

# EXPOSURE DRAFT

2013-2014-2015

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Private Health Insurance (Prudential Supervision) Bill 2015**

**No.     , 2015**

*(Treasury)*

**A Bill for an Act to regulate private health  
insurance, and for related purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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# EXPOSURE DRAFT

1

## A Bill for an Act to regulate private health insurance, and for related purposes

2

3

4

The Parliament of Australia enacts:

5

### Part 1—Introduction

6

#### Division 1—Preliminary

7

##### 1 Short title

8

This Act may be cited as the *Private Health Insurance (Prudential Supervision) Act 2015*.

9

10

##### 2 Commencement

11

This Act commences on 1 July 2015.

12

##### 3 Simplified outline of this Act

13

[A simplified outline of this Act will be included here later.]

14

##### 4 Interpretation

15

(1) In this Act:

16

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

17

18

*application provision*: see subsection 65(2).

19

*applied Corporations Act provision*: see subsection 65(3).

20

*appointed actuary*, of a private health insurer, means the person holding an appointment by the insurer under section 105.

21

# EXPOSURE DRAFT

**Part 1** Introduction  
**Division 1** Preliminary

Section 4

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- 1                    **approved form**: see section 170.
- 2                    **APRA** means the Australian Prudential Regulation Authority.
- 3                    **APRA rules**: see subsection 172(1).
- 4                    **APRA staff member** has the same meaning as in the *Australian*  
5                    *Prudential Regulation Authority Act 1998*.
- 6                    **assets** of a health benefits fund: see section 26.
- 7                    **business rules** of a private health insurer, means the body of rules  
8                    established by the insurer that relate to the day-to-day operation of  
9                    the insurer's health insurance business and (if any) health-related  
10                    business.
- 11                    **chief executive officer** of a private health insurer, is the person  
12                    who is primarily and directly responsible to the directors of the  
13                    insurer for the general and overall management of the insurer.
- 14                    **civil penalty order**: see subsection 156(2).
- 15                    **collapsed insurer levy**: means levy imposed by the *Private Health*  
16                    *Insurance (Collapsed Insurer Levy) Act 2003*.
- 17                    **complying health insurance policy** has the same meaning as in the  
18                    *Private Health Insurance Act 2007*.
- 19                    **complying health insurance product** has the same meaning as in  
20                    the *Private Health Insurance Act 2007*.
- 21                    **constitutional corporation** means a corporation to which  
22                    paragraph 51(xx) of the Constitution applies.
- 23                    **cover**, in relation to an insurance policy, has the same meaning as  
24                    in the *Private Health Insurance Act 2007*.
- 25                    **declaration of contravention** means a declaration under  
26                    subsection 155(1).
- 27                    **dependent child** has the same meaning as in the *Private Health*  
28                    *Insurance Act 2007*.

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1 **director** has the same meaning as in the *Corporations Act 2001*.

2 **disqualified person**: see sections 118 and 120.

3 **enforceable obligation** means any of the following:

- 4 (a) a provision of this Act;
- 5 (b) a direction given under this Act;
- 6 (c) a provision of the risk equalisation fund legislation;
- 7 (d) if the registration of a private health insurer is subject to
- 8 terms and conditions (see subsection 15(1))—those terms and
- 9 conditions;
- 10 (e) in the case of a restricted access insurer—a provision
- 11 included in the insurer's constitution or business rules in
- 12 order to comply with subsection 15(3).

13 Note: References to this Act include prudential standards and APRA rules  
14 (see the definition of *this Act* in this subsection).

15 **external administration** means:

- 16 (a) administration by an external administrator; or
- 17 (b) some other similar form of administration, whether under a
- 18 law of a State or Territory or otherwise.

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

- 20 (a) a liquidator or provisional liquidator;
- 21 (b) a receiver, manager, managing controller, receiver and
- 22 manager or other controller (other than an external manager
- 23 or terminating manager);
- 24 (c) a voluntary administrator or administrator of a deed of a
- 25 company arrangement or a scheme manager.

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

28 **external management** means management under Divisions 6 and 8  
29 of Part 3.

30 **external manager**, in relation to a health benefits fund, means a  
31 person appointed under section 51 as the external manager of the  
32 fund.

# EXPOSURE DRAFT

**Part 1** Introduction  
**Division 1** Preliminary

Section 4

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- 1                    ***Federal Court*** means the Federal Court of Australia.
- 2                    ***for profit insurer*** means a private health insurer that is registered  
3                    under Part 2 as a for profit insurer.
- 4                    ***health benefits fund*** has the same meaning as in the *Private*  
5                    *Health Insurance Act 2007*.
- 6                    ***Health Department*** means the Department administered by the  
7                    Health Minister.
- 8                    ***health insurance business*** has the same meaning as in the *Private*  
9                    *Health Insurance Act 2007*.
- 10                   ***Health Minister*** means the Minister administering the *Private*  
11                   *Health Insurance Act 2007*.
- 12                   ***health-related business*** has the same meaning as in the *Private*  
13                   *Health Insurance Act 2007*.
- 14                   ***Health Secretary*** means the Secretary of the Health Department.
- 15                   ***improper discrimination*** has the same meaning as in the *Private*  
16                   *Health Insurance Act 2007*.
- 17                   ***inspector*** means a person appointed under section 129 to be an  
18                   inspector, and (except in section 146) includes a person exercising  
19                   powers under a delegation under section 146.
- 20                   ***insurance***: see section 6.
- 21                   ***investigation*** means an investigation under Division 3 of Part 6.
- 22                   ***investigation warrant***: see subsection 135(1).
- 23                   ***lawyer*** means a duly qualified legal practitioner and, in relation to  
24                   a person, means such a practitioner acting for the person.
- 25                   ***makes a permitted capital payment***: see subsection 27(3).
- 26                   ***manager***, in relation to a health benefits fund, means an external  
27                   manager or terminating manager of the fund.

# EXPOSURE DRAFT

1           **net asset position** of a health benefits fund, means the difference  
2           between:

- 3           (a) the assets of the fund; and  
4           (b) the policy liabilities and other liabilities of the fund that the  
5           private health insurer conducting the fund has incurred for  
6           the purposes of the fund.

7           **officer** of a private health insurer, means:

- 8           (a) a director of the insurer; or  
9           (b) a chief executive officer of the insurer; or  
10          (c) any other person who has or exercises senior management  
11          responsibilities (within the meaning of prudential standards)  
12          for the insurer.

13          **penalty** includes forfeiture or punishment.

14          **personal information** has the same meaning as in the *Privacy Act*  
15          1988.

16          **policy group** of a health benefits fund: see subsection 32(6).

17          **policy holder** of a health benefits fund, has the same meaning as in  
18          the *Private Health Insurance Act 2007*.

19          **policy liability** of a private health insurer means:

- 20          (a) a liability that has arisen under an insurance policy; or  
21          (b) a liability that, subject to the terms and conditions of an  
22          insurance policy, will arise on the happening of an event, or  
23          at a time, specified in the policy.

24          **premises** includes the following:

- 25          (a) a structure, building, vehicle, vessel or aircraft;  
26          (b) a place (whether or not enclosed or built on);  
27          (c) a part of a thing referred to in paragraph (a) or (b).

28          **Private Health Insurance Ombudsman** has the same meaning as  
29          in the *Private Health Insurance Act 2007*.

# EXPOSURE DRAFT

**Part 1** Introduction  
**Division 1** Preliminary

Section 4

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- 1                    **private health insurer** means a body corporate registered under  
2                    Part 2.
- 3                    **proceeding** means:  
4                    (a) a proceeding in a court; or  
5                    (b) a proceeding or hearing before, or an examination by or  
6                    before, a tribunal;  
7                    whether the proceeding, hearing or examination is of a civil,  
8                    administrative, criminal, disciplinary or other nature.
- 9                    **prudential matters**: see subsection 91(2).
- 10                   **prudential standards**: see subsection 91(1).
- 11                   **referable**: an insurance policy is **referable** to a health benefits fund  
12                   if:  
13                   (a) the fund is identified under paragraph 93-15(1)(c) of the  
14                   *Private Health Insurance Act 2007* as the fund to which the  
15                   policy is referable (and the policy has not been made  
16                   referable to another health benefits fund under Division 4 of  
17                   Part 3 of this Act); or  
18                   (b) the policy has been made referable to the fund under  
19                   Division 4 of Part 3 of this Act.
- 20                   **responsible insurer** means:  
21                   (a) for a health benefits fund that is under external  
22                   management—the private health insurer that was conducting  
23                   the fund prior to the appointment of the external manager of  
24                   the fund; or  
25                   (b) for a health benefits fund that is under terminating  
26                   management—the private health insurer that was conducting  
27                   the fund prior to the appointment of the terminating manager  
28                   of the fund.
- 29                   **restricted access group**: see subsection 15(4).
- 30                   **restricted access insurer** means a private health insurer that is  
31                   registered under Part 2 as a restricted access insurer.
- 32                   **risk equalisation fund legislation** means any of the following:
-



# EXPOSURE DRAFT

- 1 (a) the *Private Health Insurance (Risk Equalisation Levy) Act*  
2 *2003*;
- 3 (b) the provisions of the *Private Health Insurance Act 2007*, as  
4 they apply in relation to:
- 5 (i) levy imposed under the *Private Health Insurance (Risk*  
6 *Equalisation Levy) Act 2003*; or
- 7 (ii) the Risk Equalisation Trust Fund.

8 ***risk equalisation jurisdiction***: see subsection 32(7).

9 ***Risk Equalisation Trust Fund*** has the same meaning as in the  
10 *Private Health Insurance Act 2007*.

11 ***search powers*** means powers to search for, inspect, take extracts  
12 from, and make copies of, documents.

13 ***statutory functions and duties*** of an actuary of a private health  
14 insurer: see subsection 106(2).

15 ***terminating management*** means management under Divisions 5  
16 and 8 of Part 3.

17 ***terminating manager***, in relation to the health benefits funds of a  
18 private health insurer, means a person appointed under  
19 paragraph 37(2)(a) or Division 7 of Part 3 as the terminating  
20 manager of the funds.

21 ***termination day***, in relation to the health benefits funds of a private  
22 health insurer: see subsection 40(2).

23 ***this Act*** includes prudential standards and APRA rules.

24 ***voluntary deed of arrangement*** means:

- 25 (a) a deed of arrangement agreed on at a meeting of a kind  
26 referred to in section 58; or
- 27 (b) such a deed as varied in accordance with APRA rules made  
28 for the purpose of this paragraph.

29 (2) To avoid doubt, a reference in this Act to another Act includes a  
30 reference to any regulations, rules, standards or other instruments  
31 made, and to any conditions imposed, under that other Act.

# EXPOSURE DRAFT

## Part 1 Introduction

### Division 1 Preliminary

#### Section 5

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- 1                                Note:        For example:
- 2                                                (a) a reference to the *Private Health Insurance Act 2007* includes a
- 3                                                reference to rules made under that Act; and
- 4                                                (b) a reference to the *Financial Sector (Collection of Data) Act 2001*
- 5                                                includes a reference to reporting standards made under that Act.

#### 6        **5 General administration of Act**

7                                APRA has the general administration of this Act.

# EXPOSURE DRAFT

1 **Division 2—Constitutional matters**

2 **6 Meaning of *insurance***

3 In this Act:

4 *insurance* means insurance to which paragraph 51(xiv) of the  
5 Constitution applies.

6 **7 Act not to apply to State insurance within that State**

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

9 **8 Compensation for acquisition of property**

10 (1) If the operation of this Act would result in an acquisition of  
11 property (within the meaning of paragraph 51(xxxi) of the  
12 Constitution) from a person otherwise than on just terms (within  
13 the meaning of that paragraph), the Commonwealth is liable to pay  
14 a reasonable amount of compensation to the person.

15 (2) If the Commonwealth and the person do not agree on the amount  
16 of the compensation, the person may institute proceedings in the  
17 Federal Court for the recovery from the Commonwealth of such  
18 reasonable amount of compensation as the Court determines.

# EXPOSURE DRAFT

**Part 2** Registration of private health insurers

**Division 1** Introduction

Section 9

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1 **Part 2—Registration of private health insurers**

2 **Division 1—Introduction**

3 **9 Simplified outline of this Part**

4

*[A simplified outline of this Part will be included here later.]*

# EXPOSURE DRAFT

1 **Division 2—Prohibition of carrying on health insurance**  
2 **business without registration**

3 **10 Carrying on health insurance business without registration**

- 4 (1) A person commits an offence if:  
5 (a) the person carries on health insurance business; and  
6 (b) the person is not a private health insurer.

7 Penalty: 40 penalty units.

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

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

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

20 **11 Injunctions**

- 21 (1) The Federal Court may grant an injunction in such terms as it  
22 determines to be appropriate if, on the application of APRA, the  
23 Court is satisfied that a person has engaged, or is proposing to  
24 engage, in conduct that constitutes or would constitute a  
25 contravention of section 10.
- 26 (2) The Federal Court may grant an interim injunction pending  
27 determination of an application under subsection (1).
- 28 (3) The Federal Court must not require an applicant for an injunction  
29 to give an undertaking as to damages as a condition of granting an  
30 interim injunction.

# EXPOSURE DRAFT

## Part 2 Registration of private health insurers

### Division 2 Prohibition of carrying on health insurance business without registration

#### Section 11

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- 1 (4) The Federal Court may discharge or vary an injunction granted  
2 under subsection (1) or (2).
- 3 (5) The power of the Federal Court to grant an injunction restraining a  
4 person from engaging in conduct may be exercised:
- 5 (a) whether or not it appears to the Court that the person intends  
6 to engage again, or to continue to engage, in conduct of that  
7 kind; and
- 8 (b) whether or not the person has previously engaged in conduct  
9 of that kind.
- 10 (6) The power of the Federal Court to grant an injunction requiring a  
11 person to do an act or thing may be exercised:
- 12 (a) whether or not it appears to the Court that the person intends  
13 to refuse or fail again, or to continue to refuse or fail, to do  
14 that act or thing; and
- 15 (b) whether or not the person has previously refused or failed to  
16 do that act or thing.

# EXPOSURE DRAFT

Registration of private health insurers **Part 2**

Registration **Division 3**

Section 12

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1 **Division 3—Registration**

2 **12 Applying for registration**

3 (1) A body that is:

4 (a) a company within the meaning of the *Corporations Act 2001*;  
5 and

6 (b) a constitutional corporation;

7 may apply to APRA for registration as a private health insurer.

8 (2) The application:

9 (a) must be in the approved form; and

10 (b) must be accompanied by a copy of the applicant's proposed  
11 business rules; and

12 (c) if the applicant is seeking to be registered as a for profit  
13 insurer—must state that fact; and

14 (d) if the applicant is seeking to be registered as a restricted  
15 access insurer—must state that fact.

16 **13 Requiring further information**

17 APRA may, within 90 days after the application is made, give the  
18 applicant written notice requiring the applicant to give APRA such  
19 further information relating to the application as is specified in the  
20 notice.

21 **14 Criteria for registration**

22 APRA rules may set criteria for the registration of bodies as private  
23 health insurers.

24 **15 Deciding the application**

25 (1) APRA may, in writing, grant the application, subject to such terms  
26 and conditions as APRA considers appropriate.

27 Note: Refusals of applications, and granting of applications subject to terms  
28 and conditions, are reviewable under section 167.

# EXPOSURE DRAFT

## Part 2 Registration of private health insurers

### Division 3 Registration

#### Section 15

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- 1 (2) If APRA grants the application:
- 2 (a) the applicant is taken to be, or have been, registered as a
- 3 private health insurer under this Part from the date of effect
- 4 specified in the instrument granting the application (which
- 5 may be a date that occurred before the application was
- 6 made); and
- 7 (b) if the grant is subject to terms and conditions—the
- 8 registration is taken to be subject to those terms and
- 9 conditions from the day on which the applicant is notified of
- 10 the granting of the application; and
- 11 (c) if the applicant sought to be registered as a for profit
- 12 insurer—the registration is taken to be registration of the
- 13 applicant as a for profit insurer; and
- 14 (d) if the applicant sought to be registered as a restricted access
- 15 insurer and the applicant’s constitution or business rules
- 16 satisfy the requirements of subsection (3)—the registration is
- 17 taken to be registration of the applicant as a restricted access
- 18 insurer.
- 19 (3) The applicant’s constitution or business rules satisfy the
- 20 requirements of this subsection if they:
- 21 (a) describe the restricted access group to whom the applicant’s
- 22 complying health insurance products are, or will be,
- 23 available; and
- 24 (b) prohibit the applicant from issuing a complying health
- 25 insurance product to a person who does not belong to the
- 26 group; and
- 27 (c) prohibit the applicant from ceasing to insure a person for the
- 28 reason that the person has ceased to belong to the group.
- 29 (4) A **restricted access group** is a group of people who all belong to a
- 30 particular group, based on whether they:
- 31 (a) are or were employed in a particular profession, trade,
- 32 industry or calling; or
- 33 (b) are or were employed by a particular employer or by an
- 34 employer who belongs to a particular class of employers; or



# EXPOSURE DRAFT

Registration of private health insurers **Part 2**

Registration **Division 3**

Section 16

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- 1 (c) are or were members of a particular profession, professional  
2 association or union; or  
3 (d) are or were members of the Defence Force or part of the  
4 Defence Force; or  
5 (e) are or were part of any group described in APRA rules made  
6 for the purpose of this paragraph.

7 The partners and dependent children of people who belong to such  
8 a group are also taken to belong to that group.

- 9 (5) APRA rules made for the purpose of paragraph (4)(e) may describe  
10 a group as consisting of one or more classes of people (whether or  
11 not the class or classes are described by reference to matters of a  
12 kind referred to in paragraphs (4)(a) to (d)).

## 13 **16 Notifying the decision**

- 14 (1) If APRA grants the application, APRA must:  
15 (a) notify the applicant in writing of the grant, and of the terms  
16 and conditions (if any) to which the grant is subject; and  
17 (b) within one month after granting the application, publish in  
18 the Gazette a notification of the grant setting out:  
19 (i) the applicant's name; and  
20 (ii) the date of effect of the applicant's registration; and  
21 (iii) the terms and conditions (if any) to which the grant is  
22 subject.
- 23 (2) If APRA refuses the application, APRA must notify the applicant  
24 in writing of the refusal.

## 25 **17 APRA can be taken to refuse application**

- 26 APRA is taken, for the purposes of section 167, to have refused the  
27 application if APRA does not notify the applicant of its decision on  
28 the application:  
29 (a) within 90 days after the application was made; or

# EXPOSURE DRAFT

## Part 2 Registration of private health insurers

### Division 3 Registration

#### Section 18

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- 1 (b) if APRA has given the applicant a notice under section 13  
2 requiring the applicant to give further information relating to  
3 the application—within 90 days after the applicant gives that  
4 information to APRA;  
5 whichever is later.

#### 6 **18 APRA to ensure that up-to-date record of information about** 7 **private health insurers is publicly available**

8 An up-to-date record of the following must be publicly available  
9 on APRA's website:

- 10 (a) the names of all private health insurers;  
11 (b) in relation to each private health insurer:  
12 (i) its address, telephone number and website address; and  
13 (ii) the States and Territories in which it operates; and  
14 (iii) if the insurer is registered as a restricted access  
15 insurer—the restricted access group to whom the  
16 insurer's complying health insurance products are, or  
17 will be, available.

#### 18 **19 Changing registration status**

19 *For profit insurer*

- 20 (1) A private health insurer that:  
21 (a) because of paragraph 15(2)(c) or subsection (2) of this  
22 section, is registered as a for profit insurer; and  
23 (b) notifies APRA in the approved form, that it does not wish to  
24 be registered as a for profit insurer;  
25 is taken, from the day after the day on which APRA receives the  
26 notice, not to be registered as a for profit insurer.
- 27 (2) If:  
28 (a) because of subsection (1) or otherwise, a private health  
29 insurer is not registered as a for profit insurer; and

# EXPOSURE DRAFT

1 (b) APRA approves under section 20 an application by the  
2 insurer for the insurer to convert to being registered as a for  
3 profit insurer;  
4 the insurer is taken, from the day specified in APRA's approval, to  
5 be registered as a for profit insurer.

6 (3) If a private health insurer is taken under this section to be, or not to  
7 be, registered as a for profit insurer, APRA must, as soon as  
8 practicable, given written notice of that fact to:

- 9 (a) the Health Secretary; and  
10 (b) the Private Health Insurance Ombudsman; and  
11 (c) the Commissioner of Taxation.

12 *Restricted access insurer*

13 (4) A private health insurer that:

- 14 (a) because of paragraph 15(2)(d) or subsection (5) of this  
15 section, is registered as a restricted access insurer; and  
16 (b) notifies APRA, in the approved form, that it does not wish to  
17 be registered as a restricted access insurer;  
18 is taken, from the day after the day on which APRA receives the  
19 notice, not to be registered as a restricted access insurer.

20 (5) Subject to subsection 15(3), a private health insurer that:

- 21 (a) because of subsection (4) of this section or otherwise, is not  
22 registered as a restricted access insurer; and  
23 (b) notifies APRA, in the approved form, that it wishes to be  
24 registered as a restricted access insurer;  
25 is taken, from the day after the day on which APRA receives the  
26 notice, to be registered as a restricted access insurer.

27 (6) If a private health insurer is taken under this section to be, or not to  
28 be, registered as a restricted access insurer, APRA must, as soon as  
29 practicable, give written notice of that fact to:

- 30 (a) the Health Secretary; and  
31 (b) the Private Health Insurance Ombudsman.

# EXPOSURE DRAFT

Part 2 Registration of private health insurers

Division 3 Registration

Section 20

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1     **20 Conversion to for profit status**

2                     *Application for conversion to for profit status*

- 3             (1) A private health insurer may apply to APRA for approval to  
4                 convert to being registered as a for profit insurer.
- 5             (2) The application:
- 6                 (a) must be in the approved form; and
- 7                 (b) must be given to APRA at least 90 days before the day  
8                     specified in the application as the day on which the insurer  
9                     proposes that it become registered as a for profit insurer.

10                     *How APRA decides an application*

- 11             (3) APRA must approve the application if APRA is satisfied, within  
12                 30 days after the application was made, that:
- 13                 (a) the application complies with subsection (2); and
- 14                 (b) the conversion scheme would not in substance involve the  
15                     demutualisation of the insurer.
- 16             (4) If subsection (3) does not apply:
- 17                 (a) APRA must, at least 45 days before the day specified in the  
18                     application, cause a notice of the application to be published  
19                     in a national newspaper, or in a newspaper circulating in each  
20                     jurisdiction where the insurer has its registered office or  
21                     carries on business; and
- 22                 (b) APRA may, within 90 days after the application is made,  
23                     give the insurer written notice requiring the insurer to give  
24                     APRA such further information relating to the application as  
25                     is specified in the notice.
- 26             (5) If subsection (3) does not apply, APRA must approve the  
27                 application if:
- 28                 (a) APRA is satisfied that the application complies with  
29                     subsection (2); and
- 30                 (b) the insurer has given APRA such further information (if any)  
31                     as APRA has required under paragraph (4)(b); and

# EXPOSURE DRAFT

Registration of private health insurers **Part 2**

Registration **Division 3**

## Section 21

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- 1 (c) APRA is satisfied that the conversion scheme would not  
2 result in a financial benefit to any person who is not a policy  
3 holder of, or another person insured through, a health benefits  
4 fund conducted by the insurer; and  
5 (d) APRA is satisfied that the conversion scheme would not  
6 result in financial benefits from the scheme being distributed  
7 inequitably between such policy holders and insured persons.
- 8 (6) APRA rules may provide for criteria for deciding, for the purposes  
9 of subsection (3), whether a conversion scheme would not in  
10 substance involve the demutualisation of the insurer.

### 11 *Notification of APRA's decision*

- 12 (7) APRA must notify the insurer in writing of APRA's decision on  
13 the application.

14 Note: Refusals of applications are reviewable under section 167.

## 15 **21 Cancellation of registration**

- 16 (1) APRA must cancel the registration of a private health insurer if:  
17 (a) the insurer has not conducted health insurance business  
18 during the preceding 12 months; or  
19 (b) the insurer's health benefits funds have been terminated  
20 under Division 5 of Part 3; or  
21 (c) the insurer ceases to be a company within the meaning of the  
22 *Corporations Act 2001*.
- 23 (2) APRA must:  
24 (a) notify the insurer in writing of the cancellation; and  
25 (b) within one month after the cancellation, publish in the  
26 Gazette a notification of the cancellation.

# EXPOSURE DRAFT

**Part 3** Health benefits funds

**Division 1** Introduction

Section 22

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1 **Part 3—Health benefits funds**

2 **Division 1—Introduction**

3 **22 Simplified outline of this Part**

4

*[A simplified outline of this Part will be included here later.]*

# EXPOSURE DRAFT

1 **Division 2—The requirement to have health benefits funds**

2 **23 Private health insurers must have health benefits funds**

- 3 (1) A private health insurer must at all times have at least one health  
4 benefits fund in respect of:  
5 (a) its health insurance business; or  
6 (b) its health insurance business and some or all of its  
7 health-related businesses.
- 8 (2) A private health insurer may have more than one health benefits  
9 fund, but must not have more than one in respect of a particular  
10 risk equalisation jurisdiction.
- 11 (3) Despite subsection (2), a private health insurer may have more than  
12 one health benefits fund in respect of a particular risk equalisation  
13 jurisdiction if:  
14 (a) each of those funds; or  
15 (b) each of those funds, other than one such fund which was  
16 established in connection with a restructure of funds under  
17 Division 4;  
18 is a fund that existed on 1 April 2007 and that, immediately before  
19 that day, was conducted by a registered organization (within the  
20 meaning of the *National Health Act 1953* as in force before that  
21 day).
- 22 (4) Despite subsection (2), a private health insurer may have more than  
23 one health benefits fund in respect of a particular risk equalisation  
24 jurisdiction in the circumstances specified in Private Health  
25 Insurance (Health Benefits Fund Policy) Rules made under the  
26 *Private Health Insurance Act 2007*.

27 **24 Notifying APRA when health benefits funds are established**

- 28 (1) If a private health insurer establishes a health benefits fund, the  
29 insurer must give APRA written notice of:  
30 (a) the establishment of the fund; and

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 2 The requirement to have health benefits funds

#### Section 25

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- 1 (b) the day on which the fund was established; and  
2 (c) such other matters as are specified in APRA rules made for  
3 the purpose of this paragraph.
- 4 (2) The notice must be in the approved form.
- 5 (3) This section does not apply if the fund is established under an  
6 approval given under Division 4.

#### 25 Inclusion of health-related businesses in health benefits funds

- 8 (1) If a private health insurer has a health benefits fund in respect of its  
9 health insurance business and some or all of its health-related  
10 businesses, the dominant purpose of the fund must relate to its  
11 health insurance business.
- 12 (2) If APRA is satisfied that a private health insurer is contravening  
13 subsection (1):
- 14 (a) APRA may, by notice in writing to the insurer, give the  
15 insurer such directions relating to divesting the fund of  
16 health-related businesses as APRA considers necessary to  
17 ensure the insurer's compliance with subsection (1); and  
18 (b) the insurer must comply with those directions.
- 19 (3) APRA may, by notice in writing to a private health insurer, vary or  
20 revoke a direction given to the insurer under subsection (2).
- 21 (4) A direction under subsection (2) ceases to have effect if APRA  
22 revokes the direction.
- 23 (5) Sections 97, 100, 101 and 102 apply in relation to a direction under  
24 subsection (2) as if:
- 25 (a) a reference in those sections to a direction under section 95  
26 were a reference to a direction under subsection (2) of this  
27 section; and  
28 (b) the reference in subsection 100(3) to a direction of a kind  
29 referred to in paragraph 96(1)(l) were omitted.

30 Note: The matters dealt with in the sections referred to in paragraph (a) are  
31 as follows:



# EXPOSURE DRAFT

Health benefits funds **Part 3**  
The requirement to have health benefits funds **Division 2**

## Section 25

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- 1 (a) section 97—power to comply with a direction;
- 2 (b) section 100—a direction is not grounds for denial of obligations;
- 3 (c) section 101—supply of information about directions;
- 4 (d) section 102—secrecy requirements.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 3 The operation of health benefits funds

#### Section 26

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1 **Division 3—The operation of health benefits funds**

2 **26 Assets of health benefits funds**

3 *Assets of a health benefits fund to be kept separate from other*  
4 *assets*

- 5 (1) A private health insurer must keep assets of a health benefits fund  
6 distinct and separate from assets of other health benefits funds and  
7 from all other money, assets or investments of the insurer.
- 8 (2) A private health insurer must maintain a separate account with an  
9 ADI for each health benefits fund that it conducts.

10 *What are the assets of a health benefits fund?*

- 11 (3) The *assets* of a health benefits fund at a particular time are the  
12 following:
- 13 (a) the balance of money represented by amounts credited to the  
14 fund in accordance with section 27;
- 15 (b) assets of the insurer obtained as a result of the expenditure or  
16 application of money credited to the fund;
- 17 (c) investments held by the insurer as a result of the expenditure  
18 or application of money credited to the fund;
- 19 (d) other money, assets or investments of the insurer transferred  
20 to the fund, whether under this Act or otherwise.
- 21 (4) Assets or investments obtained by the application of assets of a  
22 health benefits fund are themselves *assets* of the fund.
- 23 (5) The *assets* of a health benefits fund:
- 24 (a) include assets that, in accordance with a restructure or  
25 arrangement approved under Division 4, are to be assets of  
26 the fund; but
- 27 (b) do not include assets that, in accordance with such a  
28 restructure or arrangement, are no longer to be assets of the  
29 fund.

# EXPOSURE DRAFT

- 1 (6) Despite paragraphs (3)(b) and (c) and subsection (4), assets or  
2 investments obtained by the expenditure of money of, or the  
3 application of other assets of, a health benefits fund are not *assets*  
4 of the fund if:  
5 (a) the private health insurer conducting the fund is a for profit  
6 insurer; and  
7 (b) the expenditure or application was not done for the purposes  
8 of the fund.

9 *This Act does not have effect of making insurer etc. a trustee of*  
10 *assets of a health benefits fund*

- 11 (7) To avoid doubt, nothing in this Act is intended to have the effect of  
12 making a private health insurer or its directors a trustee or trustees  
13 of the assets of the health benefits funds of the insurer.

## 14 **27 Payments to health benefits funds**

- 15 (1) A private health insurer must credit the following amounts to a  
16 health benefits fund:  
17 (a) premiums payable under policies of insurance that are  
18 referable to the fund;  
19 (b) amounts paid to the insurer in relation to a liability under  
20 Division 9 in relation to the fund;  
21 (c) income from the investment of assets of the fund;  
22 (d) money paid to or by the insurer under a judgment of a court  
23 relating to any matter concerning the business of the fund or  
24 any failure to comply with this Part in relation to the fund;  
25 (e) any other money received by the insurer in connection with  
26 its conduct of the business of the fund;  
27 (f) any other amounts specified in APRA rules made for the  
28 purpose of this paragraph.
- 29 (2) This Act does not prevent a private health insurer from making a  
30 permitted capital payment to a health benefits fund.
- 31 (3) A private health insurer *makes a permitted capital payment* to a  
32 health benefits fund if it credits to the fund an amount that:

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 3 The operation of health benefits funds

#### Section 28

---

- 1 (a) is not required to be credited to the fund under subsection (1);  
2 and  
3 (b) either:  
4 (i) does not represent any part of the assets of another  
5 health benefits fund; or  
6 (ii) is credited to the fund with APRA's written approval.
- 7 Note: Refusals to approve the crediting of an amount to a fund are  
8 reviewable under section 167.

#### 9 **28 Expenditure and application of health benefits funds**

- 10 (1) A private health insurer must not apply, or deal with, assets of a  
11 health benefits fund, whether directly or indirectly, except in  
12 accordance with this Division.
- 13 (2) The assets of a health benefits fund must not be applied:  
14 (a) for any purpose other than:  
15 (i) meeting policy liabilities and other liabilities, or  
16 expenses, incurred for the purposes of the business of  
17 the fund including policy liabilities and other liabilities  
18 that are treated, in accordance with a restructure or  
19 arrangement approved under Division 4, as policy  
20 liabilities and other liabilities incurred for the purposes  
21 of the fund; or  
22 (ii) making investments in accordance with section 30; or  
23 (iii) making a distribution under Division 5; or  
24 (iv) a purpose specified in APRA rules made for the purpose  
25 of this subparagraph; or  
26 (b) for a purpose specified in APRA rules made for the purpose  
27 of this paragraph.
- 28 (3) A private health insurer must not mortgage or charge any of the  
29 assets of a health benefits fund except:  
30 (a) to secure an overdraft from an ADI; or  
31 (b) for such other purposes, and subject to such conditions, as are  
32 specified in APRA rules made for the purpose of this  
33 paragraph.

# EXPOSURE DRAFT

- 1 (4) A private health insurer must not borrow money for the purposes  
2 of the business of a health benefits fund except in accordance with  
3 APRA rules made for the purpose of this subsection.
- 4 (5) Despite subsection (2), if a private health insurer is a for profit  
5 insurer, the assets of a health benefits fund conducted by the  
6 insurer may be applied for any purpose, except an application of  
7 the assets that is inconsistent with:
- 8 (a) prudential standards relating to capital adequacy or solvency  
9 that apply in relation to the fund; or
- 10 (b) a direction given to the insurer under section 95 that relates to  
11 the fund.
- 12 (6) This section does not apply to the transfer of assets:
- 13 (a) from one health benefits fund to another in accordance with  
14 Division 4; or
- 15 (b) in accordance with a direction under subsection 25(2).

## 29 Effect of non-compliance with section 28

### *General principle*

- 17
- 18 (1) A transaction entered into in contravention of section 28 is of no  
19 effect unless:
- 20 (a) the Federal Court makes an order under subsection (2); or
- 21 (b) it is included in a class of transactions specified in APRA  
22 rules, made for the purpose of this paragraph, to be  
23 transactions to which this section applies, and the Court has  
24 not made an order under subsection (6).

### *Order declaring the transaction to be effective*

- 25
- 26 (2) The Federal Court, on application by a party to the transaction,  
27 may make an order declaring that the transaction is effective, and is  
28 to be taken always to have been effective, for all purposes.
- 29 (3) The Federal Court must not make an order under subsection (2)  
30 unless it is satisfied that the applicant entered into the transaction  
31 in good faith and without knowledge of the contravention.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 3 The operation of health benefits funds

#### Section 30

---

1 (4) In deciding whether to make an order under subsection (2), the  
2 Federal Court may have regard to any hardship that would be  
3 caused to the applicant if the order were not made.

4 (5) Subsection (4) is not intended to limit the matters to which the  
5 Federal Court may have regard on an application under  
6 subsection (2).

7 *Order declaring the transaction to be of no effect*

8 (6) The Federal Court, on application by APRA, may make an order  
9 declaring that a particular transaction that:

10 (a) was entered into in contravention of section 28; and

11 (b) is included in a class of transactions of a kind referred to in  
12 paragraph (1)(b) of this section;

13 is, and is to be taken always to have been, of no effect for any  
14 purpose.

15 (7) The Federal Court must not make an order under subsection (6) if  
16 it is satisfied that the effect of the order (if made) would be to  
17 cause hardship to a person who entered into the transaction in good  
18 faith and without knowledge of the contravention.

#### 19 **30 Investment of health benefits funds**

20 (1) A private health insurer may invest assets of a health benefits fund  
21 in any way that is likely to further the business of the fund.

22 (2) However:

23 (a) nothing in this Act authorises a private health insurer to make  
24 an investment the insurer would otherwise be prohibited from  
25 making; and

26 (b) nothing in this Act authorises a private health insurer to make  
27 an investment the insurer would not otherwise have power to  
28 make; and

29 (c) a private health insurer must not invest assets of a health  
30 benefits fund, or keep such assets invested, if the investment,  
31 or the retention of the investment, as the case requires, is

# EXPOSURE DRAFT

Health benefits funds **Part 3**  
The operation of health benefits funds **Division 3**

Section 30

---

- 1 prohibited by APRA rules made for the purpose of this
- 2 paragraph, or by prudential standards.
- 3 (3) A transaction is not ineffective merely because it involves a
- 4 contravention of paragraph (2)(c).





# EXPOSURE DRAFT

1

*How APRA decides whether to approve the restructure*

2

- (2) Subject to subsection (4), APRA must approve the restructure if it is satisfied that:

3

4

- (a) the assets and liabilities that would be transferred to the receiving fund or funds represent a reasonable estimate of what would, immediately before the restructure, be the net asset position of the transferring fund; and

5

6

7

8

- (b) if there is more than one receiving fund—those assets and liabilities would be fairly distributed between the receiving funds; and

9

10

11

- (c) the restructure will not result in any breach of prudential standards.

12

13

- (3) For the purposes of paragraph (2)(a), in working out the net asset position of the transferring fund, disregard the net asset position of the fund to the extent that it relates to insurance policies that do not belong to a policy group referred to in paragraph (1)(a).

14

15

16

17

- (4) APRA must not approve the restructure if:

18

- (a) it considers that the restructure will result in unfairness to the policy holders of a health benefits fund of the insurer as that fund exists immediately before the restructure, when those policy holders are viewed as a group; or

19

20

21

- (b) it considers that the restructure will result in unfairness to the persons who would be policy holders of a health benefits fund of the insurer as that fund would exist immediately after the restructure, when those persons are viewed as a group; or

22

23

24

25

- (c) the insurer is being wound up when the application is made.

26

27

Note: Refusals to approve restructures are reviewable under section 167.

28

*APRA rules may provide for various matters*

29

- (5) APRA rules may provide for the following:

30

- (a) criteria for approving or refusing to approve applications under subsection (1);

31

32

- (b) how to work out reasonable estimates of the kind referred to in paragraph (2)(a);

33

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 4 Restructure, merger and acquisition of health benefits funds

#### Section 32

---

- 1 (c) criteria for deciding, for the purposes of paragraph (2)(b),  
2 whether assets and liabilities would be fairly distributed;
- 3 (d) requirements to notify interested persons of the outcomes of  
4 such applications;
- 5 (e) matters connected with how restructures take place, including  
6 the following:
- 7 (i) insurance policies becoming referable to a receiving  
8 fund or funds;
- 9 (ii) policy liabilities and other liabilities incurred for the  
10 purposes of a transferring fund becoming treated as  
11 policy liabilities and other liabilities incurred for the  
12 purposes of a receiving fund or funds;
- 13 (iii) assets of a transferring fund becoming assets of a  
14 receiving fund or funds;
- 15 (iv) the timing of restructures;
- 16 (v) if a receiving fund is a proposed new health benefits  
17 fund—the establishment of that fund;
- 18 (f) requirements for private health insurers to give APRA  
19 information following restructures.

#### 20 *Definitions*

- 21 (6) A **policy group** of a health benefits fund, is all of the insurance  
22 policies:
- 23 (a) that are referable to the fund; and  
24 (b) the addresses of the policy holders of which, as known to the  
25 private health insurer conducting the fund, are located in the  
26 same risk equalisation jurisdiction.
- 27 APRA rules may provide for how to work out the policy group for  
28 a policy that has 2 or more holders whose addresses are not all  
29 located in the same risk equalisation jurisdiction.
- 30 (7) An area is a **risk equalisation jurisdiction** if Private Health  
31 Insurance (Health Benefits Fund Policy) Rules made under the  
32 *Private Health Insurance Act 2007* so provide.

# EXPOSURE DRAFT

1     **33 Merger and acquisition of health benefits funds**

2                     *When an arrangement may be entered into*

- 3             (1) A private health insurer (the *transferee insurer*) may enter into an  
4             arrangement with one or more other private health insurers  
5             (*transferor insurers*) under which:
- 6                 (a) insurance policies that are referable to a health benefits fund  
7                 or funds (*transferring funds*) of the transferor insurer or  
8                 transferor insurers become referable to a health benefits fund  
9                 or funds (*receiving funds*) of the transferee insurer; and  
10                (b) in relation to each of the transferring funds, the insurance  
11                policies concerned are:
- 12                     (i) all of the insurance policies that are referable to the  
13                     transferring fund; or  
14                     (ii) all of the insurance policies that are referable to the  
15                     transferring fund and that belong to one or more policy  
16                     groups of the fund.
- 17             (2) However, the arrangement must not take effect unless:
- 18                 (a) the insurers referred to in subsection (1) apply jointly to  
19                 APRA, in the approved form, for approval of the  
20                 arrangement; and  
21                 (b) APRA approves the arrangement in writing; and  
22                 (c) the insurers comply with any requirements imposed on the  
23                 insurers in relation to the arrangement by APRA rules made  
24                 for the purpose of this paragraph.

25                     *How APRA decides whether to approve the arrangement*

- 26             (3) APRA must approve the arrangement if it is satisfied that:
- 27                 (a) the assets and liabilities that would be transferred, under the  
28                 arrangement, to the receiving fund or funds represent a  
29                 reasonable estimate of what would, immediately before the  
30                 restructure, be:
- 31                     (i) if there is only one transferring fund—the net asset  
32                     position of the fund; or

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 4 Restructure, merger and acquisition of health benefits funds

#### Section 33

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- 1 (ii) if there is more than one transferring fund—the sum of  
2 the net asset positions of each of the funds; and  
3 (b) if, under the arrangement, there would be more than one  
4 receiving fund—those assets and liabilities would be fairly  
5 distributed between the receiving funds; and  
6 (c) if subparagraph (1)(b)(i) applies to any transferring fund—  
7 the net asset position of the fund immediately after the  
8 arrangement takes effect will not be greater than zero; and  
9 (d) the arrangement will not result in any breach of prudential  
10 standards if it takes effect.

11 Note: Refusals to approve transfers are reviewable under section 167.

- 12 (4) For the purposes of paragraph (3)(a), in working out the net asset  
13 position of a transferring fund to which subparagraph (1)(b)(ii)  
14 applies, disregard the net asset position of the fund to the extent  
15 that it relates to insurance policies that do not belong to a policy  
16 group referred to in that subparagraph.

17 *APRA rules may provide for various matters*

- 18 (5) APRA rules may provide for the following:  
19 (a) criteria for approving or refusing to approve applications  
20 under this section;  
21 (b) how to work out reasonable estimates of the kind referred to  
22 in paragraph (3)(a);  
23 (c) criteria for deciding, for the purposes of paragraph (3)(b),  
24 whether assets and liabilities would be fairly distributed;  
25 (d) requirements to notify interested persons of the outcomes of  
26 such applications;  
27 (e) matters connected with how arrangements take effect,  
28 including the following:  
29 (i) insurance policies becoming referable to a health  
30 benefits fund or funds of the transferee insurer;  
31 (ii) policy liabilities and other liabilities incurred for the  
32 purposes of a health benefits fund or funds of a  
33 transferor insurer becoming treated as policy liabilities

# EXPOSURE DRAFT

- 1 and other liabilities incurred for the purposes of a health  
2 benefits fund or funds of the transferee insurer;
- 3 (iii) assets of a health benefits fund or funds of a transferor  
4 insurer becoming assets of a health benefits fund or  
5 funds of the transferee insurer;
- 6 (iv) the timing of arrangements;
- 7 (f) requirements for private health insurers to give APRA  
8 information following arrangements taking effect.

9 *Notice to be given if arrangement takes effect*

- 10 (6) The transferee insurer must, within 28 days after the arrangement  
11 takes effect, notify APRA of the arrangement. The notice must  
12 comply with any requirements specified in APRA rules made for  
13 the purpose of this subsection.

14 *Effect of arrangement*

- 15 (7) For the purposes of this Act, an insurance policy that becomes  
16 referable to a health benefits fund of the transferee insurer as a  
17 result of the arrangement is treated, after the arrangement takes  
18 effect, as if it were an insurance policy issued by the transferee  
19 insurer.

20 **34 Consent of policy holders not required**

- 21 The consent of the policy holders of a health benefits fund is not  
22 required for any:
- 23 (a) restructuring health benefits funds as provided for in  
24 section 32; or
- 25 (b) entering into arrangements of a kind referred to in section 33,  
26 or implementing such arrangements;
- 27 unless the constitution of the private health insurer conducting the  
28 fund provides otherwise.

# EXPOSURE DRAFT

**Part 3** Health benefits funds

**Division 5** Termination of health benefits funds

Section 35

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1        **Division 5—Termination of health benefits funds**

2        **Subdivision A—Approving the termination of health benefits**  
3                **funds**

4        **35 Applying for termination**

5                        A private health insurer may apply to APRA, in the approved form,  
6                        for approval of the termination of each of its health benefits funds.

7        **36 Requiring further information**

8                        APRA may, within 28 days after the application is made, give the  
9                        applicant written notice requiring the applicant to give APRA such  
10                       further information relating to the application as is specified in the  
11                       notice.

12       **37 Deciding the application**

- 13                       (1) APRA must approve the termination if it is satisfied that:
- 14                                (a) the insurer is not in the process of being wound up; and
- 15                                (b) each of its health benefits funds complies with prudential  
16                                       standards relating to capital adequacy or solvency that apply  
17                                       in relation to the funds; and
- 18                                (c) in relation to each of the funds, termination of the fund will  
19                                       not result in unfairness to the policy holders of the fund,  
20                                       when those policy holders are viewed as a group;
- 21                       and is satisfied as to such other matters as are specified in APRA  
22                       rules made for the purpose of this subsection.
- 23                       (2) If APRA grants the application, APRA:
- 24                                (a) may appoint a person other than the applicant as the  
25                                       terminating manager of the funds; and
- 26                                (b) must notify the insurer in writing:
- 27                                       (i) that it approves the termination; and

# EXPOSURE DRAFT

1 (ii) if paragraph (a) applies—of the appointment of the  
2 terminating manager.

3 (3) If APRA refuses the application, APRA must notify the insurer in  
4 writing of the refusal.

5 Note: Refusals to approve terminations are reviewable under section 167.

## 6 **38 APRA can be taken to refuse application**

7 APRA is taken, for the purposes of section 167, to have refused the  
8 application if APRA does not notify the applicant of its decision on  
9 the application:

- 10 (a) within 90 days after the application was made; or  
11 (b) if APRA had given the applicant a notice under section 36  
12 requiring the applicant to give further information relating to  
13 the application—within 90 days after the applicant gives that  
14 information to APRA;  
15 whichever is later.

## 16 **Subdivision B—Conducting the termination of health benefits** 17 **funds**

### 18 **39 The basis of the law relating to termination**

- 19 (1) A health benefits fund cannot be wound up or otherwise terminated  
20 except in accordance with this Part.
- 21 (2) Subject to this Part, any provisions of a law of the Commonwealth,  
22 or a State or Territory, that, but for this section, would relate to the  
23 winding up or termination of such a fund cease, by force of this  
24 section, to apply in relation to the fund.

### 25 **40 Conduct of funds during termination process**

- 26 (1) A private health insurer must not, after being notified under  
27 subsection 37(2) that termination of its health benefits funds has  
28 been approved:

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 5 Termination of health benefits funds

#### Section 41

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- 1 (a) enter into an insurance policy that is referable to any of its  
2 funds with a person who is not already a holder of such a  
3 policy; or  
4 (b) if the insurer is a for profit insurer—apply the assets of any  
5 of the funds except in accordance with subsection 28(2)  
6 (unless this paragraph has ceased to apply to the insurer  
7 because of section 45); or  
8 (c) if the insurer is not a for profit insurer—become a for profit  
9 insurer.
- 10 (2) The insurer must, within 60 days after being notified under  
11 subsection 37(2) that termination of its health benefits funds has  
12 been approved:  
13 (a) give a written notice, stating the day (the *termination day*)  
14 from which it will not renew insurance policies that are  
15 referable to any of its funds, to:  
16 (i) each policy holder of any of its funds; and  
17 (ii) APRA; and  
18 (b) notify the termination day in a national newspaper, or in a  
19 newspaper circulating in each jurisdiction where the insurer  
20 has its registered office or carries on business.  
21 The termination day must not be earlier than 90 days after the  
22 insurer finishes giving notices under this subsection.
- 23 (3) The insurer must not, on or after the termination day, renew any  
24 insurance policies that are referable to any of those funds.
- 25 (4) The insurer must accept any valid claim for benefits under an  
26 insurance policy that is or was referable to any of those funds if the  
27 claim is made before the end of the period of 12 months following  
28 the expiry of the last policy that was referable to any of those  
29 funds.

#### 41 Insurers etc. to give reports to APRA

- 31 If APRA has approved the termination of the health benefits funds  
32 of a private health insurer:  
33 (a) the insurer; or
-



# EXPOSURE DRAFT

- 1 (b) if a terminating manager of the funds has been appointed—  
2 the terminating manager;  
3 must, within 28 days after the end of the termination day, make a  
4 written report to APRA setting out details of the assets and  
5 liabilities of each of the funds as at that day.

## 6 **42 Terminating managers displace management of funds**

- 7 If a terminating manager of the health benefits funds of a private  
8 health insurer has been appointed, then, for so long as the  
9 appointment is in force and until the termination is completed:  
10 (a) the management of the fund vests in the terminating  
11 manager; and  
12 (b) any officer of the responsible insurer for the fund who was  
13 vested with the management of the fund immediately before  
14 the appointment is, by force of this section, divested of that  
15 management.

## 16 **Subdivision C—Ending the termination of health benefits funds**

### 17 **43 Power to end termination**

- 18 (1) At any time during the termination of the health benefits funds of a  
19 private health insurer, the Federal Court may, on application, make  
20 an order ending the termination on a day specified in the order.
- 21 (2) An application may be made by:  
22 (a) APRA; or  
23 (b) the terminating manager.
- 24 (3) On such an application, the Federal Court may, before making an  
25 order, direct the terminating manager to give a report with respect  
26 to a relevant fact or matter.
- 27 (4) If the Federal Court has made an order ending the termination, the  
28 Court may give such directions as it considers appropriate for the  
29 resumption of the management and control of the health benefits  
30 funds of the private health insurer by its officers.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 5 Termination of health benefits funds

#### Section 44

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1     **Subdivision D—Completing the termination of health benefits**  
2             **funds**

3     **44 Completion of the termination process**

4             The termination of the health benefits funds of a private health  
5             insurer is completed if:

- 6             (a) the period of 12 months referred to in subsection 40(4) has  
7             come to an end; and  
8             (b) so far as possible having regard to the extent of the assets of  
9             the funds:  
10            (i) the liabilities of the funds to the policy holders of the  
11            funds have been discharged; and  
12            (ii) any amounts of collapsed insurer levy that APRA has  
13            paid, for the purposes of any of the funds, to the insurer  
14            or to the person appointed to administer the termination  
15            of the funds have been repaid to APRA; and  
16            (iii) any other liabilities of the funds have been discharged.

17     **45 Distribution of remaining assets after completion of the**  
18             **termination process**

19             If the termination of the funds is completed and, on the completion,  
20             there are assets of those funds, then:

- 21             (a) if the insurer is a for profit insurer—paragraph 40(1)(b)  
22             ceases to apply to the insurer; or  
23             (b) if the insurer is not a for profit insurer—the insurer is liable  
24             to pay to APRA an amount equal to the value of those assets.

25     **46 Liability of officers of insurers for loss to terminated funds**

- 26             (1) If:  
27             (a) a private health insurer contravenes this Act in relation to a  
28             health benefits fund that it conducts; and  
29             (b) the contravention results in a loss to the fund; and  
30             (c) the termination of the fund is completed;

# EXPOSURE DRAFT

1 the persons who were officers of the insurer when the  
2 contravention occurred are jointly and severally liable to pay to  
3 APRA, for payment to the Risk Equalisation Trust Fund, an  
4 amount equal to the amount of the loss.

5 (2) A person is not liable under subsection (1) if the person proves that  
6 he or she used due diligence to prevent the occurrence of such a  
7 contravention.

8 (3) On application by APRA, the Federal Court may order any person  
9 liable under subsection (1) to pay to APRA, for payment to the  
10 Risk Equalisation Trust Fund, the whole or any part of the loss.

## 11 **47 Report of terminating manager**

12 (1) The terminating manager may, at any time, make a written report  
13 to APRA on the termination of the health benefits funds of a  
14 private health insurer, and must make such a report as soon as  
15 practicable after the termination of the funds.

16 (2) The report may include a recommendation that an application be  
17 made under section 48 for the winding up of the insurer.

## 18 **48 Applying for winding up**

19 (1) If the terminating manager's report under section 47 includes a  
20 recommendation that an application be made under this section for  
21 the winding up of a private health insurer, APRA, or the  
22 terminating manager, may apply to the Federal Court for an order  
23 that the insurer be wound up.

24 (2) However, the terminating manager must not apply unless directed  
25 by APRA to apply.

26 (3) On an application under subsection (1), the Federal Court may  
27 make an order that the insurer be wound up if the Court is satisfied  
28 that it is in the financial interests of the policy holders of the health  
29 benefits funds conducted by the insurer that such an order be made.

# EXPOSURE DRAFT

**Part 3** Health benefits funds

**Division 5** Termination of health benefits funds

Section 48

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- 1                   (4) The winding up of the insurer is to be conducted in accordance  
2                   with the *Corporations Act 2001*.

# EXPOSURE DRAFT

1 **Division 6—External management of health benefits funds**

2 **Subdivision A—Preliminary**

3 **49 Purpose of Division**

4 The purpose of this Division is to permit the business, affairs and  
5 property of a health benefits fund under external management to be  
6 managed in a way:

- 7 (a) that maximises the chance that the policy holders of the fund  
8 continue to be covered for health insurance either by that  
9 fund or by another fund to which the business of that fund is  
10 transferred; or  
11 (b) if it is not possible for that coverage to be maintained—that,  
12 to the extent possible, safeguards the financial interests of  
13 those policy holders if the fund is terminated.

14 **50 The basis of the law relating to external management**

- 15 (1) The external management of a health benefits fund is regulated:  
16 (a) by the provisions of this Division; and  
17 (b) by the provisions of Divisions 6, 7, 8, 10, 11, 13 and 16 of  
18 Part 5.3A of Chapter 5 of the *Corporations Act 2001* and of  
19 Division 7A of Part 5.6 of that Chapter, all applying, so far as  
20 they are capable of so doing, subject to such modifications as  
21 are set out in:  
22 (i) this Act; or  
23 (ii) APRA rules made for the purpose of this subparagraph.
- 24 (2) A health benefits fund cannot be placed under external  
25 administration, or dealt with as a fund under external  
26 administration, except in accordance with this Part.
- 27 (3) Subject to this Part, any provisions of a law of the Commonwealth,  
28 or a State or Territory, that, but for this section, would relate to the  
29 external administration of such a fund cease, by force of this  
30 section, to apply in relation to the fund.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 51

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- 1 (4) In the application of the provisions of the *Corporations Act 2001*  
2 referred to in subsection (1) in relation to the external management  
3 of a health benefits fund, those provisions apply as if:  
4 (a) a reference to the company were a reference to the fund; and  
5 (b) a reference to the administrator were a reference to the  
6 external manager of the fund appointed under this Act; and  
7 (c) a reference to the Court were a reference to the Federal  
8 Court.
- 9 (5) APRA rules referred to in subparagraph (1)(b)(ii) may provide for  
10 different modifications according to the nature of the health  
11 benefits fund that is to be, or that is being, administered.

#### 12 **Subdivision B—Appointment of external managers**

#### 13 **51 APRA may appoint external managers**

- 14 (1) APRA may, in writing, appoint a person as the external manager of  
15 a health benefits fund if the requirements of subsections 52(1) and  
16 (2) are satisfied.
- 17 (2) However, the person:  
18 (a) must be registered, or taken to be registered, as an official  
19 liquidator under the *Corporations Act 2001*; and  
20 (b) must not be a person who is:  
21 (i) a policy holder of the fund; or  
22 (ii) an appointed actuary of the fund; or  
23 (iii) an auditor of the fund; or  
24 (iv) a chargee of property of the fund; or  
25 (v) an officer of a body corporate that is a chargee of  
26 property of the fund; or  
27 (vi) a person who is otherwise related to the fund.
- 28 (3) The appointment takes effect from the day specified in the  
29 instrument of appointment.

# EXPOSURE DRAFT

1     **52 Preconditions for appointment of external managers**

- 2             (1) APRA must not appoint an external manager to a health benefits  
3             fund unless APRA considers that the appointment of an external  
4             manager to the fund is, in the circumstances, in the interests of the  
5             policy holders of the fund.
- 6             (2) In addition to subsection (1) being satisfied, APRA must not  
7             appoint an external manager to a health benefits fund unless:
- 8                 (a) APRA is satisfied that the private health insurer conducting  
9                 the fund has contravened:
- 10                     (i) a prudential standard relating to capital adequacy or  
11                     solvency that applies in relation to the fund; or
- 12                     (ii) a direction given to the insurer under section 95 that  
13                     relates to the fund; or
- 14                 (b) a request for external management of the fund is made to  
15                 APRA by a resolution of the directors of the insurer; or
- 16                 (c) a ground specified in APRA rules, made for the purpose of  
17                 this paragraph, applies in respect of the fund.

18     **53 External managers to displace management of funds**

- 19             If a person is appointed as external manager of a health benefits  
20             fund, then, for so long as the fund is under external management:
- 21                 (a) the management of the fund vests in the external manager;  
22                 and
- 23                 (b) any officer of the responsible insurer for the fund who was  
24                 vested with the management of the fund immediately before  
25                 the appointment of the external manager is, by force of this  
26                 section, divested of that management.

27     **Subdivision C—Duties and powers of external managers**

28     **54 Duties of external managers**

- 29             (1) The main duties of the external manager of a health benefits fund  
30             are:
- 31                 (a) to examine the business, affairs and property of the fund; and

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 55

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- 1 (b) to ascertain the assets and liabilities of the fund; and  
2 (c) if the business of the fund has been mixed with other  
3 business of the private health insurer concerned—to  
4 apportion the assets and liabilities as between the fund and  
5 that other business; and  
6 (d) to form an opinion as to which course of action maximises  
7 the chance that the policy holders of the fund continue to be  
8 covered for health insurance either by that fund or by another  
9 fund to which the business of that fund is transferred; and  
10 (e) to make a final written report to APRA, in accordance with  
11 Subdivision E of Division 6, recommending that course of  
12 action.
- 13 (2) In the day-to-day administration of a health benefits fund, it is the  
14 duty of the external manager to administer the fund as efficiently  
15 and economically as possible.

#### 55 Additional powers of external managers

- 17 (1) In the application of the provisions of Division 8 of Part 5.3A of  
18 Chapter 5 of the *Corporations Act 2001*, for the purpose of:  
19 (a) conferring further powers on the external manager of a health  
20 benefits fund; and  
21 (b) where appropriate, qualifying the exercise of those powers;  
22 the provisions of that Division are taken not to include  
23 section 442A or subsection 442D(1).
- 24 (2) For the purposes of section 442F of the *Corporations Act 2001* as  
25 so applying, sections 128 and 129 of that Act are also taken to  
26 apply, subject to such modifications as are specified in APRA rules  
27 made for the purpose of this subsection.

#### 56 Protection of property during external management

- 29 (1) In the application of the provisions of Division 6 of Part 5.3A of  
30 Chapter 5 of the *Corporations Act 2001* in relation to the  
31 protection, during the external management of a health benefits



# EXPOSURE DRAFT

1 fund, of the property of the fund, the provisions of that Division are  
2 taken not to include section 440A.

- 3 (2) In determining, for the purposes of section 440D of the  
4 *Corporations Act 2001* as so applying, whether the external  
5 manager should consent to, or the court should give leave for, a  
6 person's beginning or continuing legal proceedings, the external  
7 manager or the court must have regard to whether:  
8 (a) the proceedings do, or do not, relate to any property of the  
9 fund under external management; and  
10 (b) the proceedings would, or would not, be materially  
11 detrimental to the interests of the policy holders of the fund.

12 **57 Rights of chargee, owner or lessor of property of fund under**  
13 **external management**

- 14 (1) In the application of the provisions of Division 7 of Part 5.3A of  
15 Chapter 5 of the *Corporations Act 2001* in relation to the property  
16 of a health benefits fund under external management:  
17 (a) the provisions of that Division are taken not to include  
18 section 441A; and  
19 (b) subsection 441D(1) is taken not to include the words  
20 following paragraph 441D(1)(b).
- 21 (2) Nothing in that Division as so applying prevents:  
22 (a) the external manager of a health benefits fund giving written  
23 consent; or  
24 (b) the court giving leave;  
25 for the enforcement of a charge, subject to any condition specified  
26 by the external manager or by the court, as the case requires, if the  
27 external manager or the court is satisfied:  
28 (c) that the charge does not relate to the property of the fund  
29 under external management; and  
30 (d) that the enforcement of the charge will not be materially  
31 detrimental to the interests of the policy holders of the fund.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 58

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1       **Subdivision D—Procedure relating to voluntary deeds of**  
2                                   **arrangement**

3       **58 Matters that may be included in APRA rules**

- 4                   (1) APRA rules may provide for all or any of the following:
- 5                       (a) the convening by external managers of health benefits funds  
6                                   of meetings of creditors of those funds, and the policy  
7                                   holders of the funds, to consider the possibility of the  
8                                   responsible insurers for those funds executing voluntary  
9                                   deeds of arrangement;
- 10                      (b) the procedure for convening such meetings (including the  
11                                   giving of notices);
- 12                      (c) the conduct of such meetings;
- 13                      (d) the matters that may be decided at such meetings;
- 14                      (e) the circumstances in which the external managers must  
15                                   include in their reports to APRA under section 59,  
16                                   recommendations arising out of decisions taken at such  
17                                   meetings;
- 18                      (f) the kinds of such recommendations that may be included in  
19                                   those reports;
- 20                      (g) the actions that APRA may take if such recommendations are  
21                                   included in those reports.
- 22                   (2) This section does not limit the matters that may be included in  
23                                   APRA rules for the purposes of any other provision of this Part.

24       **Subdivision E—External managers’ reports to APRA**

25       **59 External managers to give reports to APRA**

- 26                   (1) As soon as practicable after being appointed as external manager of  
27                                   a health benefits fund, and in any case within the period under  
28                                   subsection (2), the external manager must:
- 29                       (a) conclude the examination of the business, affairs and  
30                                   property of the fund; and
- 31                       (b) make a final written report to APRA.

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- 1 (2) The period is:  
2 (a) the 3 months after being appointed as external manager; or  
3 (b) such longer period as APRA notifies to the external manager.
- 4 (3) The external manager must, in the report to APRA:  
5 (a) recommend a course of action that, in the external manager's  
6 opinion, maximises, in the circumstances, the chance that the  
7 policy holders of the fund continue to be covered for health  
8 insurance either by that fund or by another fund to which the  
9 business of that fund is transferred; and  
10 (b) set out the reasons for that recommendation.
- 11 (4) Without limiting subsection (3), the external manager may  
12 recommend:  
13 (a) subject to the Federal Court's making an order or orders in  
14 relation to the matter, that the responsible insurer for the fund  
15 implement a scheme of arrangement concerning the business  
16 of the fund; or  
17 (b) subject to the Court's making an order or orders in relation to  
18 the matter, that a terminating manager of the health benefits  
19 funds of the responsible insurer be appointed; or  
20 (c) that the external management cease and that the business of  
21 the fund be resumed by the responsible insurer for the fund.
- 22 (5) However, if APRA rules made for the purpose of this subsection so  
23 provide, the external manager must recommend that APRA  
24 approve the execution of a voluntary deed of arrangement.
- 25 (6) Without limiting the matters that may be dealt with in a scheme of  
26 arrangement referred to in paragraph (4)(a), such a scheme may  
27 provide for:  
28 (a) the continuance, on terms or conditions set out in the scheme,  
29 of the business of the fund; or  
30 (b) the transfer of the fund, on terms set out in the scheme, to a  
31 private health insurer other than the responsible insurer for  
32 the fund; or

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 60

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- 1 (c) the execution of a deed in the same terms as a proposed  
2 voluntary deed of arrangement rejected at a meeting of a kind  
3 referred to in section 58.

#### 4 **60 Dealing with reports given to APRA**

##### 5 *Deciding what to do in relation to a recommendation*

- 6 (1) For the purpose of deciding what to do in relation to a  
7 recommendation under subsection 59(3), APRA may:  
8 (a) request the external manager to provide further information  
9 on any matter; and  
10 (b) engage any person to assist it in evaluating assessments  
11 made, or projections relied on, by the external manager in  
12 relation to matters dealt with in the report.

13 APRA must have regard to the external manager's report, and to  
14 any additional information provided by the external manager or by  
15 any person engaged to assist APRA, in reaching its decision.

##### 16 *APRA to inform external manager if satisfied with a recommended 17 course of action*

- 18 (2) If APRA is satisfied that a course of action recommended by the  
19 external manager under subsection 59(3) will, in the circumstances,  
20 be in the interests of the policy holders of the fund, APRA must, by  
21 written notice, inform the external manager to that effect.

22 Note: If APRA is satisfied with a recommendation that the external  
23 management cease, then the external management ends when notice is  
24 given under this subsection (see paragraph 62(2)(c)).

##### 25 *Additional steps to be taken by APRA if satisfied with certain kinds 26 of recommended course of action*

- 27 (3) If the course of action in relation to which APRA is satisfied as  
28 mentioned in subsection (2) is a course of action specified in  
29 paragraph 59(4)(a), APRA must direct the external manager to  
30 apply under subsection 61(1) to give effect to the course of action.

# EXPOSURE DRAFT

- 1 (4) If the course of action in relation to which APRA is satisfied as  
2 mentioned in subsection (2) is termination of the funds of the  
3 private health insurer in question, APRA must direct the external  
4 manager to apply under subsection 66(1) for the appointment of a  
5 terminating manager of the funds.
- 6 (5) APRA rules may provide for what is to be done if the course of  
7 action in relation to which APRA is satisfied as mentioned in  
8 subsection (2) is a course of action that is not of a kind specified in  
9 subsection 59(4) or (5).
- 10 *If APRA is not satisfied with a recommended course of action*
- 11 (6) If APRA is not satisfied as mentioned in subsection (2), APRA  
12 may take a different course of action that APRA is satisfied will, in  
13 the circumstances, be in the interests of policy holders of the fund.
- 14 (7) The courses of action that APRA may take under subsection (6)  
15 include:
- 16 (a) APRA applying to the Federal Court for an order or orders in  
17 relation to the responsible insurer for the fund implementing  
18 a scheme of arrangement concerning the business of the fund;  
19 and  
20 (b) APRA applying to the Court for an order or orders for the  
21 appointment of a terminating manager of the health benefits  
22 funds of the responsible insurer.

## 61 Federal Court orders in respect of schemes of arrangement

- 24 (1) If, under subsection 60(3), APRA directs the external manager to  
25 apply under this subsection to give effect to a course of action  
26 specified in paragraph 59(4)(a), the external manager must apply to  
27 the Federal Court for an order or orders to give effect to the course  
28 of action.
- 29 Note: For what is to happen if the course of action is to be termination of a  
30 fund (see subsection 66(1)).
- 31 (2) On an application under subsection (1) of this section, or under  
32 paragraph 60(7)(a), for such an order or orders:

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 62

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- 1 (a) APRA and any other person interested are entitled to be  
2 heard; and  
3 (b) the Federal Court may make such order or orders in respect  
4 of the course of action the subject of the application as it  
5 considers to be, in all the circumstances, in the interests of  
6 the policy holders of the health benefits fund concerned.

#### 7 **Subdivision F—Miscellaneous**

#### 8 **62 When an external management begins and ends**

- 9 (1) The external management of a health benefits fund begins when an  
10 external manager is appointed under section 51 to administer the  
11 fund.
- 12 (2) The external management of a health benefits fund ends when:  
13 (a) APRA terminates the appointment of the external manager  
14 and does not appoint a replacement external manager; or  
15 (b) a voluntary deed of arrangement relating to the fund is  
16 executed; or  
17 (c) APRA notifies the external manager, under subsection 60(2),  
18 that it has accepted the external manager's recommendation,  
19 made under subsection 59(3), that the external management  
20 cease; or  
21 (d) the Federal Court makes an order or orders under section 61  
22 for a course of action approved by APRA and incorporated in  
23 a scheme of arrangement; or  
24 (e) a terminating manager of the fund is appointed.

#### 25 **63 Effect of things done during external management of health** 26 **benefits funds**

27 A payment made, transaction entered into, or other act or thing  
28 done, in good faith, by, or with the consent of, the external  
29 manager of a health benefits fund:

- 30 (a) is valid and effectual for the purposes of this Act and for the  
31 purposes of the *Corporations Act 2001* as it applies in  
32 relation to the fund; and

# EXPOSURE DRAFT

1 (b) is not liable to be set aside in a termination of the fund.

## 2 **64 Disclaimer of onerous property**

3 (1) In the application of the provisions of Division 7A of Part 5.6 of  
4 Chapter 5 of the *Corporations Act 2001* for the purpose of  
5 determining the power of an external manager of a health benefits  
6 fund to disclaim property of the fund, those provisions have effect  
7 as if:

8 (a) the external manager were the liquidator of the company that  
9 the fund is taken to constitute; and

10 (b) the references in subsections 568B(3) and 568E(5) of that  
11 Act to the company's creditors were references to the policy  
12 holders of the fund.

13 (2) A disclaimer by an external manager of a health benefits fund has  
14 the same effect, and the external manager is under the same  
15 obligations, for the purposes of this Act, as if the disclaimer had  
16 been made under Division 7A of Part 5.6 of Chapter 5 of the  
17 *Corporations Act 2001*.

## 18 **65 Application of provisions of Corporations Act**

19 *Regulations etc. under the Corporations Act*

20 (1) A reference in an application provision to an applied Corporations  
21 Act provision includes (unless the contrary intention appears) a  
22 reference to any regulations or other instruments in force for the  
23 purposes of that provision, or any of those provisions, of the  
24 *Corporations Act 2001*.

25 Note: So, for example, a provision of this Act that applies a particular  
26 provision of the *Corporations Act 2001* also applies any regulations  
27 that have effect for the purposes of that provision (unless a contrary  
28 intention appears).

29 (2) An **application provision** is a provision of this Division that:

30 (a) provides for the application of a provision, or a group of  
31 provisions (including a Chapter, Part, Division or  
32 Subdivision), of the *Corporations Act 2001*; or

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 6 External management of health benefits funds

#### Section 65

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1 (b) refers to a provision, or group of provisions, of the  
2 *Corporations Act 2001* as so applied.

3 (3) An ***applied Corporations Act provision*** is a provision, or a  
4 provision in a group of provisions, of the *Corporations Act 2001*  
5 that is applied as mentioned in paragraph (2)(a).

#### 6 *Modifications under APRA rules*

7 (4) If an application provision contains a power for APRA rules to  
8 modify an applied Corporations Act provision the power extends to  
9 modifying any regulations or other instruments, in force for the  
10 purposes of that provision of the *Corporations Act 2001*, that are  
11 applied as a result of subsection (1).

12 (5) The fact that provision is made in this Act for a specific  
13 modification of one or more applied Corporations Act provisions  
14 does not imply that further modifications of that provision, or any  
15 of those provisions, consistent with that specific modification,  
16 should not be made by APRA rules.

#### 17 *Corporations Act definitions and interpretation principles*

18 (6) The definitions and interpretation principles that have effect in or  
19 under the *Corporations Act 2001* have the same effect in relation  
20 to:

21 (a) an applied Corporations Act provision; or

22 (b) a provision of regulations or another instrument that is  
23 applied as a result of subsection (1);

24 as that provision applies for the purposes of a provision of this  
25 Division, unless a contrary intention appears in an application  
26 provision or in a modification made by APRA rules.

#### 27 *Things that may be done under regulations under the Corporations 28 Act*

29 (7) If an applied Corporations Act provision allows something to be  
30 done in or by regulations, then:



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- 1 (a) APRA rules may do that thing for the purposes of the applied
- 2 Corporations Act provision; and
- 3 (b) if they do, any regulations or instruments that are applied as a
- 4 result of subsection (1) are ineffective, for the purposes of
- 5 this Division, to the extent that they are inconsistent with the
- 6 provisions of APRA rules that do that thing.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 7 Ordering the termination of health benefits funds

#### Section 66

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1       **Division 7—Ordering the termination of health benefits**  
2                               **funds**

3       **66 Applications by external managers to the Federal Court**

- 4                               (1) If, under subsection 60(4), APRA directs the external manager to  
5                               apply under this subsection for the appointment of a terminating  
6                               manager of the health benefits funds of a private health insurer, the  
7                               external manager must apply to the Federal Court for an order or  
8                               orders to give effect to such an appointment.
- 9                               (2) APRA and any other person likely to be affected by the  
10                              termination of the funds are entitled to be heard on the application.

11       **67 Orders made on applications for appointments of terminating**  
12                               **managers**

- 13                              (1) On an application under subsection 66(1), or under  
14                              paragraph 60(7)(b), the Federal Court may make an order for the  
15                              appointment of a terminating manager of the health benefits funds  
16                              of a private health insurer, and any related orders.
- 17                              (2) However, the Federal Court must not do so unless it is satisfied  
18                              that the orders will, in the circumstances, be in the interests of the  
19                              policy holders of the funds.

20       **68 Notice of appointments**

21                              If the Federal Court orders the appointment of a terminating  
22                              manager of the health benefits funds of a private health insurer,  
23                              APRA must notify the insurer in writing of the person appointed as  
24                              the terminating manager.

# EXPOSURE DRAFT

1 **Division 8—External managers and terminating managers**

2 **Subdivision A—Powers of managers**

3 **69 Powers of managers**

- 4 (1) While a health benefits fund is under external management or  
5 terminating management, the manager has power, in the interests  
6 of the policy holders of the fund:
- 7 (a) to control the business, affairs and property of the fund; and
  - 8 (b) to carry on the business of the fund, and to manage the affairs  
9 and property of the fund; and
  - 10 (c) to terminate or dispose of all or any part of the business, and  
11 to dispose of all or any part of the property, of the fund; and
  - 12 (d) to execute a document, bring or defend proceedings, or do  
13 any other thing, in the name of the responsible insurer for the  
14 fund, for the purposes of the business of the fund; and
  - 15 (e) to appoint a lawyer to assist him or her in his or her duties;  
16 and
  - 17 (f) to appoint an agent to do any business that the manager is  
18 unable to do, or that it is unreasonable to expect the manager  
19 to do, in person; and
  - 20 (g) to perform or exercise any other function or power that the  
21 insurer or any of its officers or employees could perform or  
22 exercise in relation to the conduct of the fund if the fund  
23 were not under external management or terminating  
24 management.
- 25 (2) The rights of the following:
- 26 (a) the insurer;
  - 27 (b) any of the insurer's officers or employees;
  - 28 (c) an external administrator of any of the assets of the fund;
- 29 to perform or exercise any of the functions or powers mentioned in  
30 subsection (1) in relation to the fund are suspended while the fund  
31 is under external management or terminating management.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 8 External managers and terminating managers

#### Section 70

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1                    However, such a person may exercise powers or functions with the  
2                    manager's written approval.

3                    (3) Nothing in this Division or in section 42 or 53 is taken to imply  
4                    that an officer or employee of the insurer, or an external  
5                    administrator, ceases to be an officer or employee, or an external  
6                    administrator.

#### 7                    **70 Officers etc. not to perform functions etc. while fund is under** 8                    **management**

9                    A person commits an offence if:

- 10                    (a) a health benefits fund is under external management or  
11                    terminating management; and  
12                    (b) the person is not the manager of the fund; and  
13                    (c) the person performs or exercises in relation to the fund, or  
14                    purports to perform or exercise in relation to the fund, a  
15                    function or power as:  
16                           (i) an officer of the responsible insurer for the fund; or  
17                           (ii) an external administrator of any of the assets of the  
18                    fund; and  
19                    (d) the person does so without the manager's written approval;  
20                    and  
21                    (e) the function or power is one that the manager has power to  
22                    exercise or perform.

23                    Penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

#### 27                    **71 Managers act as agents of private health insurers**

28                    (1) When exercising a power as manager of a health benefits fund, the  
29                    manager is taken to be acting as the agent of the responsible insurer  
30                    for the fund.

# EXPOSURE DRAFT

- 1 (2) To avoid doubt, subsection (1) does not confer on the responsible  
2 insurer for the fund power to direct the manager in the exercise of  
3 his or her powers.

4 **Subdivision B—Information concerning, and records and**  
5 **property of, health benefits funds**

6 **72 Directors etc. to help managers**

- 7 (1) As soon as practicable after the external management or  
8 terminating management of a health benefits fund begins, each  
9 director of the responsible insurer for the fund must:  
10 (a) deliver to the manager all records in the director's possession  
11 that relate to the business of the fund; and  
12 (b) if the director knows of the locality of other records relating  
13 to the business of the fund—tell the manager of that locality.
- 14 (2) Within 7 days after the external management or terminating  
15 management of the fund begins, or such longer period as the  
16 manager allows, the directors and other officers of the responsible  
17 insurer for the fund must give to the manager a statement about the  
18 business, property, affairs and financial circumstances of the fund.
- 19 (3) The statement must comply with any requirements of the manager  
20 as to its form and contents.
- 21 (4) A director or other officer of the responsible insurer for the fund  
22 must:  
23 (a) attend on the manager at such times; and  
24 (b) give the manager such information about the business,  
25 property, affairs and financial circumstances of the fund;  
26 as the manager reasonably requires.
- 27 (5) A person commits an offence if:  
28 (a) the person is required, by or under subsection (1), (2), (3) or  
29 (4), to do something; and  
30 (b) the person does not comply with the requirement.
- 31 Penalty: Imprisonment for 6 months or 30 penalty units, or both.
-

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 8 External managers and terminating managers

#### Section 73

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

4 (6) Subsection (1) does not apply if the person is entitled to retain  
5 possession of the records, as against the manager and the  
6 responsible insurer for the fund.

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

#### 9 **73 Managers' rights to certain records**

10 (1) A person is not entitled, as against the manager of a health benefits  
11 fund:

12 (a) to retain possession of records of the responsible insurer for  
13 the fund; or

14 (b) to claim or enforce a lien on such records;  
15 but such a lien is not otherwise prejudiced.

16 (2) Paragraph (1)(a) does not apply in relation to records of which a  
17 secured creditor of the responsible insurer for the fund is entitled to  
18 possession otherwise than because of a lien. However, the manager  
19 is entitled to inspect, and make copies of, such records at any  
20 reasonable time.

21 (3) The manager of a health benefits fund may give to a person written  
22 notice requiring the person to deliver to the manager, as specified  
23 in the notice, records so specified that are in the person's  
24 possession.

25 (4) A notice under subsection (3) must specify a period of at least 3  
26 days as the period within which the notice must be complied with.

27 (5) A person commits an offence if:  
28 (a) the person is given a notice under subsection (3); and  
29 (b) the person fails to comply with the notice.

30 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

# EXPOSURE DRAFT

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

4 (6) Subsection (5) does not apply if the person is entitled to retain  
5 possession of the records, as against the manager and the  
6 responsible insurer for the fund.

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

## 9 **74 Only manager can deal with property of fund under management**

10 (1) A transaction or dealing affecting the property of a health benefits  
11 fund that is entered into, while the fund is under external  
12 management or terminating management, by the responsible  
13 insurer for the fund (or by a person purportedly on behalf of the  
14 fund or the responsible insurer), is void unless:

- 15 (a) the transaction or dealing has been entered into by the  
16 manager of the fund; or  
17 (b) the manager consented to the transaction or dealing before it  
18 was entered into; or  
19 (c) the transaction or dealing was entered into by order of the  
20 Federal Court or of the Supreme Court of a State or Territory.

21 (2) Subsection (1) does not apply to a payment that an ADI makes, out  
22 of an account kept with the ADI by the responsible insurer for the  
23 fund, that is made:

- 24 (a) in good faith and in the ordinary course of the ADI's banking  
25 business; and  
26 (b) after the external management or terminating management  
27 began but on or before the day on which:  
28 (i) the manager gives to the ADI written notice of the  
29 appointment that began the external management or  
30 terminating management; or  
31 (ii) the manager notifies the appointment in a national  
32 newspaper, or in a newspaper circulating in each  
33 jurisdiction where the responsible insurer has its  
34 registered office or carries on business;

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 8 External managers and terminating managers

#### Section 75

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1

whichever happens first.

2

(3) Subsection (1) has effect subject to any order that the Federal Court makes after the purported transaction or dealing.

3

4

(4) A person commits an offence if:

5

(a) the person is:

6

(i) an officer of the responsible insurer for a health benefits fund under external management or terminating management; or

7

8

9

(ii) an external administrator of any of the assets of the fund; and

10

11

(b) the person:

12

(i) purported to enter into a transaction or dealing on behalf of the responsible insurer; or

13

14

(ii) was in any way, by act or omission, directly or indirectly concerned in, or party to, a transaction or dealing; and

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16

17

(c) the transaction or dealing is, because of the operation of subsection (1), void, or would be void apart from subsection (3).

18

19

20

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

21

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

22

23

24

#### **75 Order for compensation where officer involved in void transaction**

25

26

(1) If:

27

(a) a court finds a person guilty of an offence against subsection 74(4); and

28

29

(b) the court is satisfied that the health benefits fund under external management or terminating management to which the offence relates has suffered loss or damage because of the act or omission constituting the offence;

30

31

32



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- 1 the court may (whether or not it imposes a penalty) order the  
2 person to pay compensation of such amount as the order specifies  
3 to the responsible insurer for the fund.
- 4 (2) An order under subsection (1) may be enforced as if it were a  
5 judgment of the court.
- 6 (3) If, in proceedings against a person under subsection 74(4), it  
7 appears to the court that the person is, or might be, liable to pay  
8 compensation under subsection (1) of this section, but that:  
9 (a) the person has acted honestly; and  
10 (b) having regard to all the circumstances of the case, the person  
11 ought fairly to be excused from paying compensation;  
12 the court may relieve the person either wholly or partly from a  
13 liability to pay compensation, under subsection (1) of this section,  
14 to which the person would otherwise be subject, or that might  
15 otherwise be imposed on the person.
- 16 (4) If a person considers that proceedings under subsection 74(4) will,  
17 or might, be begun against him or her, he or she may apply to the  
18 Federal Court for relief.
- 19 (5) On an application under subsection (4), the Federal Court may  
20 grant relief under subsection (3) as if proceedings under  
21 subsection 74(4) had been begun in the Court.
- 22 (6) For the purposes of subsection (3) as it applies to a case tried by a  
23 judge with a jury:  
24 (a) a reference in that subsection to the court is a reference to the  
25 judge; and  
26 (b) the relief that may be granted includes withdrawing the case  
27 in whole or in part from the jury and directing judgment to be  
28 entered for the defendant on such terms as to costs as the  
29 judge considers appropriate.

# EXPOSURE DRAFT

**Part 3** Health benefits funds

**Division 8** External managers and terminating managers

Section 76

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1     **Subdivision C—Provisions incidental to appointment of**  
2                     **managers**

3     **76 Remuneration of managers**

- 4             (1) APRA may, in writing, determine:
- 5                     (a) the remuneration and allowances that an external manager or
- 6                             terminating manager is to receive; and
- 7                     (b) who is to pay that remuneration and those allowances, if they
- 8                             are not to be paid as mentioned in subsection (2).
- 9             (2) Unless APRA determines otherwise, the remuneration and
- 10                     allowances are to be paid out of the assets of the health benefits
- 11                             fund under external management or terminating management.

12     **77 APRA may give directions to managers**

- 13             (1) APRA may give a manager written directions concerning the
- 14                     exercise of the powers that are vested in the manager.
- 15             (2) The directions given to the manager will ordinarily be of a general
- 16                     nature but may, where appropriate, take into account specific
- 17                             circumstances relevant to the particular health benefits fund under
- 18                             external management or terminating management.
- 19             (3) APRA may also give directions to the manager concerning the
- 20                     provision to APRA, from time to time, of interim reports relating
- 21                             to the business of the health benefits fund under external
- 22                             management or terminating management.
- 23             (4) The manager must comply with any directions given to him or her
- 24                     under this section.

25     **78 Termination of appointments of managers**

- 26             (1) APRA may, at any time, by written notice given to a manager,
- 27                     terminate the appointment of the manager with effect from the day
- 28                             specified in the instrument of termination. When the termination
- 29                             takes effect:

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- 1 (a) the manager is divested of the functions and powers referred  
2 to in subsection 69(1); and  
3 (b) all of the other functions and powers of the manager in  
4 relation to the fund cease.
- 5 (2) If APRA terminates the appointment of an external manager, it  
6 may appoint another external manager to carry on the external  
7 management.
- 8 (3) If APRA terminates the appointment of a terminating manager, it  
9 must appoint another terminating manager to carry on the  
10 terminating management, unless:  
11 (a) the Federal Court has ordered under section 43 an end to the  
12 termination of the health benefits funds in question; or  
13 (b) the termination of those funds has been completed, and the  
14 terminating manager has reported to APRA under section 47.
- 15 (4) If APRA terminates the appointment of a manager of a health  
16 benefits fund but does not appoint another manager as mentioned  
17 in subsection (2) or (3), then:  
18 (a) subsection 69(2) ceases to have effect; and  
19 (b) officers, employees and external administrators may resume  
20 performing or exercising powers and functions in relation to  
21 the fund, subject to any directions made by the Federal Court  
22 under subsection 43(4).
- 23 Note: In the case of terminating the appointment of a terminating manager,  
24 this subsection is not intended to imply that APRA has a discretion not  
25 to appoint another terminating manager, if subsection (3) requires  
26 another terminating manager to be appointed.

## 27 **79 Acts of managers valid etc.**

- 28 (1) The acts of the manager of a health benefits fund are valid despite  
29 any defects that may afterwards be discovered in his or her  
30 appointment.
- 31 (2) Despite any defect or irregularity affecting the validity of the  
32 appointment of manager of a health benefits fund:

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 8 External managers and terminating managers

#### Section 80

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- 1 (a) a conveyance, assignment, transfer, mortgage or charge of  
2 assets of the fund; or  
3 (b) a payment of money of the fund; or  
4 (c) any other disposition of assets of the fund;  
5 is valid in favour of any person taking such assets in good faith and  
6 for value and without actual knowledge of the defect or  
7 irregularity.
- 8 (3) Despite any defect or irregularity affecting the validity of the  
9 appointment of manager of a health benefits fund, a person making  
10 or permitting:  
11 (a) a payment of money of the fund; or  
12 (b) any other disposition of assets of the fund;  
13 is to be protected and indemnified in so doing if the person does  
14 not have actual knowledge of the defect or irregularity.

#### 15 **80 Indemnity**

16 The manager of a health benefits fund is not subject to any action,  
17 claim or demand by, or liable to, any person in respect of anything  
18 done or omitted to be done in good faith in, or in connection with,  
19 the exercise of the powers conferred on the manager by this Act.

#### 20 **81 Qualified privilege**

21 The manager of a health benefits fund has qualified privilege in  
22 respect of a statement that he or she makes, whether orally or in  
23 writing, in the course of his or her duties as manager.

#### 24 **Subdivision D—Miscellaneous**

#### 25 **82 Time for doing act does not run while act prevented by this** 26 **Division or other provisions**

27 If:

- 28 (a) for any purpose (for example, the purposes of a law,  
29 agreement or instrument) an act must or may be done within  
30 a particular period or before a particular time; and
-

# EXPOSURE DRAFT

1 (b) this Division, or Division 5 or 6, prevents the act from being  
2 done within that period or before that time;  
3 the period is extended, or the time is deferred, because of this  
4 section, according to how long this Division, or Division 5 or 6,  
5 prevented the act from being done.

## 6 **83 Continued application of other provisions of Act**

- 7 (1) The appointment of a person as the external manager of a health  
8 benefits fund does not affect the continued operation of provisions  
9 of this Act (other than Division 6):  
10 (a) in relation to the fund; or  
11 (b) in relation to the rights and obligations of persons in relation  
12 to the responsible insurer for the fund.
- 13 (2) The appointment of a person as the terminating manager of a  
14 health benefits fund does not affect the continued operation of  
15 provisions of this Act (other than Division 5 or 7):  
16 (a) in relation to the fund; or  
17 (b) in relation to the rights and obligations of persons in relation  
18 to the responsible insurer for the fund.

## 19 **84 Modifications of this Act in relation to health benefits funds** 20 **under management**

- 21 (1) APRA rules may set out modifications of this Act, or the *Private*  
22 *Health Insurance Act 2007*, relating to how Chapter 3 of the  
23 *Private Health Insurance Act 2007* applies in relation to health  
24 benefits funds for which:  
25 (a) external managers have been appointed under Division 6 of  
26 this Part; or  
27 (b) terminating managers have been appointed under Division 5  
28 or 7 of this Part.
- 29 (2) APRA rules may provide for different such modifications  
30 according to the nature of the health benefits funds concerned.
- 31 (3) The modifications cannot:

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 8 External managers and terminating managers

#### Section 85

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- 1 (a) modify a provision of this Act that creates an offence; or  
2 (b) include new provisions that create offences.
- 3 (4) Before making APRA rules for the purposes of this section, APRA  
4 must consult the Health Secretary about the proposed rules.
- 5 (5) This Act and the *Private Health Insurance Act 2007* have effect  
6 subject to the modifications.

#### 7 **85 Order of Federal Court to be binding on all persons**

8 An order of the Federal Court made under this Division, or  
9 Division 5, 6 or 7, relating to any matter, is binding on all persons  
10 and has effect despite anything in the constitution or business rules  
11 of a private health insurer to which the order may relate.

#### 12 **86 APRA rules dealing with various matters**

13 APRA rules may:

- 14 (a) make provision for, or in relation to, any of the following  
15 matters in relation to meetings required or permitted to be  
16 held by Division 6, or by provisions of APRA rules:  
17 (i) the convening, conduct of, and procedure at, a meeting;  
18 (ii) voting at a meeting (including proxy voting);  
19 (iii) the number of persons that constitutes a quorum at a  
20 meeting;  
21 (iv) the sending of notices to persons entitled to attend a  
22 meeting;  
23 (v) the lodging of copies of notices of, or resolutions passed  
24 at, a meeting; and  
25 (b) make provision relating to the form and contents of any  
26 document or instrument required or permitted to be given to  
27 APRA, or to an external manager or terminating manager of  
28 a health benefits fund, by a provision of Division 5 or 6.

# EXPOSURE DRAFT

1 **Division 9—Duties and liabilities of directors etc.**

2 **87 Notices to remedy contraventions**

- 3 (1) If a private health insurer has contravened this Part, APRA may  
4 give the insurer a written notice requiring the insurer, within a  
5 specified period, to take such action as is specified in the notice to  
6 remedy the contravention.
- 7 (2) The period specified in the notice must be a period ending not  
8 earlier than one month after the giving of the notice.
- 9 (3) The action to be specified in the notice is such action as APRA  
10 considers appropriate and reasonable to overcome the effects of the  
11 contravention.
- 12 (4) At any time before the end of the period specified in the notice,  
13 APRA may extend the period by such further period as APRA  
14 considers appropriate.
- 15 (5) The insurer must comply with the notice.

16 **88 Liability of directors in relation to non-compliance with notices**

- 17 (1) If:
- 18 (a) APRA has given a notice to a private health insurer under  
19 section 87 in respect of a contravention of this Part; and
- 20 (b) the contravention has resulted in a loss to a health benefits  
21 fund; and
- 22 (c) the insurer has failed to comply with the notice within the  
23 period specified in it or within that period as extended under  
24 subsection 87(4);
- 25 the persons who were the directors of the insurer when the  
26 contravention occurred are jointly and severally liable to pay the  
27 insurer an amount equal to the amount of the loss.

# EXPOSURE DRAFT

## Part 3 Health benefits funds

### Division 9 Duties and liabilities of directors etc.

#### Section 89

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- 1 (2) A person is not liable under subsection (1) if the person proves that  
2 he or she used due diligence to ensure that the insurer complied  
3 with the notice.
- 4 (3) An action to recover an amount for which a person is liable under  
5 subsection (1) may be brought:  
6 (a) by the insurer; or  
7 (b) with the written approval of APRA, by a policy holder of the  
8 health benefits fund involved.
- 9 (4) An approval under subsection (3) may be given subject to  
10 conditions relating to the persons, or the number of persons, who  
11 may join in the action as plaintiffs.

#### 12 **89 APRA may sue in the name of private health insurers**

13 If APRA considers that it is in the interests of the policy holders of  
14 a health benefits fund to do so, APRA may bring an action against  
15 a person in the name, and for the benefit, of a private health insurer  
16 for the recovery of an amount that the insurer is entitled to recover  
17 under this Division.



# EXPOSURE DRAFT

Prudential standards and directions **Part 4**  
Introduction **Division 1**

Section 90

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1 **Part 4—Prudential standards and directions**

2 **Division 1—Introduction**

3 **90 Simplified outline of this Part**

4

*[A simplified outline of this Part will be included here later.]*

# EXPOSURE DRAFT

Part 4 Prudential standards and directions

Division 2 Prudential standards

Section 91

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1 **Division 2—Prudential standards**

2 **91 Prudential standards**

3 *APRA may make prudential standards*

4 (1) Subject to subsection (8), APRA may, in writing, make standards  
5 (**prudential standards**), relating to prudential matters, that must be  
6 complied with by, or in relation to, private health insurers.

7 (2) **Prudential matters**, in relation to a private health insurer, are  
8 matters relating to:

9 (a) the conduct of the affairs of the insurer in such a way as:

10 (i) to keep the insurer in a sound financial position; or

11 (ii) not to cause or promote instability in the Australian  
12 financial system; or

13 (b) the conduct of the affairs of the insurer with integrity,  
14 prudence and professional skill.

15 *The private health insurers to which a prudential standard applies*

16 (3) A prudential standard may be expressed to apply in relation to:

17 (a) all private health insurers; or

18 (b) a specified class of private health insurers only; or

19 (c) one or more specified private health insurers only.

20 *Prudential standards may provide for APRA to exercise powers  
21 and discretions*

22 (4) A prudential standard may provide for APRA to exercise powers  
23 and discretions under the standard, including but not limited to  
24 discretions to approve, impose, adjust or exclude specific  
25 prudential requirements in relation to a particular private health  
26 insurer or a particular class of private health insurers.

27 *Variation and revocation of prudential standards*

28 (5) APRA may, in writing, vary or revoke a prudential standard.

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# EXPOSURE DRAFT

Prudential standards and directions **Part 4**

Prudential standards **Division 2**

Section 91

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1                    *Prudential standards are legislative instruments (other than*  
2                    *standards that apply to one or more specified insurers)*

3                    (6) A prudential standard referred to in paragraph (3)(a) or (b), or an  
4                    instrument varying or revoking such a prudential standard, is a  
5                    legislative instrument. However, a prudential standard referred to  
6                    in paragraph (3)(c), or an instrument varying or revoking such a  
7                    prudential standard, is not a legislative instrument.

8                    Note 1:    Paragraph (3)(c) covers prudential standards that are expressed to  
9                    apply in relation to one or more specified private health insurers only.  
10                    Section 92 applies to these prudential standards.

11                    Note 2:    A decision to make or vary a prudential standard referred to in  
12                    paragraph (3)(c) is reviewable under section 167.

13                    *Prudential standards may provide for a matter by adopting etc.*  
14                    *material from another instrument*

15                    (7) A prudential standard may provide for a matter by applying,  
16                    adopting or incorporating, with or without modification, any matter  
17                    contained in an instrument or other writing as in force or existing  
18                    from time to time, despite:

- 19                    (a) section 46AA of the *Acts Interpretation Act 1901*; and  
20                    (b) section 14 of the *Legislative Instruments Act 2003*.

21                    *Prudential standards may not do certain things*

22                    (8) To avoid doubt, prudential standards may not do the following:  
23                    (a) create an offence or civil penalty;  
24                    (b) provide powers of:  
25                    (i) arrest or detention; or  
26                    (ii) entry, search or seizure;  
27                    (c) impose a tax;  
28                    (d) set an amount to be appropriated from the Consolidated  
29                    Revenue Fund under an appropriation in this Act;  
30                    (e) amend this Act.

# EXPOSURE DRAFT

## Part 4 Prudential standards and directions

### Division 2 Prudential standards

#### Section 92

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1

#### *Delegation of power to make etc. prudential standards*

2

(9) APRA may, under section 15 of the *Australian Prudential Regulation Authority Act 1998*, delegate the power to make, vary or revoke prudential standards, but only if the delegation is to:

3

4

5

(a) an APRA member (within the meaning of that Act); or

6

(b) an APRA staff member who is an executive general manager or equivalent.

7

8

#### **92 Additional matters in relation to standards that are not legislative instruments**

9

10

(1) A prudential standard referred to in paragraph 91(3)(c), or an instrument varying or revoking such a standard, has effect:

11

12

(a) from the day on which the standard or instrument is made; or

13

(b) if the standard or instrument specifies a later day—from that later day.

14

15

(2) If APRA makes, varies or revokes a prudential standard referred to in paragraph 91(3)(c), it must, as soon as practicable:

16

17

(a) in the case of making a standard—give a copy of the standard to each private health insurer to which the standard applies;

18

19

or

20

(b) in the case of varying a standard—give a copy of the variation to:

21

22

(i) each private health insurer to which the standard (as in force before the variation) applied; and

23

24

(ii) any other private health insurer to which the standard will (because of the variation) apply; or

25

26

(c) in the case of revoking a standard—give notice of the revocation to each private health insurer to which the standard (as in force before the revocation) applied.

27

28

29

(3) A failure to comply with subsection (2) does not affect the validity of the making, variation or revocation of the prudential standard.

30

# EXPOSURE DRAFT

1 **93 Compliance with prudential standards**

2 A private health insurer must comply with prudential standards that  
3 apply in relation to the insurer.

4 **94 Notice of breach of prudential standards or of other matters that**  
5 **materially affect financial position**

- 6 (1) A private health insurer commits an offence if:  
7 (a) the insurer becomes aware of:  
8 (i) a breach by it of a prudential standard; or  
9 (ii) any other matter or occurrence that materially affects its  
10 financial position; and  
11 (b) the insurer fails to notify APRA, as soon as practicable, in  
12 writing of the breach or of the other matter or occurrence.

13 Penalty: 40 penalty units.

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

- 17 (2) A notification given to APRA of a matter referred to in  
18 paragraph (1)(a) must not include personal information relating to  
19 a person insured under a complying health insurance product that is  
20 referable to a health benefits fund conducted by the insurer, unless  
21 the information relates to prudential matters relating to the insurer.

# EXPOSURE DRAFT

## Part 4 Prudential standards and directions

### Division 3 Directions

#### Section 95

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1 **Division 3—Directions**

2 **95 APRA’s power to give directions**

- 3 (1) APRA may give a private health insurer a direction of a kind  
4 specified in section 96 if APRA reasonably believes that:
- 5 (a) the insurer has contravened:
    - 6 (i) an enforceable obligation; or
    - 7 (ii) a provision of the *Financial Sector (Collection of Data)*  
8 *Act 2001*; or
  - 9 (b) the insurer:
    - 10 (i) is likely to contravene an enforceable obligation, or a  
11 provision referred to in subparagraph (a)(ii); and
    - 12 (ii) the contravention is likely to give rise to a prudential  
13 risk; or
  - 14 (c) the direction is necessary in the interests of policy holders, or  
15 prospective policy holders, of the insurer; or
  - 16 (d) the insurer is, or is about to become, unable to meet its  
17 liabilities; or
  - 18 (e) there is, or there might be, a material risk to the security of  
19 the insurer’s assets; or
  - 20 (f) there has been, or there might be, a material deterioration in  
21 the insurer’s financial condition; or
  - 22 (g) the insurer is conducting its affairs in an improper or  
23 financially unsound way; or
  - 24 (h) the failure to issue a direction would materially prejudice the  
25 interests of policy holders or prospective policy holders of  
26 the insurer; or
  - 27 (i) the insurer is conducting its affairs in a way that may cause  
28 or promote instability in the Australian financial system.

29 Note: A decision to give a direction on a ground specified in  
30 paragraph (1)(a), (b) or (c) is reviewable under section 167.

31 (2) A direction must:

- 32 (a) be given by notice in writing to the private health insurer; and
-

# EXPOSURE DRAFT

1 (b) specify the ground referred to in subsection (1) because of  
2 which the direction is given.

3 Note: Two or more directions may be given in the same notice.

4 (3) A direction may deal with the time by which, or period during  
5 which, it is to be complied with.

## 6 **96 The kinds of direction that may be given**

7 (1) The kinds of direction that a private health insurer may be given  
8 under section 95 are directions to do any one or more of the  
9 following:

- 10 (a) to comply with all, or specified:
- 11 (i) enforceable obligations; or
  - 12 (ii) provisions of the *Financial Sector (Collection of Data)*  
13 *Act 2001*; or
- 14 (b) to remove an officer of the insurer from office;
- 15 (c) to ensure an officer of the insurer does not take part in the  
16 management or conduct of the business of the insurer except  
17 as permitted by APRA;
- 18 (d) to appoint a person as an officer of the insurer for such term  
19 as APRA directs;
- 20 (e) to terminate the appointment of the appointed actuary of the  
21 insurer and to appoint another actuary to hold office for such  
22 term as APRA directs;
- 23 (f) not to give financial accommodation to any person;
- 24 (g) not to issue or renew any policy, undertake any liability  
25 under any policy or collect any premium;
- 26 (h) not to borrow any amount;
- 27 (i) not to accept any payment on account of share capital, except  
28 payments in respect of calls that fell due before the direction  
29 was given;
- 30 (j) not to repay any amount paid on shares;
- 31 (k) not to pay a dividend on any shares;
- 32 (l) not to discharge any policy or other liability;
- 33 (m) not to transfer any asset;

# EXPOSURE DRAFT

## Part 4 Prudential standards and directions

### Division 3 Directions

#### Section 96

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- 1 (n) not to pay or transfer any amount to any person, or create an  
2 obligation (contingent or otherwise) to do so;
- 3 (o) not to undertake any financial obligation (contingent or  
4 otherwise) on behalf of any other person;
- 5 (p) to hold, or otherwise deal in a specified way, with a specified  
6 amount of capital;
- 7 (q) to provide, or further provide, in its accounts for the purposes  
8 of this Act, a specified amount or an amount determined in a  
9 specified way in respect of its liabilities or the value of a  
10 specified asset of the insurer;
- 11 (r) to order an actuarial investigation of the affairs of the insurer,  
12 at the expense of the insurer, by an actuary chosen by APRA;
- 13 (s) to do, or to refrain from doing, an act that relates to the way  
14 in which the affairs of the insurer are to be conducted or not  
15 conducted;
- 16 (t) to modify the business rules of the insurer;
- 17 (u) to take specified action to ensure, as far as practicable, that  
18 the insurer will be able to meet the liabilities of a health  
19 benefits fund conducted by the insurer out of the assets of the  
20 fund as they become due;
- 21 (v) to take specified action to ensure, as far as practicable, that  
22 assets of a health benefits fund conducted by the insurer will  
23 provide adequate capital for the conduct of the business of  
24 the fund in accordance with this Act and in the interests of  
25 the policy holders of the fund.
- 26 (2) A direction referred to in paragraph (1)(m) or (n) does not apply to  
27 the payment or transfer of money pursuant to an order of a court or  
28 a process of execution.
- 29 (3) Without limiting subsection (1), a direction referred to in a  
30 paragraph of that subsection may:
- 31 (a) deal with some only of the matters referred to in the  
32 paragraph; or
- 33 (b) deal with a particular class or particular classes of those  
34 matters; or



# EXPOSURE DRAFT

Prudential standards and directions **Part 4**

Directions **Division 3**

Section 97

---

- 1 (c) make different provision with respect to different matters or  
2 different classes of matters.

## 3 **97 Power to comply with a direction**

4 A private health insurer has power to comply with a direction  
5 under section 95 despite anything in its constitution or business  
6 rules or any contract or arrangement to which it is a party.

## 7 **98 Varying or revoking a direction**

- 8 (1) APRA may, by notice in writing to a private health insurer, vary a  
9 direction given to the insurer under section 95 if, at the time of the  
10 variation, APRA considers that the variation is necessary or  
11 appropriate.

12 Note: A decision to refuse to vary a direction that was given on a ground  
13 specified in paragraph 95(1)(a), (b) or (c) is reviewable under  
14 section 167.

- 15 (2) APRA may, by notice in writing to a private health insurer, revoke  
16 a direction given to the insurer under section 95 if, at the time of  
17 the revocation, APRA considers that the direction is no longer  
18 necessary or appropriate.

19 Note: A decision to refuse to revoke a direction that was given on a ground  
20 specified in paragraph 95(1)(a), (b) or (c) is reviewable under  
21 section 167.

## 22 **99 When a direction ceases to have effect**

23 A direction under section 95 ceases to have effect if APRA revokes  
24 the direction under section 98.

## 25 **100 Direction not grounds for denial of obligations**

- 26 (1) This section applies if a private health insurer is party to a contract,  
27 whether the proper law of the contract is Australian law (including  
28 the law of a State or Territory) or law of a foreign country  
29 (including the law of part of a foreign country).

# EXPOSURE DRAFT

## Part 4 Prudential standards and directions

### Division 3 Directions

#### Section 101

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- 1 (2) The fact that the private health insurer is subject to a direction by  
2 APRA under section 95 does not allow the contract, or a party to  
3 the contract, other than the insurer, to do any of the following:  
4 (a) deny any obligations under that contract;  
5 (b) accelerate any debt under that contract;  
6 (c) close out any transaction relating to that contract.  
7 This subsection has effect subject to subsections (3) and (4).
- 8 (3) If the private health insurer is prevented from fulfilling its  
9 obligations under the contract because of a direction under  
10 section 95, other than a direction of a kind referred to in  
11 paragraph 96(1)(1), the other party or parties to the contract are,  
12 subject to any orders made under subsection (4) of this section,  
13 relieved from obligations owed to the insurer under the contract.
- 14 (4) A party to a contract to which subsection (3) applies may apply to  
15 the Federal Court for an order relating to the effect on the contract  
16 of a direction under section 95. The order may deal with matters  
17 including (but not limited to) the following:  
18 (a) requiring a party to the contract to fulfil an obligation under  
19 the contract despite subsection (3);  
20 (b) obliging a party to the contract to take some other action (for  
21 example, paying money or transferring property) in view of  
22 obligations that were fulfilled under the contract before the  
23 direction was made.  
24 The order must not require a person to take action that would  
25 contravene the direction, or any other direction under section 95.

#### 101 Supply of information about directions

##### *Power to publish notice of directions in Gazette*

- 26  
27  
28 (1) APRA may publish in the Gazette notice of any direction given  
29 under section 95. The notice must include the name of the private  
30 health insurer given the direction and a summary of the direction.

# EXPOSURE DRAFT

Prudential standards and directions **Part 4**

Directions **Division 3**

## Section 101

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1                    *Requirement to publish notice of variation or revocation of certain*  
2                    *directions in Gazette*

3                    (2) If APRA publishes notice of a direction given under section 95 and  
4                    then later varies or revokes the direction, APRA must publish in  
5                    the Gazette notice of that variation or revocation as soon as  
6                    practicable after the revocation.

7                    *Requirement to provide information about directions to Minister*

8                    (3) If the Minister requests APRA to provide information about:  
9                           (a) any directions under section 95 in respect of a particular  
10                           private health insurer; or  
11                           (b) any directions made during a specified period under  
12                           section 95 in respect of any private health insurer;  
13                    APRA must comply with the request.

14                    *Power to inform Minister of directions*

15                    (4) APRA may provide any information that it considers appropriate to  
16                    the Minister about any directions under section 95, or variations or  
17                    revocations of such directions, in respect of any private health  
18                    insurer, at any time.

19                    *Requirement to inform Minister of variation or revocation of*  
20                    *direction if informed of making of direction*

21                    (5) If APRA provides the Minister with information about a direction  
22                    and then later varies or revokes the direction, APRA must notify  
23                    the Minister of the variation or revocation of the direction as soon  
24                    as practicable after the revocation.

25                    *Failure to comply with this section does not affect validity of*  
26                    *direction etc.*

27                    (6) A failure to comply with a requirement of this section in relation to  
28                    a direction, or the variation or revocation of a direction, does not  
29                    affect the validity of the direction, or the variation or revocation.

# EXPOSURE DRAFT

## Part 4 Prudential standards and directions

### Division 3 Directions

#### Section 102

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1     **102 Secrecy requirements**

2                     Information relating to directions under section 95, and revocations  
3                     of such directions, is subject to the secrecy requirements in Part 6  
4                     of the *Australian Prudential Regulation Authority Act 1998*, unless  
5                     the information has been published in the *Gazette* under  
6                     section 101 of this Act.

7     **103 Non-compliance with a direction**

- 8                     (1) A private health insurer commits an offence of strict liability if:  
9                         (a) the insurer is given a direction under section 95; and  
10                        (b) the insurer fails to comply with the direction.

11                    Penalty: 50 penalty units.

12                    Note 1:     If a body corporate is convicted of an offence against this subsection,  
13                        subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
14                        fine of up to 5 times the penalty stated above.

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

- 16                    (2) If a private health insurer commits an offence against  
17                        subsection (1), the insurer commits an offence against that  
18                        subsection in respect of:  
19                        (a) the first day on which the offence is committed; and  
20                        (b) each subsequent day (if any) on which the circumstances that  
21                            gave rise to the insurer committing the offence continue  
22                            (including the day of conviction for any such offence or any  
23                            later day).

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

- 26                    (3) An officer of a private health insurer commits an offence of strict  
27                        liability if:  
28                        (a) the insurer is given a direction under section 95; and  
29                        (b) the officer's duties include ensuring that the insurer complies  
30                            with the direction, or with a class of directions that includes  
31                            the direction; and

# EXPOSURE DRAFT

Prudential standards and directions **Part 4**

Directions **Division 3**

## Section 103

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1 (c) the officer fails to take reasonable steps to ensure that the  
2 insurer complies with the direction.

3 Penalty: 50 penalty units.

4 Note 1: If a body corporate is convicted of an offence against this subsection,  
5 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
6 fine of up to 5 times the penalty stated above.

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

8 (4) If an officer of a private health insurer fails to take reasonable steps  
9 to ensure that the insurer complies with a direction given to it  
10 under section 95 in circumstances that give rise to the officer  
11 committing an offence against subsection (3), the officer commits  
12 an offence against that subsection in respect of:

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

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

# EXPOSURE DRAFT

**Part 5** Other obligations of private health insurers

**Division 1** Introduction

Section 104

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1 **Part 5—Other obligations of private health insurers**

2 **Division 1—Introduction**

3 **104 Simplified outline of this Part**

4

*[A simplified outline of this Part will be included here later.]*

# EXPOSURE DRAFT

1 **Division 2—Appointed actuaries**

2 **105 Appointment**

- 3 (1) Subject to subsection (2), a private health insurer must have an  
4 actuary appointed by the insurer.
- 5 (2) Within 6 weeks after a person ceases to be the appointed actuary of  
6 a private health insurer, the insurer must appoint another person to  
7 be the actuary of the insurer.
- 8 (3) A private health insurer must not appoint a person as the actuary of  
9 the insurer unless the insurer is satisfied that the person meets the  
10 eligibility criteria set out in prudential standards for appointment as  
11 the actuary of a private health insurer.
- 12 (4) A private health insurer must not appoint a person as the actuary of  
13 the insurer if:  
14 (a) the person is disqualified from being or acting as an actuary  
15 of the private health insurer because of an order under  
16 section 119; or  
17 (b) the person is a disqualified person (other than only because  
18 of an order under section 119).
- 19 (5) An appointment of a person as actuary of a private health insurer  
20 cannot take effect while there is in force an appointment of another  
21 person as the actuary of the insurer.

22 **106 Terminating an appointment as actuary**

- 23 (1) A private health insurer must terminate the appointment of a  
24 person as actuary of the insurer if:  
25 (a) the person does not meet the eligibility criteria set out in  
26 prudential standards for appointment as the actuary of a  
27 private health insurer; or  
28 (b) the insurer is satisfied that the person has failed to perform  
29 adequately and properly the person's statutory functions and  
30 duties as actuary of the private health insurer; or

# EXPOSURE DRAFT

## Part 5 Other obligations of private health insurers

### Division 2 Appointed actuaries

#### Section 107

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- 1 (c) the person is disqualified from being or acting as an actuary  
2 of the private health insurer because of an order under  
3 section 119; or  
4 (d) the person is a disqualified person (other than only because  
5 of an order under section 119).
- 6 (2) The *statutory functions and duties* of an actuary of a private health  
7 insurer are the functions and duties that an actuary has under:  
8 (a) this Act; and  
9 (b) the *Private Health Insurance Act 2007*; and  
10 (c) the *Financial Sector (Collection of Data) Act 2001*.
- 11 Note 1: The reference in paragraph (a) to this Act includes prudential  
12 standards and APRA rules (see the definition of *this Act* in  
13 subsection 4(1)).
- 14 Note 2: The references in paragraphs (b) and (c) to Acts include regulations,  
15 rules, standards etc. made under those Acts (see subsection 4(2)).
- 16 (3) If:  
17 (a) a private health insurer is required under subsection (1) to  
18 terminate the appointment of a person as actuary of the  
19 insurer; and  
20 (b) the power to appoint the actuary of the insurer is not vested  
21 in the directors of the insurer or is not vested in the directors  
22 of the insurer alone;  
23 the directors may appoint a person who satisfies the requirements  
24 of subsection 105(3) to be the actuary of the insurer until an  
25 appointment is made in accordance with the constitution or  
26 business rules of the private health insurer.

#### 107 Notification of appointment etc.

- 27  
28 (1) A private health insurer that appoints a person under section 105  
29 must give APRA written notice of:  
30 (a) the name of the person; and  
31 (b) details of the actuarial qualifications and experience of the  
32 person; and  
33 (c) the date of the appointment; and



# EXPOSURE DRAFT

Other obligations of private health insurers **Part 5**

Appointed actuaries **Division 2**

## Section 108

---

- 1 (d) any other matter specified in prudential standards.
- 2 (2) Notice under subsection (1) must be given within 14 days after the
- 3 day of the appointment.
- 4 (3) If a person ceases to be the appointed actuary of a private health
- 5 insurer, the insurer must give APRA written notice that the person
- 6 has so ceased and of the day on which he or she so ceased.
- 7 (4) Notice under subsection (3) must be given within 14 days after the
- 8 day on which the person ceased to be the appointed actuary.

### 9 **108 Role of appointed actuary**

- 10 (1) The appointed actuary of a private health insurer must perform the
- 11 actuary's statutory functions and duties.
- 12 (2) The private health insurer must make any arrangements necessary
- 13 to enable the appointed actuary to perform those functions and
- 14 duties. These arrangements may include (without limitation) the
- 15 following:
- 16 (a) providing access to documents and information in the
- 17 insurer's control;
- 18 (b) requiring officers or employees of the insurer to answer
- 19 questions;
- 20 (c) allowing the actuary to attend meetings of directors of the
- 21 insurer, annual general meetings or any other meetings of
- 22 members of the insurer;
- 23 (d) allowing the actuary to speak at meetings of directors of the
- 24 insurer on matters under consideration that relate to the
- 25 actuary's statutory functions and duties.

### 26 **109 Actuary's obligation to report**

- 27 (1) The appointed actuary of a private health insurer must draw to the
- 28 attention of the insurer, or the directors of the insurer, any matter
- 29 that comes to the attention of the actuary and that the actuary
- 30 considers requires action to be taken by the insurer or its directors:

# EXPOSURE DRAFT

## Part 5 Other obligations of private health insurers

### Division 2 Appointed actuaries

#### Section 109

---

- 1 (a) to avoid a contravention of this Act, the *Private Health*  
2 *Insurance Act 2007* or the *Financial Sector (Collection of*  
3 *Data) Act 2001*; or
- 4 (b) to avoid prejudice to the interests of policy holders of a  
5 health benefits fund conducted by the insurer.
- 6 (2) If the appointed actuary of a private health insurer considers:
- 7 (a) that the insurer, or an officer of the insurer, may have  
8 contravened this Act or any other law; and
- 9 (b) that the contravention is of such a nature that it may affect  
10 significantly the interests of policy holders of a health  
11 benefits fund conducted by the insurer;
- 12 the appointed actuary must immediately inform APRA in writing  
13 of:
- 14 (c) his or her opinion; and
- 15 (d) the information on which it is based.
- 16 (3) Subsection (2) does not apply to the appointed actuary of a private  
17 health insurer in relation to a contravention if:
- 18 (a) an officer of the private health insurer informs the actuary  
19 that the private health insurer has informed APRA in writing  
20 of the contravention; and
- 21 (b) the actuary has no reason to disbelieve the officer.
- 22 (4) A person commits an offence if:
- 23 (a) the person is an officer of a private health insurer; and
- 24 (b) the person knows that:
- 25 (i) there are reasonable grounds for believing that the  
26 insurer, or an officer of the insurer, may have  
27 contravened this Act or any other law; and
- 28 (ii) the contravention is of such a nature that it may affect  
29 significantly the interests of policy holders of a health  
30 benefits fund conducted by the insurer; and
- 31 (c) the person informs the appointed actuary of the private health  
32 insurer that the private health insurer has informed APRA in  
33 writing of the contravention; and
- 34 (d) the private health insurer has not so informed APRA.
-

# EXPOSURE DRAFT

Other obligations of private health insurers **Part 5**  
Appointed actuaries **Division 2**

## Section 110

---

1 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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

5 (5) If:

6 (a) the appointed actuary of a private health insurer has drawn to  
7 the attention of the insurer, or of an officer of the insurer, a  
8 matter that the actuary considers requires action to be taken  
9 by the insurer or its directors:

10 (i) to avoid a contravention of this Act, the *Private Health*  
11 *Insurance Act 2007* or the *Financial Sector (Collection*  
12 *of Data) Act 2001*; or

13 (ii) to avoid prejudice to policy holders of a health benefits  
14 fund conducted by the insurer; and

15 (b) the appointed actuary is satisfied that there has been  
16 reasonable time for the taking of the action but the action has  
17 not been taken;

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

20 (6) If:

21 (a) a person becomes subject to an obligation under  
22 subsection (2) or (5) to inform APRA of anything; and

23 (b) before the person informs APRA, the person ceases to be the  
24 appointed actuary of the private health insurer concerned;

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

### 27 **110 Appointed actuary may give information to APRA**

28 (1) A person who is or was the appointed actuary of a private health  
29 insurer may give information, or produce books, accounts or  
30 documents, about the private health insurer to APRA if the person  
31 considers that doing so will assist APRA in performing its  
32 functions under this Act, the *Private Health Insurance Act 2007* or  
33 the *Financial Sector (Collection of Data) Act 2001*.

# EXPOSURE DRAFT

## Part 5 Other obligations of private health insurers

### Division 2 Appointed actuaries

#### Section 111

---

- 1 (2) A person who, in good faith and without negligence, gives  
2 information to APRA in accordance with this section is not subject  
3 to any action, claim or demand by, or any liability to, any other  
4 person in respect of the information.

#### 5 **111 Duty of appointed actuary to give information when required**

- 6 (1) APRA may, by written notice given to a person who is, or was, the  
7 appointed actuary of a private health insurer, require the person:  
8 (a) to give APRA information about the private health insurer; or  
9 (b) to produce books, accounts or documents about the private  
10 health insurer;  
11 if APRA considers that the giving of the information, or the  
12 production of the books, accounts or documents, will assist APRA  
13 in performing APRA's functions under this Act, the *Private Health*  
14 *Insurance Act 2007* or the *Financial Sector (Collection of Data)*  
15 *Act 2001*.
- 16 (2) A person commits an offence if:  
17 (a) the person is given a notice under subsection (1); and  
18 (b) the person fails to comply with the notice.

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

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

- 23 (3) A person commits an offence of strict liability if:  
24 (a) the person is given a notice under subsection (1); and  
25 (b) the person fails to comply with the notice.

26 Penalty: 60 penalty units.

27 Note 1: If a body corporate is convicted of an offence against this subsection,  
28 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
29 fine of up to 5 times the penalty stated above.

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

# EXPOSURE DRAFT

## 112 Qualified privilege of appointed actuary

- 1
- 2 (1) A person who is, or has been, the appointed actuary of a private  
3 health insurer has qualified privilege in respect of any statement,  
4 whether written or oral, made by him or her for the purpose of the  
5 performance of the actuary's statutory functions and duties.
- 6 (2) In particular (and without limiting subsection (1)), a person who is  
7 or has been the appointed actuary of a private health insurer has  
8 qualified privilege in respect of:
- 9 (a) any statement, written or oral, made by him or her under, or  
10 for the purposes of, a provision of this Act, the *Private*  
11 *Health Insurance Act 2007* or the *Financial Sector*  
12 *(Collection of Data) Act 2001*; and
- 13 (b) the answer to any question he or she is required by the  
14 insurer to answer.
- 15 (3) The privilege conferred by this section is in addition to any  
16 privilege conferred on a person by any other law.

## 113 Referring matters to professional associations for actuaries

- 17
- 18 (1) If APRA considers that an appointed actuary of a private health  
19 insurer:
- 20 (a) has failed, whether within or outside Australia, to perform  
21 adequately and properly:
- 22 (i) the actuary's statutory functions and duties; or  
23 (ii) the actuary's functions or duties under any other law of  
24 the Commonwealth, or of a State or a Territory; or
- 25 (b) is otherwise not a fit and proper person to be the actuary of a  
26 private health insurer;
- 27 APRA may refer the details of the matter to those members of the  
28 professional association of the actuary whom APRA considers will  
29 be involved in considering or taking any disciplinary or other  
30 action concerning the matter against the actuary.
- 31 (2) If APRA refers details of a matter under this section, APRA must  
32 also give written notice of the referral (including the nature of the  
33 matter) to the actuary.
-

# EXPOSURE DRAFT

Part 5 Other obligations of private health insurers

Division 2 Appointed actuaries

Section 114

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1 **114 APRA may direct removal of actuary**

2 *When a direction may be given*

3 (1) APRA may, if satisfied there is a ground under subsection (2), give  
4 a written direction to a private health insurer to terminate the  
5 appointment of a person as the appointed actuary of the private  
6 health insurer.

7 Note: Decisions to give directions under this section are reviewable under  
8 section 167.

9 (2) The grounds for giving a direction to terminate a person's  
10 appointment are:

11 (a) the person is disqualified from being or acting as an actuary  
12 of the private health insurer because of an order under  
13 section 119; or

14 (b) the person is a disqualified person (other than only because  
15 of an order under section 119); or

16 (c) the person is not a fit and proper person to hold the  
17 appointment; or

18 (d) the person has failed to perform adequately and properly the  
19 person's statutory functions and duties as an actuary of the  
20 insurer.

21 *Notice to be given before direction*

22 (3) Before directing a private health insurer to terminate a person's  
23 appointment, APRA must:

24 (a) give written notice to:

25 (i) the insurer; and

26 (ii) the person; and

27 (b) give the insurer and the person a reasonable opportunity to  
28 make submissions on the matter.

29 (4) The notice must include a statement that any submissions in  
30 response to the notice may be discussed by APRA with other  
31 persons as mentioned in paragraph (5)(b).

32 (5) If a submission is made in response to the notice, APRA:

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# EXPOSURE DRAFT

Other obligations of private health insurers **Part 5**  
Appointed actuaries **Division 2**

## Section 114

---

- 1 (a) must have regard to the submission; and  
2 (b) may discuss any matter contained in the submission with any  
3 persons APRA considers appropriate for the purpose of  
4 assessing the truth of the matter.

5 *When a direction takes effect*

- 6 (6) A direction to terminate a person's appointment takes effect on the  
7 day specified in the direction, which must be at least 7 days after  
8 the direction is made.

9 *Insurer and person to be given copy of direction*

- 10 (7) If APRA directs a private health insurer to terminate a person's  
11 appointment, APRA must give the insurer and the person a copy of  
12 the direction.

13 *Offence*

- 14 (8) A private health insurer commits an offence of strict liability if:  
15 (a) the insurer is given a direction under this section; and  
16 (b) the insurer fails to comply with the direction.

17 Penalty for contravention of this subsection: 60 penalty units.

18 Note 1: If a body corporate is convicted of an offence against this subsection,  
19 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
20 fine of up to 5 times the penalty stated above.

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

# EXPOSURE DRAFT

Part 5 Other obligations of private health insurers

Division 3 Disqualified persons

Section 115

---

1 **Division 3—Disqualified persons**

2 **115 Private health insurers not to allow disqualified persons to act**  
3 **as officers or appointed actuaries**

- 4 (1) A private health insurer commits an offence if:  
5 (a) the insurer allows a person to be or to act as an officer, or  
6 appointed actuary, of the insurer; and  
7 (b) the person is a disqualified person; and  
8 (c) if the person is a disqualified person only because of an order  
9 under section 119—the person is disqualified from being or  
10 acting as that officer or actuary.

11 Penalty: 50 penalty units.

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

- 15 (2) Subsection (1) does not apply if the private health insurer:  
16 (a) contacted APRA within a reasonable period before allowing  
17 the person to be to or act as an officer or appointed actuary,  
18 as the case may be; and  
19 (b) was advised by APRA that the person was not a disqualified  
20 person.

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

23 **116 Disqualified persons must not act for private health insurers**

- 24 A person commits an offence if:  
25 (a) the person acts as an officer, or appointed actuary, of a  
26 private health insurer; and  
27 (b) the person is a disqualified person; and  
28 (c) if the person is a disqualified person only because of an order  
29 under under section 119—the person is disqualified from  
30 being or acting as that officer or actuary.



# EXPOSURE DRAFT

1                   Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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

## 5                   **117 Effect of non-compliance**

6                   A failure to comply with section 115 or 116 does not affect the  
7                   validity of an appointment or transaction.

## 8                   **118 Who is a *disqualified person*?**

9                   (1) A person is a *disqualified person* if, at any time:

- 10                   (a) the person has been convicted of an offence against or arising  
11                                    out of:
- 12                                    (i) this Act; or
  - 13                                    (ii) the *Private Health Insurance Act 2007*; or
  - 14                                    (iii) the *Financial Sector (Collection of Data) Act 2001*; or
  - 15                                    (iv) the *Corporations Act 2001*, the Corporations Law that  
16                                        was previously in force, or any law of a foreign country  
17                                        that corresponds to that Act or to that Corporations  
18                                        Law; or
- 19                   (b) the person has been convicted of an offence against or arising  
20                                    out of a law in force in Australia, or the law of a foreign  
21                                    country, if the offence concerns dishonest conduct or conduct  
22                                    relating to:
- 23                                    (i) a private health insurer; or
  - 24                                    (ii) a financial sector company (within the meaning of the  
25                                        *Financial Sector (Shareholdings) Act 1998*); or
  - 26                                    (iii) a superannuation entity (within the meaning of the  
27                                        *Superannuation Industry (Supervision) Act 1993*); or
- 28                   (c) the person has been or becomes bankrupt; or
- 29                   (d) the person has applied to take the benefit of a law for the  
30                                    relief of bankrupt or insolvent debtors; or
- 31                   (e) the person has compounded with his or her creditors; or
- 32                   (f) the Federal Court has disqualified the person under  
33                                    section 119.

# EXPOSURE DRAFT

## Part 5 Other obligations of private health insurers

### Division 3 Disqualified persons

#### Section 119

---

- 1 (2) A reference in subsection (1) to a person who has been convicted  
2 of an offence includes a reference to a person in respect of whom  
3 an order has been made relating to the offence under:  
4 (a) section 19B of the *Crimes Act 1914*; or  
5 (b) a corresponding provision of a law of a State, a Territory or a  
6 foreign country.
- 7 (3) Nothing in this section affects the operation of Part VIIC of the  
8 *Crimes Act 1914* (which includes provisions that, in certain  
9 circumstances, relieve persons from the requirement to disclose  
10 spent convictions and require persons aware of such convictions to  
11 disregard them).

#### 12 **119 Court power of disqualification**

- 13 (1) On application by APRA, the Federal Court may, by order,  
14 disqualify a person from being or acting as someone referred to in  
15 subsection (2), for a period that the Court considers appropriate, if  
16 the Court is satisfied that:  
17 (a) the person is not a fit and proper person to be or act as such a  
18 person; and  
19 (b) the disqualification is justified.
- 20 (2) For the purposes of subsection (1), the Federal Court may  
21 disqualify a person from being or acting as an officer or appointed  
22 actuary of:  
23 (a) a particular private health insurer; or  
24 (b) a class of private health insurers; or  
25 (c) any private health insurer.
- 26 (3) In deciding whether paragraph (1)(a) is satisfied, the Federal Court  
27 may take into account:  
28 (a) any matters specified in prudential standards; and  
29 (b) any criteria for fitness and propriety specified in prudential  
30 standards; and  
31 (c) any other matters the Court considers relevant.

# EXPOSURE DRAFT

- 1 (4) In deciding whether paragraph (1)(b) is satisfied, the Federal Court  
2 may have regard to:
- 3 (a) if the application is for the person to be disqualified from  
4 being or acting as an officer—the person’s conduct in  
5 relation to the management, business or property of any  
6 corporation; and
- 7 (b) if the application is for the person to be disqualified from  
8 being or acting as an appointed actuary—the person’s  
9 conduct, in relation to the person’s functions or duties as an  
10 actuary, under any of the following:
- 11 (i) this Act;
- 12 (ii) the *Private Health Insurance Act 2007*;
- 13 (iii) the *Financial Sector (Collection of Data) Act 2001*;
- 14 (iv) the *Insurance Act 1973*;
- 15 (v) the *Life Insurance Act 1995*;
- 16 (vi) the *Superannuation Industry (Supervision) Act 1993*;
- 17 and
- 18 (c) in any case—any other matters the Court considers relevant.
- 19 (5) As soon as practicable after the Federal Court disqualifies a person  
20 under this section, APRA must cause particulars of the  
21 disqualification:
- 22 (a) if the person is, or is acting as, an officer or appointed  
23 actuary of a private health insurer—to be given to the private  
24 health insurer concerned; and
- 25 (b) to be published in the Gazette.

## 26 **120 Court power to revoke or vary a disqualification etc.**

- 27 (1) A disqualified person, or APRA, may apply to the Federal Court  
28 for:
- 29 (a) if the person is a disqualified person only because of an order  
30 under section 119—a variation or a revocation of the order  
31 made under that section; or
- 32 (b) otherwise—an order that the person is not a disqualified  
33 person.

# EXPOSURE DRAFT

## Part 5 Other obligations of private health insurers

### Division 3 Disqualified persons

#### Section 121

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- 1 (2) If the Federal Court revokes an order under paragraph (1)(a) or  
2 makes an order under paragraph (1)(b), then, despite section 118,  
3 the person is not a *disqualified person*.
- 4 (3) At least 21 days before commencing the proceedings, written  
5 notice of the application must be given:  
6 (a) if the disqualified person makes the application—by the  
7 person to APRA; or  
8 (b) if APRA makes the application—by APRA to the  
9 disqualified person.
- 10 (4) An order under paragraph (1)(b) may be expressed to be subject to  
11 exceptions and conditions determined by the Federal Court.

#### 12 **121 Privilege against exposure to penalty—disqualification under** 13 **section 119**

##### 14 *Proceedings*

- 15 (1) In the case of any proceeding under, or arising out of, this Act, a  
16 person is not entitled to refuse or fail to comply with a  
17 requirement:  
18 (a) to answer a question or give information; or  
19 (b) to produce books, accounts or other documents; or  
20 (c) to do any other act;  
21 on the ground that the answer or information, production of the  
22 book or other thing, or doing that other act, as the case may be,  
23 might tend to make the person liable to a penalty by way of a  
24 disqualification under section 119.
- 25 (2) Subsection (1) applies whether or not the person is a defendant in,  
26 or a party to, the proceeding or any other proceeding.

##### 27 *Statutory requirements*

- 28 (3) A person is not entitled to refuse or fail to comply with a  
29 requirement under this Act:  
30 (a) to answer a question or give information; or

# EXPOSURE DRAFT

Other obligations of private health insurers **Part 5**  
Disqualified persons **Division 3**

## Section 121

---

- 1 (b) to produce books, accounts or other documents; or  
2 (c) to do any other act;  
3 on the ground that the answer or information, production of the  
4 book or other thing, or doing that other act, as the case may be,  
5 might tend to make the person liable to a penalty by way of a  
6 disqualification under section 119.

7 *Admissibility*

- 8 (4) Section 148 does not apply to a proceeding for the imposition of a  
9 penalty by way of a disqualification under section 119.

10 Note: Section 148 relates to self-incrimination.

11 *Other provisions*

- 12 (5) Subsections (1) and (3) of this section have effect despite anything  
13 in:  
14 (a) any other provision of this Act; or  
15 (b) the *Private Health Insurance Act 2007*; or  
16 (c) the *Administrative Appeals Tribunal Act 1975*.

# EXPOSURE DRAFT

Part 5 Other obligations of private health insurers

Division 4 Miscellaneous

Section 122

---

1 **Division 4—Miscellaneous**

2 **122 Restrictions on payment of pecuniary penalties etc.**

3 A private health insurer must not:

4 (a) use its money, or permit the use of its money, for:

5 (i) the payment of a pecuniary penalty imposed on an  
6 officer of the insurer because of an offence under this  
7 Act; or

8 (ii) the payment of an amount that an officer of the insurer,  
9 or a person who has been such an officer, is liable to  
10 pay under Part 3 or 8; or

11 (b) reimburse:

12 (i) an officer of the insurer in respect of a pecuniary  
13 penalty imposed on the officer because of an offence  
14 under this Act; or

15 (ii) an officer of the insurer, or a person who has been such  
16 an officer, in respect of a liability imposed on the officer  
17 under Part 3 or 8.

18 **123 Giving APRA copies of reports made to policy holders**

19 APRA rules may require a private health insurer to give APRA  
20 copies of reports that the insurer makes to all or any of the policy  
21 holders of health benefits funds conducted by the insurer.

22 **124 Notifying APRA of name and contact details of officers**

23 APRA rules may require a private health insurer to notify APRA  
24 of, or of changes to, the names and contact details of officers of the  
25 insurer.

# EXPOSURE DRAFT

Monitoring and investigation **Part 6**  
Introduction **Division 1**

Section 125

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1 **Part 6—Monitoring and investigation**

2 **Division 1—Introduction**

3 **125 Simplified outline of this Part**

4 *[A simplified outline of this Part will be included here later.]*

# EXPOSURE DRAFT

Part 6 Monitoring and investigation

Division 2 Monitoring

Section 126

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1 **Division 2—Monitoring**

2 **126 Purposes for which powers may be exercised etc.**

- 3 (1) The powers in this Division may be exercised:
- 4 (a) for the purposes of this Act; or
- 5 (b) for the purposes of the risk equalisation fund legislation.
- 6 The powers cannot be exercised for any other purpose.
- 7 (2) The powers in this Division may be exercised in relation to a
- 8 private health insurer, even if an investigation is being conducted
- 9 of the whole or a part of the affairs of the insurer.

10 **127 Power to require private health insurer to provide information**

11 **and reports**

12 APRA may, by notice in writing to a private health insurer, require

13 the insurer to give APRA particular information, or a report on

14 particular matters, relating to the affairs of the insurer by a

15 reasonable time specified in the notice.

16 Note: Refusal or failure to comply with a requirement under this section is

17 an offence (see section 147).

18 **128 Power to require production of documents**

- 19 (1) APRA may, by notice in writing to:
- 20 (a) a private health insurer; or
- 21 (b) an officer of a private health insurer;
- 22 require the insurer or officer to produce to APRA, at a reasonable
- 23 time and place specified in the notice, any documents relating to
- 24 the affairs of the insurer.

25 Note: Refusal or failure to comply with a requirement under this subsection

26 is an offence (see section 147).

- 27 (2) If a document produced to APRA under subsection (1) is not in
- 28 writing and in English, APRA may require the insurer to produce



# EXPOSURE DRAFT

Monitoring and investigation **Part 6**  
Monitoring **Division 2**

## Section 128

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1 to APRA a version of the document that is in writing and in  
2 English.

3 Note: Refusal or failure to comply with a requirement under this subsection  
4 is an offence (see section 147).

5 (3) APRA, or an APRA staff member, may inspect, take extracts from  
6 and make copies of any document, or of any version of any  
7 document, produced to APRA under this section.

# EXPOSURE DRAFT

## Part 6 Monitoring and investigation

### Division 3 Investigation

#### Section 129

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1 **Division 3—Investigation**

2 **129 Investigation of private health insurers by inspectors**

- 3 (1) APRA may, in writing, appoint an APRA staff member to be an  
4 inspector to investigate the affairs of a private health insurer if  
5 APRA reasonably suspects that:
- 6 (a) the affairs of the insurer are being, or are about to be, carried  
7 on in a way that is not in the interests of the policy holders of  
8 a health benefits fund conducted by the insurer; or  
9 (b) the insurer has contravened an enforceable obligation.
- 10 (2) The instrument of appointment must specify:
- 11 (a) the matter referred to in paragraph (1)(a) or (b) that APRA  
12 suspects; and  
13 (b) the ground on which APRA suspects the matter; and  
14 (c) the matters into which the investigation is to be made, being  
15 the whole or some part of the affairs of the private health  
16 insurer.
- 17 (3) APRA may at any time:
- 18 (a) terminate an investigation; or  
19 (b) terminate the appointment of a person as an inspector; or  
20 (c) appoint another APRA staff member to be an inspector for  
21 the purposes of an investigation.

22 **130 Identity cards for inspectors**

- 23 (1) APRA must issue an identity card to each inspector.
- 24 (2) The identity card must:
- 25 (a) be in the form prescribed by APRA rules; and  
26 (b) contain a photograph that is no more than 1 year old of the  
27 inspector.
- 28 (3) A person commits an offence of strict liability if:
- 29 (a) the person has been issued with an identity card; and

# EXPOSURE DRAFT

- 1 (b) the person ceases to be an inspector; and  
2 (c) the person does not return the identity card to APRA within  
3 14 days after ceasing to be an inspector.

4 Penalty: 1 penalty unit.

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

- 6 (4) Subsection (3) does not apply if the identity card was lost or  
7 destroyed.

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

- 10 (5) An inspector must carry his or her identity card at all times when  
11 exercising powers under this Act as an inspector.

## 12 **131 Powers of inspectors**

- 13 (1) An inspector may, by notice in writing given to a person whom the  
14 inspector believes to have some knowledge of the affairs of the  
15 private health insurer that the inspector is investigating, require that  
16 person:

- 17 (a) to produce to the inspector all or any documents relating to  
18 the affairs of the insurer that are in the custody, or under the  
19 control, of that person; or  
20 (b) to give to the inspector all reasonable assistance within the  
21 person's power in connection with the investigation; or  
22 (c) to appear before the inspector for examination concerning  
23 matters that are relevant to the investigation and are within  
24 the knowledge of the person;

25 within the period (not being less than 14 days) specified in the  
26 notice.

27 Note: Refusal or failure to comply with a requirement under this subsection  
28 is an offence (see section 147).

- 29 (2) If documents are produced to an inspector under subsection (1), the  
30 inspector may:

- 31 (a) take possession of them for such period as the inspector  
32 considers necessary for the purposes of the investigation; and

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## Part 6 Monitoring and investigation

### Division 3 Investigation

#### Section 132

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- 1 (b) make copies of, and take extracts from, them.
- 2 (3) An inspector is not entitled to refuse to permit a person to inspect  
3 documents that are in the possession of the inspector under  
4 subsection (2) if the person would be entitled to inspect those  
5 documents if the inspector had not taken possession of them.

#### 6 **132 Person may be represented by lawyer when being examined**

- 7 A lawyer acting for a person being examined by an inspector:
- 8 (a) may attend the examination; and  
9 (b) may, to the extent that the inspector allows:  
10 (i) address the inspector; and  
11 (ii) examine the person;  
12 in relation to matters in respect of which the inspector has  
13 questioned the person.

#### 14 **133 Access to premises**

##### 15 *The functions of an inspector under this section*

- 16 (1) An inspector who:  
17 (a) is appointed to investigate the whole or a part of the affairs of  
18 a private health insurer; and  
19 (b) enters any premises under subsection (3) or (4);  
20 may exercise the functions of an inspector under this section in  
21 relation to the insurer.
- 22 (2) The functions of an inspector under this section in relation to the  
23 insurer are to exercise search powers in relation to any documents  
24 that relate, or that the inspector reasonably believes relate, to the  
25 affairs of the insurer.

##### 26 *Entry with consent*

- 27 (3) An inspector may, with the consent of the occupier of premises,  
28 enter the premises for the purpose of exercising the functions of an

# EXPOSURE DRAFT

1 inspector under this section in relation to the private health insurer  
2 whose affairs the inspector is investigating.

3 Note: See also section 134, which contains general provision relating to  
4 obtaining consent etc.

5 *Entry under warrant*

6 (4) An inspector may, in accordance with an investigation warrant in  
7 relation to premises, enter the premises for the purpose of  
8 exercising the functions of an inspector under this section in  
9 relation to the private health insurer whose affairs the inspector is  
10 investigating.

11 Note: An investigation warrant also authorises such assistance as the  
12 inspector considers necessary, and such force as is necessary and  
13 reasonable in the circumstances (see paragraph 135(4)(c)).

14 **134 General provisions relating to obtaining consent to enter**  
15 **premises**

16 (1) Before obtaining the consent of an occupier of premises for the  
17 purpose of subsection 133(3), an inspector must inform the  
18 occupier that the occupier may refuse consent.

19 (2) A consent has no effect unless the consent is voluntary.

20 (3) A consent may be expressed to be limited to entry during a  
21 particular period. If so, the consent has effect for that period unless  
22 the consent is withdrawn before the end of that period.

23 (4) A consent that is not limited as mentioned in subsection (3) has  
24 effect until the consent is withdrawn.

25 (5) If an inspector entered premises because of the consent of the  
26 occupier of the premises, the inspector, and any person assisting,  
27 must leave the premises if the consent ceases to have effect.

28 (6) If:

29 (a) an inspector enters premises because of the consent of the  
30 occupier of the premises; and

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## Part 6 Monitoring and investigation

### Division 3 Investigation

#### Section 135

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- 1 (b) the inspector has not shown the occupier his or her identity  
2 card before entering the premises;  
3 the inspector must do so on, or as soon as is reasonably practicable  
4 after, entering the premises.

#### 5 **135 Investigation warrants**

- 6 (1) An inspector may apply to a magistrate for a warrant under this  
7 section (an *investigation warrant*) in relation to premises.
- 8 (2) The magistrate may issue the warrant if the magistrate is satisfied,  
9 by information on oath or affirmation, that there are reasonable  
10 grounds for suspecting that there are, or there may be within the  
11 next 72 hours, documents in the premises relating to the affairs of  
12 the private health insurer that the inspector is investigating.
- 13 (3) However, the magistrate must not issue the warrant unless the  
14 inspector or some other person has given to the magistrate, either  
15 orally or by affidavit, such further information (if any) as the  
16 magistrate requires concerning the grounds on which the issue of  
17 the warrant is being sought.
- 18 (4) The warrant must:
- 19 (a) state that the warrant is issued under this Division; and  
20 (b) name the inspector who applied for the warrant; and  
21 (c) state that the warrant authorises the inspector, with such  
22 assistance as the inspector considers necessary, to enter the  
23 premises, using such force as is necessary and reasonable in  
24 the circumstances:
- 25 (i) during such hours of the day or night as the warrant  
26 specifies; or  
27 (ii) if the warrant so specifies, at any time;  
28 for the purpose of exercising the functions of an inspector  
29 under section 133 in relation to the insurer concerned; and  
30 (d) specify the day (not more than 1 week after the issue of the  
31 warrant) on which the warrant ceases to be in force.

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1 **136 Announcement before entry under investigation warrant**

- 2 (1) Before an inspector enters premises under an investigation warrant,  
3 the inspector must:
- 4 (a) announce that he or she is authorised to enter the premises;  
5 and
- 6 (b) show his or her identity card to the occupier of the premises,  
7 or to another person who apparently represents the occupier,  
8 if the occupier or other person is present at the premises; and
- 9 (c) give any person at the premises an opportunity to allow entry  
10 to the premises.
- 11 (2) However, an inspector is not required to comply with  
12 subsection (1) if the inspector believes on reasonable grounds that  
13 immediate entry to the premises is required to ensure that the  
14 effective execution of the warrant is not frustrated.
- 15 (3) If:
- 16 (a) an inspector does not comply with subsection (1) because of  
17 subsection (2); and
- 18 (b) the occupier of the premises, or another person who  
19 apparently represents the occupier, is present at the premises;  
20 the inspector must, as soon as practicable after entering the  
21 premises, show his or her identity card to the occupier or other  
22 person.

23 **137 Inspector to be in possession of investigation warrant**

24 An inspector executing an investigation warrant must be in  
25 possession of the warrant issued by the magistrate under  
26 section 135, or a copy of the warrant as so issued.

27 **138 Details of warrant etc. to be given to occupier**

- 28 If:
- 29 (a) an investigation warrant is being executed in relation to  
30 premises; and

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## Part 6 Monitoring and investigation

### Division 3 Investigation

#### Section 139

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- 1 (b) the occupier of the premises, or another person who  
2 apparently represents the occupier, is present at the premises;  
3 an inspector executing the warrant must, as soon as practicable:  
4 (c) make a copy of the warrant available to the occupier or other  
5 person; and  
6 (d) inform the occupier or other person in writing of the rights  
7 and responsibilities of the occupier or other person under  
8 sections 139 and 140.

#### 9 **139 Right to observe execution of warrant**

- 10 (1) The occupier of premises to which an investigation warrant relates,  
11 or another person who apparently represents the occupier, is  
12 entitled to observe the execution of the warrant if the occupier or  
13 other person is present at the premises while the warrant is being  
14 executed.
- 15 (2) The right to observe the execution of the warrant ceases if the  
16 occupier or other person impedes that execution.
- 17 (3) This section does not prevent the execution of the warrant in 2 or  
18 more areas of the premises at the same time.

#### 19 **140 Responsibility to provide facilities and assistance**

- 20 (1) The occupier of premises to which an investigation warrant relates,  
21 or another person who apparently represents the occupier, must  
22 provide:  
23 (a) an inspector executing the warrant; and  
24 (b) any person assisting the inspector;  
25 with all reasonable facilities and assistance for the effective  
26 exercise of their powers.
- 27 Note: Obstructing, hindering, intimidating or resisting an inspector in the  
28 performance of his or her functions is an offence against section 149.1  
29 of the *Criminal Code*.
- 30 (2) A person commits an offence if:  
31 (a) the person is subject to subsection (1); and



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1 (b) the person fails to comply with that subsection.

2 Penalty for contravention of this subsection: Imprisonment for 6  
3 months or 30 penalty units, or both.

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

## 7 **141 Concealing etc. records**

8 (1) A person commits an offence if:

9 (a) the person does an act; and

10 (b) the act results in the concealment, destruction, mutilation or  
11 alteration of documents relating to the affairs of a private  
12 health insurer; and

13 (c) those affairs are being investigated under this Division.

14 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

18 (2) Subsection (1) does not apply if the person did not act with intent  
19 to defeat the purposes of this Division and did not act with intent to  
20 delay or obstruct the carrying out of the investigation.

21 Note: The defendant bears an evidential burden in relation to the matters in  
22 this subsection (see subsection 13.3(3) of the *Criminal Code*).

## 23 **142 Reports of inspectors**

24 (1) An inspector:

25 (a) must, on the completion of an investigation of the whole or a  
26 part of the affairs of a private health insurer, report in writing  
27 to APRA on the result of the investigation; and

28 (b) if so directed in writing by APRA, must make such written  
29 reports during the investigation as are specified in the  
30 direction; and

31 (c) may make one or more other written reports to APRA during  
32 the investigation.

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## Part 6 Monitoring and investigation

### Division 3 Investigation

#### Section 143

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- 1 (2) Subject to subsection (3), an inspector may include in a report  
2 under this section any recommendations that the inspector  
3 considers appropriate.
- 4 (3) An inspector must not include in a report under this section:  
5 (a) a recommendation relating to the institution of criminal  
6 proceedings; or  
7 (b) a statement to the effect that the inspector considers that a  
8 specified person has committed a criminal offence.
- 9 (4) However, if an inspector considers that criminal proceedings ought  
10 to be instituted or that a person has committed a criminal offence,  
11 the inspector must state that opinion in writing given to APRA.

#### 12 **143 Dissemination of reports**

- 13 (1) APRA must give a copy of a report made to APRA under  
14 paragraph 142(1)(a) to the private health insurer to which the  
15 report relates.
- 16 (2) However, subsection (1) does not apply if APRA considers that,  
17 having regard to proceedings that have been or might be instituted,  
18 a copy of the report should not be given to the insurer.
- 19 (3) If APRA has given a copy of the report to the insurer under  
20 subsection (1), APRA may, if it considers it is in the public interest  
21 to do so, cause the whole or a part of the report to be published.
- 22 (4) A court before which proceedings under this Act, or the risk  
23 equalisation fund legislation, are brought against a private health  
24 insurer or other person in respect of matters dealt with in a report  
25 under section 142 may order that a copy of the report be given to  
26 that insurer or other person.

#### 27 **144 Liability for publishing reports etc.**

28 An action or proceeding, civil or criminal, does not lie against a  
29 person (not being APRA or an APRA staff member) for publishing  
30 in good faith a copy of, or a fair extract from or of, a publication  
31 made under subsection 143(3).

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1 Note: APRA and APRA staff members are protected from liability by  
2 section 58 of the *Australian Prudential Regulation Authority Act*  
3 1998.

## 4 **145 Powers of magistrates**

### 5 *Powers conferred personally*

- 6 (1) A power conferred on a magistrate by this Division is conferred on  
7 the magistrate:  
8 (a) in a personal capacity; and  
9 (b) not as a court or a member of a court.

### 10 *Powers need not be accepted*

- 11 (2) The magistrate need not accept the power conferred.

### 12 *Protection and immunity*

- 13 (3) A magistrate exercising a power conferred by this Division has the  
14 same protection and immunity as if the magistrate were exercising  
15 the power:  
16 (a) as the court of which the magistrate is a member; or  
17 (b) as a member of the court of which the magistrate is a  
18 member.

## 19 **146 Delegation by inspectors**

- 20 (1) An inspector may, by writing signed by the inspector, delegate any  
21 of the inspector's powers under this Division to an APRA staff  
22 member.
- 23 (2) A delegate who proposes to exercise his or her delegated powers  
24 must, at the request of any person who may be affected by the  
25 proposed exercise, produce for the inspection of that person the  
26 instrument of delegation or a copy of that instrument.

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## Part 6 Monitoring and investigation

### Division 4 Other matters

#### Section 147

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1 **Division 4—Other matters**

2 **147 Refusing or failing to comply with requirements**

- 3 (1) A person commits an offence if:
- 4 (a) a requirement is made of the person under section 127, 128
- 5 or 131; and
- 6 (b) the person fails to comply with the requirement.

7 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

8 Note: If a body corporate is convicted of an offence against this subsection,

9 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a

10 fine of up to 5 times the penalty stated above.

- 11 (2) However, the person is only required to comply with the
- 12 requirement to the extent that the person is capable of doing so.

13 Note: The defendant bears an evidential burden in relation to the matter in

14 this subsection (see subsection 13.3(3) of the *Criminal Code*).

15 **148 Self-incrimination**

- 16 (1) A person is not excused from answering a question, providing
- 17 information or a report, or producing a document, under this Part
- 18 on the ground that the answer, the information or report, or the
- 19 production of the document, might tend to incriminate the person
- 20 or make the person liable to a penalty.

21 Note: This section does not apply in relation to proceedings for a penalty by

22 way of a disqualification under section 119 (see section 121).

- 23 (2) However, in the case of an individual:
- 24 (a) the answer given, the information or report provided or the
- 25 document produced; and
- 26 (b) answering the question, providing the information or report,
- 27 or producing the document;
- 28 are not admissible in evidence against the individual in any
- 29 criminal or civil proceedings, except proceedings under, or arising
- 30 out of, section 137.1 or 137.2 of the *Criminal Code* in relation to

# EXPOSURE DRAFT

1                   answering the question, providing the information or report, or  
2                   producing the document.

3                   Note:       Sections 137.1 and 137.2 of the *Criminal Code* create offences for  
4                   providing false or misleading information or documents.

## 5                   **149 Legal professional privilege**

6                   Nothing in this Part affects the right of a person to refuse to answer  
7                   a question, provide information or a report, or produce a document,  
8                   on the ground that:

- 9                   (a) the answer to the question, or the information or report,  
10                  would be privileged from being given on the ground of legal  
11                  professional privilege; or  
12                  (b) the document would be privileged from being produced on  
13                  the ground of legal professional privilege.

## 14                  **150 Protection from liability**

15                  A person who complies with a requirement made of the person  
16                  under this Part by APRA or an inspector does not incur any  
17                  liability to any other person merely because of that compliance.

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## Part 7 Enforceable undertakings

### Section 151

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1 **Part 7—Enforceable undertakings**  
2

3 **151 Simplified outline of this Part**

4 

<i>[A simplified outline of this Part will be included here later.]</i>
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5 **152 Enforceable undertakings**

6 (1) APRA may accept a written undertaking given by a person in  
7 connection with a matter in relation to which APRA has a power or  
8 function under:

- 9 (a) this Act; or  
10 (b) the risk equalisation fund legislation.

11 (2) The person may withdraw or vary the undertaking at any time, but  
12 only with APRA's consent.

13 Note: A decision to refuse consent is reviewable under section 167.

14 (3) If APRA considers that the person who gave the undertaking has  
15 breached any of its terms, APRA may apply to the Federal Court  
16 for an order under subsection (4).

17 (4) If the Federal Court is satisfied that the person has breached a term  
18 of the undertaking, the Court may make all or any of the following  
19 orders:

- 20 (a) an order directing the person to comply with that term of the  
21 undertaking;  
22 (b) an order directing the person to pay to the Commonwealth an  
23 amount up to the amount of any financial benefit that the  
24 person has obtained directly or indirectly and that is  
25 reasonably attributable to the breach;  
26 (c) any order that the Court considers appropriate directing the  
27 person to compensate any other person who has suffered loss  
28 or damage as a result of the breach;  
29 (d) any other order that the Court considers appropriate.

1 **Part 8—Remedies in the Federal Court**  
2

3 **153 Simplified outline of this Part**

4 

<i>[A simplified outline of this Part will be included here later.]</i>
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5 **154 APRA may apply to the Federal Court**

- 6 (1) If APRA is satisfied that a private health insurer has contravened  
7 an enforceable obligation, APRA may apply to the Federal Court  
8 for:  
9 (a) a declaration of contravention (see section 155); and  
10 (b) any one or more of the following orders:  
11 (i) a civil penalty order (see section 156);  
12 (ii) a compensation order (see section 157);  
13 (iii) any other order that APRA considers to be appropriate  
14 to redress the contravention.
- 15 (2) The application must be made within 4 years of the alleged  
16 contravention.

17 **155 Declarations of contravention**

- 18 (1) If, on application under section 154, the Federal Court is satisfied  
19 that a private health insurer has contravened an enforceable  
20 obligation, it must make a declaration of contravention.
- 21 (2) The declaration must specify:  
22 (a) the enforceable obligation that was contravened; and  
23 (b) the private health insurer that contravened the obligation; and  
24 (c) the conduct that constituted the contravention; and  
25 (d) if the court is satisfied that an officer of the private health  
26 insurer failed to take reasonable steps to prevent the insurer  
27 contravening the obligation—the officer.

# EXPOSURE DRAFT

## Part 8 Remedies in the Federal Court

### Section 156

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- 1 (3) The declaration is conclusive evidence of the matters mentioned in  
2 subsection (2).

#### 3 **156 Civil penalty order**

- 4 (1) If the Federal Court has made a declaration of contravention that  
5 specifies an officer of a private health insurer (see  
6 paragraph 155(2)(d)), the Court may order the officer to pay the  
7 Commonwealth a pecuniary penalty of up to 1,000 penalty units.
- 8 (2) An order under subsection (1) is a *civil penalty order*.
- 9 (3) The Federal Court must not make a civil penalty order if it is  
10 satisfied that a court has ordered the officer to pay damages in the  
11 nature of punitive damages in respect of:  
12 (a) the contravention of the enforceable obligation; or  
13 (b) the officer's failure to take reasonable steps to prevent the  
14 insurer contravening the enforceable obligation.
- 15 (4) The pecuniary penalty is a civil debt payable to the  
16 Commonwealth.
- 17 (5) The Commonwealth may enforce the order as if it were an order  
18 made in civil proceedings against the officer to recover a debt due  
19 by the officer. The debt arising from the order is taken to be a  
20 judgment debt.

#### 21 **157 Compensation order**

- 22 (1) If the Federal Court has made a declaration of contravention, the  
23 Court may order the private health insurer specified in the  
24 declaration to compensate an individual for any injury or loss  
25 suffered by the individual as a result of the contravention.
- 26 (2) The order must specify the amount of compensation.
- 27 (3) The order may be enforced as if it were a judgment of the Court.



1 **158 Other order**

- 2 (1) If the Federal Court has made a declaration of contravention, the  
3 Court may make any other order that APRA applies for.
- 4 (2) The order may be enforced as if it were a judgment of the Court.

5 **159 Civil evidence and procedure rules for declarations and orders**

6 The Federal Court must apply the rules of evidence and procedure  
7 for civil matters in proceedings under this Part.

8 Note: The standard of proof in civil proceedings is the balance of  
9 probabilities (see section 140 of the *Evidence Act 1995*).

10 **160 Civil proceedings after criminal proceedings**

11 The Federal Court must not make a civil penalty order against an  
12 officer of a private health insurer if the officer has been convicted  
13 of an offence constituted by conduct that is substantially the same  
14 as the conduct to which the court had regard in satisfying itself that  
15 the officer failed to take reasonable steps to prevent the insurer  
16 contravening the enforceable obligation.

17 **161 Criminal proceedings during civil proceedings**

- 18 (1) Proceedings for a civil penalty order against an officer of a private  
19 health insurer are stayed if:
- 20 (a) criminal proceedings are started or have already been started  
21 against the officer for an offence; and
- 22 (b) the offence is constituted by conduct that is substantially the  
23 same as the conduct to which the Court had regard in  
24 satisfying itself that the officer failed to take reasonable steps  
25 to prevent the insurer contravening the enforceable  
26 obligation.
- 27 (2) The proceedings for the order may be resumed if the officer is not  
28 convicted of the offence. Otherwise, the proceedings for the order  
29 are dismissed.

# EXPOSURE DRAFT

## Part 8 Remedies in the Federal Court

### Section 162

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1     **162 Criminal proceedings after civil proceedings**

- 2             Criminal proceedings may be started against a person for conduct  
3             that is substantially the same as conduct constituting a  
4             contravention of an enforceable obligation regardless of whether:  
5             (a) a declaration of contravention has been made that specifies  
6             the person; or  
7             (b) an order has been made against the person under this Part.

8     **163 Evidence given in proceedings for penalty not admissible in**  
9     **criminal proceedings**

- 10            Evidence of information given or evidence of production of  
11            documents by an officer of a private health insurer is not  
12            admissible in criminal proceedings against the officer if:  
13            (a) the officer previously gave the evidence or produced the  
14            documents in proceedings for a civil penalty order against the  
15            officer (whether or not the order was made); and  
16            (b) the conduct alleged to constitute the offence is substantially  
17            the same as the conduct to which the court had regard in  
18            satisfying itself that the officer failed to take reasonable steps  
19            to prevent the insurer contravening the enforceable  
20            obligation.  
21            However, this does not apply to a criminal proceeding in respect of  
22            the falsity of the evidence given by the officer in the proceedings  
23            for the civil penalty order.

24     **164 APRA may require person to assist**

- 25            (1) APRA may, in writing, require a person to give all reasonable  
26            assistance in connection with an application by APRA:  
27            (a) for a declaration of contravention in relation to a private  
28            health insurer; or  
29            (b) for a declaration of contravention that specifies an officer of  
30            a private health insurer; or  
31            (c) for a civil penalty order in relation to an officer of a private  
32            health insurer.

# EXPOSURE DRAFT

- 1 (2) A person commits an offence if:  
2 (a) a requirement is made of the person under subsection (1); and  
3 (b) the person fails to comply with the requirement.
- 4 Penalty: 5 penalty units.
- 5 Note: If a body corporate is convicted of an offence against this subsection,  
6 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
7 fine of up to 5 times the penalty stated above.
- 8 (3) APRA must not require the person to assist in connection with an  
9 application for a declaration or order referred to in paragraph (1)(a)  
10 unless:  
11 (a) it appears to APRA that someone other than the person  
12 required to assist may have contravened an enforceable  
13 obligation; and  
14 (b) APRA reasonably suspects or believes that the person  
15 required to assist can give information relevant to the  
16 application.
- 17 (4) APRA may require the person to assist regardless of whether an  
18 application for the declaration or order has actually been made.
- 19 (5) The person cannot be required to assist if the person is or has been  
20 a lawyer for the person suspected of the contravention of the  
21 enforceable obligation.
- 22 (6) The Federal Court may order the person to comply with the  
23 requirement in a specified way. Only APRA may apply to the court  
24 for an order under this subsection.

## 25 **165 Relief from liability for contravening an enforceable obligation**

- 26 (1) If, in proceedings brought against a person under this Part, it  
27 appears to the Federal Court that:  
28 (a) the person has, or may have:  
29 (i) contravened an enforceable obligation; or  
30 (ii) if the person is an officer of a private health insurer—  
31 failed to take reasonable steps to prevent the insurer  
32 from contravening an enforceable obligation; but
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# EXPOSURE DRAFT

## Part 8 Remedies in the Federal Court

### Section 165

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- 1 (b) the person has acted honestly and, having regard to all the  
2 circumstances of the case, the person ought fairly to be  
3 excused for the contravention;  
4 the Court may relieve the person either wholly or partly from a  
5 liability to which the person would otherwise be subject, or that  
6 might otherwise be imposed on the person, because of the  
7 contravention.
- 8 (2) A person who thinks that proceedings will or may be begun against  
9 the person under this Part may apply to the Federal Court for relief.
- 10 (3) On an application under subsection (2), the Federal Court may  
11 grant relief under subsection (1) as if the proceedings had been  
12 begun in the Court.
- 13 (4) For the purposes of subsection (1) as applying for the purposes of a  
14 case tried by a judge with a jury:  
15 (a) a reference in that subsection to the Federal Court is a  
16 reference to the judge; and  
17 (b) the relief that may be granted includes withdrawing the case  
18 in whole or in part from the jury and directing judgment to be  
19 entered for the defendant on such terms as to costs as the  
20 judge thinks appropriate.

# EXPOSURE DRAFT

## Part 9—Miscellaneous

### 166 Simplified outline of this Part

*[A simplified outline of this Part will be included here later.]*

### 167 AAT review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of any of the following decisions:

Reviewable decisions		
Item	Decision	Provision under which decision is made
1	to refuse an application for registration as a private health insurer	section 15
2	to grant an application, subject to terms and conditions, for registration as a private health insurer	section 15
3	to refuse an application for approval for a private health insurer to convert to being registered as a for profit insurer	section 20
4	to refuse to approve the crediting of an amount to a health benefits fund of a private health insurer	subparagraph 27(3)(b)(ii)
5	to refuse to approve a restructure of the health benefits funds of a private health insurer	section 32
6	to refuse to approve a transfer of the health benefits funds of one or more private health insurers	section 33
7	to refuse to approve a termination of the health benefits funds of a private health insurer	section 37

# EXPOSURE DRAFT

## Part 9 Miscellaneous

### Section 168

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#### Reviewable decisions

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Item	Decision	Provision under which decision is made
8	to make, vary or revoke a prudential standard referred to in paragraph 91(3)(c)	section 91
9	to give a direction under section 95 on a ground specified in paragraph 95(1)(a), (b) or (c)	section 95
10	to refuse to vary or revoke a direction that was given under section 95 on a ground specified in paragraph 95(1)(a), (b) or (c)	section 98
11	to give a direction to terminate the appointment of a person as appointed actuary	section 114
12	to refuse to consent to the variation or revocation of an undertaking given under section 152	section 152

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1 **168 Approvals, determinations etc. by APRA**

2 If:

- 3 (a) a provision of this Act refers to an approval given,  
4 determination made or other act or thing done by APRA; and  
5 (b) there is no other provision of this Act expressly authorising  
6 APRA to give the approval, make the determination or do the  
7 act or thing;

8 APRA is authorised to give the approval, make the determination  
9 or do the act or thing.

10 **169 Powers of Federal Court**

11 A provision of this Act conferring a power on the Federal Court  
12 does not affect any other power of the Court conferred by another  
13 provision of this Act or otherwise.

1 **170 Approved forms, and giving documents not required to be in**  
2 **approved forms**

3 *Approved forms*

- 4 (1) A notice, statement, application or other document under this Act  
5 is in the **approved form** if:  
6 (a) it is in the form approved in writing by APRA for that kind of  
7 notice, statement, application or other document; and  
8 (b) it contains the information that the form requires, and is  
9 accompanied by any other documentation that the form  
10 requires; and  
11 (c) if the form requires the form to be signed by a person or  
12 persons—it is signed by the person or persons in accordance  
13 with any applicable requirements specified in the form; and  
14 (d) the form is given in a manner that complies with any  
15 applicable requirements specified in the form.
- 16 (2) Requirements specified in a form referred to in paragraph (1)(c) or  
17 (d) may include requirements relating to the giving of forms by  
18 electronic means.

19 Note: For example, a form may include requirements relating to electronic  
20 signatures, or for the use of specified software.

- 21 (3) The approved forms must be publicly available on APRA’s  
22 website

23 *Other documents*

- 24 (4) APRA rules may impose requirements relating to the manner in  
25 which other documents (being documents that are not required to  
26 be in an approved form) are to be given under this Act.
- 27 (5) Requirements specified in APRA rules referred to in subsection (4)  
28 may include requirements relating to the giving of documents by  
29 electronic means.

30 Note: For example, APRA rules may include requirements relating to the  
31 use of specified software.

# EXPOSURE DRAFT

## Part 9 Miscellaneous

### Section 171

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1     **171 Delegation by Minister**

2                     The Minister may, in writing, delegate all or any of his or her  
3                     functions or powers under this Act to an SES employee, or an  
4                     acting SES employee, in the Department.

5     **172 APRA rules**

- 6                     (1) APRA may, by legislative instrument (and subject to  
7                     subsection (3)), make rules (*APRA rules*) prescribing matters:  
8                     (a) required or permitted by this Act to be prescribed by APRA  
9                     rules; or  
10                    (b) necessary or convenient to be prescribed for carrying out or  
11                    giving effect to this Act.
- 12                    (2) APRA rules may provide for APRA to exercise powers and  
13                    discretions under the rules.
- 14                    (3) To avoid doubt, APRA rules may not do the following:  
15                    (a) create an offence or civil penalty;  
16                    (b) provide powers of:  
17                    (i) arrest or detention; or  
18                    (ii) entry, search or seizure;  
19                    (c) impose a tax;  
20                    (d) set an amount to be appropriated from the Consolidated  
21                    Revenue Fund under an appropriation in this Act;  
22                    (e) amend this Act.
- 23                    (4) APRA may, under section 15 of the *Australian Prudential*  
24                    *Regulation Authority Act 1998*, delegate the power to make, vary  
25                    or revoke APRA rules, but only if the delegation is to:  
26                    (a) an APRA member (within the meaning of that Act); or  
27                    (b) an APRA staff member who is an executive general manager  
28                    or equivalent.
- 29