statutory manager consents to the disposal.
- 3 (3) Neither APRA nor the statutory manager is liable to an action or
4 other proceedings for damages in respect of a refusal to give
5 consent under subsection (2).

90 Moratorium—restrictions on exercise of third party property rights

- 6 (1) Section 440B of the *Corporations Act 2001* applies during a period
7 in which a statutory manager is in control of a body corporate's
8 business in the same way it applies during the administration of a
9 company.
10
11 (2) For the purposes of this section, treat the reference in
12 paragraph 440B(2)(a) of the *Corporations Act 2001* to the
13 administrator's written consent as being a reference to:
14 (a) the statutory manager's written consent; or
15 (b) APRA's written consent.
16
17 (3) Neither APRA nor a statutory manager is liable to an action or
18 other proceedings for damages in respect of a refusal to give
19 consent as mentioned in subsection (2).
20 (4) This section applies despite sections 87, 88 and 89.

91 Moratorium—effect of statutory management on supply of essential services

- 21 (1) If:
22 (a) a statutory manager is in control of a body corporate's
23 business; and
24 (b) the statutory manager requests, or authorises someone else to
25 request, a person or authority (the *supplier*) to supply an
26 essential service to the body corporate in Australia; and
27 (c) the body corporate owes an amount to the supplier in respect
28 of the supply of the essential service before the day on which
29
30

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- 1 the statutory manager took control of the body corporate's
2 business;
- 3 the supplier must not:
- 4 (d) refuse to comply with the request for the reason only that the
5 amount is owing; or
- 6 (e) make it a condition of the supply of the essential service
7 pursuant to the request that the amount is to be paid.
- 8 (2) In this section:
- 9 *essential service* has the same meaning as in the *Corporations Act*
10 *2001*.

11 **92 Moratorium—effect of statutory management on annual general** 12 **meeting**

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

20 **93 Certain circumstances not grounds for denial of obligations**

- 21 (1) This section applies if a body corporate is party to a contract,
22 whether the proper law of the contract is:
- 23 (a) Australian law (including the law of a State or Territory); or
24 (b) law of a foreign country (including the law of part of a
25 foreign country).
- 26 (2) None of the matters mentioned in subsection (3) allow the contract,
27 or a party to the contract (other than the body corporate), to do any
28 of the following:
- 29 (a) deny any obligations under the contract;
30 (b) accelerate any debt under the contract;

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Division 2 Statutory management

Section 94

- 1 (c) close out any transaction relating to the contract;
2 (d) enforce any security under the contract.
- 3 (3) The matters are as follows:
4 (a) a statutory manager being in control, or being appointed to
5 take control, of the business of the body corporate;
6 (b) if the body corporate is a member of a relevant group of
7 bodies corporate—a statutory manager being in control, or
8 being appointed to take control, of the business of another
9 member of the group.

10 **94 Application of other provisions**

- 11 (1) None of the matters mentioned in subsection (2) affect:
12 (a) the continued operation of other provisions of this Act or the
13 operation of the *Financial Sector (Collection of Data) Act*
14 *2001* or the *Financial Accountability Regime Act 2023* in
15 relation to a body corporate; or
16 (b) the obligation of a body corporate to comply with those other
17 provisions and those Acts.
- 18 (2) The matters are as follows:
19 (a) the appointment of a statutory manager of the body
20 corporate's business under this Division;
21 (b) the fact that a statutory manager is in control of the body
22 corporate's business.
- 23 (3) The *Public Governance, Performance and Accountability Act 2013*
24 does not apply to a body corporate that has a statutory manager.

25 **95 Costs of statutory management**

- 26 (1) APRA's costs (including costs in the nature of remuneration and
27 expenses) of being in control of a body corporate's business, or of
28 having an administrator in control of a body corporate's business,
29 are payable from the body corporate's funds and are a debt due to
30 APRA.

EXPOSURE DRAFT

Statutory management and winding up **Part 7**

Statutory management **Division 2**

Section 96

- 1 (2) Despite anything contained in any law relating to the winding-up
2 of companies, debts due to APRA by a body corporate under
3 subsection (1) have priority in a winding-up of the body corporate
4 over all other unsecured debts.

5 **96 APRA must report to the Minister and publish information about**
6 **statutory management**

7 *Reports to the Minister*

- 8 (1) If the Minister requests APRA to give the Minister a written report
9 concerning the activities of statutory managers in respect of
10 specified bodies corporate or in respect of a specified period,
11 APRA must give the Minister such a written report within a
12 reasonable time after the Minister requests it.
- 13 (2) If a statutory manager takes control of a body corporate's business
14 during a financial year, or if there is an ultimate termination of
15 control during a financial year, APRA must give the Minister a
16 written report within a reasonable time after the end of the
17 financial year concerning activities of all statutory managers and
18 each ultimate termination of control that occurred during that
19 financial year.

20 *Requirement to publish notices in Gazette*

- 21 (3) If APRA:
22 (a) takes control of a body corporate's business; or
23 (b) appoints an administrator of a body corporate's business; or
24 (c) makes an ultimate termination of control in respect of a body
25 corporate's business;
26 APRA must publish notice of that fact in the Gazette. However,
27 mere failure to publish such a notice does not affect the validity of
28 the act.

EXPOSURE DRAFT

Part 7 Statutory management and winding up

Division 2 Statutory management

Section 97

1 **97 Exceptions to Part IV of the *Competition and Consumer Act 2010***

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

- 5 (a) the acquisition of assets in a sale or disposal of the whole or
6 part of the business of a body corporate under this Division
7 by a statutory manager in control of the body corporate's
8 business (whether the assets are shares in another body
9 corporate or other assets);
- 10 (b) the acquisition of shares in a body corporate as a direct result
11 of:
- 12 (i) the issue or sale of the shares under this Division by a
13 statutory manager in control of the body corporate's
14 business; or
- 15 (ii) the exercise of a right to acquire shares that was issued
16 or sold under this Division by a statutory manager in
17 control of the body corporate's business.

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1 **Division 3—External administrators**

2 **98 Involving APRA in proposed appointment of external**
3 **administrators of regulated entities or registered NOHCs**

- 4 (1) At least one week before a person other than APRA:
- 5 (a) makes an application to a court under Chapter 5 of the
6 *Corporations Act 2001* for the appointment of an external
7 administrator of a regulated entity or registered NOHC; or
8 (b) makes another kind of application (whether or not to a court)
9 for the appointment of an external administrator of a
10 regulated entity or registered NOHC; or
11 (c) appoints an external administrator of a regulated entity or
12 registered NOHC (otherwise than as the result of an
13 application made by another person);
- 14 the person must give APRA notice, in the approved form, that the
15 person proposes to make the application or appointment.

16 Note: For more on approved forms, see section 188.

- 17 (2) Subsection (1) does not apply if APRA gives the person written
18 notice, before the person makes the application or appointment,
19 that APRA consents to the person making the application or
20 appointment.
- 21 (3) APRA is entitled to be heard on the application.
- 22 (4) After receiving the notice, APRA may request the person to
23 provide details of the proposed application.

24 *Offence*

- 25 (5) A person (other than APRA) commits an offence of strict liability
26 if:
- 27 (a) the person:
- 28 (i) makes an application to a court under Chapter 5 of the
29 *Corporations Act 2001* for the appointment of an

EXPOSURE DRAFT

Part 7 Statutory management and winding up

Division 3 External administrators

Section 98

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

22 Penalty: 60 penalty units.

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Statutory management and winding up **Part 7**
Restructuring of regulated entities **Division 4**

Section 99

1 **Division 4—Restructuring of regulated entities**

2 **99 Restructuring of regulated entities**

3 (1) If consent has been given under this section to an arrangement,
4 agreement or reconstruction, the Minister must arrange for notice
5 of the consent to be published in the Gazette as soon as practicable.

6 (2) A regulated entity, other than a foreign regulated entity, commits
7 an offence if:

8 (a) the regulated entity:

9 (i) enters into an arrangement or agreement for any sale or
10 disposal of its business by amalgamation or otherwise,
11 or for the carrying on of business in partnership with
12 another regulated entity; or

13 (ii) effects a reconstruction of the regulated entity; and

14 (b) the Minister did not give prior consent in writing to the
15 regulated entity entering into the arrangement or agreement
16 or effecting the reconstruction.

17 Note: An individual can commit an ancillary offence that is either an offence
18 against this subsection or an offence relating to this subsection (see
19 Part 2.4 of the *Criminal Code*).

20 Penalty:

21 (a) for a body corporate—1,000 penalty units; or

22 (b) for an individual—200 penalty units.

23 (3) An offence against subsection (2) is an indictable offence.

24 (4) Any such arrangement, agreement or reconstruction, and any such
25 sale or disposal in pursuance of any such arrangement or
26 agreement, entered into without the prior consent of the Minister is
27 void and of no effect.

28 (5) The consent of the Minister under subsection (2) shall not be
29 unreasonably withheld.

EXPOSURE DRAFT

Part 7 Statutory management and winding up

Division 4 Restructuring of regulated entities

Section 99

- 1 (6) In making a decision whether to consent to an arrangement,
2 agreement or reconstruction, the Minister must take the national
3 interest into account.
- 4 (7) A foreign regulated entity commits an offence if:
5 (a) there is a proposal that involves the foreign regulated entity:
6 (i) entering into an arrangement or agreement for any sale
7 or disposal of its business by amalgamation or
8 otherwise, or for the carrying on of business in
9 partnership with another regulated entity; or
10 (ii) effecting a reconstruction of the foreign regulated
11 entity; and
12 (b) the foreign regulated entity does not give the Minister
13 reasonable notice, in writing, of the proposal.
- 14 Note: An individual can commit an ancillary offence that is either an offence
15 against this subsection or an offence relating to this subsection (see
16 Part 2.4 of the *Criminal Code*).
- 17 Penalty:
18 (a) for a body corporate—1,000 penalty units; or
19 (b) for an individual—200 penalty units.
- 20 (8) An offence against subsection (7) is an indictable offence.
- 21 (9) The Minister may, in writing, delegate all or any of the Minister's
22 powers under this Division to:
23 (a) APRA, an APRA member or an APRA staff member; or
24 (b) ASIC, a member of ASIC or a staff member (as defined in
25 subsection 5(1) of the *Australian Securities and Investments*
26 *Commission Act 2001*) only in the case of a demutualisation
27 of a regulated entity; or
28 (c) an officer of the Department.
- 29 (10) The Minister may, by legislative instrument, determine guidelines
30 as to acceptable standards of disclosure of information by a
31 regulated entity (other than a foreign regulated entity) to its
32 members in respect of a proposed demutualisation of the regulated
33 entity.

EXPOSURE DRAFT

Statutory management and winding up **Part 7**
Restructuring of regulated entities **Division 4**

Section 100

- 1 (11) The Minister must consider whether a regulated entity has
2 complied with the guidelines (if any) in deciding whether to give a
3 consent, for the purposes of paragraph (2)(b), to the regulated
4 entity effecting a demutualisation.
- 5 (12) In making a determination under subsection (10), the Minister must
6 consult with APRA and ASIC.
- 7 (13) In this section:
- 8 *demutualisation* has a meaning affected by rules made for the
9 purposes of this subsection.
- 10 *reconstruction*, of a regulated entity, includes a reference to a
11 demutualisation of the regulated entity.
- 12 (14) Subsections (10) to (13) do not limit the rest of this section. In
13 particular, those subsections do not limit the matters that the
14 Minister may take into account in deciding whether to give a
15 consent, for the purposes of paragraph (2)(b), to a regulated entity
16 effecting a demutualisation.

100 Conditions on consent to restructure a regulated entity

- 17
- 18 (1) The Minister's consent under subsection 99(2) is subject to the
19 conditions (if any) imposed by the Minister on the consent.
- 20 (2) The Minister may, by written notice given to the person who has
21 been given the consent:
- 22 (a) impose conditions, or further conditions, on the consent; or
23 (b) revoke or vary any condition imposed on the consent; or
24 (c) revoke the consent if the Minister is satisfied that there has
25 been a contravention of a condition to which the consent is
26 subject.
- 27 (3) The Minister must arrange for a copy of a notice that has been
28 given under subsection (2) to be published in the Gazette as soon
29 as practicable.

EXPOSURE DRAFT

Part 7 Statutory management and winding up

Division 4 Restructuring of regulated entities

Section 100

- 1 (4) The Minister's powers under subsection (2) may be exercised on
2 the Minister's own initiative. The Minister's powers under
3 paragraph (2)(a) or (b) may be exercised on application made to
4 the Minister by the person who has been given the consent.

EXPOSURE DRAFT

1 **Division 5—Winding up**

2 **101 APRA’s powers to apply for regulated entity to be wound up**

3 *Power to apply for regulated entity to be wound up*

- 4 (1) APRA may apply to the Federal Court for an order that a regulated
5 entity be wound up if APRA considers that the entity is insolvent
6 and could not be restored to solvency within a reasonable period.
- 7 (2) To avoid doubt, subsection (1) applies whether or not a regulated
8 entity statutory manager is in control of the entity’s business.
- 9 (3) The application is to be made under section 459P of the
10 *Corporations Act 2001*.
- 11 (4) The winding up of the entity is to be conducted in accordance with
12 the *Corporations Act 2001*.
- 13 (5) If APRA makes an application under subsection (1), APRA must
14 inform the Minister of the application as soon as possible.

15 **102 Involving APRA in applications by liquidator**

- 16 (1) Before making an application to a court in relation to a matter
17 arising under:
18 (a) the winding-up of a regulated entity or registered NOHC; or
19 (b) the proposed winding-up of a regulated entity or registered
20 NOHC;
21 a liquidator must give APRA notice, in the approved form, that the
22 liquidator proposes to make the application.
- 23 Note: For more on approved forms, see section 188.
- 24 (2) The notice must include details of the proposed application.
- 25 (3) APRA is entitled to be heard on the application.

EXPOSURE DRAFT

Part 7 Statutory management and winding up

Division 5 Winding up

Section 103

1 **103 Application by APRA for directions**

- 2 (1) APRA may apply to the Federal Court for directions regarding any
3 matter arising under:
- 4 (a) the winding-up of a regulated entity or registered NOHC
5 (whether the winding-up occurs as a result of an application
6 made under the *Corporations Act 2001* or by APRA under
7 section 101 of this Act); or
- 8 (b) the proposed winding-up of a regulated entity or registered
9 NOHC (whether the winding-up will occur as a result of an
10 application made, or proposed to be made, under the
11 *Corporations Act 2001* or by APRA under section 101 of this
12 Act).
- 13 (2) APRA must give the liquidator written notice that APRA proposes
14 to make the application.
- 15 (3) The notice must include details of the proposed application.
- 16 (4) The liquidator is entitled to be heard on the application.

17 **104 APRA may request information from liquidator**

- 18 (1) APRA may request a liquidator of a regulated entity or registered
19 NOHC in writing to give APRA, within a reasonable time
20 specified in the request, specified information in writing about:
- 21 (a) the winding-up of the entity or NOHC (whether the
22 winding-up occurs as a result of an application made under
23 the *Corporations Act 2001* or by APRA under section 101 of
24 this Act) and the other affairs of the entity or NOHC; or
- 25 (b) the proposed winding-up of the entity or NOHC (whether the
26 winding-up will occur as a result of an application made, or
27 proposed to be made, under the *Corporations Act 2001* or by
28 APRA under section 101 of this Act) and the other affairs of
29 the entity or NOHC.
- 30 (2) The liquidator must comply with the request.

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

1 **Part 8—Governance**
2

3 **105 Simplified outline of this Part**

4

<i>to be drafted</i>

5 **106 Disqualified persons must not act for major SVF providers**

- 6 (1) A person commits an offence if:
7 (a) the person is a disqualified person; and
8 (b) the person is or acts as a director, senior manager or auditor
9 of a major SVF provider that is a regulated entity; and
10 (c) for a person who is a disqualified person only because the
11 person was disqualified under section 108—the person is
12 disqualified from being or acting as that director, senior
13 manager or auditor (as the case requires).

14 Penalty: Imprisonment for 2 years.

- 15 (2) A person commits an offence of strict liability if:
16 (a) the person is a disqualified person; and
17 (b) the person is or acts as a director, senior manager or auditor
18 of a major SVF provider that is a regulated entity; and
19 (c) for a person who is a disqualified person only because the
20 person was disqualified under section 108—the person is
21 disqualified from being or acting as that director, senior
22 manager or auditor (as the case requires).

23 Penalty: 60 penalty units.

- 24 (3) A body corporate commits an offence if:
25 (a) a person is a disqualified person; and
26 (b) the person is or acts as a director, senior manager or auditor
27 of a major SVF provider that is a regulated entity; and

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Part 8 Governance

Section 107

- 1 (c) for a person who is a disqualified person only because the
2 person was disqualified under section 108—the person is
3 disqualified from being or acting as that director, senior
4 manager or auditor (as the case requires); and
5 (d) in any case—the body corporate allows the person to be or
6 act as a director, senior manager or auditor (as the case
7 requires).

8 Penalty: 250 penalty units.

- 9 (4) A body corporate commits an offence of strict liability if:
10 (a) a person is a disqualified person; and
11 (b) the person is or acts as a director, senior manager or auditor
12 of a major SVF provider that is a regulated entity; and
13 (c) for a person who is a disqualified person only because the
14 person was disqualified under section 108—the person is
15 disqualified from being or acting as that director, senior
16 manager or auditor (as the case requires); and
17 (d) in any case—the body corporate allows the person to be or
18 act as a director, senior manager or auditor (as the case
19 requires).

20 Penalty: 60 penalty units.

- 21 (5) A failure to comply with this section does not affect the validity of
22 an appointment or transaction.
23 (6) Subsections (1) to (5) have no effect until the end of the 3-month
24 period that begins at the commencement of this section.

25 **107 Who is a *disqualified person*?**

- 26 (1) A person is a *disqualified person* if, at any time (whether before or
27 after the commencement of this section):
28 (a) the person has been convicted of an offence against or arising
29 out of:
30 (i) this Act; or
31 (ii) the *Banking Act 1959*; or
32 (iii) the *Financial Sector (Collection of Data) Act 2001*; or

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- 1 (iv) the *Financial Accountability Regime Act 2023*; or
2 (v) the *Corporations Act 2001*, the Corporations Law that
3 was previously in force, or any law of a foreign country
4 that corresponds to that Act or to that Corporations
5 Law; or
6 (b) the person has been convicted of an offence against or arising
7 out of a law in force in Australia, or the law of a foreign
8 country, where the offence related or relates to dishonest
9 conduct, or to conduct relating to a company that carries on
10 business in the financial sector; or
11 (c) the person has been or becomes bankrupt; or
12 (d) the person has applied to take the benefit of a law for the
13 relief of bankrupt or insolvent debtors; or
14 (e) the person has compounded with the person's creditors; or
15 (f) the Federal Court has disqualified the person under
16 section 108; or
17 (g) the person has been disqualified under the law of a foreign
18 country from managing, or taking part in the management of,
19 an entity that carries on the business of banking or insurance
20 or otherwise deals in financial matters.

21 Note: The Federal Court may determine that a person is not a disqualified
22 person (see section 109).

- 23 (2) A reference in subsection (1) to a person who has been convicted
24 of an offence includes a reference to a person in respect of whom
25 an order has been made relating to the offence under:
26 (a) section 19B of the *Crimes Act 1914*; or
27 (b) a corresponding provision of a law of a State, a Territory or a
28 foreign country.
- 29 (3) Nothing in this section affects the operation of Part VIIC of the
30 *Crimes Act 1914* (which includes provisions that, in certain
31 circumstances, relieve persons from the requirement to disclose
32 spent convictions and require persons aware of such convictions to
33 disregard them).

EXPOSURE DRAFT

Part 8 Governance

Section 108

1 **108 Court power of disqualification**

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

6 (a) the person is not a fit and proper person to be or act as such a
7 person; and

8 (b) the disqualification is justified.

9 (2) For the purposes of subsection (1), the Court may disqualify a
10 person from being or acting as a director, senior manager or auditor
11 of:

12 (a) a particular major SVF provider that is a regulated entity; or

13 (b) a class of such providers; or

14 (c) any such provider;

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

17 (a) any matters specified in the rules for the purposes of this
18 paragraph; and

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

21 (c) any other matters the Court considers relevant.

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

24 (a) if the application is for the person to be disqualified from
25 being or acting as a director or senior manager—the person’s
26 conduct in relation to the management, business or property
27 of any corporation; and

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

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

- 1 (5) As soon as practicable after the Court disqualifies a person under
2 this section, APRA must cause particulars of the disqualification:
3 (a) to be given to the major SVF provider concerned; and
4 (b) to be published in the Gazette.

5 **109 Court power to revoke or vary a disqualification etc.**

- 6 (1) A disqualified person, or APRA, may apply to the Federal Court
7 for:
8 (a) if the person is a disqualified person only because the person
9 was disqualified under section 108—a variation or a
10 revocation of the order made under that section; or
11 (b) otherwise—an order that the person is not a disqualified
12 person.
- 13 (2) If the Court revokes an order under paragraph (1)(a) or makes an
14 order under paragraph (1)(b), then, despite section 107, the person
15 is not a *disqualified person*.
- 16 (3) At least 21 days before commencing the proceedings, written
17 notice of the application must be lodged:
18 (a) if the disqualified person makes the application—by the
19 person with APRA; or
20 (b) if APRA makes the application—by APRA with the
21 disqualified person.
- 22 (4) An order under paragraph (1)(b) may be expressed to be subject to
23 exceptions and conditions determined by the Court.

24 **110 Privilege against exposure to penalty—disqualification under**
25 **section 108**

26 *Proceedings*

- 27 (1) In the case of any proceeding under, or arising out of, this Act, a
28 person is not entitled to refuse or fail to comply with a
29 requirement:
30 (a) to answer a question or give information; or

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Part 8 Governance

Section 110

- 1 (b) to produce books, accounts or other documents; or
2 (c) to do any other act;
3 on the ground that the answer or information, production of the
4 book or other thing, or doing that other act, as the case may be,
5 might tend to make the person liable to a penalty by way of a
6 disqualification under section 108.
- 7 (2) Subsection (1) applies whether or not the person is a defendant in,
8 or a party to, the proceeding or any other proceeding.
- 9 *Statutory requirements*
- 10 (3) A person is not entitled to refuse or fail to comply with a
11 requirement under this Act:
12 (a) to answer a question or give information; or
13 (b) to produce books, accounts or other documents; or
14 (c) to do any other act;
15 on the ground that the answer or information, production of the
16 book or other thing, or doing that other act, as the case may be,
17 might tend to make the person liable to a penalty by way of a
18 disqualification under section 108.
- 19 *Admissibility*
- 20 (4) Subsections 72(4), 77(6) and 163(2) do not apply to a proceeding
21 for the imposition of a penalty by way of a disqualification under
22 section 108.
- 23 *Other provisions*
- 24 (5) Subsections (1) and (3) of this section have effect despite anything
25 in:
26 (a) any other provision of this Act; or
27 (b) section 87 of the Regulatory Powers Act (as that section
28 applies because of section 166 of this Act); or
29 (c) the *Administrative Review Tribunal Act 2024*.

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1 *Definition*
2 (6) In this section:
3 *penalty* includes forfeiture.

EXPOSURE DRAFT

Part 9 APRA’s direction powers

Division 1 Simplified outline

Section 111

1 **Part 9—APRA’s direction powers**

2 **Division 1—Simplified outline**

3 **111 Simplified outline of this Part**

4

to be drafted

EXPOSURE DRAFT

1 **Division 2—General direction powers**

2 **112 APRA may give directions in certain circumstances**

- 3 (1) APRA may give a body corporate that is a regulated entity or a
4 registered NOHC a direction of a kind specified in subsection (10)
5 if APRA has reason to believe that:
- 6 (a) the body corporate has contravened a provision of:
 - 7 (i) this Act; or
 - 8 (ii) the *Financial Sector (Collection of Data) Act 2001*; or
 - 9 (b) the body corporate has contravened a prudential requirement
10 regulation or a prudential standard; or
 - 11 (c) the body corporate is likely to contravene this Act, a
12 prudential requirement regulation, a prudential standard or
13 the *Financial Sector (Collection of Data) Act 2001*, and the
14 direction is reasonably necessary for one or more prudential
15 matters relating to the body corporate; or
 - 16 (d) the body corporate has contravened a condition or direction
17 under this Act or the *Financial Sector (Collection of Data)*
18 *Act 2001*; or
 - 19 (e) the direction is necessary in the interests of:
 - 20 (i) if the body corporate is a regulated entity—customers of
21 the entity, or end users of relevant PS money of the
22 entity; or
 - 23 (ii) if the body corporate is a registered NOHC that has one
24 or more subsidiaries that are regulated entities—
25 customers of such a subsidiary, or end users of relevant
26 PS money of such a subsidiary; or
 - 27 (f) the body corporate is, or is about to become, unable to meet
28 its liabilities; or
 - 29 (g) there is, or there might be, a material risk to the security of
30 the body corporate's assets; or
 - 31 (h) there has been, or there might be, a material deterioration in
32 the body corporate's financial condition; or

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Part 9 APRA's direction powers
Division 2 General direction powers

Section 112

- 1 (i) the body corporate is conducting its affairs in an improper or
2 financially unsound way; or
3 (j) the failure to issue a direction would materially prejudice the
4 interests of:
5 (i) if the body corporate is a regulated entity—customers of
6 the entity, or end users of relevant PS money of the
7 entity; or
8 (ii) if the body corporate is a registered NOHC that has one
9 or more subsidiaries that are regulated entities—
10 customers of such a subsidiary, or end users of relevant
11 PS money of such a subsidiary; or
12 (k) the body corporate is conducting its affairs in a way that
13 causes or promotes, or may cause or promote, instability in
14 the Australian financial system.
- 15 (2) APRA may give a body corporate that is a regulated entity or is a
16 registered NOHC a direction of a kind specified in subsection (10)
17 if APRA has reason to believe that:
18 (a) a subsidiary of the body corporate has contravened a
19 provision of:
20 (i) this Act; or
21 (ii) the *Financial Sector (Collection of Data) Act 2001*; or
22 (b) a subsidiary of the body corporate has contravened a
23 prudential requirement regulation or a prudential standard; or
24 (c) a subsidiary of the body corporate is likely to contravene this
25 Act, a prudential requirement regulation, a prudential
26 standard or the *Financial Sector (Collection of Data) Act*
27 *2001*; or
28 (d) the direction is in respect of a subsidiary of the body
29 corporate and is necessary in the interests of:
30 (i) if the body corporate is a regulated entity—customers of
31 the entity, or end users of relevant PS money of the
32 entity; or
33 (ii) if the body corporate is a registered NOHC that has one
34 or more subsidiaries that are regulated entities—
35 customers of such a subsidiary, or end users of relevant
36 PS money of such a subsidiary; or

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APRA's direction powers **Part 9**
General direction powers **Division 2**

Section 112

- 1 (e) a subsidiary of the body corporate is, or is about to become,
2 unable to meet the subsidiary's liabilities; or
3 (f) there is, or there might be, a material risk to the security of
4 the assets of a subsidiary of the body corporate; or
5 (g) there has been, or there might be, a material deterioration in
6 the financial condition of a subsidiary of the body corporate;
7 or
8 (h) a subsidiary of the body corporate is conducting the
9 subsidiary's affairs in an improper or financially unsound
10 way; or
11 (i) a subsidiary of the body corporate is conducting the
12 subsidiary's affairs in a way that may cause or promote
13 instability in the Australian financial system; or
14 (j) a subsidiary of the body corporate is conducting the
15 subsidiary's affairs in a way that may cause it to be unable to
16 continue to supply services to:
17 (i) if the body corporate is a regulated entity—the entity; or
18 (ii) if the body corporate is a registered NOHC—any
19 regulated entity that is a subsidiary of the NOHC; or
20 (k) the direction is in respect of a subsidiary of the body
21 corporate and the failure to issue a direction would materially
22 prejudice the interests of:
23 (i) if the body corporate is a regulated entity—customers of
24 the entity, or end users of relevant PS money of the
25 entity; or
26 (ii) if the body corporate is a registered NOHC that has one
27 or more subsidiaries that are regulated entities—
28 customers of such a subsidiary, or end users of relevant
29 PS money of such a subsidiary.
- 30 (3) However, APRA can only make a direction as a result of a ground
31 referred to in paragraph (2)(a), (b), (c), (e), (f), (g), (h) or (j) if
32 APRA considers that the direction is reasonably necessary for one
33 or more prudential matters relating to the body corporate.

EXPOSURE DRAFT

Part 9 APRA's direction powers
Division 2 General direction powers

Section 112

- 1 (4) APRA may give a body corporate that is a subsidiary of a regulated
2 entity or of a registered NOHC a direction of a kind specified in
3 subsection (10) if:
- 4 (a) APRA has given the entity or registered NOHC a direction
5 under subsection (2) because one or more of the grounds
6 referred to in that subsection have been satisfied in respect of
7 the subsidiary; or
- 8 (b) APRA may give the entity or registered NOHC a direction
9 under subsection (2) because one or more of the grounds
10 referred to in that subsection have been satisfied in respect of
11 the subsidiary.
- 12 (5) APRA cannot give a direction under subsection (4) to a body
13 corporate of a kind specified in rules (if any) made for the purposes
14 of this subsection.
- 15 (6) Subsections (1), (2) and (4) do not limit each other.
- 16 (7) The direction must:
- 17 (a) be given by notice in writing to the body corporate; and
18 (b) specify:
- 19 (i) in the case of a direction under subsection (4)—the
20 ground referred to in subsection (2) as a result of which
21 the direction is given; or
- 22 (ii) otherwise—the ground referred to in subsection (1) or
23 (2) as a result of which the direction is given.
- 24 (8) In deciding whether to give a direction under subsection (1), (2) or
25 (4) to a body corporate, APRA may disregard any external support
26 for the body corporate.
- 27 (9) The rules may specify that a particular form of support is not
28 external support for the purposes of subsection (8).
- 29 (10) The kinds of direction that the body corporate may be given are
30 directions to do, or to cause a body corporate that is its subsidiary
31 to do, any one or more of the following:
- 32 (a) to comply with the whole or a part of:
33 (i) this Act; or

EXPOSURE DRAFT

APRA's direction powers **Part 9**
General direction powers **Division 2**

Section 112

- 1 (ii) the *Financial Sector (Collection of Data) Act 2001*;
- 2 (b) to comply with the whole or a part of a condition or direction
- 3 referred to in paragraph (1)(d);
- 4 (c) to comply with the whole or a part of a prudential
- 5 requirement regulation or a prudential standard;
- 6 (d) to order an audit of the affairs of the body corporate, at the
- 7 expense of the body corporate, by an auditor chosen by
- 8 APRA;
- 9 (e) to remove a director or senior manager of the body corporate
- 10 from office;
- 11 (f) to ensure a director or senior manager of the body corporate
- 12 does not take part in the management or conduct of the
- 13 business of the body corporate except as permitted by APRA;
- 14 (g) to appoint a person or persons as a director or senior manager
- 15 of the body corporate for such term as APRA directs;
- 16 (h) to remove any auditor of the body corporate from office and
- 17 appoint another auditor to hold office for such term as APRA
- 18 directs;
- 19 (i) not to give any financial accommodation to any person;
- 20 (j) not to accept the transfer of any amount of funds;
- 21 (k) not to borrow any amount;
- 22 (l) not to accept any payment on account of share capital, except
- 23 payments in respect of calls that fell due before the direction
- 24 was given;
- 25 (m) not to repay any amount paid on shares;
- 26 (n) not to pay a dividend on any shares;
- 27 (o) not to repay any relevant PS money;
- 28 (p) not to pay or transfer any amount or asset to any person, or
- 29 create an obligation (contingent or otherwise) to do so;
- 30 (q) not to undertake any financial obligation (contingent or
- 31 otherwise) on behalf of any other person;
- 32 (r) to make changes to the body corporate's systems, business
- 33 practices or operations;
- 34 (s) to reconstruct, amalgamate or otherwise alter all or part of
- 35 any of the following:

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Part 9 APRA's direction powers
Division 2 General direction powers

Section 112

- 1 (i) the business, structure or organisation of the body
2 corporate;
3 (ii) the business, structure or organisation of the group
4 constituted by the body corporate and its subsidiaries;
5 (t) to use a particular method covered by section 46 or paragraph
6 50(b) to safeguard relevant PS money of the body corporate;
7 (u) to do, or to refrain from doing, anything else in relation to the
8 affairs of the body corporate.

9 A direction under paragraph (p) not to pay or transfer any amount
10 or asset does not apply to the payment or transfer of money
11 pursuant to an order of a court or a process of execution.

12 (11) Without limiting the generality of subsection (10), a direction
13 referred to in a paragraph of that subsection may:

- 14 (a) deal with only some of the matters referred to in that
15 paragraph; or
16 (b) deal with a particular class or particular classes of those
17 matters; or
18 (c) make different provision with respect to different matters or
19 different classes of matters.

20 (12) The kinds of direction that may be given as mentioned in
21 subsection (10) are not limited by any other provision in this Part
22 or any of Parts 2 to 8.

23 (13) The kinds of direction that may be given as mentioned in a
24 particular paragraph of subsection (10) are not limited by any other
25 paragraph of that subsection.

26 (14) Without limiting the generality of paragraph (10)(u), a direction
27 under that paragraph to a foreign regulated entity may be any one
28 or more of the following:

- 29 (a) a direction that the entity act in a way so as to ensure that:
30 (i) a particular asset, or a particular class of assets, of the
31 entity is returned to the control (however described) of
32 the part of the entity's regulated business that is carried
33 on in Australia; or

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- 1 (ii) a particular liability, or a particular class of liabilities, of
2 the entity ceases to be the responsibility (however
3 described) of the part of the entity's regulated business
4 that is carried on in Australia;
- 5 (b) a direction that the entity not act in a way that has the result
6 that:
- 7 (i) a particular asset, or a particular class of assets, of the
8 entity ceases to be under the control (however
9 described) of the part of the entity's regulated business
10 that is carried on in Australia; or
- 11 (ii) a particular liability, or a particular class of liabilities, of
12 the entity becomes the responsibility (however
13 described) of the part of the entity's regulated business
14 that is carried on in Australia.
- 15 (15) The direction may deal with the time by which, or period during
16 which, it is to be complied with.
- 17 (16) The body corporate has power to comply with the direction despite
18 anything in its constitution or any contract or arrangement to which
19 it is a party.
- 20 (17) If the direction requires the body corporate to cause a subsidiary to
21 do, or to refrain from doing, an act or thing:
- 22 (a) the body corporate has power to cause the subsidiary to do,
23 or to refrain from doing, the act or thing; and
- 24 (b) the subsidiary has power to do, or to refrain from doing, the
25 act or thing;
- 26 despite anything in the subsidiary's constitution or any contract or
27 arrangement to which the subsidiary is a party.
- 28 (18) APRA may, by notice in writing to the body corporate, vary the
29 direction if, at the time of the variation, it considers that the
30 variation is necessary and appropriate.
- 31 (19) The direction has effect until APRA revokes it by notice in writing
32 to the body corporate. APRA may revoke the direction if, at the
33 time of revocation, it considers that the direction is no longer
34 necessary or appropriate.

EXPOSURE DRAFT

Part 9 APRA's direction powers
Division 2 General direction powers

Section 113

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

4 Note: *Senior manager* is defined in section 9 of this Act.

5 **113 Direction not grounds for denial of obligations**

6 (1) This section applies if a body corporate is party to a contract,
7 whether the proper law of the contract is:
8 (a) Australian law (including the law of a State or Territory); or
9 (b) law of a foreign country (including the law of part of a
10 foreign country).

11 (2) None of the matters mentioned in subsection (3) allows the
12 contract, or a party to the contract (other than the body corporate),
13 to do any of the following:
14 (a) deny any obligations under the contract;
15 (b) accelerate any debt under the contract;
16 (c) close out any transaction relating to the contract;
17 (d) enforce any security under the contract.

18 This subsection has effect subject to subsections (4) and (5).

19 (3) The matters are as follows:
20 (a) the body corporate being given a direction by APRA under
21 this Division;
22 (b) if the body corporate is a member of a relevant group of
23 bodies corporate—another member of the group being given
24 a direction by APRA under this Division.

25 (4) If the body corporate is prevented from fulfilling its obligations
26 under the contract because of a direction under this Division, other
27 than a direction under paragraph 112(10)(o), the other party or
28 parties to the contract are, subject to any orders made under
29 subsection (5), relieved from obligations owed to the body
30 corporate under the contract.

31 (5) A party to a contract to which subsection (4) applies may apply to
32 the Federal Court for an order relating to the effect on the contract

EXPOSURE DRAFT

APRA's direction powers **Part 9**
General direction powers **Division 2**

Section 114

1 of a direction under this Division. The order may deal with matters
2 including (but not limited to):

- 3 (a) requiring a party to the contract to fulfil an obligation under
4 the contract despite subsection (4); and
5 (b) obliging a party to the contract to take some other action (for
6 example, paying money or transferring property) in view of
7 obligations that were fulfilled under the contract before the
8 direction was made.

9 The order must not require a person to take action that would
10 contravene the direction, or any other direction under this Division.

11 **114 Supply of information about issue and revocation of directions**

12 *Requirement to provide information about direction to the Minister*
13 *and Reserve Bank*

- 14 (1) If the Minister or the Reserve Bank requests APRA to provide
15 information about:
16 (a) any directions under this Division in respect of a particular
17 regulated entity, registered NOHC or other body corporate;
18 or
19 (b) any directions made during a specified period under this in
20 respect of any regulated entities, registered NOHCs or other
21 bodies corporate;
22 APRA must comply with the request.

23 *Power to inform the Minister and Reserve Bank of direction*

- 24 (2) APRA may provide any information that it considers appropriate to
25 the Minister or the Reserve Bank about any directions, or
26 revocations of directions, made under this Division, in respect of
27 any regulated entity, registered NOHC or other body corporate, at
28 any time.

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 2 General direction powers

Section 114

1 *Requirement to inform the Minister and Reserve Bank of*
2 *revocation of direction if informed of making of direction*

3 (3) If APRA provides the Minister or the Reserve Bank with
4 information about a direction and then later revokes the direction,
5 APRA must notify that person of the revocation of the direction as
6 soon as practicable after the revocation. Failure to notify the person
7 does not affect the validity of the revocation.

EXPOSURE DRAFT

APRA's direction powers **Part 9**
Recapitalisation directions **Division 3**

Section 115

1 **Division 3—Recapitalisation directions**

2 **115 Who this Division applies to**

- 3 (1) This Division applies to a regulated entity that:
- 4 (a) is a company that:
- 5 (i) is registered under the *Corporations Act 2001*; and
- 6 (ii) has a share capital; and
- 7 (b) does not have a statutory manager.
- 8 (2) Subsections (3) and (4) apply if:
- 9 (a) APRA has given a recapitalisation direction to a regulated
- 10 entity under subsection 116(1) (the ***primary recapitalisation***
- 11 ***direction***); and
- 12 (b) the entity is a subsidiary of a NOHC/NOHC subsidiary; and
- 13 (c) the NOHC/NOHC subsidiary is a company that:
- 14 (i) is registered under the *Corporations Act 2001*; and
- 15 (ii) has a share capital; and
- 16 (d) the NOHC/NOHC subsidiary does not have a statutory
- 17 manager.
- 18 (3) This Division applies to the NOHC/NOHC subsidiary in the same
- 19 way that it does to a regulated entity.
- 20 (4) However, disregard the following provisions in applying this
- 21 Division to the NOHC/NOHC subsidiary:
- 22 (a) subsection 116(1);
- 23 (b) subsection 117(1).
- 24 (5) In this section:
- 25 ***NOHC/NOHC subsidiary*** means a body corporate that is any of
- 26 the following:
- 27 (a) a registered NOHC;
- 28 (b) a subsidiary of a registered NOHC.

EXPOSURE DRAFT

Part 9 APRA's direction powers
Division 3 Recapitalisation directions

Section 116

116 Recapitalisation direction by APRA

- 1
- 2 (1) APRA may give a regulated entity a direction (a *recapitalisation*
3 *direction*) that requires the entity to increase the entity's level of
4 capital to the level specified in the direction if:
5 (a) the entity informs APRA that:
6 (i) the entity considers that the entity is likely to become
7 unable to meet the entity's obligations; or
8 (ii) the entity is about to suspend payment; or
9 (b) APRA considers that, in the absence of external support:
10 (i) the entity may become unable to meet the entity's
11 obligations; or
12 (ii) the entity may suspend payment; or
13 (iii) it is likely that the entity will be unable to carry on
14 regulated business in Australia consistently with the
15 interests of the entity's customers; or
16 (iv) it is likely that the entity will be unable to carry on
17 regulated business in Australia consistently with the
18 stability of the financial system in Australia; or
19 (c) the entity:
20 (i) becomes unable to meet the entity's obligations; or
21 (ii) suspends payment.
- 22 (2) Subsection (3) applies if subsections 115(3) and (4) apply to a
23 NOHC/NOHC subsidiary because of a primary recapitalisation
24 direction given to a regulated entity (as mentioned in
25 subsection 115(2)).
- 26 (3) For the purposes of facilitating compliance with the primary
27 recapitalisation direction, APRA may give the NOHC/NOHC
28 subsidiary a direction (also a *recapitalisation direction*) that
29 requires the NOHC/NOHC subsidiary to do anything that is
30 specified in the direction.
- 31 (4) In deciding whether to give a recapitalisation direction, APRA
32 must consult with the Australian Competition and Consumer
33 Commission (the *ACCC*), unless the ACCC notifies APRA, in
34 writing, that the ACCC does not wish to be consulted about:

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- 1 (a) the direction; or
2 (b) a class of directions that includes the direction.
- 3 (5) The rules may specify that a particular form of support is not
4 external support for the purposes of paragraph (1)(b).
- 5 (6) A recapitalisation direction is not a legislative instrument.
- 6 (7) A recapitalisation direction may deal with the time by which, or
7 period during which, it is to be complied with.
- 8 (8) APRA may, by notice in writing to the regulated entity, vary the
9 recapitalisation direction if, at the time of the variation, it considers
10 that the variation is necessary and appropriate.
- 11 (9) The direction has effect until APRA revokes it by notice in writing
12 to the regulated entity. APRA may revoke the direction if, at the
13 time of revocation, it considers that the direction is no longer
14 necessary or appropriate.

15 **117 Additional contents of a recapitalisation direction**

- 16 (1) A recapitalisation direction may direct the regulated entity to issue:
17 (a) shares, or rights to acquire shares, in the entity; or
18 (b) other capital instruments of a kind specified in the direction.
- 19 (2) If the recapitalisation direction is a direction to a NOHC/NOHC
20 subsidiary under subsection 116(3), the direction may direct the
21 NOHC/NOHC subsidiary to do any of the following:
22 (a) issue:
23 (i) shares, or rights to acquire shares, in the NOHC/NOHC
24 subsidiary; or
25 (ii) other capital instruments in the NOHC/NOHC
26 subsidiary of a kind specified in the direction;
27 (b) acquire:
28 (i) shares, or rights to acquire shares, in the regulated entity
29 mentioned in subsection 116(2); or

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Section 117

- 1 (ii) other capital instruments in the regulated entity
2 mentioned in subsection 116(2) of a kind specified in
3 the direction;
- 4 (c) acquire:
- 5 (i) shares, or rights to acquire shares, in a specified body
6 corporate covered by subsection (3); or
- 7 (ii) other capital instruments in a specified body corporate
8 covered by subsection (3), of a kind specified in the
9 direction.
- 10 (3) This subsection covers a body corporate if:
- 11 (a) the body corporate is a subsidiary of the NOHC/NOHC
12 subsidiary; and
- 13 (b) the regulated entity is a subsidiary of the body corporate.
- 14 (4) Without limiting the generality of subsections (1), (2) and (5), but
15 subject to subsection (6), a direction referred to in those
16 subsections may:
- 17 (a) deal with some only of the matters referred to in those
18 subsections; or
- 19 (b) deal with a particular class or particular classes of those
20 matters; or
- 21 (c) make different provision with respect to different matters or
22 different classes of matters.
- 23 (5) A direction for the purposes of paragraph (1)(a) or
24 subparagraph (2)(a)(i), (2)(b)(i) or (2)(c)(i) may specify that the
25 shares or rights must:
- 26 (a) be of a kind specified in the direction; or
27 (b) have the characteristics specified in the direction.
- 28 (6) A direction for the purposes of paragraph (1)(b) or
29 subparagraph (2)(a)(ii), (2)(b)(ii) or (2)(c)(ii):
- 30 (a) must not specify a kind of capital instrument unless that kind
31 of capital instrument is specified in the rules; and
- 32 (b) may specify that the capital instruments must have the
33 characteristics specified in the direction.

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1 **118 Compliance with a recapitalisation direction**

2 *Giving members of the regulated entity notice of share issue etc.*

3 (1) As soon as practicable after a regulated entity issues shares, rights
4 to acquire shares, or other capital instruments, in compliance with a
5 recapitalisation direction, the entity must give written notice to the
6 persons who were members (under section 231 of the *Corporations*
7 *Act 2001*) of the entity just before the issue.

8 (2) The notice must:

- 9 (a) identify the issue; and
10 (b) explain the effect of the issue of the shares, rights to acquire
11 shares, or other capital instruments on the members'
12 interests.

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

14 (3) A regulated entity may issue or acquire shares, rights to acquire
15 shares, or other capital instruments, in compliance with a
16 recapitalisation direction despite:
17 (a) the *Corporations Act 2001* (without limiting the scope of
18 section 184 of this Act); and
19 (b) the regulated entity's constitution; and
20 (c) any contract or arrangement to which the regulated entity is a
21 party; and
22 (d) any listing rules of a financial market in whose official list
23 the regulated entity is included.

24 **119 APRA must obtain expert's report on the fair value of shares**
25 **etc.**

26 (1) APRA must comply with this section before giving a
27 recapitalisation direction that directs a regulated entity to issue
28 shares, or rights to acquire shares, in the entity, unless APRA is
29 satisfied that compliance with this section would detrimentally
30 affect:

- 31 (a) the customers of the entity; or

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Section 119

- 1 (b) the stability of the financial system in Australia.
- 2 (2) If the recapitalisation direction is a direction to a NOHC/NOHC
3 subsidiary under subsection 116(3), treat the reference in
4 paragraph (1)(a) of this section to “the customers of the entity” as
5 being a reference to “the customers of the regulated entity
6 mentioned in subsection 116(2)”.
- 7 (3) APRA must:
- 8 (a) obtain a report on the fair value of the shares, or rights to
9 acquire shares, in the regulated entity from an expert who is
10 not an associate of the company under Division 2 of Part 1.2
11 of the *Corporations Act 2001*; and
12 (b) consider the report.
- 13 (4) The report must set out:
- 14 (a) the amount that is, in the expert’s opinion, the fair value for
15 each of those shares or rights; and
16 (b) the reasons for forming the opinion; and
17 (c) any relationship between the expert and:
18 (i) the regulated entity; or
19 (ii) a person who is an associate of the regulated entity
20 under Division 2 of Part 1.2 of the *Corporations Act*
21 *2001*;
22 including any circumstances in which the expert gives the
23 entity or person advice, or acts on behalf of the entity or
24 person, in the proper performance of the functions attaching
25 to the expert’s professional capacity or business relationship
26 with the entity or person; and
27 (d) any financial or other interest of the expert that could
28 reasonably be regarded as being capable of affecting the
29 expert’s ability to give an unbiased opinion in relation to the
30 matter being reported on.
- 31 (5) If the recapitalisation direction is a direction to a NOHC/NOHC
32 subsidiary under subsection 116(3), treat the references in
33 paragraph (4)(c) of this section to “the regulated entity” as being a

EXPOSURE DRAFT

1 reference to “the NOHC/NOHC subsidiary mentioned in
2 subsection 116(3)”.

3 **120 Determination of the fair value of shares by an expert**

- 4 (1) In determining the fair value for each share in a regulated entity for
5 the purposes of paragraph 119(4)(a), the expert must:
6 (a) first, assess the value of the entity as a whole, in accordance
7 with the assumptions (if any) notified to the expert by the
8 Minister for the valuation of the entity; and
9 (b) then, allocate that value among the classes of shares in the
10 entity that:
11 (i) have been issued; or
12 (ii) APRA proposes to direct be issued (taking into account
13 the relative financial risk, and voting and distribution
14 rights, of the classes); and
15 (c) then, allocate the value of each class pro rata among the
16 shares in that class that:
17 (i) have been issued; or
18 (ii) APRA proposes to direct be issued (without allowing a
19 premium or applying a discount for particular shares in
20 that class).
- 21 (2) The Minister may give the expert written notice of assumptions for
22 the valuation of the company.
- 23 (3) The Minister may, by further written notice given to the expert,
24 revoke, but not vary, notice of the assumptions.
- 25 (4) A notice given under subsection (2) or (3) is not a legislative
26 instrument.

27 **121 Determination of the fair value of rights by an expert**

- 28 (1) In determining the fair value for each right to acquire shares in a
29 regulated entity for the purposes of paragraph 119(4)(a), the expert
30 must act in accordance with the assumptions (if any) notified to the
31 expert by the Minister for the valuation of that right.

EXPOSURE DRAFT

Part 9 APRA's direction powers
Division 3 Recapitalisation directions

Section 122

- 1 (2) The Minister may give the expert written notice of assumptions for
2 the valuation of such rights.
- 3 (3) The Minister may, by further written notice given to the expert,
4 revoke, but not vary, notice of the assumptions.
- 5 (4) A notice given under subsection (2) or (3) is not a legislative
6 instrument.

122 Ascertaining the fair value of other capital instruments

- 8 (1) APRA must comply with this section before giving a
9 recapitalisation direction that directs a regulated entity to issue
10 capital instruments other than shares, or rights to acquire shares, in
11 the entity.
- 12 (2) APRA must comply with any requirements of the rules relating to
13 ascertaining the fair value of the capital instruments.
- 14 (3) Rules made for the purposes of this section may specify different
15 requirements in relation to different kinds of capital instruments.

123 Contravention of certain provisions does not affect the validity of recapitalisation direction etc.

- 18 A contravention of:
19 (a) section 119 or subsection 120(1) or 121(1); or
20 (b) section 122 or rules made for the purposes of that section;
21 does not affect the validity of a recapitalisation direction or
22 anything done in compliance with the direction.

124 Recapitalisation direction not grounds for denial of obligations

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

EXPOSURE DRAFT

APRA's direction powers **Part 9**
Recapitalisation directions **Division 3**

Section 125

- 1 (2) None of the matters mentioned in subsection (3) allows the
2 contract, or a party to the contract (other than the body corporate),
3 to do any of the following:
4 (a) deny any obligation under the contract;
5 (b) accelerate any debt under the contract;
6 (c) close out any transaction relating to the contract;
7 (d) enforce any security under the contract.
- 8 (3) The matters are as follows:
9 (a) the body corporate being subject to a recapitalisation
10 direction;
11 (b) if the body corporate is a member of a relevant group of
12 bodies corporate—another member of the group being
13 subject to a recapitalisation direction.

14 **125 Supply of information about issue and revocation of** 15 **recapitalisation directions**

16 *Requirement to provide information about recapitalisation* 17 *direction to Minister and Reserve Bank*

- 18 (1) If the Minister or the Reserve Bank requests APRA to provide
19 information about:
20 (a) any recapitalisation directions in respect of a particular
21 regulated entity; or
22 (b) any recapitalisation directions made during a specified period
23 in respect of any regulated entities;
24 APRA must comply with the request.

25 *Power to inform Minister and Reserve Bank of recapitalisation* 26 *direction*

- 27 (2) APRA may provide any information that APRA considers
28 appropriate to the Minister or the Reserve Bank about any
29 recapitalisation directions, or revocations of recapitalisation
30 directions, in respect of any regulated entity, at any time.

EXPOSURE DRAFT

1 **Division 4—Governance directions**

2 **127 APRA may remove a director or senior manager of a major**
3 **SVF provider**

- 4 (1) This section applies in relation to a person who is a director or
5 senior manager of a major SVF provider that is a regulated entity.
- 6 (2) APRA may direct (in writing) that the major SVF provider remove
7 the person from the position if APRA is satisfied that the person:
8 (a) either:
9 (i) for a person who is a disqualified person only because
10 the person was disqualified under section 108—is
11 disqualified from being or acting as a director or senior
12 manager of the major SVF provider; or
13 (ii) otherwise—is a disqualified person; or
14 (b) does not meet one or more of the criteria for fitness and
15 propriety set out in the prudential standards.
- 16 (3) Before directing the major SVF provider to remove the person,
17 APRA must give written notice to:
18 (a) the person; and
19 (b) the major SVF provider;
20 giving each of them a reasonable opportunity to make submissions
21 on the matter.
- 22 (4) If a submission is made to APRA in response to the notice, APRA
23 must have regard to the submission and may discuss any matter
24 contained in the submission with such persons as it considers
25 appropriate for the purpose of assessing the truth of the matter.
- 26 (5) A notice given under subsection (3) to the person and the major
27 SVF provider must state that any submissions made in response to
28 the notice may be discussed by APRA with other persons as
29 mentioned in subsection (4).
- 30 (6) A direction takes effect on the day specified in it, which must be
31 not earlier than 7 days after it is signed.

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 4 Governance directions

Section 127

1 (7) If APRA directs the major SVF provider to remove the person,
2 APRA must give a copy of the direction to the person and to the
3 major SVF provider.

4 (8) A major SVF provider must comply with a direction under this
5 section.

6 Note: For enforcement of the direction, see section 131.

7 (9) The power of a major SVF provider to comply with a direction
8 under this section may be exercised on behalf of the provider as set
9 out in the following table:
10

Power to comply with a direction		
Item	Who may exercise the power	How the power may be exercised
1	The chair of the board of directors of the provider	by signing a written notice.
2	A majority of the directors of the provider (excluding any director who is the subject of the direction)	by jointly signing a written notice.

11 (10) Subsection (9) does not, by implication, limit any other powers of a
12 major SVF provider to remove a person.

EXPOSURE DRAFT

1 **Division 5—Relevant PS money directions**

2 **128 APRA may give directions to third parties assisting regulated**
3 **entities with their trustee obligations in order to**
4 **safeguard relevant PS money**

- 5 (1) APRA may give a person covered by subsection (2) a direction of a
6 kind specified in subsection (3) if APRA reasonably believes that
7 the direction is necessary to:
8 (a) deal with a material risk to stability in the Australian
9 financial system; or
10 (b) protect end users of relevant PS money of a regulated entity.
- 11 (2) This subsection covers a person who has an arrangement covered
12 by subsection 45(2):
13 (a) with a regulated entity; and
14 (b) under which the person holds one or more accounts covered
15 by subsection 46(2) for segregating relevant PS money of the
16 regulated entity for the benefit of one or more end users of
17 the money.
- 18 (3) The kinds of direction that may be given are as follows:
19 (a) a direction to take all reasonable steps to obtain specified
20 details of each of the end users from the regulated entity;
21 (b) a direction to distribute the relevant PS money to the end
22 users.
- 23 Note: For paragraph (a), the details could include the end users' account
24 balances and contact details.
- 25 (4) APRA cannot give a direction under subsection (1) to a person of a
26 kind specified in rules (if any) made for the purposes of this
27 subsection.
- 28 (5) A direction under subsection (1) must be given by notice in writing
29 to the person.
- 30 (6) The direction may deal with the time by which, or period during
31 which, it is to be complied with.

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 5 Relevant PS money directions

Section 129

- 1 (7) The person given the direction has power to comply with the
2 direction despite anything in the person's constitution (if any) or
3 any contract or arrangement to which the person is a party.
- 4 (8) If the direction requires the person to cause a subsidiary to do, or to
5 refrain from doing, an act or thing:
6 (a) the person has power to cause the subsidiary to do, or to
7 refrain from doing, the act or thing; and
8 (b) the subsidiary has power to do, or to refrain from doing, the
9 act or thing;
10 despite anything in the subsidiary's constitution or any contract or
11 arrangement to which the subsidiary is a party.
- 12 (9) APRA may, by notice in writing to the person, vary the direction
13 if, at the time of the variation, APRA considers that the variation is
14 necessary and appropriate.
- 15 (10) The direction has effect until APRA revokes it by notice in writing
16 to the person. APRA may revoke the direction if, at the time of
17 revocation, it considers that the direction is no longer necessary or
18 appropriate.

129 Direction not grounds for denial of obligations

- 19 (1) This section applies if a person is party to a contract, whether the
20 proper law of the contract is:
21 (a) Australian law (including the law of a State or Territory); or
22 (b) law of a foreign country (including the law of part of a
23 foreign country).
24
- 25 (2) None of the matters mentioned in subsection (3) allows the
26 contract, or a party to the contract (other than the person), to do
27 any of the following:
28 (a) deny any obligations under the contract;
29 (b) accelerate any debt under the contract;
30 (c) close out any transaction relating to the contract;
31 (d) enforce any security under the contract.
32 This subsection has effect subject to subsections (4) and (5).

EXPOSURE DRAFT

APRA's direction powers **Part 9**
Relevant PS money directions **Division 5**

Section 129

- 1 (3) The matters are as follows:
2 (a) the person being given a direction by APRA under this
3 Division;
4 (b) if the person is a body corporate that is a member of a
5 relevant group of bodies corporate—another member of the
6 group being given a direction by APRA under this Division.
- 7 (4) If the person is prevented from fulfilling its obligations under the
8 contract because of a direction under this Division, the other party
9 or parties to the contract are, subject to any orders made under
10 subsection (5), relieved from obligations owed to the person under
11 the contract.
- 12 (5) A party to a contract to which subsection (4) applies may apply to
13 the Federal Court for an order relating to the effect on the contract
14 of a direction under this Division. The order may deal with matters
15 including the following:
16 (a) requiring a party to the contract to fulfil an obligation under
17 the contract despite subsection (4);
18 (b) obliging a party to the contract to take some other action (for
19 example, paying money or transferring property) in view of
20 obligations that were fulfilled under the contract before the
21 direction was made.
- 22 The order must not require a person to take action that would
23 contravene the direction, or any other direction under this Division.

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 6 Removal of auditors

Section 130

1 **Division 6—Removal of auditors**

2 **130 APRA may remove an auditor of a regulated entity**

- 3 (1) This section applies to a person who is an appointed auditor of a
4 regulated entity.
- 5 (2) APRA may direct (in writing) that a regulated entity remove the
6 person from the position if APRA is satisfied that the person:
7 (a) has failed to perform adequately and properly the functions
8 and duties of the position as required under this Act, the
9 prudential standards or the *Financial Accountability Regime*
10 *Act 2023*; or
11 (b) does not meet one or more of the criteria for fitness and
12 propriety set out in the prudential standards; or
13 (c) is a disqualified person.
- 14 (3) Before directing a regulated entity to remove a person, APRA must
15 give written notice to:
16 (a) the person; and
17 (b) the regulated entity;
18 giving each of them a reasonable opportunity to make submissions
19 on the matter.
- 20 (4) If a submission is made to APRA in response to the notice, APRA
21 must have regard to the submission and may discuss any matter
22 contained in the submission with such persons as it considers
23 appropriate for the purpose of assessing the truth of the matter.
- 24 (5) A notice given under subsection (3) to a person or a regulated
25 entity must state that any submissions made in response to the
26 notice may be discussed by APRA with other persons as mentioned
27 in subsection (4).
- 28 (6) A direction takes effect on the day specified in it, which must be
29 not earlier than 7 days after it is made.

EXPOSURE DRAFT

APRA's direction powers **Part 9**

Removal of auditors **Division 6**

Section 130

- 1 (7) If APRA directs a regulated entity to remove a person, APRA must
2 give a copy of the direction to the person and to the entity.
- 3 (8) A regulated entity must comply with a direction under this section.
4 Note: For enforcement of the direction, see section 131.
- 5 (9) The power of a regulated entity to comply with a direction under
6 this section may be exercised by giving a written notice to the
7 person who is the subject of the direction.
- 8 (10) Subsection (9) does not, by implication, limit any other powers of a
9 regulated entity to remove a person.

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 7 Non-compliance with a direction

Section 131

1 **Division 7—Non-compliance with a direction**

2 **131 Non-compliance with a direction other than a recapitalisation**
3 **direction**

- 4 (1) A regulated entity, registered NOHC or other person commits an
5 offence if:
6 (a) it does, or fails to do, an act; and
7 (b) doing, or failing to do, the act results in a contravention of a
8 direction given to it under this Part, other than a
9 recapitalisation direction.

10 Penalty: 50 penalty units.

- 11 (2) If a regulated entity, registered NOHC or other person does or fails
12 to do an act in circumstances that give rise to the entity, NOHC or
13 other person committing an offence against subsection (1), the
14 entity, NOHC or other person commits an offence against that
15 subsection in respect of:
16 (a) the first day on which the offence is committed; and
17 (b) each subsequent day (if any) on which the circumstances that
18 gave rise to the entity, NOHC or other person committing the
19 offence continue (including the day of conviction for any
20 such offence or any later day).

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

- 23 (3) An officer of a regulated entity, registered NOHC or other person
24 commits an offence if:
25 (a) the officer fails to take reasonable steps to ensure that the
26 entity, NOHC or other person complies with a direction
27 given to it under this Part, other than a recapitalisation
28 direction; and
29 (b) the officer's duties include ensuring that the entity, NOHC or
30 other person complies with the direction, or with a class of
31 directions that includes the direction.

EXPOSURE DRAFT

APRA's direction powers **Part 9**
Non-compliance with a direction **Division 7**

Section 132

1 Penalty: 50 penalty units.

2 (4) If an officer of a regulated entity, registered NOHC or other person
3 fails to take reasonable steps to ensure that the entity, NOHC or
4 other person complies with a direction given to it under this Part,
5 other than a recapitalisation direction, in circumstances that give
6 rise to the officer committing an offence against subsection (3), the
7 officer commits an offence against that subsection in respect of:

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

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

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

17 **132 Non-compliance with a recapitalisation direction**

- 18 (1) A regulated entity commits an offence if:
19 (a) the entity does, or refuses or fails to do, an act; and
20 (b) doing, or refusing or failing to do, the act results in a
21 contravention of a recapitalisation direction given to the
22 entity.

23 Note: An individual can commit an ancillary offence that is either an offence
24 against this subsection or an offence relating to this subsection (see
25 Part 2.4 of the *Criminal Code*).

26 Penalty:

- 27 (a) for a body corporate—250 penalty units; or
28 (b) for an individual—50 penalty units.

- 29 (2) However, subsection (1) does not apply if:
30 (a) the entity made reasonable efforts to comply with the
31 recapitalisation direction; and

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 7 Non-compliance with a direction

Section 132

1 (b) the entity's contravention is due to circumstances beyond the
2 entity's control.

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

5 (3) If a regulated entity does, or refuses or fails to do, an act in
6 circumstances that give rise to the entity committing an offence
7 against subsection (1), the entity commits an offence against that
8 subsection in respect of:

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

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

16 (4) An officer of a regulated entity commits an offence if:

- 17 (a) the officer refuses or fails to take reasonable steps to ensure
18 that the entity complies with a recapitalisation direction given
19 to the entity; and
20 (b) the officer's duties include ensuring that the entity complies
21 with the direction, or with a class of directions that includes
22 the direction.

23 Penalty: 50 penalty units.

24 (5) If an officer of a regulated entity refuses or fails to take reasonable
25 steps to ensure that the entity complies with a recapitalisation
26 direction given to the entity in circumstances that give rise to the
27 officer committing an offence against subsection (4), the officer
28 commits an offence against that subsection in respect of:

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

EXPOSURE DRAFT

Part 9 APRA's direction powers

Division 8 Secrecy and disclosure provisions relating to all directions

Section 133

1 **Division 8—Secrecy and disclosure provisions relating to**
2 **all directions**

3 **133 APRA may determine that a direction is covered by secrecy**
4 **provision**

- 5 (1) This section applies if APRA has given an entity (the *directed*
6 *entity*) a direction under this Part.
- 7 (2) APRA may determine, in writing, that the direction is covered
8 under this subsection if APRA considers that the determination is
9 necessary to:
- 10 (a) promote stability in the Australian financial system; or
11 (b) protect the customers of any regulated entity; or
12 (c) protect the end users of relevant PS money of any regulated
13 entity.
- 14 Note: For repeal of a determination, see subsection 33(3) of the *Acts*
15 *Interpretation Act 1901*.
- 16 (3) APRA must give the directed entity a copy of the determination as
17 soon as practicable after making it.
- 18 (4) A determination under subsection (2) is not a legislative
19 instrument.
- 20 (5) If APRA makes a determination under subsection (2), APRA must
21 consider whether it is appropriate in the circumstances to also
22 make a determination under either or both of subsections 136(2)
23 and 136(5).

24 **134 Secrecy relating to directions**

- 25 (1) A person commits an offence if:
26 (a) APRA has given an entity (the *directed entity*) a direction
27 under this Part; and
28 (b) the direction is covered by a determination under
29 subsection 133(2); and

EXPOSURE DRAFT

APRA's direction powers **Part 9**
Secrecy and disclosure provisions relating to all directions **Division 8**

Section 135

- 1 (c) the person is, or has been, covered by subsection (2) of this
2 section in relation to the direction; and
3 (d) the person discloses information; and
4 (e) the information reveals the fact that the direction was made.

5 Penalty: Imprisonment for 2 years.

- 6 (2) A person is covered by this subsection in relation to the direction if
7 the person is:
8 (a) the directed entity; or
9 (b) an officer, employee or contractor of the directed entity at a
10 time on or after APRA gave the directed entity the direction;
11 or
12 (c) any other person who, because of the person's employment,
13 or in the course of that employment, has acquired
14 information that reveals the fact that the direction was made.

15 *Exception*

- 16 (3) Subsection (1) does not apply if:
17 (a) the disclosure is authorised by section 135, 136, 137, 138,
18 139 or 140; or
19 (b) the disclosure is required by an order or direction of a court
20 or tribunal.

21 Note: A defendant bears an evidential burden in relation to a matter in
22 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

23 **135 Disclosure of publicly available information**

24 A person covered by subsection 134(2) in relation to a direction
25 may disclose information that reveals the fact that the direction was
26 made, to the extent that the information has already been lawfully
27 made available to the public.

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Part 9 APRA's direction powers

Division 8 Secrecy and disclosure provisions relating to all directions

Section 136

1 **136 Disclosure allowed by APRA**

- 2 (1) A person covered by subsection 134(2) in relation to a direction
3 may disclose information that reveals the fact that the direction was
4 made if:
5 (a) a determination under subsection (2) or (5) of this section
6 allows the disclosure by the person; and
7 (b) if APRA has included conditions in the determination—those
8 conditions are satisfied.

9 *Determinations relating to specified person*

- 10 (2) APRA may, in writing, make a determination allowing:
11 (a) a specified person covered by subsection 134(2) in relation to
12 a specified direction; or
13 (b) a specified person covered by subsection 134(2) in relation to
14 a direction that is in a specified class of directions;
15 to disclose specified information in relation to the direction.
16 (3) An instrument under subsection (2) is not a legislative instrument.
17 (4) APRA must give a copy of the determination as soon as practicable
18 after making it to:
19 (a) the directed entity; and
20 (b) the person specified, or each person specified, in the
21 determination.

22 *Determinations relating to specified class of persons*

- 23 (5) APRA may, by legislative instrument, make a determination
24 allowing a specified class of persons covered by subsection 134(2)
25 in relation to a direction that is in a specified class of directions to
26 disclose:
27 (a) specified kinds of information in relation to the direction; or
28 (b) any kind of information in relation to the direction.

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APRA's direction powers **Part 9**
Secrecy and disclosure provisions relating to all directions **Division 8**

Section 137

1 *Conditions in determinations*

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

7 **137 Disclosure to legal representative for purpose of seeking legal**
8 **advice**

9 A person covered by subsection 134(2) in relation to a direction
10 may disclose information that reveals the fact that the direction was
11 made if:

- 12 (a) the disclosure is to the person's legal representative; and
13 (b) the purpose of the person making the disclosure is for the
14 legal representative to provide legal advice, or another legal
15 service, in relation to the direction.

16 **138 Disclosure allowed by APRA Act secrecy provision**

- 17 (1) A person covered by subsection 134(2) in relation to a direction
18 may disclose information that reveals the fact that the direction was
19 made if:
20 (a) the person is:
21 (i) an APRA member (within the meaning of
22 subsection 56(1) of the *Australian Prudential*
23 *Regulation Authority Act 1998*); or
24 (ii) an APRA staff member (within the meaning of that
25 subsection); or
26 (iii) a Financial Regulator Assessment Authority official
27 (within the meaning of that subsection); or
28 (iv) a Commonwealth officer (within the meaning of the
29 *Crimes Act 1914*) who is covered by paragraph (c) of
30 the definition of **officer** in subsection 56(1) of the
31 *Australian Prudential Regulation Authority Act 1998*;
32 and

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Part 9 APRA's direction powers

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Section 139

- 1 (b) the information is protected information (within the meaning
2 of subsection 56(1) of that Act), or is contained in a protected
3 document (within the meaning of that subsection); and
4 (c) the disclosure is in accordance with a provision mentioned in
5 paragraph 56(2)(c) of that Act.

6 *Relationship to APRA Act secrecy provision*

- 7 (2) Disclosure of information in relation to a direction is not an
8 offence under section 56 of the *Australian Prudential Regulation*
9 *Authority Act 1998* if the disclosure is authorised by section 135,
10 136, 137, 139 or 140 of this Act.

11 **139 Disclosure in circumstances set out in the rules**

12 A person covered by subsection 134(2) in relation to a direction
13 may disclose information that reveals the fact that the direction was
14 made, if the disclosure is made in circumstances (if any) set out in
15 the rules.

16 **140 Disclosure for purpose**

17 A person covered by subsection 134(2) (the *relevant person*) in
18 relation to a direction may disclose information that reveals the fact
19 that the direction was made if:

- 20 (a) another person covered by subsection 134(2) in relation to
21 the direction disclosed that information to the relevant person
22 for a particular purpose in accordance with section 136, 137,
23 138 or 139, or in accordance with a previous operation of this
24 section; and
25 (b) the disclosure by the relevant person is for the same purpose.

26 **141 Exceptions operate independently**

27 Sections 135, 136, 137, 138, 139 and 140 do not limit each other.

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Investigations **Part 10**
Simplified outline **Division 1**

Section 142

- 1 **Part 10—Investigations**
- 2 **Division 1—Simplified outline**
- 3 **142 Simplified outline of this Part**

4

to be drafted

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Part 10 Investigations
Division 2 Investigations

Section 143

1 **Division 2—Investigations**

2 **143 Investigations**

- 3 (1) APRA may investigate the affairs of a regulated entity or appoint a
4 person to investigate the affairs of a regulated entity if:
- 5 (a) the entity informs APRA that the entity considers that it is
6 likely to become unable to meet its obligations or that it is
7 about to suspend payment; or
 - 8 (b) APRA considers that, in the absence of external support:
 - 9 (i) the entity may become unable to meet its obligations; or
 - 10 (ii) the entity may suspend payment; or
 - 11 (iii) it is likely that the entity will be unable to carry on
12 regulated business in Australia consistently with the
13 interests of its customers; or
 - 14 (iv) it is likely that the entity will be unable to carry on
15 regulated business in Australia consistently with the
16 stability of the financial system in Australia; or
 - 17 (c) the entity becomes unable to meet its obligations or suspends
18 payment; or
 - 19 (d) an external administrator has been appointed to a holding
20 company of the entity (or a similar appointment has been
21 made in a foreign country in respect of such a holding
22 company), and APRA considers that the appointment poses a
23 significant threat to:
 - 24 (i) the operation or soundness of the entity; or
 - 25 (ii) the interests of customers of the entity; or
 - 26 (iii) the interests of end users of relevant PS money of the
27 entity; or
 - 28 (iv) the stability of the financial system in Australia; or
 - 29 (e) if the entity is a foreign regulated entity:
 - 30 (i) an application for the appointment of an external
31 administrator of the foreign regulated entity, or for a
32 similar procedure in respect of the foreign regulated
33 entity, has been made in a foreign country; or

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1 (ii) an external administrator has been appointed to the
2 foreign regulated entity, or a similar appointment has
3 been made in respect of the foreign regulated entity, in a
4 foreign country.

5 (2) The rules may specify that a particular form of support for a
6 regulated entity is not to be considered external support for the
7 purposes of paragraph (1)(b).

8 *APRA's power to investigate or appoint an investigator if*
9 *information etc. not provided*

10 (3) APRA may investigate the affairs of a regulated entity, or appoint a
11 person to do so, if the entity fails to comply with a requirement to
12 provide information, books, accounts or documents under this
13 section.

14 (4) To avoid doubt, this section applies to a body corporate that is, or
15 becomes, a Chapter 5 body corporate (within the meaning of the
16 *Corporations Act 2001*) in the same way as this section applies to
17 any other body corporate.

18 **144 Investigators—regulated entity must provide information and** 19 **facilities**

20 (1) An investigator of the affairs of a regulated entity under
21 section 143 is entitled to have access to the books, accounts and
22 documents of the entity, and to require the entity to give the
23 investigator information or facilities to conduct the investigation.

24 (2) A regulated entity commits an offence if:
25 (a) the entity does not give the investigator access to its books,
26 accounts and documents; or
27 (b) the entity fails to comply with a requirement made under
28 subsection (1) for the provision of information or facilities.

29 Note: An individual can commit an ancillary offence that is either an offence
30 against this subsection or an offence relating to this subsection (see
31 Part 2.4 of the *Criminal Code*).

32 Penalty:

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Part 10 Investigations
Division 2 Investigations

Section 145

- 1 (a) for a body corporate—250 penalty units; or
2 (b) for an individual—50 penalty units.
- 3 (3) If the regulated entity does or fails to do an act in circumstances
4 that give rise to the entity committing an offence against
5 subsection (2), the entity commits an offence against that
6 subsection in respect of:
7 (a) the first day on which the offence is committed; and
8 (b) each subsequent day (if any) on which the circumstances that
9 gave rise to the entity committing the offence continue
10 (including the day of conviction for any such offence or any
11 later day).
- 12 Note: This subsection is not intended to imply that section 4K of the *Crimes*
13 *Act 1914* does not apply to offences against this Act.
- 14 (4) Part 6 of the *Australian Prudential Regulation Authority Act 1998*
15 prohibits certain disclosures of information received by
16 investigators under this Act.

17 **145 APRA may conduct investigations**

- 18 (1) APRA may appoint a person to investigate and report on prudential
19 matters in relation to:
20 (a) a body corporate that is:
21 (i) a regulated entity; or
22 (ii) a registered NOHC; or
23 (iii) a subsidiary of a regulated entity or of a registered
24 NOHC; or
25 (b) if a body corporate that is a regulated entity is a subsidiary of
26 a foreign corporation (whether or not the entity is itself a
27 foreign regulated entity):
28 (i) another subsidiary of the foreign corporation (other than
29 a body mentioned in paragraph (a), being a subsidiary
30 that is incorporated in Australia; or
31 (ii) the Australian operations of another subsidiary of the
32 foreign corporation (other than a body mentioned in

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1 paragraph (a), being a subsidiary that is not incorporated
2 in Australia and carries on business in Australia;
3 if it is satisfied that such a report is necessary. The appointment
4 must be in writing and must specify the prudential matters that are
5 to be the subject of the investigation and report.

6 (2) If APRA has appointed a person under this section to investigate
7 and report on prudential matters in relation to a body corporate, the
8 body corporate must give the person access to its books, accounts
9 and documents and must give the person such information and
10 facilities as the person requires to conduct the investigation and
11 produce the report.

12 (3) A body corporate commits an offence if:
13 (a) under subsection (1), APRA has appointed a person to
14 investigate and report on prudential matters in relation to the
15 body corporate; and
16 (b) the body corporate:
17 (i) does not give the person access to its books, accounts
18 and documents; or
19 (ii) fails to comply with a requirement made under
20 subsection (2) for the provision of information or
21 facilities.

22 Note: An individual can commit an ancillary offence that is either an offence
23 against this subsection or an offence relating to this subsection (see
24 Part 2.4 of the *Criminal Code*).

25 Penalty:

26 (a) for a body corporate—250 penalty units; or
27 (b) for an individual—50 penalty units.

28 (4) If a body corporate does or fails to do an act in circumstances that
29 give rise to the body corporate committing an offence against
30 subsection (3), the body corporate commits an offence against that
31 subsection in respect of:
32 (a) the first day on which the offence is committed; and
33 (b) each subsequent day (if any) on which the circumstances that
34 gave rise to the body corporate committing the offence

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Division 2 Investigations

Section 146

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

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

5 (5) Nothing in this section is intended to limit the operation of any
6 other provision of this Act.

7 (6) To avoid doubt, this section applies to a body corporate that is, or
8 becomes, a Chapter 5 body corporate (within the meaning of the
9 *Corporations Act 2001*) in the same way as this section applies to
10 any other body corporate.

11 **146 Investigator may require production of books etc.**

12 (1) If an investigator reasonably believes that a person has custody or
13 control of any books, accounts or documents relevant to the
14 investigator's investigation, the investigator may, by written notice
15 given to the person, require the person to produce any or all of the
16 books, accounts or documents to the investigator.

17 (2) A person commits an offence if the person refuses or fails to
18 comply with a requirement under this section.

19 Penalty: 30 penalty units.

20 **147 Concealing books, accounts or documents relevant to**
21 **investigation**

22 A person commits an offence if:

23 (a) the person knows that an investigator is investigating, or is
24 about to investigate, a matter; and

25 (b) the person:

26 (i) conceals, destroys, mutilates or alters a book, account or
27 document relating to the matter; or

28 (ii) if a book, account or document relating to the matter is
29 in a particular State or Territory—takes or sends the
30 book, account or document out of that State or Territory
31 or out of Australia; and

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Investigations **Division 2**

Section 147

1 (c) the person intended that the investigation or proposed
2 investigation would be delayed or obstructed as a result of
3 that conduct.

4 Penalty: Imprisonment for 2 years.

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Part 10 Investigations
Division 3 Examinations

Section 148

1 **Division 3—Examinations**

2 **148 Notice requiring appearance for examination**

3 If an investigator reasonably believes or suspects that a person (the
4 *examinee*) can give information relevant to the investigator's
5 investigation, the investigator may, by written notice given to the
6 examinee, require the examinee:

- 7 (a) to give the investigator all reasonable assistance in
8 connection with the investigation; and
9 (b) to appear before the investigator for examination.

10 Note: Failure to comply with a requirement made under this subsection is an
11 offence (see section 152).

12 **149 Conduct of examinations**

13 (1) The investigator may examine the examinee on oath or affirmation
14 and may, for that purpose:

- 15 (a) require the examinee to either take an oath or make an
16 affirmation; and
17 (b) administer an oath or affirmation to the examinee.

18 Note: Failure to comply with a requirement made under this subsection is an
19 offence (see section 152).

20 (2) The oath or affirmation to be taken or made by the examinee for
21 the purposes of the examination is an oath or affirmation that the
22 statements that the examinee will make will be true.

23 (3) The investigator may require the examinee to answer a question
24 that is put to the examinee at the examination and is relevant to a
25 matter that the investigator is investigating, or is to investigate.

26 Note: Failure to comply with a requirement made under this subsection is an
27 offence (see section 152).

28 (4) The examiner may make an audio, or audio-visual, recording of all
29 or any part of the examination.

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150 Who may be present at examinations

- (1) The examination must take place in private.
- (2) The following people may be present at the examination:
 - (a) the investigator;
 - (b) the examinee;
 - (c) the examinee's lawyer;
 - (d) an APRA staff member approved by APRA to be present;
 - (e) a person directed by the investigator to be present.
- (3) A person commits an offence if the person:
 - (a) is present at an examination; and
 - (b) is not a person mentioned in subsection (2).

Penalty: 30 penalty units.

- (4) The examinee's lawyer may, at such times during the examination as the investigator determines, address the investigator and examine the examinee about matters about which the investigator has examined the examinee.
- (5) The investigator may require a person to stop addressing the investigator or examining the examinee if, in the investigator's opinion, the person is trying to obstruct the examination by exercising rights under subsection (4).

Note: Failure to comply with a requirement made under this subsection is an offence (see section 152).

151 Record of examination

Written record of statements

- (1) The investigator must cause a written record (including a transcript of an audio, or audio-visual, recording) to be made of statements made at the examination.

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Part 10 Investigations
Division 3 Examinations

Section 152

- 1 (2) The investigator may require the examinee to read the written
2 record, or to have it read to the investigator, and may require the
3 examinee to sign it.

4 Note: Failure to comply with a requirement made under this subsection is an
5 offence (see section 152).

6 *Copies of record*

- 7 (3) The investigator must give a copy of a written record to the
8 examinee, without charge, but subject to such conditions (if any) as
9 the investigator imposes.

10 *Use of copies*

- 11 (4) If the investigator gives a copy of a written record to a person
12 under subsection (3) subject to conditions, the person, or any other
13 person who has possession, custody or control of the copy or a
14 copy of it, must comply with the conditions.

15 Penalty: Imprisonment for 6 months.

16 **152 Offences**

17 A person commits an offence if the person refuses or fails to
18 comply with a requirement under this Division.

19 Penalty: 30 penalty units.

EXPOSURE DRAFT

1 **Division 4—Evidentiary use of certain material**

2 **153 Statements made at an examination—proceedings against**
3 **examinee**

4 *Admissibility of statements made at examination*

- 5 (1) Subject to this section, a statement that a person makes at an
6 examination of the person is admissible in evidence against the
7 person in a proceeding.

8 *Self-incrimination exception*

- 9 (2) The statement is not admissible if the statement is not admissible in
10 evidence against the person under section 163.

11 *Irrelevant statement exception*

- 12 (3) The statement is not admissible if it is not relevant to the
13 proceeding and the person objects to the admission of evidence of
14 the statement.

15 *Related statement exception*

- 16 (4) The statement (the *subject statement*) is not admissible if:
17 (a) it is qualified or explained by some other statement made at
18 the examination; and
19 (b) evidence of the other statement is not tendered in the
20 proceeding; and
21 (c) the person objects to the admission of evidence of the subject
22 statement.

23 *Legal professional privilege exception*

- 24 (5) The statement is not admissible if:
25 (a) it discloses matter in respect of which the person could claim
26 legal professional privilege in the proceeding if
27 subsection (1) did not apply in relation to the statement; and

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Division 4 Evidentiary use of certain material

Section 154

1 (b) the person objects to the admission of evidence of the
2 statement.

3 *Joint proceedings*

4 (6) Subsection (1) applies in relation to a proceeding against a person
5 even if it is heard together with a proceeding against another
6 person.

7 *Record is prima facie evidence*

8 (7) If a written record of an examination of a person is signed by the
9 person under subsection 151(2), or is authenticated as mentioned in
10 subsection 290(7) of the *Superannuation Industry (Supervision)*
11 *Act 1993*, the record is, in a proceeding, prima facie evidence of
12 the statements it records.

13 *Admissibility of other evidence*

14 (8) This Division does not limit or affect the admissibility in the
15 proceedings of other evidence of statements made at the
16 examination.

17 **154 Statements made at an examination—other proceedings**

18 *Admissibility of absent witness evidence*

19 (1) If direct evidence by a person (the *absent witness*) of a matter
20 would be admissible in a proceeding, a statement that the absent
21 witness made at an examination of the absent witness and that
22 tends to establish that matter is admissible in the proceedings as
23 evidence of that matter in accordance with subsection (2).

24 *Requirement for admissibility*

25 (2) The statement is admissible:
26 (a) if it appears to the court or tribunal that:
27 (i) the absent witness is dead or is unfit, because of
28 physical or mental incapacity, to attend as a witness; or

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- 1 (ii) the absent witness is outside the State or Territory in
2 which the proceeding is being heard and it is not
3 reasonably practicable to secure the witness' attendance;
4 or
5 (iii) all reasonable steps have been taken to find the absent
6 witness but the witness cannot be found; or
7 (b) if it does not so appear to the court or tribunal—unless
8 another party to the proceeding requires the party tendering
9 evidence of the statement to call the absent witness as a
10 witness in the proceeding and the tendering party does not so
11 call the absent witness.

12 **155 Weight of evidence under section 154**

- 13 (1) If evidence of a statement made by a person at an examination of
14 the person is admitted under section 154 in a proceeding, in
15 deciding how much weight (if any) to give to the statement as
16 evidence of a matter, regard is to be had to:
17 (a) the length of period between the statement and the matter to
18 which the statement relates; and
19 (b) any reason the person may have had for concealing or
20 misrepresenting a material matter; and
21 (c) any other circumstances from which it is reasonable to draw
22 an inference about the accuracy of the statement.
23 (2) If the person is not called as a witness in the proceeding:
24 (a) evidence that would, if the person had been so called, have
25 been admissible in the proceeding for the purpose of
26 destroying or supporting the person's credibility is so
27 admissible; and
28 (b) evidence is admissible to show that the statement is
29 inconsistent with another statement that the person has made
30 at any time.
31 (3) However, evidence of a matter is not admissible under this section
32 if, had the person been called as a witness in the proceeding and
33 denied the matter in cross-examination, evidence of the matter

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Division 4 Evidentiary use of certain material

Section 156

1 would not have been admissible if adduced by the cross-examining
2 party.

3 **156 Objection to admission of statements made at examination**

4 *Notice of intention to apply to admit evidence and statements*

5 (1) A party (the **adducing party**) to proceedings may, not less than 14
6 days before the first day of the hearing of the proceeding, give to
7 another party to the proceeding written notice that the adducing
8 party:

9 (a) will apply to have admitted in evidence in the proceeding
10 specified statements made at an examination; and

11 (b) for that purpose, will apply to have evidence of those
12 statements admitted in the proceeding.

13 *Notice to set out etc. statements*

14 (2) A notice under subsection (1) must set out, or be accompanied by
15 writing that sets out, the specified statements.

16 *Notice of objection*

17 (3) Within 14 days after a notice is given under subsection (1), the
18 other party may give to the adducing party a written notice:

19 (a) stating that the other party objects to specified statements
20 being admitted in evidence in the proceeding; and

21 (b) specifies, in relation to each of those statements, the grounds
22 of objection.

23 *Extension of objection period*

24 (4) The period prescribed by subsection (3) may be extended by the
25 court or tribunal or by agreement between the parties concerned.

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1 *Notice etc. to be given to court or tribunal*

- 2 (5) On receiving a notice given under subsection (3), the adducing
3 party must give to the court or tribunal a copy of:
4 (a) the notice under subsection (1) and any writing that
5 subsection (2) requires to accompany that notice; and
6 (b) the notice under subsection (3).

7 *Action by court or tribunal*

- 8 (6) If subsection (5) is complied with, the court or tribunal may either:
9 (a) determine the objections as a preliminary point before the
10 hearing of the proceeding begins; or
11 (b) defer determination of the objections until the hearing.

12 *Right to object to admission of statement*

- 13 (7) If a notice has been given in accordance with subsections (1) and
14 (2), the other party is not entitled to object at the hearing of the
15 proceeding to a statement specified in the notice being admitted in
16 evidence in the proceedings, unless:
17 (a) the other party has, in accordance with subsection (3),
18 objected to the statement being so admitted; or
19 (b) the court or tribunal gives the other party leave to object to
20 the statement being so admitted.

21 **157 Copies of, or extracts from, certain books, accounts and**
22 **documents**

- 23 (1) A copy of, or an extract from, a book, account or document to
24 which subsection 40(1), 144(1), 145(2), 146(1) or 162(1) applies,
25 is admissible in evidence in a proceeding as if the copy was the
26 original book, account or document or the extract were the relevant
27 part of original book, account or document.
- 28 (2) A copy of, or an extract from, a book, account or document is not
29 admissible in evidence under subsection (1) unless it is proved that
30 the copy or extract is a true copy of the book, account or document,
31 or of the relevant part of the book, account or document.

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- 1 (3) For the purposes of subsection (2), a person who has compared:
2 (a) a copy of a book, account or document with the book,
3 account or document; or
4 (b) an extract from a book, account or document, with the
5 relevant part of the book, account or document;
6 may give evidence, either orally or by an affidavit or statutory
7 declaration, that the copy or extract is a true copy of the book,
8 account or document, or relevant part of the book, account or
9 document.

10 **158 Report under section 145**

11 Subject to section 159, if a copy of a report under
12 subsection 145(1) purports to be certified by APRA as a true copy
13 of such a report, the copy is admissible in a proceeding (other than
14 a criminal proceeding) as prima facie evidence of any facts or
15 matters that the report states an investigator to have found to exist.

16 **159 Exceptions to admissibility of report**

- 17 (1) If a party to a proceeding tenders a copy of a report as evidence
18 against another party, the copy is not admissible under section 158
19 in the proceeding as evidence against the other party unless the
20 court or tribunal is satisfied that:
21 (a) a copy of the report has been given to the other party; and
22 (b) the other party, and the other party's lawyer, have had a
23 reasonable opportunity to examine that copy and to take its
24 contents into account in preparing the other party's case.
- 25 (2) Before or after the copy tendered in evidence is admitted in
26 evidence, the other party may apply to cross-examine, in relation to
27 the report, a specified person who, or 2 or more specified persons
28 each of whom:
29 (a) was concerned in preparing the report or making a finding
30 about a fact or matter that the report states the investigator to
31 have found to exist; or
32 (b) whether or not pursuant to a requirement made under this
33 Part, gave information, or produced a book, account or

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- 1 document, on the basis of which, or on the basis of matters
2 including which, such a finding was made.
- 3 (3) The court or tribunal must grant an application made under
4 subsection (2) unless it considers that, in all the circumstances, it is
5 not appropriate to do so.
- 6 (4) The court or tribunal must refuse to admit the copy, or must treat
7 the copy as not having been admitted, if:
- 8 (a) the court or tribunal grants the application or applications
9 made under subsection (2); and
- 10 (b) one or more persons to whom the application or any of the
11 applications relates:
- 12 (i) are unavailable; or
- 13 (ii) do not attend to be cross-examined in relation to the
14 report; and
- 15 (c) the court or tribunal is of the opinion that to admit the copy
16 under section 158 in the proceeding as evidence against the
17 other party without the other party having the opportunity to
18 cross-examine the other person or persons would unfairly
19 prejudice the other party.

20 **160 Material otherwise admissible**

21 Nothing in this Division renders evidence inadmissible in a
22 proceeding in circumstances where it would have been admissible
23 in that proceeding if this Division had not been enacted.

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Part 11 Provisions relating to the giving of information

Division 1 Simplified outline

Section 161

1 **Part 11—Provisions relating to the giving of**
2 **information**

3 **Division 1—Simplified outline**

4 **161 Simplified outline of this Part**

5

<i>to be drafted</i>

EXPOSURE DRAFT

Provisions relating to the giving of information **Part 11**
APRA may require information to be given **Division 2**

Section 162

1 **Division 2—APRA may require information to be given**

2 **162 Supply of information**

3 (1) APRA may require persons to provide information as follows:

4 (a) a regulated entity may be required to give APRA information
5 in respect of the entity or in respect of any member of a
6 relevant group of bodies corporate of which the entity is a
7 member;

8 (b) a registered NOHC may be required to give APRA
9 information in respect of the NOHC or in respect of any
10 member of a relevant group of bodies corporate of which the
11 NOHC is a member;

12 (c) a subsidiary of a regulated entity or a registered NOHC may
13 be required to give APRA information in respect of the
14 subsidiary or in respect of any member of a relevant group of
15 bodies corporate of which the subsidiary is a member;

16 (d) if a regulated entity is a subsidiary of a foreign corporation
17 (whether or not the entity is itself a foreign regulated entity):

18 (i) another subsidiary of the foreign corporation (other than
19 a body mentioned in paragraph (a), (b) or (c) that is
20 incorporated in Australia may be required to give APRA
21 information in respect of the subsidiary; or

22 (ii) another subsidiary of the foreign corporation (other than
23 a body mentioned in paragraph (a), (b) or (c)) that is not
24 incorporated in Australia and carries on business in
25 Australia may be required to give APRA information in
26 respect of its Australian operations;

27 (e) any other constitutional corporation that carries on any
28 regulated business in Australia may be required to give
29 APRA information in connection with the corporation's
30 regulated business.

31 The requirement to supply information may include a requirement
32 to supply books, accounts or documents.

33 (2) A person commits an offence if:

EXPOSURE DRAFT

Part 11 Provisions relating to the giving of information

Division 2 APRA may require information to be given

Section 162

- 1 (a) under subsection (1), APRA requires the person to provide
2 information, books, accounts or documents; and
3 (b) the person fails to comply with the requirement.
- 4 Penalty: 200 penalty units.
- 5 (3) An offence against subsection (2) is an indictable offence.
- 6 (4) If a person fails to comply with a requirement under subsection (1)
7 in circumstances that give rise to the person committing an offence
8 against subsection (2), the person commits an offence against
9 subsection (2) in respect of:
10 (a) the first day on which the offence is committed; and
11 (b) each subsequent day (if any) on which the circumstances that
12 gave rise to the person committing the offence continue
13 (including the day of conviction for any such offence or any
14 later day).
- 15 Note: This subsection is not intended to imply that section 4K of the *Crimes*
16 *Act 1914* does not apply to offences against this Act.
- 17 (5) A requirement under subsection (1) must not require information,
18 books, accounts or documents to be given with respect to the
19 affairs of an individual customer of a regulated entity unless the
20 information, books, accounts or documents are in respect of
21 prudential matters relating to:
22 (a) the entity; or
23 (b) any member of a relevant group of bodies corporate of which
24 the entity is a member.
- 25 (6) To avoid doubt, this section applies to a person that is, or becomes,
26 a Chapter 5 body corporate (within the meaning of the
27 *Corporations Act 2001*) in the same way as this section applies to
28 any other person.

EXPOSURE DRAFT

Provisions relating to the giving of information **Part 11**
Protections **Division 3**

Section 163

1 **Division 3—Protections**

2 Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

3 **163 Self-incrimination**

4 (1) A person is not excused from complying with a requirement under
5 this Act or the *Financial Sector (Collection of Data) Act 2001* to
6 give information, produce a book, account or document or sign a
7 record on the ground that doing so would tend to incriminate the
8 person or make the person liable to a penalty.

9 (2) However, if the person is an individual, the information given, the
10 record signed or the book, account or document produced by the
11 individual in compliance with the requirement is not admissible in
12 evidence against the individual in criminal proceedings or in
13 proceedings for the imposition of a penalty, other than proceedings
14 in respect of the falsity of the information, if:

15 (a) before complying with the requirement, the individual claims
16 that giving the information, signing the record or producing
17 the book, account or document might tend to incriminate the
18 individual or make the individual liable to a penalty; and

19 (b) giving the information, signing the record or producing the
20 book, account or document might in fact tend to incriminate
21 the individual or make the individual liable to a penalty.

22 **164 Legal professional privilege**

23 (1) This section applies if:

24 (a) under this Act, a person requires a lawyer;

25 (i) to give information; or

26 (ii) to produce a book, account or document; and

27 (b) either:

28 (i) giving the information would involve disclosing; or

29 (ii) the book, account or document contains;

30 a privileged communication made by, or on behalf of or to
31 the lawyer in the person's capacity as a lawyer.

EXPOSURE DRAFT

Part 11 Provisions relating to the giving of information

Division 3 Protections

Section 164

- 1 (2) The lawyer is entitled to refuse to comply with the requirement
2 unless:
3 (a) if the person to whom, or by or on behalf of whom, the
4 communication was made is a body corporate that is under
5 administration or is being wound up—the administrator or
6 the liquidator of the body; or
7 (b) otherwise—the person to whom, or by or on behalf of whom,
8 the communication was made;
9 consents to the lawyer complying with the requirement.
- 10 (3) If the lawyer so refuses, the lawyer must, as soon as practicable,
11 give to the person who made the requirement a written notice
12 setting out:
13 (a) if the lawyer knows the name of the person to whom, or by or
14 on behalf of whom, the communication was made—that
15 name and address; and
16 (b) if subparagraph (1)(a)(i) applies and the communication was
17 made in writing—sufficient particulars to identify the
18 document containing the communication; and
19 (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to
20 identify the book, account or document, or the part of the
21 book, account or document, containing the communication.
- 22 (4) A person commits an offence if the person refuses or fails to
23 comply with a requirement under this section.
- 24 Penalty: 30 penalty units.

EXPOSURE DRAFT

Enforcement **Part 12**
Simplified outline **Division 1**

Section 165

1 **Part 12—Enforcement**

2 **Division 1—Simplified outline**

3 **165 Simplified outline of this Part**

4 *to be drafted*

EXPOSURE DRAFT

Part 12 Enforcement

Division 2 Civil penalty provisions

Section 166

1 **Division 2—Civil penalty provisions**

2 **166 Civil penalty provisions**

3 *Enforceable civil penalty provisions*

4 (1) Each civil penalty provision of this Act is enforceable under Part 4
5 of the Regulatory Powers Act.

6 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
7 be enforced by obtaining an order for a person to pay a pecuniary
8 penalty for the contravention of the provision.

9 *Authorised applicant*

10 (2) For the purposes of Part 4 of the Regulatory Powers Act, APRA is
11 an authorised applicant in relation to the civil penalty provisions of
12 this Act.

13 *Relevant court*

14 (3) For the purposes of Part 4 of the Regulatory Powers Act, the
15 Federal Court is a relevant court in relation to the civil penalty
16 provisions of this Act.

EXPOSURE DRAFT

1 **Division 3—Infringement notices**

2 **167 Infringement notices**

3 *Provisions subject to an infringement notice*

4 (1) The following provisions of this Act are subject to an infringement
5 notice under Part 5 of the Regulatory Powers Act:

6 (a) sections 20 and 24;

7 (b) each provision setting out an offence of strict liability.

8 Note: Part 5 of the Regulatory Powers Act creates a framework for using
9 infringement notices in relation to provisions.

10 *Infringement officers*

11 (2) For the purposes of Part 5 of the Regulatory Powers Act, APRA is
12 an infringement officer in relation to the provisions mentioned in
13 subsection (1).

14 *Relevant chief executive*

15 (3) For the purposes of Part 5 of the Regulatory Powers Act, APRA is
16 the relevant chief executive in relation to the provisions mentioned
17 in subsection (1).

EXPOSURE DRAFT

Part 12 Enforcement

Division 4 Enforceable undertakings

Section 168

1 **Division 4—Enforceable undertakings**

2 **168 Enforceable undertakings**

3 *Enforceable provisions*

- 4 (1) Each provision of this Act, the rules, and the prudential standards
5 is enforceable under Part 6 of the Regulatory Powers Act.

6 Note: Part 6 of the Regulatory Powers Act creates a framework for
7 accepting and enforcing undertakings relating to compliance with
8 provisions.

9 *Authorised person*

- 10 (2) For the purposes of Part 6 of the Regulatory Powers Act, APRA is
11 an authorised person in relation to the provisions mentioned in
12 subsection (1).

13 *Relevant court*

- 14 (3) For the purposes of Part 6 of the Regulatory Powers Act, the
15 Federal Court is a relevant court in relation to the provisions
16 mentioned in subsection (1).

17 *Enforceable undertaking may be published on APRA's website*

- 18 (4) An authorised person in relation to a provision mentioned in
19 subsection (1) may publish or cause to be published an undertaking
20 given in relation to the provision on APRA's website.

EXPOSURE DRAFT

1 **Division 5—Injunctions**

2 **169 Injunctions**

3 *Enforceable provisions*

- 4 (1) Each provision of this Act, the rules, and the prudential standards
5 is enforceable under Part 7 of the Regulatory Powers Act.

6 Note: Part 7 of the Regulatory Powers Act creates a framework for using
7 injunctions to enforce provisions.

8 *Authorised person*

- 9 (2) For the purposes of Part 7 of the Regulatory Powers Act, APRA is
10 an authorised person in relation to the provisions mentioned in
11 subsection (1).

12 *Relevant court*

- 13 (3) For the purposes of Part 7 of the Regulatory Powers Act, the
14 Federal Court is a relevant court in relation to the provisions
15 mentioned in subsection (1).

EXPOSURE DRAFT

Part 13 Reconsideration and review of decisions

Division 1 Simplified outline

Section 170

1 **Part 13—Reconsideration and review of decisions**

2 **Division 1—Simplified outline**

3 **170 Simplified outline of this Part**

4

<i>to be drafted</i>

EXPOSURE DRAFT

Reconsideration and review of decisions **Part 13**
Notice of reviewable APRA decisions **Division 2**

Section 171

1 **Division 2—Notice of reviewable APRA decisions**

2 **171 Notice of reviewable APRA decisions**

3 (1) If written notice of a reviewable APRA decision is given to a
4 person whose interests are affected by the decision, the notice must
5 include a statement setting out the particulars of the person's
6 review rights.

7 (2) The notice may impose conditions relating to the disclosure of
8 specified information that:
9 (a) is part of the reasons for the decision; and
10 (b) is contained in, or in a document accompanying, the notice.

11 (3) A person commits an offence if the person fails to comply with a
12 condition imposed under subsection (2).

13 Penalty: Imprisonment for 2 years.

14 (4) Any failure to comply with the requirement in subsection (1) in
15 relation to a decision does not affect the validity of the decision.

EXPOSURE DRAFT

Part 13 Reconsideration and review of decisions

Division 3 Internal reconsideration of reviewable APRA decisions

Section 172

1 **Division 3—Internal reconsideration of reviewable APRA**
2 **decisions**

3 **172 Internal reconsideration of reviewable APRA decisions**

4 (1) A person (the *affected person*) whose interests are affected by a
5 reviewable APRA decision made by a delegate of APRA may
6 request that APRA reconsider the decision.

7 Note: See section 174 for review of a reviewable APRA decision that is
8 made by APRA itself rather than by a delegate.

9 *Form and timing of request*

10 (2) The affected person must make the request in writing:
11 (a) before the end of the period of 21 days beginning on the day
12 on which the person is notified of the reviewable APRA
13 decision, unless paragraph (b) applies; or
14 (b) if APRA allows a longer period for making the request—
15 before the end of that longer period.

16 *Reasons for request*

17 (3) The affected person must set out in the request the reasons for the
18 request.

19 *Reconsideration of decision*

20 (4) APRA, on receiving a request made in accordance with
21 subsections (2) and (3), must:
22 (a) reconsider the reviewable APRA decision itself (not by way
23 of a delegate); or
24 (b) cause the reviewable APRA decision to be reconsidered by a
25 person:
26 (i) who was not involved in making that decision; and
27 (ii) if that decision was made by an APRA member—is
28 another APRA member; and

EXPOSURE DRAFT

Reconsideration and review of decisions **Part 13**
Internal reconsideration of reviewable APRA decisions **Division 3**

Section 172

- 1 (iii) if that decision was made by an APRA staff member—
2 is either an APRA member or an APRA staff member
3 covered by subsection (5).

4 The person who reconsiders the decision is the *internal reviewer*.

- 5 (5) For the purposes of subparagraph (4)(b)(iii), this subsection covers
6 an APRA staff member who holds, or is acting in, an office or
7 position that is:
8 (a) equivalent to a position occupied by an SES employee; and
9 (b) at least the same level as that held or occupied by the person
10 who made the decision.

11 *Reconsideration of decision*

- 12 (6) The internal reviewer must:
13 (a) affirm, vary or set aside the reviewable APRA decision; and
14 (b) if the internal reviewer sets aside the reviewable APRA
15 decision—may make a new decision in substitution for the
16 reviewable APRA decision.
- 17 (7) The internal reviewer must do so before the end of the period of 21
18 days beginning on the day APRA receives the request.

19 *When decision on reconsideration takes effect*

- 20 (8) The internal reviewer's decision on reconsideration takes effect:
21 (a) on the day on which that decision is made, unless
22 paragraph (b) applies; or
23 (b) if the notice under section 173(1) specifies a day on which
24 that decision is to take effect—on that day.

25 *Decision-maker may be taken to have affirmed reviewable decision*

- 26 (9) APRA is taken to have made a decision affirming the reviewable
27 APRA decision if the affected person is not notified under
28 subsection 173(1) of the internal reviewer's decision on
29 reconsideration before the end of the period applicable under
30 subsection (7) of this section.

EXPOSURE DRAFT

Part 13 Reconsideration and review of decisions

Division 3 Internal reconsideration of reviewable APRA decisions

Section 173

1 *Reviewable APRA decision continues to operate unless*
2 *Administrative Review Tribunal orders otherwise*

3 (10) Section 32 of the *Administrative Review Tribunal Act 2024* applies
4 as if the making of the request under subsection (1) of this section
5 were the making of an application to the Administrative Review
6 Tribunal for a review of that decision.

7 (11) An order must not be made under subsection 32(2) of that Act (as
8 that subsection applies to the request because of subsection (10) of
9 this section) except by the Administrative Review Tribunal.

10 **173 Notice of reconsideration decisions**

11 (1) After the internal reviewer makes a decision on a reconsideration
12 in accordance with subsection 172(6), the internal reviewer must
13 give the affected person written notice of the decision that:

- 14 (a) sets out the findings on material questions of fact; and
15 (b) refers to the evidence or other material on which those
16 findings were based; and
17 (c) gives the reasons for the decision.

18 Note: Section 266 of the *Administrative Review Tribunal Act 2024* also
19 requires the person to be notified of the person's right to apply to the
20 Administrative Review Tribunal for review of the decision.

21 (2) If a notice includes information of a kind mentioned in
22 paragraph (1)(a) or (b), the notice may impose conditions to be
23 complied with in relation to that information.

24 (3) A person commits an offence if the person fails to comply with a
25 condition imposed under subsection (2).

26 Penalty: Imprisonment for 2 years.

EXPOSURE DRAFT

1 **Division 4—Review of certain decisions by the**
2 **Administrative Review Tribunal**

3 **174 Administrative Review Tribunal review of decisions**

- 4 (1) An application may be made to the Administrative Review
5 Tribunal for review of any of the following decisions:
6 (a) a reviewable APRA decision made by APRA itself (not by a
7 delegate of APRA);
8 (b) a decision on a reconsideration made as described in
9 paragraph 172(6)(a);
10 (c) a decision that is taken to have been made under subsection
11 172(9);
12 (d) a decision made by the Minister under subsection 13(2) to
13 designate a payment entity.
- 14 (2) Subsection 12(2) of the *Administrative Review Tribunal Act 2024*
15 does not apply to a decision covered by paragraph (1)(a).

EXPOSURE DRAFT

Part 14 Miscellaneous

Division 1 Simplified outline

Section 175

1 **Part 14—Miscellaneous**

2 **Division 1—Simplified outline**

3 **175 Simplified outline of this Part**

4

to be drafted

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1 **Division 2—Miscellaneous**

2 **176 APRA may determine that provisions of this Act do not apply**

3 (1) APRA may, in writing, determine that any or all of the provisions
4 of Part 2 or 3, or of Division 2 of Part 4, do not apply to a person
5 while the determination is in force.

6 (2) The determination:

7 (a) may be expressed to apply to a particular person or to a class
8 of persons; and

9 (b) may specify the period during which the determination is in
10 force; and

11 (c) may be made subject to specified conditions (including
12 conditions that apply to individuals).

13 (3) If APRA makes a determination that applies to a particular person,
14 APRA must also give the person written notice of the
15 determination.

16 (4) A person commits an offence if:

17 (a) a condition to which a determination under this section is
18 subject applies to the person; and

19 (b) the person does, or fails to do, an act; and

20 (c) doing, or failing to do, the act results in a contravention of
21 the condition.

22 Penalty: 200 penalty units.

23 (5) An offence against subsection (4) is an indictable offence.

24 (6) If a person does or fails to do an act in circumstances that give rise
25 to the person committing an offence against subsection (4), the
26 person commits an offence against that subsection in respect of:

27 (a) the first day on which the offence is committed; and

28 (b) each subsequent day (if any) on which the circumstances that
29 gave rise to the person committing the offence continue

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Part 14 Miscellaneous
Division 2 Miscellaneous

Section 177

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

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

5 (7) APRA may, in writing, vary or revoke a determination under this
6 section.

7 (8) The following instruments made under this section are not
8 legislative instruments:

9 (a) a determination that applies to a particular person;

10 (b) an instrument varying or revoking a determination that
11 applies to a particular person.

12 (9) Otherwise, an instrument made under this section is a legislative
13 instrument.

14 (10) If a person applies to APRA to make a determination under this
15 section that applies just to that person, APRA must either:

16 (a) make such a determination; or

17 (b) refuse to make such a determination.

18 **177 Institution of offence proceedings no bar to winding up**

19 The institution of proceedings against a body corporate for an
20 offence against this Act, the *Financial Sector (Collection of Data)*
21 *Act 2001* or the *Financial Accountability Regime Act 2023* does not
22 prevent the institution of proceedings for the winding-up of the
23 body corporate on a ground that relates to the matter that
24 constitutes the offence.

25 **178 Conduct of directors, employees and agents etc.**

26 (1) Where it is necessary to establish, for the purposes of this Act or
27 the rules, the state of mind of a person other than a body corporate
28 in relation to particular conduct, it is sufficient to show:

29 (a) that the conduct was engaged in by an employee or agent of
30 the person within the scope of the employee's actual or
31 apparent authority; and

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- 1 (b) that the employee or agent had the state of mind.
- 2 (2) Any conduct engaged in on behalf of a person other than a body
3 corporate by an employee or agent of the person within the scope
4 of the employee's or agent's actual or apparent authority shall be
5 deemed, for the purposes of this Act and the rules, to have been
6 engaged in also by the first-mentioned person unless the
7 first-mentioned person establishes that the first-mentioned person
8 took reasonable precautions and exercised due diligence to avoid
9 the conduct.
- 10 (3) Where:
- 11 (a) a person other than a body corporate is convicted of an
12 offence; and
- 13 (b) the person would not have been convicted of the offence if
14 subsections (1) and (2) had not been enacted;
15 the person is not liable to be punished by imprisonment for that
16 offence.
- 17 (4) A reference in subsection (1) to the state of mind of a person
18 includes a reference to:
- 19 (a) the knowledge, intention, opinion, belief or purpose of the
20 person; and
21 (b) the person's reasons for the intention, opinion, belief or
22 purpose.
- 23 (5) A reference in this section to engaging in conduct includes a
24 reference to failing or refusing to engage in conduct.
- 25 Note: For provisions relating to proof of offences by bodies corporate, see
26 Part 2.5 of the *Criminal Code*.

179 Disclosure of information received under Act prohibited in certain circumstances

27 Part 6 of the *Australian Prudential Regulation Authority Act 1998*
28 prohibits certain disclosures of information received under this
29 Act.
30
31

EXPOSURE DRAFT

Part 14 Miscellaneous
Division 2 Miscellaneous

Section 180

- 1 **180 Compensation for acquisition of property**
- 2 (1) If:
- 3 (a) the operation of this Act would result in an acquisition of
- 4 property (within the meaning of paragraph 51(xxxi) of the
- 5 Constitution) from a person otherwise than on just terms
- 6 (within the meaning of that paragraph); and
- 7 (b) the acquisition would be invalid because of
- 8 paragraph 51(xxxi) of the Constitution;
- 9 the Commonwealth is liable to pay a reasonable amount of
- 10 compensation to the person.
- 11 (2) If the Commonwealth and the person do not agree on the amount
- 12 of the compensation, the person may institute proceedings in the
- 13 Federal Court or the Supreme Court of a State or Territory for the
- 14 recovery from the Commonwealth of such reasonable amount of
- 15 compensation as the court determines.
- 16 (3) Any damages or compensation recovered or other remedy given in
- 17 a proceeding that is commenced otherwise than under this section
- 18 is to be taken into account in assessing compensation payable in a
- 19 proceeding that is commenced under this section and that arises out
- 20 of the same event or transaction.

1 **181 Protection from liability—general**

- 2 (1) A person is not subject to any liability to any person in respect of
3 anything done, or omitted to be done, in good faith and without
4 negligence in the exercise or performance, or the purported
5 exercise or performance, of powers, functions or duties under this
6 Act.
- 7 (2) To avoid doubt, any information provided by a person to APRA
8 under section 63 is taken, for the purposes of subsection (1) of this
9 section, to be provided in the exercise of a power or the
10 performance of a function under this Act.
- 11 (3) Subsection (1) does not apply to a person referred to in section 58
12 of the *Australian Prudential Regulation Authority Act 1998* and, to
13 avoid doubt, does not affect the operation of that section.

14 **182 Protection from liability—directions and secrecy**

- 15 (1) An action, suit or proceeding (whether criminal or civil) does not
16 lie against a person in relation to anything done, or omitted to be
17 done, in good faith by the person if:
- 18 (a) the person does the thing, or omits to do the thing, for the
19 purpose of any of the following:
- 20 (i) complying with a direction under Part 9 given by APRA
21 to a body corporate;
- 22 (ii) complying with section 134 (secrecy) in relation to a
23 direction under Part 9 given by APRA to a body
24 corporate; and
- 25 (b) it is reasonable for the person to do the thing, or to omit to do
26 the thing, in order to achieve that purpose; and
- 27 (c) the person is any of the following:
- 28 (i) an officer or senior manager of the body corporate, or of
29 a member of a relevant group of bodies corporate of
30 which the body corporate is also a member;
- 31 (ii) an employee or agent of the body corporate, or of a
32 member of a relevant group of bodies corporate of
33 which the body corporate is also a member;

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Part 14 Miscellaneous

Division 2 Miscellaneous

Section 183

- 1 (iii) the body corporate or a member of a relevant group of
2 bodies corporate of which the body corporate is also a
3 member.
- 4 (2) For the purposes of paragraph (1)(b), treat it as reasonable for a
5 person to do a thing, or to omit to do a thing, in order to achieve a
6 purpose unless no reasonable person in that person's position
7 would do the thing, or omit to do the thing, in order to achieve that
8 purpose.
- 9 (3) In this section:
- 10 *employee* of a body corporate includes a person engaged to provide
11 advice or services to the body corporate.
- 12 *officer* has the meaning given by section 9 of the *Corporations Act*
13 *2001*.

14 **183 Protection from liability—provisions do not limit each other**

- 15 The following provisions do not limit the operation of each other:
- 16 (a) section 182;
- 17 (b) section 58 of the *Australian Prudential Regulation Authority*
18 *Act 1998*.

19 **184 Act has effect despite the Corporations Act**

- 20 This Act has effect despite any provision of the *Corporations Act*
21 *2001*.

22 **185 APRA and ASIC may give advice to Minister**

- 23 APRA and ASIC may give advice to the Minister in relation to:
- 24 (a) any matter in respect of which the Minister has a discretion
25 under this Act; and
- 26 (b) any other matter concerning a regulated entity or a registered
27 NOHC.

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1 **186 ASIC may give advice to APRA**

2 ASIC may give advice to APRA in relation to any matter
3 concerning a regulated entity or a registered NOHC.

4 **187 APRA must notify ASIC of certain matters**

5 APRA must notify ASIC if APRA:

- 6 (a) registers a payment entity under Division 2 of Part 3; or
7 (b) registers a NOHC under Division 3 of Part 3; or
8 (c) cancels the registration of a regulated entity or registered
9 NOHC.

10 **188 Approved forms**

11 (1) A document under a provision of this Act is in the *approved form*
12 if, and only if:

- 13 (a) it is in a form (if any) approved by APRA; and
14 (b) it contains the information that any such form requires, and
15 any further information, statement or document that APRA
16 requires, whether in the form or otherwise; and
17 (c) it is given in the manner (if any) required by APRA (which
18 may include electronically).

19 (2) APRA may, in writing, approve one or more forms for the
20 purposes of paragraph (1)(a).

21 (3) APRA must publish on its website:

- 22 (a) any form approved for the purposes of paragraph (1)(a); and
23 (b) any requirements mentioned in:
24 (i) paragraph (1)(b) that are not included in an approved
25 form; or
26 (ii) paragraph (1)(c).

27 **189 Minister's power to make rules**

28 (1) The Minister may, by legislative instrument, make rules
29 prescribing matters:

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Part 14 Miscellaneous
Division 2 Miscellaneous

Section 189

- 1 (a) required or permitted by this Act to be prescribed by the
2 rules; or
3 (b) necessary or convenient to be prescribed for carrying out or
4 giving effect to this Act.
- 5 (2) To avoid doubt, the rules may not do the following:
6 (a) create an offence or civil penalty;
7 (b) provide powers of:
8 (i) arrest or detention; or
9 (ii) entry, search or seizure;
10 (c) impose a tax;
11 (d) set an amount to be appropriated from the Consolidated
12 Revenue Fund under an appropriation in this Act;
13 (e) directly amend the text of this Act.
- 14