

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY ACT 1998

The following amendment (No. 146, 1999) has not been incorporated. A new consolidation is in preparation.

TABLE OF PROVISIONS

- Part 1 Preliminary
1. Short title
2. Commencement
3. Definitions
4. Act binds the Crown
5. External Territories
6. Application of Criminal Code
- Part 2 Establishment, functions and powers of APRA
7. Establishment of APRA
8. Purpose for establishing APRA
9. APRA's functions
- 9A. Conferral of functions by State or Territory laws or by agreements
10. Duty to advise the Treasurer
11. APRA's powers
12. Government's powers in relation to APRA policies
13. APRA is a body corporate
14. APRA is not the Crown
15. Delegation of APRA's functions or powers by CEO
- Part 3 APRA's Board Division 1 Establishment, functions, powers and membership
16. Establishment of Board
17. Board's functions
18. The Board's powers
19. Membership
20. Delegation by the Board
- Division 2 Meetings and resolutions without meetings
21. Times and places of meetings
22. Presiding at meetings
23. Quorum
24. Voting at meetings
25. Conduct of meetings
26. Board resolutions without meetings
- Division 3 Terms and conditions of Board members (other than the CEO)
27. Appointment and period of appointment
28. Remuneration and allowances
29. Leave of absence
30. Resignation
31. Termination of appointment
32. Other terms and conditions
33. Acting Board members
34. Signpost to other provisions applying to Board members
- Part 4 The CEO and APRA staff members Division 1 The CEO
35. Appointment
36. Duties
37. Remuneration and allowances

38. Leave of absence
39. Resignation
40. Termination
41. Other terms and conditions
42. Acting appointments
43. Delegation by CEO
44. Signpost to other provisions applying to the CEO
Division 2 Appointment of APRA staff members
45. Appointment of permanent, temporary and casual staff
46. Staff seconded to APRA
47. Consultants and other people engaged to perform services
48. Appointments of person appointed to perform specific roles
Part 5 Financial and taxation matters
49. Money of APRA
50. APRA's share of levy money
51. Charges for APRA's services etc.
52. Application of money held by APRA
53. Borrowing by APRA
54. Signpost to further provisions about financial matters
55. Liability to taxation
Part 6 Secrecy
56. Secrecy general obligations
57. Secrecy documents or information to which section 56 does not
apply
Part 7 Miscellaneous
58. Protection from liability
59. Extra matters to be included in annual report
60. Regulations

SECT 1

Part 1 Preliminary Short title This Act may be cited as the "Australian Prudential Regulation Authority Act 1998".

SECT 2

Commencement

(1)

Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2)

If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

SECT 3

Definitions

(1)

In this Act, unless the contrary intention appears:

"APRA" means the Australian Prudential Regulation Authority.

"APRA staff member" means any of the following:

(a)

a person appointed by APRA under section 45; or

(b)

a person assisting APRA under section 46; or

(c)

a person engaged by APRA under section 47.

"ASIC" means the Australian Securities and Investments Commission.

"ASIC member" means a member of ASIC.

"ASIC representative member" means a member referred to in paragraph 19(1)(d).

"ASIC staff member" has the same meaning as the expression staff member has in subsection 5(1) of the "Australian Securities and Investments Commission Act 1989".

"Board" means the board of management of APRA.

"Board member" means a member of the Board, and includes the Chair and the CEO.

"body regulated by APRA" has the meaning given by subsection (2).

"CEO" means the Chief Executive Officer of APRA.

"Chair" means the Chair of the Board.

"officer of the Reserve Bank Service" means an officer appointed under Part VII of the "Reserve Bank Act 1959".

"ordinary member" means a Board member other than the CEO or a representative member.

"prudential regulation or advice services" means services of either or both of the following kinds:

(a)

services consisting of APRA performing a role in the prudential regulation or supervision of entities;

(b)

services consisting of APRA providing advice relating to the prudential regulation or supervision of entities.

"representative member" means a Board member referred to in paragraph 19(1)(c) or (d).

"Reserve Bank" means the Reserve Bank of Australia.

"Reserve Bank representative member" means a Board member referred to in paragraph 19(1)(c).

(2)

Each of the following is a "body regulated by APRA":

(a)

an ADI, within the meaning of the "Banking Act 1959";

(b)

an authorised NOHC, within the meaning of the "Banking Act 1959";

(c)

a body corporate that is authorised to carry on insurance business under the "Insurance Act 1973";

(d)

Lloyd's, or a Lloyd's underwriter, as defined in section 3 of the "Insurance Act 1973";

(e)

a life company that is registered under the "Life Insurance Act 1995";

(f)

the trustee of a superannuation entity, within the meaning of the "Superannuation Industry (Supervision) Act 1993";

(g)

an RSA provider, within the meaning of the "Retirement Savings Accounts Act 1997".

Note: ADI is short for authorised deposit-taking institution, NOHC is short for non-operating holding company and RSA is short for retirement savings account.

(3)

The regulations may amend subsection (2) as in force from time to time for the purpose of:

(a)

making additions to, or omissions from, the kinds of bodies or entities covered by that subsection; and

(b)

changing the descriptions of the kinds of bodies or entities covered by that subsection.

SECT 4

Act binds the Crown

(1)

This Act binds the Crown in each of its capacities.

(2)

This Act does not make the Crown liable to be prosecuted for an offence.

SECT 5

External Territories This Act extends to every external Territory.

SECT 6

Application of Criminal Code The "Criminal Code" applies to all offences against this Act.

SECT 7

Part 2 Establishment, functions and powers of APRA **Establishment of APRA** The Australian Prudential Regulation Authority is established by this section.

Note: The "Commonwealth Authorities and Companies Act 1997" applies to APRA. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of executive officers.

SECT 8

Purpose for establishing APRA

(1)

APRA is established for the purpose of regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards, and for developing the policy to be applied in performing that regulatory role.

(2)

In providing this regulation and developing this policy, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality.

SECT 9

APRA's functions APRA has the following functions:

(a)

the functions conferred on it by or under this Act or any other law of the Commonwealth;

(b)

the functions conferred on it by or under any law of a State or Territory in accordance with subsection 9A(1);

(c)

the function of providing prudential regulation or advice services under agreements entered into in accordance with subsection 9A(2).

SECT 9A

Conferral of functions by State or Territory laws or by agreements

"Conferral of functions by or under State or Territory laws"

(1)

APRA may have functions or powers conferred on it by or under a law of a State or Territory if the conferral of the functions or powers is in accordance with:

(a)

provisions of an agreement entered into by the Commonwealth and the State or Territory, being provisions approved by the Minister for the purposes of this subsection; or

(b)

an approval given by the Minister for the purposes of this subsection.

APRA has the functions and powers so conferred by that law.

"Agreements for performance of prudential regulation or advice services"

(2)

APRA may, with the approval of the Minister, enter into an agreement with a State, Territory or other person under which APRA is, for a fee, to provide prudential regulation or advice services (whether in Australia or a foreign country). The agreement is only effective for the purposes of this Act to the extent to which APRA's provision of the services is for a purpose or purposes within the Commonwealth's legislative power.

"Subsection (2) agreement may deal with liabilities between the parties"

(3)

An agreement entered into in accordance with subsection (2) may make provision in relation to the circumstances in which, and the extent to which, one party to the agreement is liable to the other party to the agreement in respect of matters arising under or out of the agreement.

"Delegation of Minister's power to approve subsection (2) agreement"

(4)

The Minister may, in writing, delegate the power under subsection (2) to approve the entering into of agreements to a person holding or performing the duties of a Senior Executive Service office in the Department.

SECT 10

Duty to advise the Treasurer APRA must advise the Treasurer as soon as practicable if it considers that a body regulated by APRA is in financial difficulty.

SECT 11

APRA's powers

(1)

APRA has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

(2)

APRA's powers include, but are not limited to, the following powers:

(a)

the power to acquire, hold and dispose of real and personal property;

(b)

the power to enter into contracts;

(c)

the power to lease the whole or any part of land or a building for the purposes of APRA;

(d)

the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of APRA;

(e)

the power to do anything incidental to any of its functions.

SECT 12

Government's powers in relation to APRA policies

(1)

The Board is to regularly inform the Government of APRA's policies.

Note: The Board determines APRA's policies, see section 17.

(2)

If the Government and the Board disagree as to whether one of APRA's policies is directed to the best performance of its functions or exercise of its powers, the Treasurer and the Board are to try to reach agreement.

(3)

If the Treasurer and Board cannot agree, the Board must immediately give the Treasurer a statement about the matter in relation to which the Treasurer and Board have failed to agree.

(4)

The Treasurer may then give the Governor-General a recommendation as to the way the matter should be resolved.

(5)

The Governor-General, acting with the advice of the Federal Executive Council, may, by order, determine the policy to be adopted by APRA.

(6)

The Treasurer is to inform the Board:

(a)

of the policy determined under subsection (5); and

(b)

that the Government accepts responsibility for the adoption of that policy by APRA and that the Government will take any action within its powers that the Government considers necessary because of the adoption of that policy.

(7)

After the Treasurer has informed the Board of the matters in subsection (6), the Board is to ensure that effect is given to the policy determined by the order in accordance with the order.

(8)

The Treasurer is to cause the following documents to be Tabled in each House of the Parliament within 5 sitting days of that House after the Treasurer has informed the Board of the matters in subsection (6):

(a)

a copy of the order determining the policy; and

(b)

a statement by the Government in relation to the matter in relation to which the Treasurer and Board have failed to agree; and

(c)

a copy of the statement that the Board gave to the Treasurer as required under subsection (3).

Note: See section 28 of the "Commonwealth Authorities and Companies Act 1997" for additional information relating to obligations of the Board to follow government policy.

SECT 13

APRA is a body corporate

(1)

APRA:

(a)

is a body corporate with perpetual succession; and

(b)

must have a seal; and

(c)

may sue and be sued.

(2)

APRA's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

(3)

All courts, judges and persons acting judicially must:

(a)

take judicial notice of the imprint of APRA's seal appearing on a document; and

(b)

presume that the document was duly sealed.

SECT 14

APRA is not the Crown APRA is not entitled to any immunity or privilege of the Crown except so far as express provision is made by any law of the Commonwealth, of a State or of a Territory.

SECT 15

Delegation of APRA's functions or powers by CEO

(1)

The CEO may, by written instrument, delegate any of APRA's functions or powers under this Act or any other law of the Commonwealth to a Board member or an APRA staff member if a Board resolution allows the delegation.

(2)

The CEO may, by written instrument, delegate any of APRA's functions or powers under this Act or any other law of the Commonwealth:

(a)

to the Chairperson of ASIC, or to an ASIC staff member, if:

(i)

a Board resolution allows the delegation; and

(ii)

the Chairperson of ASIC agrees to the delegation; or

(b)

to the Governor of the Reserve Bank, or to an officer of the Reserve Bank Service, if:

(i)

a Board resolution allows the delegation; and

(ii)

the Governor of the Reserve Bank agrees to the delegation.

(3)

In performing or exercising functions or powers under a delegation, the delegate must comply with any directions of the CEO.

Note: For information about delegations, see sections 34AA to 34A of the "Acts Interpretation Act 1901".

SECT 16

Part 3 APRA's Board Division 1 Establishment, functions, powers and membership
Establishment of Board There is to be a Board of management of APRA.

SECT 17

Board's functions The Board has the following functions:

(a)

to determine APRA's policies (including goals, priorities, strategies and administrative policies); and

(b)

to ensure that APRA performs its functions properly, efficiently and effectively; and

(c)

to ensure that APRA's operations are conducted having regard to its purpose as stated in section 8.

SECT 18

The Board's powers The Board has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

SECT 19

Membership

(1)

The Board consists of the following members:

(a)

a Chair;

(b)

the CEO;

(c)

2 members, each of whom is either the Governor or the Deputy Governor of the Reserve Bank or an officer of the Reserve Bank Service; and

(d)

1 member who is also an ASIC member or an ASIC staff member; and

(e)

4 other members.

Note 1: Section 18B of the "Acts Interpretation Act 1901" deals with the title of the Chair.

Note 2: The exercise of the Board's powers and performance of its functions is not affected merely because of a vacancy or vacancies in the membership of the body (see subsection 33(2B) of the "Acts Interpretation Act 1901").

(2)

A person cannot be appointed as a Board member if that person is a director, officer or employee of a body regulated by APRA.

SECT 20

Delegation by the Board

(1)

The Board may, by resolution, delegate any of its functions or powers to a Board member or an APRA staff member.

(2)

The delegate must comply with any directions of the Board when exercising powers under the delegation.

(3)

A delegation under this section:

(a)

may be revoked by resolution of the Board (whether or not constituted by the people who constituted the Board when the power was delegated); and

(b)

continues in force despite any change in the Board's membership.

(4)

A certificate signed by the Chair stating any matter in relation to a delegation under this section is prima facie evidence of the matter.

(5)

A document that appears to be a certificate under subsection (4) is taken to be such a certificate and to have been properly given, unless the contrary is established.

Note: For further information about delegations, see sections 34AA to 34A of the "Acts Interpretation Act 1901".

SECT 21

Division 2 Meetings and resolutions without meetings Times and places of meetings

(1)

The Board must hold such meetings as are necessary for the efficient performance of its functions.

(2)

Meetings are to be held at such times and places as the Board or the Chair determines.

SECT 22

Presiding at meetings

(1)

The Chair must preside at all meetings of the Board at which he or she is present.

(2)

If the Chair is not present at a meeting, the Board members present must appoint one of their number to preside.

SECT 23

Quorum Five Board members constitute a quorum at a meeting of the Board.

SECT 24

Voting at meetings

(1)

A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.

(2)

The person presiding at a meeting has:

(a)

a deliberative vote; and

(b)

if necessary, also a casting vote.

SECT 25

Conduct of meetings The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with this Division.

Note 1: Section 33B of the "Acts Interpretation Act 1901" contains further information about the ways in which Board members may participate in meetings.

Note 2: Requirements relating to disclosure of interests are contained in section 21 of the "Commonwealth Authorities and Companies Act 1997".

SECT 26

Board resolutions without meetings A resolution is taken to have been passed at a meeting of the Board if:

(a)

the Board has determined:

(i)

that resolutions may be passed in accordance with this section; and

(ii)

the method of indicating agreement with a resolution passed in accordance with this section; and

(b)

without meeting, a majority of the Board members indicate agreement with the resolution in accordance with the method determined by the Board; and

(c)

that majority would have constituted a quorum at a meeting of the Board; and

(d)

all Board members were informed of the proposed resolution, or reasonable efforts were made to inform all Board members of the proposed resolution.

SECT 27

Division 3 Terms and conditions of Board members (other than the CEO) Appointment and period of appointment

"Ordinary members"

(1)

The ordinary members are to be appointed by the Treasurer by written instrument.

Note: The Chair is one of the ordinary members and is appointed by the Treasurer as the Chair.

(2)

The ordinary members hold office on a part-time basis, for the period specified in the instrument of appointment. The period must not exceed 5 years.

"Representative members"

(3)

The Reserve Bank representative members are to be appointed by the Governor of the Reserve Bank by instrument in writing.

Note: The Governor of the Reserve Bank may appoint himself or herself.

(4)

The ASIC representative member is to be appointed by the Chairperson of ASIC by instrument in writing.

Note: The Chairperson of ASIC may appoint himself or herself.

(5)

The representative members hold office on a part-time basis.

SECT 28

Remuneration and allowances

(1)

A Board member (other than the CEO) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is determined by the Treasurer.

(2)

A Board member (other than the CEO) is to be paid the allowances that are prescribed.

(3)

This section has effect subject to the "Remuneration Tribunal Act 1973".

SECT 29

Leave of absence The Board may grant leave of absence to each of the Board members (other than the CEO) on the terms and conditions that the Board determines.

SECT 30

Resignation

"Ordinary members"

(1)

An ordinary member may resign his or her appointment by giving the Treasurer a written resignation.

"Reserve Bank representative members"

(2)

A Reserve Bank representative member may resign his or her appointment by giving the Governor of the Reserve Bank a written resignation.

"ASIC representative members"

(3)

An ASIC representative member may resign his or her appointment by giving the Chairperson of ASIC a written resignation.

SECT 31

Termination of appointment

"All members other than the CEO"

(1)

The appointment of a Board member (other than the CEO) is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.

"Ordinary members"

(2)

The Treasurer may terminate the appointment of an ordinary member:

(a)

for misbehaviour or physical or mental incapacity; or

(b)

if the member:

(i)

becomes bankrupt; or

(ii)

applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii)

compounds with his or her creditors; or

(iv)

makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(c)

if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

(d)

if the member engages in paid employment that, in the Treasurer's opinion, conflicts with the proper performance of the duties of his or her office; or

(e)

if the member fails, without reasonable excuse, to comply with section 21 of the "Commonwealth Authorities and Companies Act 1997".

"Reserve Bank representative members"

(3)

The Governor of the Reserve Bank may at any time terminate the appointment of a Reserve Bank representative member.

(4)

The appointment of a Reserve Bank representative member is immediately terminated if the member ceases to be any of the following:

(a)

the Governor of the Reserve Bank;

(b)

the Deputy Governor of the Reserve Bank;

(c)

an officer of the Reserve Bank Service.

"ASIC representative member"

(5)

The Chairperson of ASIC may at any time terminate the appointment of an ASIC representative member.

(6)

The appointment of an ASIC representative member is immediately terminated if the member ceases to be an ASIC member or a member of the staff of ASIC.

SECT 32

Other terms and conditions The ordinary members hold office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Treasurer.

SECT 33

Acting Board members

"Ordinary members"

(1)

The Treasurer may appoint a person to act as an ordinary member:

(a)

during a vacancy in the office of an ordinary member, whether or not an appointment has previously been made to the office; or

(b)

during any period, or during all periods, when an ordinary member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

"Reserve Bank representative members"

(2)

The Governor of the Reserve Bank may appoint a person to act as a Reserve Bank representative member:

(a)

during a vacancy in the office of a Reserve Bank representative member, whether or not an appointment has previously been made to the office; or

(b)

during any period, or during all periods, when a Reserve Bank representative member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

"ASIC representative members"

(3)

The Chairperson of ASIC may appoint a person to act as an ASIC representative member:

(a)

during a vacancy in the office of an ASIC representative member, whether or not an appointment has previously been made to the office; or

(b)

during any period, or during all periods, when an ASIC representative member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

"Validity of acts—ordinary and representative members"

(4)

Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:

(a)

the occasion for the appointment had not arisen; or

(b)

there was a defect or irregularity in connection with the appointment; or

(c)

the appointment had ceased to have effect; or

(d)

the occasion to act had not arisen or had ceased.

Note: For further information about acting appointments, see section 33A of the "Acts Interpretation Act 1901".

"Qualifications of acting members"

(5)

A person is not eligible to be appointed to act in an office under this section unless the person would be eligible to be appointed to that office under section 19.

SECT 34

Signpost to other provisions applying to Board members For further provisions applying to Board members, see sections 21 to 27 of the "Commonwealth Authorities and Companies Act 1997".

SECT 35

Part 4 The CEO and APRA staff members Division 1 The CEO Appointment

(1)

There is to be a Chief Executive Officer of APRA.

(2)

The CEO is to be appointed by the Treasurer by written instrument.

(3)

The CEO is to be appointed on a full-time basis.

(4)

The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

SECT 36

Duties The CEO has the duties that the Board determines.

SECT 37

Remuneration and allowances

(1)

The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is determined by the Board.

(2)

The CEO is to be paid the allowances that are prescribed.

(3)

This section has effect subject to the "Remuneration Tribunal Act 1973".

SECT 38

Leave of absence

(1)

The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2)

The Board may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.

(3)

This section has effect subject to section 87E of the "Public Service Act 1922".

SECT 39

Resignation The CEO may resign his or her appointment by giving the Treasurer a written resignation.

SECT 40

Termination

(1)

The Treasurer may terminate the appointment of the CEO:

(a)

for misbehaviour or physical or mental incapacity; or

(b)

if the CEO:

(i)

becomes bankrupt; or

(ii)

applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii)

compounds with his or her creditors; or

(iv)

makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(c)

if the CEO is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(d)

if the CEO engages, except with the Board's approval, in paid employment outside the duties of his or her office; or

(e)

if the CEO fails, without reasonable excuse, to comply with section 21 of the "Commonwealth Authorities and Companies Act 1997".

(2)

The appointment of the CEO is immediately terminated if the CEO becomes a director, officer or employee of a body regulated by APRA.

(3)

If the CEO is:

(a)

an eligible employee for the purposes of the "Superannuation Act 1976"; or

(b)

a member of the superannuation scheme established by the Trust Deed under the "Superannuation Act 1990";

the Treasurer may, with the consent of the CEO, retire the CEO from office on the ground of physical or mental incapacity.

(4)

For the purposes of the "Superannuation Act 1976", the CEO is taken to have been retired from office on the ground of invalidity if:

(a)

the CEO's appointment is terminated, or the CEO is retired from office, on the ground of physical or mental incapacity; and

(b)

the CSS Board gives a certificate under section 54C of the "Superannuation Act 1976".

(5)

For the purposes of the "Superannuation Act 1990", the CEO is taken to have been retired from office on the ground of invalidity if:

(a)

the CEO's appointment is terminated, or the CEO is retired from office, on the ground of physical or mental incapacity; and

(b)

the PSS Board gives a certificate under section 13 of the "Superannuation Act 1990".

SECT 41

Other terms and conditions The CEO holds office on the terms and conditions in relation to matters not covered by this Act that are determined by the Board.

SECT 42

Acting appointments

(1)

The Board may appoint a person to act as the CEO:

(a)

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

(b)

during any period, or during all periods, when the CEO is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

(2)

Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:

(a)

the occasion for the appointment had not arisen; or

(b)

there was a defect or irregularity in connection with the appointment; or

(c)

the appointment had ceased to have effect; or

(d)

the occasion to act had not arisen or had ceased.

Note: For further information about acting appointments, see section 33A of the "Acts Interpretation Act 1901".

SECT 43

Delegation by CEO

(1)

The CEO may, by written instrument, delegate any of his or her functions or powers to an APRA staff member if the Board resolves that the CEO may make such a delegation.

(2)

In exercising powers under the delegation, the delegate must comply with any directions of the CEO.

Note: For further information about delegations, see sections 34AA to 34A of the "Acts Interpretation Act 1901".

SECT 44

Signpost to other provisions applying to the CEO For further provisions applying to the CEO, see sections 21 to 27 of the "Commonwealth Authorities and Companies Act 1997".

SECT 45

Division 2 Appointment of APRA staff members Appointment of permanent, temporary and casual staff

(1)

APRA may appoint such permanent, temporary or casual staff as APRA considers necessary for the performance of its functions.

(2)

The terms and conditions of appointment (including as to remuneration) are to be determined by the Board.

SECT 46

Staff seconded to APRA APRA may be assisted by officers and employees of Departments of the Australian Public Service, and by officers and employees of authorities of the Commonwealth, whose services are made available to APRA in connection with the performance or exercise of any of its functions or powers.

SECT 47

Consultants and other people engaged to perform services

(1)

APRA may engage consultants or other people to provide advice to it or perform services for it.

(2)

The terms and conditions of engagement (including as to remuneration) are to be determined by the Board.

SECT 48

Appointments of person appointed to perform specific roles Under other laws of the Commonwealth, APRA has power to appoint people to perform particular roles (for example, investigators and administrators under Division 2 of Part II of the "Banking Act 1959"). A person appointed to perform such a role must be:

(a)

a person who has been appointed by APRA under section 45; or

(b)

a person who is assisting APRA under section 46; or

(c)

a person who has been engaged by APRA under section 47.

SECT 49

Part 5 Financial and taxation matters Money of APRA APRA's money is to consist of:

(a)

amounts paid to APRA under section 50; and

(b)

other amounts paid to APRA (for example, charges referred to in section 51).

SECT 50

APRA's share of levy money

(1)

After the Commonwealth has, during a financial year, received a total amount of levy money equal to the amount determined under subsection (2) for the financial year, APRA is to be paid amounts equal to the rest of the levy money received by the Commonwealth during the financial year as soon as practicable after each payment of the rest of the levy money is received.

(2)

The Treasurer is to determine, for each financial year, the amount of levy money received during the financial year that is to be available to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions.

(3)

The Consolidated Revenue Fund is appropriated for the purpose of payments under subsection (1).

(4)

A determination under subsection (2) is to be in writing and is a disallowable instrument for the purposes of section 46A of the "Acts Interpretation Act 1901".

(5)

In this section:

"levy money" means:

(a)

levy paid under the "Financial Institutions Supervisory Levies Collection Act 1998", other than levy imposed by the "Superannuation (Financial Assistance Funding) Levy Act 1993"; and

(b)

levy paid under the "Superannuation (Excluded Funds) Taxation Act 1987".

SECT 51

Charges for APRA's services etc.

(1)

APRA may, by written instrument, fix charges to be paid to APRA by a person in respect of:

(a)

services and facilities APRA provides the person; or

(b)

applications or requests (however described) made to APRA under any law of the Commonwealth.

The instrument may also provide for the waiver or refund of charges.

(1A)

Subsection (1) does not apply to a fee payable to APRA under an agreement entered into in accordance with subsection 9A(2).

(2)

A charge fixed under subsection (1) must be reasonably related to the costs and expenses incurred or to be incurred by APRA in relation to the matters to which the charge relates and must not be such as to amount to taxation.

(3)

An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the "Acts Interpretation Act 1901".

SECT 52

Application of money held by APRA APRA's money may only be applied:

(a)

in payment or discharge of the costs, expenses and other obligations incurred by APRA in the performance of its functions or the exercise of its powers; and

(b)

in payment of any remuneration or allowances payable to persons appointed or engaged under this Act; and

(c)

in making any other payments which APRA is authorised or required to make under this Act or any other law.

SECT 53

Borrowing by APRA

(1)

APRA may borrow money from the Commonwealth or persons other than the Commonwealth.

(2)

The Treasurer may enter into a contract on behalf of the Commonwealth guaranteeing the performance by APRA of obligations incurred by APRA under subsection (1). If the Treasurer enters into such a contract the obligations are so guaranteed.

SECT 54

Signpost to further provisions about financial matters The "Commonwealth Authorities and Companies Act 1997" includes further provisions about financial matters, including:

(a)

estimates (see section 14 of that Act); and

(b)

bank accounts and investments (see section 18 of that Act); and

(c)

accounting records (see section 20 of that Act); and

(d)

annual reports and financial statements, and audits (see Schedule 1 to that Act).

SECT 55

Liability to taxation

(1)

Subject to subsection (2), APRA is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

(2)

Subject to subsection (3), the regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory, or to laws included in a specified class of laws of the Commonwealth or of a State or Territory.

(3)

If regulations made for the purpose of subsection (2) provide that subsection (1) does not apply in relation to the laws of the Commonwealth that impose income tax, APRA is to be taken not to be a public authority for the purposes of paragraph 23(d) of the "Income Tax Assessment Act 1936" or section 50-25 of the "Income Tax Assessment Act 1997".

SECT 56

Part 6 Secrecy Secrecy general obligations

(1)

In this section:

"Act covered by this section" means any of the following Acts:

- (a)
the "Banking Act 1959";
- (b)
the "Financial Institutions Supervisory Levies Collection Act 1998";
- (c)
the "Financial Sector (Shareholdings) Act 1998";
- (ca)
the "Financial Sector (Transfers of Business) Act 1999";
- (d)
the "Insurance Act 1973";
- (e)
the "Insurance Acquisitions and Takeovers Act 1991";
- (f)
the "Life Insurance Act 1995";
- (g)
the "Retirement Savings Accounts Act 1997";
- (h)
the "Superannuation Industry (Supervision) Act 1993";
- (i)
the "Superannuation (Excluded Funds) Taxation Act 1987";
- (j)
any Act imposing a levy to which the "Financial Institutions Supervisory Levies Collection Act 1998" applies, or to which the "Superannuation (Excluded Funds) Taxation Act 1987" applies;
- (k)
any other prescribed Act.

"court" includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

"financial sector supervisory agency" means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

"officer" means:

(a)

a Board member; or

(b)

an APRA staff member; or

(c)

any other person who, because of his or her employment, or in the course of that employment:

(i)

has acquired protected information; or

(ii)

has had access to protected documents;

other than an employee of the body to which the information or document relates. "produce" includes permit access to.

"protected document" means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and containing information relating to the affairs of:

(a)

a body regulated by APRA; or

(b)

a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the Corporations Law) to a body regulated by APRA; or

(c)

a person who has been, is, or proposes to be, a customer of a body regulated by APRA;

other than:

(d)

a document containing information that has already been lawfully made available to the public from other sources; or

(e)

a document given or produced under, or for the purposes of, a provision of the "Superannuation Industry (Supervision) Act 1993":

(i)

administered by the Commissioner of Taxation; or

(ii)

being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

"protected information" means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and relating to the affairs of:

(a)

a body regulated by APRA; or

(b)

a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the Corporations Law) to a body regulated by APRA; or

(c)

a person who has been, is, or proposes to be, a customer of a body regulated by APRA;
other than :

(d)

information that has already been lawfully made available to the public from other sources;
or

(e)

information given or produced under, or for the purposes of, a provision of the "Superannuation Industry (Supervision) Act 1993":

(i)

administered by the Commissioner of Taxation; or

(ii)

being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

(2)

A person who is or has been an officer is guilty of an offence if:

(a)

the person directly or indirectly:

(i)

discloses information acquired in the course of his or her duties as an officer to any person or to a court; or

(ii)

produces a document to any person or to a court; and

(b)

the information is protected information, or the document is a protected document; and

(c)

the disclosure or production is not in accordance with subsection (3), (4), (5), (6) or (7).

Penalty: Imprisonment for 2 years.

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

(3)

It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of this Act or an Act covered by this section.

(4)

It is not an offence if the disclosure of protected information or the production of a protected document by a person:

(a)

is by an employee of the person to whose affairs the information or document relates; or

(b)

occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

(5)

It is not an offence if the disclosure of protected information or the production of a protected document by a person:

(a)

occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency

(including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or

(b)

is to another person and is approved by the Board by instrument in writing.

Note: See subsection (9) for conditions that may be imposed on people making disclosures under this subsection.

(6)

It is not an offence if the disclosure of protected information or the production of a protected document is to:

(a)

a Board member; or

(b)

an APRA staff member;

for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or a Territory.

(7)

It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

(8)

A person who is, or has been, an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or an Act covered by this section.

(9)

If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.

(10)

A person is guilty of an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

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

(11)

A document that:

(a)

is a protected document; or

(b)

contains protected information;

is an exempt document for the purposes of section 38 of the "Freedom of Information Act 1982".

SECT 57

Secrecy documents or information to which section 56 does not apply

(1)

A person who is a Board member, an APRA staff member, or an agent of APRA, a Board member or an APRA staff member is guilty of an offence if:

(a)

the person permits another person to have access to, or gives another person copies of or extracts from, a document; and

(b)

the document is not a protected document for the purposes of section 56; and

(c)

the document belongs to APRA or is in APRA's possession; and

(d)

subsection (3) does not allow the person to permit the other person to have access to the document, or to give the other person the copies of, or extracts from, the document.

Penalty: Imprisonment for 2 years.

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

(2)

A person who is a Board member, an APRA staff member, or an agent of APRA, a Board member or an APRA staff member is guilty of an offence if:

(a)

the person gives another person information; and

(b)

the information is not protected information for the purposes of section 56 ; and

(c)

the information relates to the business of APRA; and

(d)

subsection (3) does not allow the person to give the other person that information.

Penalty: Imprisonment for 2 years.

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

(3)

It is not an offence against subsection (1) or (2) for a person to permit another person to have access to a document, to give another person copies of, or extracts from a document, or to give information to another person, if that act is done:

(a)

by the direction or authority of APRA; or

(b)

under compulsion or obligation of law; or

(c)

at the other person's direction, if the information relates to the other person.

SECT 58

Part 7 Miscellaneous Protection from liability

(1)

Subject to subsection (2), APRA, a Board member, an APRA staff member, or an agent of APRA, a Board member or an APRA staff member, is not subject to any liability to any person in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on APRA, the Board, a Board member or an APRA staff member by or under:

(a)

this Act or another law of the Commonwealth; or

(b)

a law of a State or Territory referred to in paragraph 9(b); or

(c)

subject to subsection (3), an agreement referred to in paragraph 9(c).

(2)

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

(3)

Subsection (1), as it applies in relation to powers, functions or duties conferred or imposed by an agreement referred to in paragraph 9(c), has effect subject to provisions of the agreement referred to in subsection 9A(3) (which allows the agreement to deal with liabilities as between the parties).

SECT 59

Extra matters to be included in annual report

(1)

The annual report on APRA under section 9 of the "Commonwealth Authorities and Companies Act 1997" must also include:

(a)

a report on the following matters under the "Banking Act 1959":

(i)

the activities of ADI statutory managers (within the meaning of the "Banking Act 1959"), and persons conducting investigations, under Division 2 of Part II of the "Banking Act 1959";

(ii)

the activities of persons conducting investigations under section 61 of the "Banking Act 1959"; and

(b)

a report on the exercise during the year of APRA's powers under Part 15 of the "Retirement Savings Accounts Act 1997" and under Part 29 of the "Superannuation Industry (Supervision) Act 1993"; and

(c)

a report on any other matters required by the regulations.

(2)

Paragraph (1)(a) does not authorise the inclusion in the annual report of a report with respect to the affairs of a particular ADI or authorised NOHC, a particular subsidiary of an ADI or authorised NOHC, or a particular customer of an ADI.

(3)

In this section:

"ADI" has the same meaning as in the "Banking Act 1959".

"authorised NOHC" has the same meaning as in the "Banking Act 1959".

SECT 60

Regulations The Governor-General may make regulations prescribing matters:

(a)

required or permitted by this Act to be prescribed; or

(b)

necessary or convenient to be prescribed for carrying out or giving effect to this Act;
and, in particular, prescribing penalties, not exceeding 10 penalty units, for offences against the regulations.