

BANKING ACT 1959

Part I--Preliminary

Section 1

Short title This Act may be cited as the "Banking Act 1959".

Section 2

Commencement Except as otherwise provided by this Act, this Act shall come into operation on the day on which the "Reserve Bank Act 1959" comes into operation.

Section 4

Repeal The following Acts are repealed:

"Banking Act 1945";

"Banking Act 1953".

Section 5

Interpretation

(1)

In this Act, unless the contrary intention appears:

"ADI" is short for authorised deposit-taking institution.

"ADI statutory manager" has the meaning given by subsection 13A (2).

"administrator of an ADI's business" means an administrator appointed under subsection 13A(1) to take control of an ADI's business.

"advance" includes loan.

"APRA" means the Australian Prudential Regulation Authority.

"APRA board member" means a member of APRA's board of management, including APRA's Chair and Chief Executive Officer.

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

"Australia" includes the Territories.

"authorised deposit-taking institution" means a body corporate in relation to which an authority under subsection 9(3) is in force.

"authorised NOHC" means a body corporate:

(a)

in relation to which an authority under subsection 11AA(2) is in force; and

(b)

that is a NOHC of an ADI or ADIs.

"banking business" means:

(a)

a business that consists of banking within the meaning of paragraph 51 (xiii) of the Constitution; or

(b)

a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:

(i)

both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or

(ii)

other financial activities prescribed by the regulations for the purposes of this definition.

"foreign ADI "means a body corporate that:

(a)

is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and

(b)

is authorised to carry on banking business in a foreign country; and

(c)

has been granted an authority under section 9 to carry on banking business in Australia.

"industry support contract" means a contract under which emergency financial support is to be provided by parties to the contract to any ADI that is a party to the contract if a specified event occurs. The contract may also deal with matters associated with the provision of the financial support.

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

"NOHC" is short for non-operating holding company.

"NOHC authority" means an authority under subsection 11AA(2).

"non-operating holding company" means, in relation to a body corporate, a body corporate:

(a)

of which the first body corporate is a subsidiary; and

(b)

that does not carry on a business (other than a business consisting of the ownership or control of other bodies corporate); and

(c)

that is incorporated in Australia.

"prudential matters", in relation to a body corporate that is an ADI or a NOHC, means matters relating to the conduct by the body corporate of any of its affairs:

(a)

in such a way as:

(i)

to keep itself in a sound financial position; and

(ii)

not to cause or promote instability in the Australian financial system; and

(b)

with integrity, prudence and professional skill.

"prudential regulation" means a regulation under section 11A.

"prudential standard" means a standard under section 11AF.

"section 9 authority" means an authority under subsection 9(3).

"subsidiary" has the meaning given by subsection (2).

"the Reserve Bank" means the Reserve Bank of Australia.

"ultimate termination of control" has the meaning given by subsection 13C(1).

(2)

For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the Corporations Law.

Section 6

Application of Act

(1)

Nothing in Part II or V, or in sections 61 to 69 (inclusive), applies with respect to State banking.

(2)

Subject to section 6A, this Act extends to all the Territories.

Section 6A

Cessation of application of Act to Territory

(1)

The Treasurer may, by notice published in the "Gazette", declare that, on a date specified in the notice, this Act shall cease to extend to an external Territory specified in the notice, and, on and after the date specified in such a notice, this Act, other than subsection (2), does not extend to the Territory so specified and a reference in this Act, other than this section, to a Territory does not include a reference to the Territory so specified.

(2)

Section 8 of the "Acts Interpretation Act 1901" applies in relation to a notice published under this section as if the notice were an Act repealing this Act to the extent that, immediately before the date specified in the notice, this Act extended to the Territory specified in the notice.

Section 6B

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

Part II--Provisions relating to the carrying on of banking business

Division 1--Authority to carry on banking business Person other than a body corporate must not carry on banking business

Section 7

(1)

A person is guilty of an offence if:

(a)

the person carries on any banking business in Australia; and

(b)

the person is not a body corporate; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

(2)

An offence against subsection (1) is an indictable offence.

(3)

If a person carries on banking business in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

Section 8

Only the Reserve Bank and bodies corporate that are ADIs may carry on banking business

(1)

A body corporate is guilty of an offence if:

(a)

the body corporate carries on any banking business in Australia; and

(b)

the body corporate is not the Reserve Bank; and

(c)

the body corporate is not an ADI; and

(d)

there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(2)

An offence against subsection (1) is an indictable offence.

(3)

If a body corporate carries on banking business in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate is guilty of an offence against that subsection in respect of:

(a)

the first day on which the offence is committed; and

(b)

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

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

Section 9

Authority to carry on banking business

(2)

A body corporate which desires authority to carry on banking business in Australia may apply in writing to APRA for authority accordingly.

Note: The body corporate may also need to consider the implications of the "Foreign Acquisitions and Takeovers Act 1975" and the "Financial Sector (Shareholdings) Act 1998".

(3)

If an application has been made, APRA may grant the body corporate an authority to carry on banking business in Australia. The authority must be in writing, and APRA must give the body corporate written notice of the granting of the authority.

Note 1: The fact that a body corporate is granted an authority to carry on banking business in Australia does not mean it is entitled to call itself a bank. To do this, the body corporate will need to have a consent under section 66.

Note 2: For APRA's power to revoke an authority, see section 9A.

(3A)

Without limiting the circumstances in which APRA may refuse an application by a body corporate for authority to carry on banking business in Australia, APRA may refuse such an application if the body corporate is a subsidiary of a NOHC that does not hold a NOHC authority.

(4)

APRA may, at any time, by notice in writing served on the body corporate concerned:

(a)

impose conditions, or additional conditions, on an authority; or

(b)

vary or revoke conditions imposed on an authority.

The conditions must relate to prudential matters.

(4A)

Without limiting the conditions that APRA may impose under subsection (4) on an ADI's authority, APRA may make the authority conditional on a body corporate of which the ADI is a subsidiary being an authorised NOHC.

(5)

A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations.

(6)

An ADI is guilty of an offence if:

(a)

it does, or fails to do, an act; and

(b)

doing, or failing to do, the act results in a contravention of a condition of the ADI's authority; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(6A)

An offence against subsection (6) is an indictable offence.

(6B)

If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (6), the ADI is guilty of 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 ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(7)

If APRA:

(a)

grants an authority under subsection (3); or

(b)

imposes, varies or revokes conditions under subsection (4);

APRA must cause notice of that action to be published in the "Gazette". APRA may also cause notice of that action to be published in any other way it considers appropriate.

(8)

A failure to comply with subsection (7) does not affect the validity of the action concerned.

Section 9A

Revocation of authority

(1)

APRA must revoke a body corporate's section 9 authority if:

(a)

the body corporate, by notice in writing to APRA, requests the revocation of the authority; and

(b)

APRA is satisfied that the revocation of the authority:

(i)

would not be contrary to the national interest; and

(ii)

would not be contrary to the interests of depositors of the body corporate.

(2)

APRA may revoke a body corporate's section 9 authority if APRA is satisfied that:

(a)

the body corporate has failed to comply with:

- (i)
a requirement of this Act or the regulations; or
- (ii)
a direction under Division 1BA; or
- (iii)
a condition of its section 9 authority; or
- (b)
it would be contrary to the national interest for the authority to remain in force; or
- (c)
it would be contrary to the interests of depositors of the body corporate for the authority to remain in force; or
- (d)
the body corporate has failed to pay:
 - (i)
an amount of levy or late penalty to which the "Financial Institutions Supervisory Levies Collection Act 1998" applies; or
 - (ii)
an amount of charge fixed under section 51 of the "Australian Prudential Regulation Authority Act 1998"; or
 - (e)
the body corporate is insolvent and is unlikely to return to solvency within a reasonable period of time; or
 - (f)
the body corporate has ceased to carry on banking business in Australia.

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

- (3)
Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's section 9 authority unless:
 - (a)

APRA has given the body corporate a notice in writing advising the body corporate:

(i)

that APRA is considering revoking the authority for the reasons specified in the notice; and

(ii)

that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and

(iii)

of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and

(b)

APRA has considered any submissions that were made by the body corporate by the specified date.

(4)

APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:

(a)

contrary to the national interest; or

(b)

contrary to the interests of depositors with the body corporate.

(5)

A revocation of a body corporate's section 9 authority under subsection

(1)

or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.

(6)

If APRA revokes a body corporate's section 9 authority under subsection

(1)

or (2), APRA must cause notice of the revocation to be published in the "Gazette". APRA may also cause notice of the revocation to be published in any other way it considers appropriate.

(7)

A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

Section 9B

Bodies that cease to exist or change their names

(1)

If APRA is satisfied that a body corporate that has been granted a section 9 authority:

(a)

has ceased to exist; or

(b)

has changed its name;

APRA must cause notice of that fact to be published in the "Gazette". APRA may also cause notice of that fact to be published in any other way it thinks appropriate.

(2)

If the body corporate has ceased to exist, its section 9 authority is taken to be revoked on publication of the notice in the "Gazette".

(3)

If the body corporate has changed its name, its section 9 authority has effect after the publication of the notice in the "Gazette" as if it had been granted to the body under its changed name.

Section 9C

Publication of list of ADIs APRA may, from time to time, publish a list of ADIs:

(a)

in the "Gazette"; or

(b)

in such other manner as APRA determines.

Section 10

APRA to be supplied with certain documents

(1)

An application under this Part by a body corporate shall be accompanied by a copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document by which the body corporate is constituted.

(2)

Every copy of an Act, charter, deed of settlement, memorandum of association, articles of association or other document furnished to APRA under subsection (1) shall be verified by a statutory declaration made by a senior officer of the body corporate concerned.

(3)

An ADI is guilty of an offence if:

(a)

an alteration is made to the Act, charter, deed of settlement, memorandum of association, articles of association, constitution or other document by which the ADI was constituted as a body corporate; and

(b)

the ADI does not, within 3 months of the making of the alteration, give to APRA a written statement:

(i)

that sets out particulars of the alteration; and

(ii)

that is verified by a statutory declaration made by a senior officer of the ADI; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

Section 11

APRA may determine that provisions of this Act do not apply

(1)

APRA may, by order published in the "Gazette", determine that all provisions (other than section 63) or specified provisions (other than section 63) of this Act do not apply to a person during the period while the order continues in force. The determination has effect accordingly.

(2)

An order under this section:

(a)

may be expressed to apply to a particular person or to the persons included in a class of persons;

(b)

may specify the period during which the order shall remain in force; and

(c)

may be made subject to such conditions as are specified in the order.

(3)

A person is guilty of an offence if:

(a)

the person does, or fails to do, an act; and

(b)

doing, or failing to do, the act results in a contravention of a condition to which an order under this section is subject (being an order that is in force and that applies to the person).

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3A)

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

(3B)

If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4)

APRA may, by order published in the "Gazette", vary or revoke an order under this section.

Division 1AA--Authority to be a NOHC of an ADI Authority to be a NOHC

Section 11AA

(1)

A body corporate may apply in writing to APRA for an authority under this section. The authority operates as an authority in relation to the body corporate and any ADIs that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority:

(a) because APRA refuses or may refuse to grant a subsidiary of the body corporate a section 9 authority unless the body corporate holds a NOHC authority (see subsection 9(3A)); or

(b) for a purpose connected with the "Financial Sector (Shareholdings) Act 1998".

Note 2: The body corporate may also need to consider the implications of the "Foreign Acquisitions and Takeovers Act 1975" and the "Financial Sector (Shareholdings) Act 1998".

(2)

APRA may grant the authority if it considers it is appropriate to do so.

Note: For APRA's power to revoke the authority, see section 11AB.

(3)

APRA may, at any time, by notice in writing given to the body corporate:

(a)

impose conditions, or additional conditions, on the authority; and

(b)

vary or revoke conditions imposed on the authority.

The conditions must relate to prudential matters.

(4)

A condition may be expressed to have effect despite anything in the prudential standards or the regulations.

(5)

The body corporate is guilty of an offence if:

(a)

it does, or fails to do, an act; and

(b)

doing, or failing to do, the act results in a contravention of a condition of the authority; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(5A)

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

(5B)

If the body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (5), the body corporate is guilty of an offence against that subsection in respect of:

(a)

the first day on which the offence is committed; and

(b)

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

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

(6)

If APRA:

(a)

grants an authority under subsection (2); or

(b)

imposes, varies or revokes conditions under subsection (3);

APRA must cause notice of that action to be published in the "Gazette". APRA may also cause notice of that action to be published in any other way that it considers appropriate.

(7)

A failure to comply with subsection (6) does not affect the validity of the action concerned.

Section 11AB

Revocation of authority

(1)

APRA must revoke a NOHC authority granted to a body corporate if:

(a)

the body corporate, by notice in writing to APRA, requests the revocation of the authority; and

(b)

APRA is satisfied that revocation of the authority:

(i)

would not be contrary to the national interest; and

(ii)

would not be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.

(2)

APRA may revoke a NOHC authority granted to a body corporate if APRA is satisfied that:

(a)

the body corporate has failed to comply with:

- (i)
a requirement of this Act or the regulations; or
- (ii)
a direction under Division 1BA; or
- (iii)
a condition of its NOHC authority; or
- (b)
the body corporate has ceased to be a NOHC of any ADI or ADIs; or
- (c)
it would be contrary to the national interest for the authority to remain in force; or
- (d)
it would be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate for the authority to remain in force; or
- (e)
the body corporate has failed to pay:

- (i)
an amount of levy or late penalty to which the "Financial Institutions Supervisory Levies Collection Act 1998" applies; or
- (ii)
an amount of charge fixed under section 51 of the "Australian Prudential Regulation Authority Act 1998".

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

(3)

Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's NOHC authority unless:

(a)

APRA has given the body corporate a notice in writing advising the body corporate:

(i)

that APRA is considering revoking the authority for the reasons specified in the notice; and

(ii)

that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and

(iii)

of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and

(b)

APRA has considered any submissions that were made by the body corporate by the specified date.

(4)

APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:

(a)

contrary to the national interest; or

(b)

contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.

(5)

A revocation of a body corporate's NOHC authority under subsection (1) or

(2)

must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.

(6)

If APRA revokes a body corporate's NOHC authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the "Gazette". APRA may also cause notice of the revocation to be published in any other way it considers appropriate.

(7)

A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

Section 11AC

Bodies that cease to exist or change their names

(1)

If APRA is satisfied that a body corporate that has been granted a NOHC authority:

(a)

has ceased to exist; or

(b)

has changed its name;

APRA must cause notice of that fact to be published in the "Gazette". APRA may also cause notice of that fact to be published in any other way it thinks appropriate.

(2)

If the body corporate has ceased to exist, any NOHC authority granted to the body corporate that is still in force is taken to be revoked on publication of the notice in the "Gazette".

(3)

If the body corporate has changed its name, any NOHC authority granted to the body corporate that is still in force has effect after the publication of the notice in the "Gazette" as if it had been granted to the body under its changed name.

Section 11AD

Publication of list of NOHCs APRA may, from time to time, publish a list of authorised NOHCs:

(a)

in the "Gazette"; or

(b)

in such other manner as APRA determines.

Division 1A--Prudential supervision and monitoring of ADIs and authorised NOHCs APRA may make prudential standards for ADIs and authorised NOHCs

Section 11AF

(1)

APRA may, in writing, determine standards in relation to prudential matters to be complied with by:

(a)

all ADIs; or

(b)

all authorised NOHCs; or

(c)

a specified class of ADIs or authorised NOHCs; or

(d)

one or more specified ADIs or authorised NOHCs.

(1A)

A standard may impose different requirements to be complied with in different situations or in respect of different activities.

(2)

A standard:

(a)

comes into force:

(i)

unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or

(ii)

if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and

(b)

continues in force until it is revoked.

(3)

APRA may, in writing, vary or revoke a standard.

(4)

Subject to subsection (6A), if APRA determines or varies a standard referred to in paragraph (1)(a), (b) or (c) it must, as soon as practicable, cause a notice advising of the determination of the standard, or of the variation of the standard, and summarising the purpose and effect of the standard or variation, to be published:

(a)

in the "Gazette"; and

(b)

in a daily newspaper or daily newspapers circulating generally in each State or Territory.

(4A)

If APRA determines or varies a standard referred to in paragraph (1)(d) it must, as soon as practicable, give a copy of the standard, or of the variation, to the ADI or authorised NOHC, or to each ADI or authorised NOHC, to which the standard applies. Whenever APRA gives a copy of a standard, or of a variation, to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.

(5)

If APRA revokes a standard referred to in paragraph (1)(a), (b) or (c) it must, as soon as practicable, cause a notice of the revocation to be published:

(a)

in the "Gazette"; and

(b)

in a daily newspaper or daily newspapers circulating generally in each State or Territory.

(5A)

If APRA revokes a standard referred to in paragraph (1)(d) it must, as soon as practicable, give notice of the revocation to the ADI or authorised NOHC, or to each ADI or authorised NOHC, to which the standard applied. Whenever APRA gives a notice of revocation to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.

(6)

Subject to subsection (6A), APRA must take reasonable steps to ensure that copies of the current text of the standards are available for inspection and purchase.

(6A)

If APRA considers that a standard, or a variation of a standard, contains commercially sensitive information:

(a)

APRA is not required to include that information in a notice published under subsection (4) or in the version of the standard that is available under subsection (6); but

(b)

APRA may include some or all of that information in either or both of those things if APRA considers it appropriate to do so.

(7)

A failure to comply with subsection (4), (4A), (5), (5A) or (6) does not affect the validity of the action concerned.

(8)

In this section:

"Territory" means a territory to which this Act extends.

Section 11A

Prudential requirements may also be prescribed by the regulations The regulations may make provision for and in relation to requiring ADIs and authorised NOHCs to observe such requirements in relation to prudential matters as are specified in, or ascertained in accordance with, the regulations.

Section 11B

APRA to monitor prudential matters The functions of APRA include:

(a)

the collection and analysis of information in respect of prudential matters relating to ADIs and authorised NOHCs;

(b)

the encouragement and promotion of the carrying out by ADIs and authorised NOHCs of sound practices in relation to prudential matters; and

(c)

the evaluation of the effectiveness and carrying out of those practices.

Section 11C

Division not to limit operation of other provisions Nothing in this Division is intended to limit the operation of any other provision of this Act or of the "Reserve Bank Act 1959".

Division 1BA--APRA's power to issue directions

Subdivision A Directions other than to enforce certified industry support contracts APRA may give directions in certain circumstances

Section 11CA

(1)

APRA may give a body corporate that is an ADI or an authorised NOHC a direction of a kind specified in subsection (2) if APRA considers that:

(a)

the body corporate has contravened a prudential regulation or a prudential standard;
or

(b)

if the body corporate is an ADI—the direction is necessary in the interests of depositors of the ADI; or

(c)

if the body corporate is an authorised NOHC—the direction is necessary in the interests of depositors of any ADI that is a subsidiary of the body corporate.

The direction is to be by notice in writing given to the body corporate.

(2)

The kinds of direction the body corporate may be given are as follows:

(a)

a direction to comply with the whole or a part of a prudential regulation or a prudential standard;

(b)

a direction to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;

(c)

a direction to do all or any of the following:

(i)

remove a director, secretary, executive officer or employee of the body corporate from office;

(ii)

ensure a director, secretary, executive officer or employee of the body corporate does not take part in the management or conduct of the business of the body corporate except as permitted by APRA;

(iii)

appoint a person or persons as a director, secretary, executive officer or employee of the body corporate for such term as APRA directs;

(d)

a direction to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;

(e)

a direction not to give any financial accommodation to any person;

(f)

a direction not to accept the deposit of any amount;

(g)

a direction not to borrow any amount;

(h)

a direction not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;

(i)

a direction not to repay any amount paid on shares;

(j)

a direction not to pay a dividend on any shares;

(k)

a direction not to repay any money on deposit or advance;

(l)

a direction not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;

(m)

a direction not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;

(n)

any other direction as to the way in which the affairs of the body corporate are to be conducted or not conducted.

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

(2A)

Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:

(a)

deal with some only of the matters referred to in that paragraph; or

(b)

deal with a particular class or particular classes of those matters; or

(c)

make different provision with respect to different matters or different classes of matters.

(3)

The direction may deal with the time by which, or period during which, it is to be complied with.

(4)

The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

(5)

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

(6)

In this section, the expressions "director", "secretary", "executive officer" and "employee" have the same meanings as they have in the Corporations Law.

Note: For further information about directions, see Subdivision C.

Subdivision B Directions to enforce certified industry support contracts

Section 11CB

APRA may certify an industry support contract APRA may certify an industry support contract if all of the parties to the contract make a written request to APRA that the contract be certified and APRA considers it appropriate to certify the contract. The certification must be by notice in writing to the parties to the contract.

Section 11CC

APRA may direct parties to an industry support contract to comply with the contract

(1)

APRA may direct any ADI that is a party to an industry support contract that is certified under section 11CB to carry out, or cease to carry out, specified acts if APRA considers:

(a)

that carrying out, or ceasing to carry out, those acts, is necessary in order for the terms of the contract to be fulfilled; and

(b)

that the direction is in the interests of the depositors of one or more of the ADIs that are parties to the contract.

The direction must be by notice in writing to the ADI.

(2)

The direction may deal with the time by which, or period during which, it is to be complied with.

(3)

The ADI has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

(4)

The direction has effect until:

(a)

APRA revokes the direction by notice in writing to the ADI (see subsection (5)); or

(b)

APRA revokes the certification of the industry support contract by notice in writing to the ADIs that are parties to it (see subsection (6)).

(5)

APRA may revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.

(6)

APRA may revoke the certification of the industry support contract if it considers that it is appropriate to do so for any reason.

Subdivision C General provisions relating to all directions

Section 11CD

Direction not grounds for denial of obligations

(1)

Subject to subsections (2) and (3), the fact that an ADI or an authorised NOHC is subject to a direction by APRA under Subdivision A or B is not a ground for any other party to a contract to which the ADI or NOHC is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

(2)

If an ADI or an authorised NOHC is prevented from fulfilling its obligations under a contract because of a direction under Subdivision A, other than a direction under paragraph 11CA(2)(k), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the ADI or authorised NOHC under the contract.

(3)

A party to a contract to which subsection (2) applies may apply to the Federal Court of Australia for an order relating to the effect on the contract of a direction under Subdivision A. The order may deal with matters including (but not limited to):

(a)

requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);

(b)

obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under Subdivision A.

Section 11CE

Supply of information about issue and revocation of directions

"Power to publish notice of directions in Gazette"

(1)

APRA may publish in the "Gazette" notice of any direction made under Subdivision A or B. The notice must include the name of the ADI or authorised NOHC given the direction and a summary of the direction.

"Requirement to publish notice of revocation of certain directions in Gazette"

(2)

If APRA publishes notice of a direction made under Subdivision A or B and then later revokes the direction, APRA must publish in the "Gazette" notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

"Requirement to provide information about direction to Treasurer and Reserve Bank"

(3)

If the Treasurer or the Reserve Bank requests APRA to provide information about:

(a)

any directions under Subdivision A or B in respect of a particular ADI or authorised NOHC; or

(b)

any directions made during a specified period under Subdivision A or B in respect of any ADIs or authorised NOHCs;

APRA must comply with the request.

"Power to inform Treasurer and Reserve Bank of direction"

(4)

APRA may provide any information that it considers appropriate to the Treasurer or the Reserve Bank about any directions, or revocations of directions, made under Subdivision A or B, in respect of any ADI or authorised NOHC, at any time.

"Requirement to inform Treasurer and Reserve Bank of revocation of direction if informed of making of direction"

(5)

If APRA provides the Treasurer or the Reserve Bank with information about a direction and then later revokes the direction, APRA must notify that person of the revocation of the direction as soon as practicable after the revocation. Failure to notify the person does not affect the validity of the revocation.

Section 11CF

Secrecy requirements Information relating to directions and revocations of directions is subject to the secrecy requirements in Part 6 of the "Australian Prudential Regulation Authority Act 1998", unless the information has been published in the "Gazette" under section 11CE.

Section 11CG

Non-compliance with a direction

(1)

An ADI or an authorised NOHC is guilty of an offence if:

(a)

it does, or fails to do, an act; and

(b)

doing, or failing to do, the act results in a contravention of a direction given to it under Subdivision A or Subdivision B; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI or authorised NOHC.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1A)

If an ADI or an authorised NOHC does or fails to do an act in circumstances that give rise to the ADI or NOHC committing an offence against subsection (1), the ADI or NOHC is guilty of 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 ADI or NOHC committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2)

An officer of an ADI or an authorised NOHC is guilty of an offence if:

(a)

the officer fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B; and

(b)

the officer's duties include ensuring that the ADI or NOHC complies with the direction, or with a class of directions that includes the direction; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the officer.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(2A)

If an officer of an ADI or an authorised NOHC fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B in circumstances that give rise to the officer committing an offence against subsection (2), the officer is guilty of an offence against that subsection in respect of:

(a)

the first day on which the offence is committed; and

(b)

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

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

(3)

In this section, "officer "has the meaning given by section 9 of the Corporations Law.

Division 1B--Provisions relating to certain ADIs Interpretation In this Division:

Section 11D

"foreign ADI" does not include the Bank of China.

Section 11E

Division 2 not applicable to foreign ADIs

(1)

Division 2 does not apply to a foreign ADI.

(2)

A foreign ADI is guilty of an offence if:

(a)

it accepts a deposit from a person in Australia; and

(b)

before accepting the deposit, the foreign ADI did not inform the person, in a manner approved by APRA, of the requirements of this Act to which the foreign ADI is not subject because of subsection (1); and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the foreign ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

Section 11F

Assets of foreign ADIs If a foreign ADI (whether in or outside Australia) suspends payment or becomes unable to meet its obligations, the assets of the ADI in Australia are to be available to meet the ADI's liabilities in Australia in priority to all other liabilities of the ADI.

Division 2--Protection of depositors Subdivision A General provisions relating to depositor protection

Section 12

APRA to protect depositors It is the duty of APRA to exercise its powers and functions under this Division for the protection of the depositors of the several ADI's.

Section 13

ADI to supply information to APRA

"APRA's power to obtain information"

(1)

APRA may, by notice in writing to an ADI, require the ADI to supply it, within the time specified in the notice, with such information relating to the ADI's financial stability as is specified in the notice.

(2)

The information supplied in compliance with a requirement under subsection

(1)

must, if required by the notice, be verified by a statutory declaration made by an officer of the ADI concerned who is authorised by the ADI to make the declaration.

"Information to be supplied if ADI unable, or likely to be unable, to meet obligations"

(3)

An ADI is guilty of an offence if:

(a)

the ADI considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; and

(b)

the ADI does not immediately inform APRA of the situation; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3A)

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

"APRA's power to appoint an investigator if information not provided"

(4)

APRA may appoint a person to investigate the affairs of an ADI if the ADI fails to comply with a requirement to provide information under this section.

"Interpretation"

(5)

In this section:

"officer", in relation to an ADI, has the same meaning as in section 11CG.

Section 13A

Consequences of inability or failure of ADI to meet obligations

"Appointment of investigator or administrator or control by APRA"

(1)

APRA may appoint a person to investigate the affairs of an ADI, take control of the ADI's business or appoint an administrator to take control of the ADI's business if:

(a)

the ADI informs APRA that the ADI considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or

(b)

APRA considers that the ADI is likely to become unable to meet its obligations or is about to suspend payment; or

(c)

the ADI becomes unable to meet its obligations or suspends payment.

Note: For information about another circumstance in which APRA may take control of the business of an ADI, see section 65.

(2)

Throughout this Subdivision and Subdivision B, the term "ADI statutory manager" is used. It refers to the entity in control of an ADI's business under this Subdivision.

That entity will be either APRA or an administrator of an ADI's business appointed by APRA.

"Australian assets of ADI to be available to meet deposit liabilities"

(3)

If an ADI becomes unable to meet its obligations or suspends payment, the assets of the ADI in Australia are to be available to meet that ADI's deposit liabilities in Australia in priority to all other liabilities of the ADI.

(4)

An ADI is guilty of an offence if:

(a)

it does not hold assets (excluding goodwill) in Australia of a value that is equal to or greater than the total amount of its deposit liabilities in Australia; and

(b)

APRA has not authorised the ADI to hold assets of a lesser value; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(5)

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

(6)

If the circumstances relating to the asset holdings of an ADI are such that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of 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 ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

Section 13B

Investigators ADI must provide information and facilities

(1)

A person appointed by APRA to investigate the affairs of an ADI under section 13 or 13A is entitled to have access to the books, accounts and documents of the ADI, and to require the ADI to give the person information or facilities to conduct the investigation.

(1A)

An ADI is guilty of an offence if:

(a)

APRA has appointed a person to investigate the affairs of the ADI under section 13 or 13A; and

(b)

the ADI:

(i)

does not give the person access to its books, accounts and documents; or

(ii)

fails to comply with a requirement made under subsection (1) for the provision of information or facilities; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1B)

If the ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (1A), the ADI is guilty of 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 ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2)

Part 6 of the "Australian Prudential Regulation Authority Act 1998" prohibits certain disclosures of information received by investigators under this Act.

Section 13C

ADI statutory managers termination of control

"Conditions necessary for termination of control"

(1)

If APRA assumes control of an ADI's business or appoints an administrator of an ADI's business, APRA must ensure that either it or an administrator of the ADI's business has control of the ADI's business until:

(a)

the following conditions are satisfied:

(i)

the ADI's deposit liabilities in Australia have been repaid or APRA is satisfied that suitable provision has been made for their repayment; and

(ii)

APRA considers that it is no longer necessary for it or an administrator to remain in control of the ADI's business; or

(b)

APRA considers that the ADI is insolvent and is unlikely to be returned to solvency within a reasonable time, and APRA has applied for the ADI to be wound up under the Corporations Law (see section 14F).

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

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

"Events to precede termination"

(2)

Before making an ultimate termination of control by an ADI statutory manager of an ADI's business, APRA must:

(a)

ensure that directors of the ADI have been appointed or elected under the ADI's constitution at a meeting called by the ADI statutory manager in accordance with the ADI's constitution; or

(b)

appoint directors of the ADI by instrument in writing; or

(c)

ensure that a liquidator for the ADI has been appointed.

"Power to terminate control"

(3)

If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of an ADI's business by an ADI statutory manager.

(4)

If the ADI statutory manager at the time of the termination is an administrator, the instrument of termination also operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

"Period of director's appointment"

(5)

If a director is elected or appointed under subsection (2), the director takes office on the termination of the ADI statutory manager's control of the ADI's business. If the director was appointed by APRA, the director holds office until the ADI's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the ADI's constitution, the constitution governs the appointment.

Note: For further information about what happens when an ADI statutory manager is in control of an ADI's business, see Subdivision B.

Subdivision B Provisions dealing with control of an ADI's business by an ADI statutory manager

Section 14A

ADI statutory manager's powers and functions

"ADI statutory manager's powers and functions include powers and functions of board"

(1)

An ADI statutory manager has the powers and functions of the members of the board of directors of the ADI (collectively and individually), including the board's powers of delegation.

Note: When an ADI statutory manager takes control of the business of an ADI, the directors of the ADI cease to hold office (see section 15).

"ADI statutory manager's power to obtain information"

(2)

An ADI statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the ADI to give the ADI statutory manager any information relating to the business of the ADI that the ADI statutory manager requires.

(2A)

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

(a)

there is an ADI statutory manager in relation to the ADI; and

(b)

under subsection (2), the ADI statutory manager requires the person to give the ADI statutory manager information; and

(c)

the person fails to comply with the requirement; and

(d)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 12 months.

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

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

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

(3)

An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(4)

If:

(a)

before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b)

giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

"ADI statutory manager's power to sell whole or part of ADI's business"

(5)

An ADI statutory manager may sell or otherwise dispose of the whole or any part of the ADI's business. The sale or disposal may occur on any terms and conditions that the ADI statutory manager considers appropriate.

"Interpretation"

(6)

In this section:

"officer", in relation to an ADI, has the same meaning as in section 11CG.

Section 14B

Administrator in control additional powers to recommend action by APRA

"Types of recommendation"

(1)

An administrator of an ADI's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:

(a)

that APRA make a particular direction under Division 1BA in respect of the ADI;

(b)

if the administrator considers that the ADI is insolvent and could not be restored to solvency within a reasonable period:

(i)

that APRA apply under section 14F to the Federal Court of Australia for an order that the ADI be wound up; or

(ii)

that APRA revoke the ADI's section 9 authority.

"Effect of recommendation"

(2)

If an administrator of an ADI's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

Section 14C

ADI statutory manager's liabilities and duties

"Liability for loss due to fraud etc."

(1)

If an ADI incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act by the ADI statutory manager, the ADI statutory manager is liable for the loss.

"Other losses"

(2)

An ADI statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, negligence or wilful failure to comply with this Act. If the ADI

statutory manager is an administrator of the ADI's business, the administrator must provide details of the loss in a written report to APRA. However, failure to do so does not make the administrator liable for the loss.

"Subsections (1) and (2) apply instead of general indemnity provisions"

(3)

The question whether an ADI statutory manager is liable for a loss is to be determined in accordance with subsections (1) and (2), rather than in accordance with section 70A of this Act or section 58 of the "Australian Prudential Regulation Authority Act 1998".

"ADI statutory manager not liable under section 588G of the Corporations Law"

(4)

An ADI statutory manager is not to be taken to be a director for the purposes of section 588G of the Corporations Law of a State or internal Territory.

"Signpost to secrecy obligations"

(5)

Part 6 of the "Australian Prudential Regulation Authority Act 1998" prohibits certain disclosures of information received by ADI statutory managers under this Act.

Section 14D

Administrator in control additional duties

"Duty to report to APRA on request"

(1)

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

"Duty to report to APRA on termination of appointment"

(2)

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

"Duty to follow directions by APRA"

(3)

APRA may give an administrator of an ADI's business a direction relating to the control of the ADI's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:

(a)

act in accordance with the direction; or

(b)

immediately provide to APRA information relating to the control of the ADI's business and request APRA to alter the direction.

(4)

If an administrator of an ADI's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

Section 14E

Termination of administrator's appointment

(1)

If an administrator of an ADI's business contravenes a requirement of this Division, APRA may terminate the administrator's appointment.

(2)

The terms and conditions of the administrator's appointment may provide for termination in circumstances in addition to those mentioned in subsection (1).

(3)

This section has effect subject to section 13C.

Section 14F

APRA's powers to apply for ADI to be wound up

"Power to apply for ADI to be wound up"

(1)

APRA may apply to the Federal Court of Australia for an order that an ADI be wound up if:

(a)

an ADI statutory manager is in control of the ADI's business; and

(b)

APRA considers that the ADI is insolvent and could not be restored to solvency within a reasonable period.

(2)

The winding up of the ADI is to be conducted in accordance with the Corporations Law of a State or internal Territory under which the ADI is incorporated or is taken to be incorporated.

Section 15

Effect on directors of ADI statutory manager taking control of an ADI's business

(1)

The directors of an ADI cease to hold office when an ADI statutory manager takes control of the ADI's business.

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

(2)

A director of an ADI must not be appointed or elected while an ADI statutory manager is in control of the ADI's business unless the appointment is made under subsection 13C(2).

(3)

If a person who ceased to hold office under subsection (1), or a purported director of the ADI appointed or elected in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.

(4)

For the purposes of this section, "director" has the same meaning as it has in the Corporations Law.

Section 15A

Effect on external administrator of ADI statutory manager taking control of an ADI's business

(1)

The appointment of an external administrator of an ADI is terminated when an ADI statutory manager takes control of the ADI's business.

Note: For the definition of "external administrator", see subsection (5).

(2)

An external administrator of an ADI must not be appointed while an ADI statutory manager is in control of the ADI's business unless APRA approves the appointment.

(3)

If a person who ceased to be the external administrator of an ADI under subsection (1), or a purported external administrator of the ADI appointed in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.

(4)

APRA must inform the external administrator of an ADI that an ADI statutory manager will take control of the ADI's business as soon as possible after the decision that an ADI statutory manager will take control of the ADI's business is made. However, failure to inform the external administrator does not affect the operation of this section.

(5)

For the purposes of this section, "external administrator "means any of the following:

(a)

a liquidator or provisional liquidator;

(b)

a receiver, manager, managing controller, receiver and manager or other controller (other than an ADI statutory manager);

(c)

a voluntary administrator or administrator of a deed of a company arrangement or a scheme manager.

Expressions used in this subsection have the same meanings as they have in the Corporations Law.

Section 15B

Effect on legal proceedings of ADI statutory manager taking control of an ADI's business

(1)

A person cannot begin or continue a proceeding in a court against an ADI while an ADI statutory manager is in control of the ADI's business unless:

(a)

the court grants leave on the ground that the person would be caused hardship if leave were not granted; or

(b)

APRA consents to the proceedings beginning or continuing.

(2)

A person intending to apply for leave of the court under paragraph (1)(a) must give APRA at least 10 days notice of the intention to apply. APRA may apply to the court to be joined as a party to the proceedings for leave.

(3)

In this section, a reference to a proceeding against an ADI includes a reference to a cross-claim or third party claim against an ADI.

Section 15C

ADI statutory manager being in control not grounds for denial of obligations The fact that an ADI statutory manager is in control of an ADI's business is not a ground for any other party to a contract to which the ADI is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

Section 16

Costs of statutory management

(1)

APRA's costs (including costs in the nature of remuneration and expenses) of being in control of an ADI's business, or of having an administrator in control of an ADI's business, are payable from the ADI's funds and are a debt due to APRA.

(2)

Despite anything contained in any law relating to the winding-up of companies, but subject to subsection 13A(3), debts due to APRA by an ADI under subsection (1)" have priority in a winding-up of the ADI over all other unsecured debts.

Section 16A

APRA must report to Treasurer and publish information about statutory management

"Reports to the Treasurer"

(1)

If the Treasurer requests APRA to give him or her a written report concerning the activities of ADI statutory managers in respect of specified ADIs or in respect of a specified period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.

(2)

If an ADI statutory manager takes control of an ADI's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all ADI statutory managers and each ultimate termination of control that occurred during that financial year.

"Requirement to publish notices in Gazette"

(3)

If APRA:

(a)

takes control of an ADI's business; or

(b)

appoints an administrator of an ADI's business; or

(c)

makes an ultimate termination of control in respect of an ADI's business;

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

Division 2A--Auditors of ADIs and authorised NOHCs and their subsidiaries

Section 16B

Requirements for auditors and people who have been auditors to give information to APRA

"Duty to give information when required"

(1)

APRA may, by notice in writing, require a person who is, or who has been, an auditor of:

(a)

an ADI; or

(b)

an authorised NOHC; or

(c)

a subsidiary of an ADI or authorised NOHC;

to provide information about the ADI, authorised NOHC or subsidiary to APRA if APRA considers that the provision of the information will assist APRA in performing its functions under this Act.

(1A)

A person who is or has been an auditor of an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, is guilty of an offence if:

(a)

under subsection (1), APRA requires the person to provide information; and

(b)

the person fails to comply with the requirement; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

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

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

"Additional duty to give information about ADIs"

(2)

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

(a)

the person has reasonable grounds for believing that:

(i)

the ADI is insolvent, or there is a significant risk that the ADI will become insolvent;
or

(ii)

the ADI has failed to comply with a prudential standard, a requirement under this Act or the regulations, a direction under Division 1BA of Part II or a condition of its section 9 authority; or

(iii)

an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; and

(b)

the person does not inform APRA of the matter; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

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

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

"Additional duty to give information about authorised NOHCs"

(3)

A person who is or has been an auditor of an authorised NOHC is guilty of an offence if:

(a)

the person has reasonable grounds for believing that:

(i)

the NOHC is insolvent, or there is a significant risk that the NOHC will become insolvent; or

(ii)

the NOHC has failed to comply with a prudential standard, a requirement under this Act or the regulations, a direction under Division 1BA of Part II or a condition of its NOHC authority; or

(iii)

an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and

(b)

the person does not inform APRA of the matter; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

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

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

"Additional duty to give information about subsidiaries of ADIs or authorised NOHCs"

(4)

A person who is or has been an auditor of a subsidiary of an ADI or an authorised NOHC (other than a subsidiary that itself is an ADI or an authorised NOHC) is guilty of an offence if:

(a)

the person has reasonable grounds for believing that:

(i)

the subsidiary is insolvent, or there is a significant risk that the subsidiary will become insolvent; or

(ii)

the subsidiary has failed to comply with a requirement under this Act or the regulations; or

(iii)

if the subsidiary is a subsidiary of an ADI—an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; or

(iv)

if the subsidiary is a subsidiary of an authorised NOHC—an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and

(b)

the person does not inform APRA of the matter; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

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

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

"Self-incrimination"

(5)

An individual is not excused from complying with a requirement under this section to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(6)

If:

(a)

before giving information in compliance with a requirement under this section, an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b)

giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

Section 16C

Auditor may provide information to APRA A person who is, or who has been, an auditor of:

(a)

an ADI; or

(b)

an authorised NOHC; or

(c)

a subsidiary of an ADI or authorised NOHC;

may provide information about the ADI, authorised NOHC or subsidiary to APRA if the person considers that the provision of that information to APRA will assist APRA in performing its functions under this Act.

Division 4--Mobilization of foreign currency

Section 32

Interpretation In this Division:

"excess receipts of foreign currency", in relation to an ADI as at a date, means the amount by which the amount of that ADI's surplus foreign currency as at that date exceeds the amount (if any) of its surplus foreign currency as at the commencement of this Part.

"sterling" means currency that is legal tender in the United Kingdom.

"surplus foreign currency", in relation to an ADI, means the amount by which the amount of that ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business exceeds the amount of its liabilities outside Australia attributable to, or incurred by virtue of, its Australian business.

Section 33

Transfer of foreign currency to Reserve Bank

(1)

The Reserve Bank may, from time to time, by notice in writing, require each ADI to transfer to the Reserve Bank an amount of sterling equivalent to such proportion as is specified in the notice of that ADI's excess receipts of foreign currency as at the close of business on a date specified in the notice, not being more than 21 days before the date on which the notice is given.

(2)

The proportion specified in a notice under subsection (1) shall be the same in respect of each ADI.

(3)

Where, as at the close of business on a date specified in a notice under subsection (1), an ADI has not transferred an amount of sterling that it has been required to transfer in pursuance of any previous notice under that subsection, the excess receipts of foreign currency to which that amount of sterling is equivalent shall not, for the purpose of calculating the amount of sterling required to be transferred in pursuance

of the first-mentioned notice, be taken into account as part of the excess receipts of foreign currency of that ADI.

(4)

An ADI is guilty of an offence if:

(a)

the ADI receives a notice under subsection (1); and

(b)

the ADI does not comply with the notice within:

(i)

7 days after receiving the notice; or

(ii)

if a longer period for compliance is specified by the Reserve Bank—the period so specified; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(4A)

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

(4B)

If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of 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 ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(5)

An ADI shall be deemed to have complied with the requirements of a notice under subsection (1) if it transfers to the Reserve Bank an amount of sterling equivalent to the specified proportion of that ADI's excess receipts of foreign currency, as shown in that ADI's books of account, as at the close of business on the date in question.

(6)

Where a ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business include foreign currency that is not freely convertible into sterling, the Reserve Bank shall make such adjustment in the amount of sterling required to be transferred by that bank to the Reserve Bank under this section as appears to the Reserve Bank to be necessary in the circumstances.

Section 34

Payment for transferred foreign currency The Reserve Bank shall pay to an ADI transferring sterling in compliance with a notice under section 33 such amount in Australian currency as is agreed upon between the Reserve Bank and the ADI transferring the sterling or, in default of agreement, as is determined in an action for compensation by the ADI against the Reserve Bank.

Section 35

Sale of foreign currency by Reserve Bank The Reserve Bank may sell foreign currency to an ADI:

(a)

where the Reserve Bank is satisfied that the ADI has complied with the provisions of this Division and is likely to suffer a shortage of foreign currency; or

(b)

if the Reserve Bank considers that, for any other reason, it is desirable to do so.

Division 5--Advances

Section 36

Advance policy

(1)

Where the Reserve Bank is satisfied that it is necessary or expedient to do so in the public interest, the Reserve Bank may determine the policy in relation to advances to be followed by ADIs.

(1A)

An ADI is guilty of an offence if:

(a)

the Reserve Bank has made a determination under subsection (1) of a policy that applies to the ADI; and

(b)

the ADI fails to follow the policy; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1B)

An offence against subsection (1A) is an indictable offence.

(2)

Without limiting the generality of subsection (1), the Reserve Bank may give directions as to the classes of purposes for which advances may or may not be made by ADIs.

(2A)

An ADI is guilty of an offence if:

(a)

the Reserve Bank has given a direction under subsection (2) that applies to the ADI; and

(b)

the ADI fails to comply with the directions; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(2B)

An offence against subsection (2A) is an indictable offence.

(3)

Nothing in this section:

(a)

authorizes the Reserve Bank to make a determination or give a direction with respect to an advance made, or proposed to be made, to a particular person; or

(b)

affects the validity of a transaction entered into in relation to an advance or affects the right of an ADI to recover an advance or enforce the security given in respect of an advance.

~~Part IIA -- ADI mergers (operation of State and Territory laws)~~

Section 38A

Operation of certain State and Territory laws relating to ADI mergers

(1)

Any law of the Commonwealth with which a provision of a law of a State or Territory referred to in Schedule 1 would, but for this subsection, be inconsistent has effect subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision.

(2)

Without prejudice to its effect apart from this subsection, each provision of a law of a State or Territory referred to in Schedule 1 has or shall be deemed to have had, as the case may be, by force of this subsection, on and from the day that is the prescribed

day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(3)

If, at any time after the commencement of this Part, a law of a State or Territory is passed or made for the purpose of, or for the purpose of making provision consequent upon or in relation to, the merger of 2 or more ADIs, the Treasurer may, in his or her discretion, by signed writing published in the "Gazette", declare that law to be a law to which this subsection applies.

(4)

Where a declaration is made under subsection (3) in relation to a law of a State or Territory:

(a)

any law of the Commonwealth with which a provision of that law of a State or Territory would, but for this paragraph, be inconsistent has effect, subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision; and

(b)

without prejudice to its effect apart from this paragraph, each provision of that law of a State or Territory has, or shall be deemed to have had, as the case may be, by force of this paragraph, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(5)

A reference in this section to the prescribed day in relation to a provision of a law of a State or Territory is a reference to the day on which that provision comes or came into operation.

Part III--Foreign exchange, foreign investment etc. Power to make regulations

Section 39

(1)

Where the Governor-General considers it expedient to do so for purposes related to:

(a)

foreign exchange or the foreign exchange resources of Australia;

(b)

the protection of the currency or the protection of the public credit or revenue of Australia; or

(c)

foreign investment in Australia, Australian investment outside Australia, foreign ownership or control of property in Australia or of Australian property outside Australia or Australian ownership or control of property outside Australia or of foreign property in Australia;

the Governor-General may make regulations, not inconsistent with this Act, in accordance with this section.

(2)

The regulations authorized to be made by this section are regulations (being regulations with respect to matters with respect to which the Parliament has power to make laws) making provision for or in relation to:

(a)

rates of exchange;

(b)

the control or prohibition of the buying, borrowing, selling, lending or exchanging in Australia of, or other dealing in Australia with, foreign currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, foreign currency by or on behalf of a person who is a resident;

(c)

the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, foreign currency, being a transaction that takes place in whole or in part in Australia or to which a person who is a resident is a party;

(d)

the control or prohibition of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, Australian currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging in Australia, or other dealing in Australia with, Australian currency by or on behalf of a person who is not a resident;

(e)

the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, Australian currency, being a transaction that takes place in whole or in part outside Australia or to which a person who is not a resident is a party;

(f)

the control or prohibition of the taking or sending out of Australia, and of the bringing or sending into Australia, of Australian currency or foreign currency;

(g)

requiring any person who is a resident and who has power to sell, or to procure the sale of, any foreign currency, or any person (whether a resident or not) who has power to sell in Australia, or to procure the sale in Australia of, any foreign currency, to sell, or to procure the sale of, that currency as prescribed;

(h)

requiring any person who is not a resident and who has power to sell, or to procure the sale of, any Australian currency, or any person (whether a resident or not) who has power to sell outside Australia, or to procure the sale outside Australia of, any Australian currency, to sell, or to procure the sale of, that currency as prescribed;

(i)

the control or prohibition of the taking, sending or transfer of any securities to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia), and of the bringing, sending or transfer of any securities to Australia from a place outside Australia (including the transfer of securities from a register outside Australia to a register in Australia);

(j)

the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is in Australia, or of Australian securities that are outside Australia, by or on behalf of a person who is not a resident;

(k)

the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is in Australia, or of Australian securities that are outside Australia, being a transaction to which a person who is not a resident is a party;

(l)

the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is outside Australia, or of foreign securities that are in Australia, by or on behalf of a person who is a resident;

(m)

the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is outside Australia, or of foreign securities that are in Australia, being a transaction to which a person who is a resident is a party;

(n)

requiring any person who is a resident and by whom moneys are payable to a person who is not a resident to pay those moneys within such time as is fixed by or under the regulations;

(o)

the control or prohibition of the importation or exportation of goods;

(p)

the obtaining by the Reserve Bank (or by a person authorized by the Bank for the purpose) of information, and the examination by the Bank (or by a person authorized by the Bank for the purpose) of accounts, books, documents or other papers, for purposes related to the exercise of the Bank's powers or the performance of the Bank's functions under the regulations;

(q)

prescribing penalties not exceeding a fine of 1,000 penalty units, or imprisonment for a period not exceeding 5 years, for offences against the regulations made under this section; and

(r)

empowering a court to order the forfeiture, or the disposal in accordance with the directions of the Reserve Bank, of Australian currency, foreign currency, goods or other property in respect of which an offence against the regulations made under this section has been committed.

(3)

Without limiting the generality of the power of the Governor-General to make regulations under this section, the regulations may:

(a)

for any purpose of the regulations, prohibit the doing of any act or thing (including the importation or exportation of goods) specified in the regulations either absolutely or subject to conditions, being conditions which may prohibit the doing of the act or thing without the authority of the Reserve Bank or except in pursuance of a licence granted under the regulations;

(b)

make provision for or in relation to terms and conditions subject to which such authorities or licences shall or may be granted, being terms and conditions which may require the deposit of money with the Reserve Bank; and

(c)

make provision for or in relation to the granting of exemptions, either unconditionally or subject to conditions determined by the Reserve Bank, from the application of any provision of the regulations.

(4)

Regulations under this section may provide:

(a)

that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a resident included in a prescribed class of persons as if the person were not a resident; and

(b)

that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a person who is not a resident but is included in a prescribed class of persons, as if the person were a resident.

(5)

Regulations under this section may provide:

(a)

that, where a body corporate that is not a resident has a place of business in Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business; and

(b)

that, where a body corporate that is a resident has a place of business outside Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, not to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business.

(6)

Regulations under this section may provide that no act or thing done, or contract or other transaction entered into, is invalid or unenforceable by reason only that the provisions of the regulations have not, or a particular provision of the regulations specified in the regulations has not, been complied with, but regulations so made shall not be construed as having the effect of preventing a person from being convicted of an offence against the regulations by reason of having failed to comply with a provision of the regulations.

(7)

Regulations under this section may provide that, in the exercise of its powers or the performance of its functions under the regulations, or under a particular provision of the regulations specified in the regulations, the Reserve Bank is subject to the directions of the Treasurer.

(8)

In this section:

"Australian currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed in Australian money, and also includes rights, and instruments of title, to Australian money.

"Australian securities" means securities or other property included in a class of securities or property specified in the regulations as Australian securities.

"foreign currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed otherwise than in Australian money, and also includes rights and instruments of title, to money other than Australian money.

"foreign securities" means securities or other property included in a class of securities or property specified in the regulations as foreign securities.

"property" includes securities and rights under securities.

"resident" means:

(a)

a person, not being a body corporate, who is ordinarily resident in Australia; and

(b)

a body corporate which is incorporated in Australia.

"securities" includes shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities.

(9)

Nothing in Part IV shall be taken as limiting the power of the Governor-General to make regulations under this section for or in relation to the control or prohibition of the importation or exportation of gold, or otherwise with respect to gold.

(10)

A reference in this section to property that is in Australia shall be read as including a reference to a right, not being property, that is exercisable in Australia, and a reference in this section to property that is outside Australia shall be read as including a reference to a right, not being property, that is not exercisable in Australia.

(11)

Nothing in subsection (1) shall be taken to affect, by implication or otherwise, the interpretation or operation of regulations made under this section.

Section 39A

Extra-territorial application of regulations

(1)

Regulations made under section 39 shall, except where the contrary intention appears, apply both within and without Australia.

(2)

A provision of the "Judiciary Act 1903" by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against the regulations made under section 39 of this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality.

(3)

Subject to the Constitution, jurisdiction is conferred on the several courts of a Territory, within the limits of their several jurisdictions other than limits as to locality, with respect to offences against the regulations made under section 39 not committed within a State or within another Territory.

(4)

The trial on indictment of an offence against the regulations made under section 39 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Section 39B

Granting of authorities by Reserve Bank subject to taxation clearance

(1)

Where regulations made under section 39 contain a provision prohibiting the doing of an act or thing without the authority of the Reserve Bank and an application is made to the Bank for the authority of the Bank to do that act or thing, then:

(a)

if the act or thing is of a kind specified in a notice in force under subsection (2) of this section—the Bank shall not grant that authority unless there is produced to the Bank, in respect of that act or thing, a tax clearance certificate issued under section 14C of the "Taxation Administration Act 1953 "in respect of that act or thing; or

(b)

in any other case—the Bank may refuse to grant that authority unless there is produced to the Bank such a certificate;

but the foregoing shall not be taken as limiting the discretion of the Bank to refuse to grant any such authority on any other ground.

(2)

The Treasurer may, by notice in writing published in the "Gazette", direct that acts or things of a kind specified in the notice are, on and after the date of publication of the notice or such later date as is specified in the notice, acts or things of a kind to which this section applies.

Part IV--Gold Operation of Part

Section 40

(1)

This Part shall not be in operation except as provided by this section.

(2)

Where the Governor-General is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall come into operation, and this Part, or the provisions so specified, shall thereupon come into operation.

(3)

Where the Governor-General is satisfied that it is no longer expedient, for the protection of the currency or of the public credit of the Commonwealth, that this Part, or any of the provisions of this Part, should remain in operation, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall cease to be in operation, and thereupon this Part, or the provisions so specified, shall cease to be in operation.

Section 41

Transfer of gold out of Australia

(1)

A person shall not, except with the consent in writing of the Reserve Bank, take or send any gold out of Australia.

(2)

A person is guilty of an offence if:

(a)

the person contravenes subsection (1); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3)

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

Section 42

Delivery of gold

(1)

Subject to this Part, a person who has any gold in the person's possession or under the person's control, not being:

(a)

gold coins the total value of the gold content of which does not exceed the prescribed amount; or

(b)

gold lawfully in the possession of that person for the purpose of being worked or used by that person in connexion with the person's profession or trade;

shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the gold comes into the person's possession or under the person's control or, if the gold is in the person's possession or under the person's control on any date on which this Part comes into operation, within one month after that date.

(1A)

A person is guilty of an offence if:

(a)

the person fails to comply with subsection (1); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(2)

Where a person who has gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade ceases to have that purpose in respect of that gold, the person shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the person has ceased to have that purpose in respect of that gold.

(3)

A person is guilty of an offence if:

(a)

the person fails to comply with subsection (2); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

Section 43

Vesting of gold delivered All gold delivered in pursuance of section 42 shall thereupon vest in the Reserve Bank absolutely, free from any mortgage, charge, lien, trust or other interest in or affecting the gold, and the Reserve Bank shall pay for the gold, to the person delivering the gold, on behalf of all persons having any interest in the gold, an amount determined in accordance with section 44 and the Reserve Bank shall not be under any liability to any other person claiming any interest in the gold.

Section 44

Payment for gold The amount to be paid for any gold delivered in pursuance of section 42 shall be an amount determined in accordance with such price as is fixed and published by the Reserve Bank or, at the option of the person delivering the gold, such amount as is determined in an action for compensation against the Reserve Bank.

Section 45

Limitation of sale and purchase of gold

(1)

Subject to this Part:

(a)

a person shall not sell or otherwise dispose of gold to a person other than the Reserve Bank or a person authorized in writing by the Reserve Bank to purchase gold; and

(b)

a person, other than the Reserve Bank or a person so authorized, shall not buy or otherwise obtain gold from any person.

(1A)

A person is guilty of an offence if:

(a)

the person fails to comply with subsection (1); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1B)

An offence against subsection (1A) is an indictable offence.

(2)

A person may buy gold from the Reserve Bank or from a person authorized in writing by the Reserve Bank to sell gold, and the Reserve Bank or a person so authorized may sell gold to a person, for the purpose of its being worked or used by the purchaser in connexion with the person's profession or trade.

(3)

A person authorized by the Reserve Bank under this section shall comply with such directions relating to gold as are given to the person by the Reserve Bank.

(4)

A person is guilty of an offence if:

(a)

the person fails to comply with subsection (3); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(5)

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

Section 46

Limitation on working of gold

(1)

A person shall not work or use in manufacture any gold, not being gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade.

(2)

A person is guilty of an offence if:

(a)

the person fails to comply with subsection (1); and

(b)

there is no order in force under section 11 determining that subsection

(1)

does not apply to the person; and

(c)

there is no instrument in force under section 48 exempting the person from the application of subsection (1).

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3)

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

Section 47

Application of Part

(1)

This Part does not apply to wrought gold, not being wrought gold worked or manufactured in contravention of this Part.

(2)

In this section, "wrought gold" means gold and gold alloys which on view have apparently been worked or manufactured for professional or trade purposes and includes the waste products arising from the working or manufacturing of gold and gold alloys for professional or trade purposes.

Section 48

Exemptions The Reserve Bank may, by instrument in writing, and either wholly or to the extent specified in the instrument, exempt a person from the application of the whole or any of the provisions of this Part and, so long as the exemption continues, that person is exempt accordingly.

Part V--Interest rates Control of interest rates

Section 50

(1)

The Reserve Bank may, with the approval of the Treasurer, make regulations:

(a)

making provision for or in relation to the control of rates of interest payable to or by ADIs, or to or by other persons in the course of any banking business carried on by them;

(b)

making provision for or in relation to the control of rates of discount chargeable by ADIs, or by other persons in the course of any banking business carried on by them;

(c)

providing that interest shall not be payable in respect of an amount deposited with an ADI, or with another person in the course of banking business carried on by the person, and repayable on demand or after the end of a period specified in the regulations; and

(d)

prescribing penalties, for offences against the regulations, not exceeding:

(i)

if the offender is a natural person—a fine of \$5,000; or

(ii)

if the offender is a body corporate—a fine of \$25,000.

Part VI--Collection and publication of information about ADIs, authorised NOHCs and their subsidiaries

Section 51

Collection and publication of information about ADIs, authorised NOHCs and their subsidiaries

(1)

The regulations may make provision for and in relation to:

(a)

requiring an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, to prepare, and to give to APRA, accounts and financial statements; and

(b)

requiring an ADI to give information relating to its banking business to APRA; and

(ba)

requiring:

(i)

an authorised NOHC; or

(ii)

a subsidiary of an ADI or an authorised NOHC;

to give information to APRA in respect of the NOHC or subsidiary; and

(c)

specifying, or enabling APRA to specify, the manner and form in which the accounts and financial statements are to be prepared and given or in which the information is to be given; and

(d)

requiring accounts, financial statements or information given to be verified by a statutory declaration made by a senior officer of the ADI, authorised NOHC or subsidiary; and

(e)

enabling APRA to exempt an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, (either unconditionally or conditionally) from compliance with an obligation of the kind mentioned in paragraph (b) or (ba); and

(f)

requiring APRA to prepare and publish, in respect of an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, all or any of the following:

(i)

a balance-sheet;

(ii)

a profit and loss statement;

(iii)

a statement of assets and liabilities;

(iv)

with the consent of the ADI, authorised NOHC or subsidiary concerned—other information.

(2)

Regulations made for the purposes of this section shall not require information to be given with respect to the affairs of an individual customer unless the information is in respect of prudential matters relating to the ADI concerned.

(3)

Regulations made for the purposes of paragraph (1)(f) shall not require the preparation and publication of information with respect to the affairs of an individual customer.

Part VII--Miscellaneous

Section 61

APRA may conduct investigations

(1)

APRA may appoint a person to investigate and report on prudential matters in relation to a body corporate that is an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, if it is satisfied that such a report is necessary. The appointment must be in writing and must specify the prudential matters that are to be the subject of the investigation and report.

(2)

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

(2A)

A body corporate is guilty of an offence if:

(a)

under subsection (1), APRA has appointed a person to investigate and report on prudential matters in relation to the body corporate; and

(b)

the body corporate:

(i)

does not give the person access to its books, accounts and documents; or

(ii)

fails to comply with a requirement made under subsection (2) for the provision of information or facilities; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(2B)

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 (2A), the body corporate is guilty of an offence against that subsection in respect of:

(a)

the first day on which the offence is committed; and

(b)

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

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

(3)

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

Section 62

Supply of information

(1)

APRA may require persons to provide information as follows:

(a)

an ADI may be required to give APRA information in respect of the ADI;

(b)

an authorised NOHC may be required to give APRA information in respect of the NOHC;

(c)

a subsidiary of an ADI or an authorised NOHC may be required to give APRA information in respect of the subsidiary;

(d)

any other person who carries on any banking business in Australia may be required to give APRA information in connection with the person's banking business.

(1A)

A person is guilty of an offence if:

(a)

under subsection (1), APRA requires the person to provide information; and

(b)

the person fails to comply with the requirement; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1B)

An offence against subsection (1A) is an indictable offence.

(1C)

If a person fails to comply with a requirement under subsection (1) in circumstances that give rise to the person committing an offence against subsection (1A), the person is guilty of an offence against subsection (1A) 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2)

A requirement under subsection (1) must not require information to be given with respect to the affairs of an individual customer of an ADI unless the information is in respect of prudential matters relating to the ADI.

(3)

An individual is not excused from complying with a requirement under subsection (1) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(4)

If:

(a)

before giving information in compliance with a requirement under subsection (1), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b)

giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

(5)

Nothing in section 51 restricts the powers conferred by this section.

Section 63

Restructuring of ADIs

(1)

An ADI, other than a foreign ADI, is guilty of an offence if:

(a)

the ADI:

(i)

enters into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or

(ii)

effects a reconstruction of the ADI; and

(b)

the Treasurer did not give prior consent in writing to the ADI entering into the arrangement or agreement or effecting the reconstruction.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1A)

An offence against subsection (1) is an indictable offence.

(2)

Any such arrangement, agreement or reconstruction, and any such sale or disposal in pursuance of any such arrangement or agreement, entered into without the prior consent of the Treasurer is void and of no effect.

(3)

The consent of the Treasurer under subsection (1) shall not be unreasonably withheld.

(4)

A foreign ADI is guilty of an offence if:

(a)

there is a proposal that involves the ADI:

(i)

entering into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or

(ii)

effecting a reconstruction of the ADI; and

(b)

the ADI does not give the Treasurer reasonable notice, in writing, of the proposal.

Maximum penalty: 200 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(4A)

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

(5)

The Treasurer may, in writing, delegate all or any of his powers under this section to:

(a)

APRA, an APRA board member or an APRA staff member; or

(b)

an officer of the Department.

Section 65

ADIs and authorised NOHCs may be directed to comply with Act

(1)

Where an ADI or an authorised NOHC is convicted of an offence against this Act or the regulations, a Full Court of the Federal Court of Australia may, upon the application of the Attorney-General by motion, direct compliance by the ADI or NOHC, within a period specified by the Court, with the provisions of this Act or the regulations with which the ADI or NOHC has failed to comply.

(2)

In default of compliance by the ADI or NOHC within the specified period with a direction given in pursuance of subsection (1), the Federal Court of Australia may authorize APRA to assume control of, and to carry on, the business of the ADI or NOHC.

(3)

The provisions of Subdivision B of Division 2 of Part II have effect, so far as they are applicable, as if they also extended to APRA being in control of the business of the ADI or NOHC under subsection (2) of this section, and as if they covered authorised NOHCs in the same way as they cover ADIs.

(4)

Where APRA has assumed control of the business of the ADI or NOHC under subsection (2), APRA shall remain in control of, and shall continue to carry on, the business of the ADI or NOHC until such time as the Federal Court of Australia is satisfied that it is no longer necessary for APRA to remain in control of the business of the ADI or NOHC and authorizes APRA to cease to control the business of the ADI or NOHC.

Section 66

Restriction on use of certain words and expressions

(1)

A person is guilty of an offence if:

(a)

the person carries on a financial business, whether or not in Australia; and

(b)

the person assumes or uses, in Australia, a restricted word or expression in relation to that financial business; and

(c)

neither subsection (1AB) nor subsection (1AC) allows that assumption or use of that word or expression; and

(d)

APRA did not consent to that assumption or use of that word or expression; and

(e)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of "restricted word or expression", "assume or use" and "financial business", see subsection (4).

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

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

(1AA)

If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(1AB)

It is not an offence against subsection (1) for the Reserve Bank to assume or use the words "bank", "banker" or "banking" in relation to its financial business.

(1AC)

It is not an offence against subsection (1) for an ADI to assume or use the word "banking" in referring to the fact that it has been granted an authority under this Act.

Note: For example, an ADI may, in its letterhead, refer to itself as being authorised under the "Banking Act 1959" to carry on banking business.

(1B)

A consent may be expressed to apply to a particular person or to persons included in a class of persons.

(2)

APRA may, at any time:

(a)

impose conditions, or additional conditions, on a consent; or

(b)

vary or revoke conditions imposed on a consent; or

(c)

revoke a consent.

(2A)

The form of the granting of a consent, or the taking of action under subsection (2) in relation to a consent, is to be as follows:

(a)

if the consent applies to a particular person—notice in writing served on the person;

(b)

if the consent applies to a class of persons—notice in writing published in the "Gazette".

(2B)

If APRA:

(a)

grants a consent; or

(b)

takes action under subsection (2) in relation to a consent;

APRA must give ASIC notice of the granting of the consent or the taking of the action.

(3)

A person is guilty of an offence if:

(a)

the person has been given a consent under this section; and

(b)

the person contravenes a condition to which the consent is subject; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3A)

If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4)

In this section:

(a)

a reference to a restricted word or expression is a reference to:

(i)

the word "bank", "banker" or "banking"; or

(ii)

the expression "building society", "credit union" or "credit society"; or

(iii)

any other word or expression specified in a determination in force under subsection (5); or

(iv)

any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and

(b)

a reference to a word or expression being assumed or used includes a reference to the word or expression being assumed or used:

(i)

as part of another word or expression; or

(ii)

in combination with other words, letters or other symbols; and

(c)

a reference to a financial business is a reference to a business that:

(i)

consists of, or includes, the provision of financial services; or

(ii)

relates, in whole or in part, to the provision of financial services.

(5)

APRA may, in writing, determine that a specified word or expression is to be a restricted word or expression for the purposes of this section. A determination is a disallowable instrument for the purposes of section 46A of the "Acts Interpretation Act 1901".

Section 66A

Restriction on use of expressions authorised deposit-taking institution and ADI

(1)

A person, other than an ADI, is guilty of an offence if:

(a)

the person carries on a financial business, whether or not in Australia; and

(b)

the person assumes or uses, in Australia, the expression "authorised deposit-taking institution", or "ADI", in relation to that financial business; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of "assume or use" and "financial business", see subsection (2).

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

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

(1A)

If a person assumes or uses an expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2)

In this section:

(a)

a reference to an expression being assumed or used includes a reference to the expression being assumed or used:

(i)

as part of another expression; or

(ii)

in combination with other words, letters or other symbols; and

(b)

a reference to a financial business is a reference to a business that:

(i)

consists of, or includes, the provision of financial services; or

(ii)

relates, in whole or in part, to the provision of financial services.

(3)

However, this section does not prohibit the use of the letters ADI as part of another word.

Note: For example, the letters "adi" appear in the word "traditional". Use of the word "traditional" is not prohibited by this section.

Section 67

Restriction on establishment or maintenance of representative offices of overseas banks

(1)

A person, other than an ADI, is guilty of an offence if:

(a)

the person carries on banking business in a foreign country but does not carry on banking business in Australia; and

(b)

the person establishes or maintains an office in Australia wholly or partly in connection with the carrying on of that banking business in that foreign country; and

(c)

APRA did not consent, in writing, to the establishment or maintenance of that office; and

(d)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(1A)

If a person establishes or maintains an office in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2)

APRA may, at any time, by notice in writing served on the person concerned:

(a)

impose conditions, or additional conditions, on a consent;

(b)

vary or revoke conditions imposed on a consent; or

(c)

revoke a consent.

(3)

A person is guilty of an offence if:

(a)

the person has been given a consent under this section; and

(b)

the person contravenes a condition to which the consent is subject; and

(c)

there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(4)

If a person does or fails to do an Act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of 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 person committing the offence continue (including the day of conviction for any such offence or any later day).

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

Section 68

Bank holidays

(1)

The Treasurer may, by notice published in the "Gazette", declare a day specified in the notice to be a bank holiday.

(2)

An ADI is not, on a day so declared to be a bank holiday, compellable to make a payment or to do any other act that the ADI would not be compellable to make or do on a Sunday and the obligation to make the payment or to do the act shall be deemed to be an obligation to make the payment or to do the act on the next day which is not a Sunday, a bank holiday or a public holiday.

(3)

This section does not affect the operation of any law of a State or Territory relating to bank holidays or public holidays.

(4)

In this section:

"ADI" includes the Reserve Bank.

Section 69

Unclaimed moneys

(1)

For the purposes of this section, "unclaimed moneys" means all principal, interest, dividends, bonuses, profits and sums of money legally payable by an ADI but in respect of which the time within which proceedings may be taken for the recovery thereof has expired, and includes moneys to the credit of an account that has not been operated on either by deposit or withdrawal for a period of not less than 7 years.

(2)

For the purposes of subsection (1), the debiting of a fee to an account shall be deemed not to be a withdrawal and the crediting to an account of interest payable by an ADI on that account shall be deemed not to be a deposit.

(3)

An ADI shall, within 3 months after the 31 December in each year, deliver to the Treasurer a statement, complying with subsection (4) and any regulations under subsection (3), of all sums of unclaimed moneys, other than unclaimed moneys held in RSAs (within the meaning of the "Retirement Savings Accounts Act 1997"), of not less than \$100 or such higher amount as is prescribed.

(3AA)

The ADI is guilty of an offence if:

(a)

it does not give the Treasurer a statement as required by subsection (3); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(3A)

The regulations may require the statement to be delivered in a specified form in a specified kind of disk, tape, film or other medium.

(4)

The statement shall set out:

- (a) the name, and the last-known address, of each shareholder, depositor or creditor; and
- (b) the amount due; and
- (c) in the case of moneys to the credit of an account—the office or branch of the ADI at which the account was kept.

- (5) The total amount shown in the statement shall be paid by the ADI to the Commonwealth at the time of the delivery of the statement.

- (5A) The ADI is guilty of an offence if:

- (a) it does not pay, at the time of the delivery of the statement, the amount specified in the statement, as required by subsection (5); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

- (6) Subject to subsection (7), an ADI is, upon payment to the Commonwealth of an amount as required by this section, discharged from further liability in respect of that amount.
- (7) Where unclaimed moneys have been paid to the Commonwealth under this section and the Treasurer or an authorized officer is satisfied that, but for subsection (6), a person would be paid those unclaimed moneys by the ADI by which they were paid to the Commonwealth (or, if that ADI is no longer carrying on banking business, by

an ADI to which the business of the first-mentioned ADI has been sold or disposed of), those unclaimed moneys shall be paid to that ADI and the ADI shall thereupon pay those moneys to that person.

(7A)

The ADI is guilty of an offence if:

(a)

it does not pay moneys to a person as required by subsection (7); and

(b)

there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the "Crimes Act 1914" allows a court to impose a fine of up to 5 times the penalty stated above.

(8)

The Consolidated Revenue Fund is appropriated for the purposes of, and to the extent necessary to give effect to, subsection (7).

(9)

The Treasurer shall cause particulars of every sum shown in a statement delivered under this section to be:

(a)

published in the "Gazette"; or

(b)

made available to the public (whether or not on the payment of a fee) in such other manner as the Treasurer determines.

(11)

The Treasurer or an ADI may apply to the Federal Court of Australia for a declaration whether any moneys are or are not unclaimed moneys within the meaning of this section and the Federal Court of Australia may make a declaration accordingly.

(11A)

It is the intention of the Parliament that a law of a State or Territory has no effect insofar as it requires an ADI to:

(a)

pay unclaimed moneys to, or to an authority of, a State or Territory; or

(b)

lodge a return relating to unclaimed moneys with, or with an authority of, a State or Territory.

(12)

In this section:

"authorized officer", means the Secretary to the Department of the Treasury or an officer of that Department authorized by the Secretary to act under this section.

Section 69AA

Powers about money of depositors who have died

(1)

If a depositor of an ADI dies, the ADI may apply an amount not exceeding \$15,000 held by the ADI that was deposited or paid up on a withdrawable share by the deceased person:

(a)

in payment of the deceased person's funeral expenses or debts; or

(b)

in payment to the executor of the deceased person's will; or

(c)

in payment to anyone else who is, in the ADI's opinion, entitled to the amount, having regard to the laws of probate and accepted practice for the administration of deceased estates.

The amount may be applied without production of probate, of the will or letters of administration of the estate.

(2)

No action lies against an ADI for acting, or failing to act, under subsection (1).

Section 69C

Conduct of directors, servants and agents

(3)

Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a)

that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and

(b)

that the servant or agent had the state of mind.

(4)

Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5)

Where:

(a)

a person other than a body corporate is convicted of an offence; and

(b)

the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6)

A reference in subsection (3) to the state of mind of a person includes a reference to:

(a)

the knowledge, intention, opinion, belief or purpose of the person; and

(b)

the person's reasons for the intention, opinion, belief or purpose.

(8)

A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Note: For provisions relating to proof of offences by bodies corporate, see Part 2.5 of the "Criminal Code".

Section 69D

Disclosure of information received under Act prohibited in certain circumstances
Part 6 of the "Australian Prudential Regulation Authority Act 1998" prohibits certain disclosures of information received under this Act.

Section 69E

Compensation for acquisition of property

(1)

If:

(a)

apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

(b)

the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution; the Commonwealth is liable to pay to the person compensation of a reasonable amount as agreed on between the Commonwealth and the person. If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

(2)

Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(3)

In this section:

"acquisition of property" and "just terms" have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

Section 69F

Severability

"Act also has effect as provided in this section"

(1)

Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

"References to a NOHC of an ADI"

(2)

This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a)

the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the "banking business definition";

(b)

the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the "banking business definition".

"References to a subsidiary of an ADI"

(3)

This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a)

the Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b)

this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (a) of the "banking business definition";

(c)

this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (b) of the "banking business" " definition".

"References to a subsidiary of an authorised NOHC"

(4)

This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a)

the Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b)

this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the "banking business" "definition";

(c)

this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the "banking business" "definition".

"Interpretation"

(5)

In this section:

"banking business definition" means the definition of banking business in subsection 5(1).

Section 70A

Indemnity A person is not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in connection with the exercise of powers or performance of functions under this Act or in compliance with obligations imposed by this Act.

Section 70B

Act has effect despite the Corporations Law This Act has effect despite any provision of the Corporations Law of a State or internal Territory.

Section 71

Regulations

(1)

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties for offences against the regulations which, except as otherwise provided by this Act, shall not exceed:

(a)

if the offender is a natural person—a fine of 50 penalty units; or

(b)

if the offender is a body corporate—a fine of 250 penalty units.

(2)

Without limiting the generality of subsection (1), the regulations may confer on APRA functions relating to the supervision of ADIs and NOHCs in relation to prudential matters.

(3)

The Governor-General shall not make regulations for or in relation to requiring ADIs or NOHCs to observe requirements in relation to prudential matters except in accordance with the recommendation of the Treasurer.

(4)

Before making a recommendation for the purposes of subsection (3), the Treasurer shall consult APRA.

SCHEDULE 1--State and Territory laws relating to ADI mergers

Note: See section 38A.

The Commercial Bank of Australia Limited (Merger) Act, 1982 of New South Wales

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of New South Wales

"The Commercial Bank of Australia Limited (Merger) Act "1982 of Victoria

"The Commercial Banking Company of Sydney Limited (Merger) Act "1982 of Victoria

"Commercial Bank of Australia Limited Merger Act "1982 of Queensland

"Commercial Banking Company of Sydney Limited Merger Act "1982 of Queensland

The Commercial Bank of Australia Limited (Merger) Act, 1982 of South Australia

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of South Australia

"The Commercial Bank of Australia Limited (Merger) Act 1982 "of Western Australia

"The Commercial Banking Company of Sydney Limited (Merger) Act 1982 "of Western Australia

"Commercial Bank of Australia Limited (Merger) Act "1982 of Tasmania

"Commercial Banking Company of Sydney Limited (Merger) Act "1982 of Tasmania

"The Commercial Bank of Australia Limited (Merger) Act 1982 "of the Northern Territory

"The Commercial Banking Company of Sydney Limited (Merger) Act 1982 "of the Northern Territory

"The Commercial Bank of Australia Limited (Merger) Ordinance 1982 "of the Australian Capital Territory

"The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 "of the Australian Capital Territory