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Dear Sir/Madam

STRENGTHENING APRA'S CRISIS MANAGEMENT POWERS

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to respond to the proposals in the consultation paper "Strengthening APRA's Crisis Management Powers" (the Consultation Paper) released for public comment in September 2012. The Insurance Council appreciates the additional time that was allowed for consultation with its members and finalisation of this submission. We are also grateful for the meeting between the Insurance Council's APRA Working Group and Treasury and APRA officials on 24 January. The background information provided at the meeting helped considerably to better understand the Consultation Paper's proposals.

The Insurance Council acknowledges that the time is appropriate to consider Australia's prudential regime in light of both domestic and international experience of the strains put on the financial system by the Global Financial Crisis. Vigilance is always required to ensure that a regulatory regime operates as effectively and efficiently as possible in order to maximise the realisation of its public policy objectives.

Financial Services Sectors raise their own Specific Prudential Issues

However, in considering the need to strengthen APRA's Crisis Management Powers, the Insurance Council and its members urge Treasury to take full account of the differences between individual financial services sectors and the way they interact with the other component parts of the financial system. You would be aware of the work of the International Association of Insurance Supervisors (IAIS) which concluded that traditional insurance poses little risk to the stability of the financial system². Consequently, the general

The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. September 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$37.9 billion per annum and has total assets of \$115.7 billion. The industry employs approx 60,000 people and on average pays out about \$116 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

² IAIS, "Insurance and Financial Stability", November 2011

insurance sector does not require the same regulatory approach as that applied to banking which is heavily influenced by the goal of promoting systemic stability.

Similarly, it is widely recognised that, if despite a stringent regulatory regime, a general insurer gets into financial difficulty, it is not susceptible to sudden collapse as a bank would be. There is time to take recovery action and, if this is ultimately unsuccessful, to manage the insurer's orderly resolution. In contrast, bank failures occur much faster and have the scope to be more disorderly than insurance failures (there can't be a "run" on an insurance company). Furthermore, the failure of a general insurer has less severe and more delayed consequences for the wider economy than of a bank so the need to guard against failure is lower.

Effectiveness of Outcomes not Uniformity of Regulation is Key

The Insurance Council accepts there may be synergies in having a uniform prudential regime which is applied as widely as possible across the financial services industry. However, the important thing is that prudential regulation works equally effectively across sectors, not that all sectors comply with the same requirements even though they aren't warranted by the characteristics of the sector. Consequently, the Insurance Council's approach to the Consultation Paper's initiatives across financial services sectors and suggested harmonisation of individual industry Acts depends upon there being overall efficiency gains and no detriment to individual sectors.

The Need for Many Proposals is not Substantiated

The justification for many of the proposals in the Consultation Paper is weakened in that it is theoretical – a particular APRA power may be useful if a certain hypothetical situation arose. Rarely does the Consultation Paper point to a proven need for an expansion of powers. Similarly, a number of proposals would extend APRA's powers to matters within an organisation related to a regulated entity without there being a connection to APRA's prudential responsibilities. Presumably, in a free market economy such as Australia's, good governance would require there be such a connection to justify APRA's intrusion into the everyday management of an organisation.

The Consultation Paper proposals to broaden the scope of the crisis management framework to all parts of a Group are examples of where the extension of APRA's powers appears unwarranted. The general insurance industry is concerned about giving APRA greater powers without adequate safeguards to ensure they are used properly and the possible unintended and unwarranted consequences for non-Australian or non-insurance entities which are part of an insurance group.

The proposal to extend APRA's power to appoint a statutory or judicial manager to an authorised NOHC or subsidiary in cases where the insurer is in distress but the authorised NOHC or subsidiary remain sound would appear to go beyond what is required to provide for effective resolution of Groups in a crisis situation. This has implications for the liabilities and responsibilities of directors and officers of non-regulated entities.

It needs also to be seriously considered whether APRA had the expertise and resources to undertake action to be able to adequately assess the likely impact of their control of organisations which lie outside the regulated financial services industry.

International Precedents do not apply to General Insurance

Similarly, a case is often made for a proposal in the Consultation Paper because of developments in other jurisdictions. However, when the substance of what is happening internationally is looked at, often the regulatory initiatives are in the banking sector and Australia appears to be the only jurisdiction moving to apply the requirement to general insurance.

For example, the Consultation Paper cites the Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes) issued by the Financial Stability Board (FSB). The FSB has stated that the objective of the Key Attributes is “to resolve any financial firm that could be systemically significant or critical in the event of failure, irrespective of its size, the nature of its business or its geographical reach, without severe systemic disruption and without exposing taxpayers to loss”³.

The FSB has also noted that “not all resolution powers and features of resolution regimes set out in the Key Attributes are relevant for all sectors”⁴. The Consultation Paper does not adequately take account of this objective and in general the proposals in the Paper seek to apply the full range of crisis resolution powers in essentially the same manner to all regulated entities (as defined in the Paper) without consideration of their systemic importance or differentiating features.

The Consultation Paper fails to recognise that the regulatory initiatives being pursued in other jurisdictions are designed to take account of the systemic importance of financial institutions and the differences in the nature of financial institutions:

- USA – Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act³ provides for certain criteria to be met before the relevant authority may be appointed as receiver to a financial firm (including banks and insurers) and the relevant liquidation or insolvency laws may be applied. These criteria include assessment and determination of, amongst other things, whether there would be serious adverse effects on financial stability;
- European Union (EU) – the proposed recovery and resolution framework in the EU applies in principle to all banks irrespective of their size and complexity on the basis that the systemic importance of a bank failure cannot be determined with full certainty in advance. However, a separate consultation is underway in relation to non-bank financial institutions and in respect of insurers is focused primarily on those that are systemically relevant in recognition that insurers tend generally to create fewer risks for the stability of the financial system than banks⁵; and
- United Kingdom (UK) – the Banking Act 2009 provides a Special Resolution Regime for banks. However a separate consultation is underway in relation to other financial institutions and in respect of insurers considers the possibility of a framework based on a “public interest condition” (involving the assessment of the likely systemic consequences of an insurer failure) where if the public interest test were met, stabilisation tools would be available and if not, a modified insolvency procedure would be used⁷. The consultation

³ FSB, Resolution of Systemically Important Financial Institutions Progress Report, 1 November 2012. The scope of the Key Attributes also refers to “systemically significant or critical” financial institutions.

⁴ Op.cit.

⁵ European Commission, Consultation on a possible recovery and resolution framework for financial institutions other than banks, 5 October 2012.

also notes that the Government does not have a firm view on the appropriateness of introducing a comprehensive resolution regime for insurers to respond to systemic risk.⁶

International Issues

As noted above, the Consultation Paper seeks to broaden the scope of the crisis management framework to all parts of a group, in particular subsidiaries of an authorised NOHC and/or insurer. However, the Paper does not address cross-border issues in this context, although it does recognise that there are limits to the control APRA can exert over cross-border groups.

The Insurance Council is generally unconvinced that APRA needs to have powers over all subsidiaries in order to achieve effective group supervision. However, if there is a case to be made for this, the Insurance Council considers that APRA's powers should be limited to entities domiciled within Australia and that separate arrangements should be in place to address cross-border co-operation and coordination on crisis management consistent with the Key Attributes and the IAIS's Insurance Core Principle 26. This is essential to avoid regulatory duplication and confusion.

The Competitive Position of Australian Insurers should not be Impeded

While general insurers agree that it is important to address any gaps and deficiencies in APRA's crisis resolution powers and to align these powers more closely with international principles and practice, the Insurance Council submits that it is necessary to ensure that Australian regulators do not impose significant regulatory burden and cost on Australian insurers that undermines international competitiveness. The Australian prudential regime should balance the objective of promoting financial safety with the need to minimise the adverse effects on efficiency, and competition.

Relationship with Other Regulatory Work

The Insurance Council is aware of the APRA view that its current consultation on conglomerate supervision does not impinge of the proposals raised in the Consultation Paper. However, the Insurance Council recommends careful consideration as to how the two pieces of regulation mesh together in practice.

Consequences of Business Transfers

Members advise that reinsurance arrangements are often predicated on the direct insurer maintaining a particular corporate structure. Therefore, careful consideration needs to be given to whether APRA directed changes in the structure of a corporate group or ownership of group entities will have on the regulated entity's reinsurance arrangements. A similar issue may arise for debt agreements.

Need to consider Interaction with State Legislation

Consistent with long standing Insurance Council policy, our submission to Treasury of 17 December 2008 on the Financial Claims Scheme legislation argued that, as a priority, the FCS should be extended to also operate in relation to State mandated insurance. (This was also a point which the Insurance Council made last year during the Post Implementation Review of the FCS.) The Insurance Council has similar concerns with the current Consultation Paper proposals. There is no provision made for the potential need to deal with those parts of a troubled general insurer which provide State mandated insurance. The

⁶ HM Treasury, Financial sector resolution: broadening the regime, 1 August 2012

Insurance Council submits that this possibility needs to be thoroughly considered in order to avoid ad hoc solutions being hastily sought in the event that such an eventuality occurs.

If you require further information in relation to this submission, please contact Mr John Anning, Insurance Council's General Manager Policy – Regulation Directorate at janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO

STRENGTHENING APRA'S CRISIS MANAGEMENT POWERS: INSURANCE COUNCIL POSITIONS	
PART A — CRISIS RESOLUTION	
1. EFFECTIVE RESOLUTION OF GROUPS	
1.1 Broadening the scope for the resolution of groups	
1.1.1 Control over non-regulated entities in a group	
Option A: Power to appoint a statutory or judicial manager to an authorised NOHC and other companies in the group.	The ICA is unconvinced that APRA requires this proposed power in addition to existing tools that can be applied in general insurance. Given the manner in which a general insurer begins to fail, the risk of delay is not a material factor and does not support the proposal. The proposal is even more unjustified to the extent that it applies to a NOHC and other group companies that are financially sound.
Option B: Amend the Corporations Act 2001 to ensure that a liquidator or receiver of a company must co-operate with APRA.	This could be supported provided the directions that APRA can give a liquidator or receiver have safeguards against potential abuse – for example the entity provides essential services to the regulated entity; any actions taken would need to consider fair value; and funds of the NOHC or subsidiary are not used to recapitalise the general insurer without the agreement of the NOHC's shareholders.
Option C: Enhance and strengthen APRA's direction making powers over NOHCs and related entities.	This could be supported with the same safeguards against abuse as suggested above.
Option D: Combination of Options A to C.	Given the ICA's opposition to Option A, the ICA would limit its support to a combination of Options B and C.
1.1.2 Management of insurers in a crisis	
	Given the differences between an insurer and bank in trouble, the ICA is unconvinced that there is a need to provide for statutory management of an insurer. A court should be able to respond with a sufficient speed in relation to matters of judicial management. If a decision is taken to provide for statutory management, the Insurance Council urges that safeguards are put in place to ensure it is only triggered in the circumstances cited on page 19 of the Consultation Paper.
1.2 Clawback of capital transfers from regulated entities	The ICA does not oppose the proposal but remains unconvinced of the effectiveness of a temporary stay of the clawback provisions.
2. ENHANCING APRA'S DIRECTION POWERS — SCOPE AND EFFICACY	
2.1 Effective enforcement and resolution powers	
2.1.1 Clarifying directions powers	The ICA does not agree with the proposal as explained in the Consultation Paper that APRA's "catch-all" directions power should extend to issues that have no connection to APRA's responsibility for financial system stability. An appropriate safeguard tying use of the catch all directions power to prudential issues would make the proposal more acceptable.
2.1.2 Protection from liability when complying with an APRA direction	The ICA supports this proposal.
2.1.3 Suspending continuous disclosure requirements	Timely disclosure of information that is material is critical for maintaining confidence in securities markets. ICA is therefore concerned at the possible consequences of the proposal to allow APRA to direct a regulated entity under its authority not to disclose material information to the ASX and the market overriding the entity's legal duty and obligation to do so under the <i>Corporations Act 2001</i> , and the ASX Listing Rules. The practicalities of observing this direction where an entity operates in more than one country need to be carefully worked through. It is not clear from the Consultation

	Paper whether the proposal is intended to apply to non Australian parts of an entity's operations but the Insurance Council considers that this would be impractical.
2.1.4 Directions on pre-positioning for resolution	The extent of what would be seen as "pre-positioning" for resolution is unclear. The ICA disagrees with the proposal because it would give APRA unwarranted power. In line with previous comments, the establishment of appropriate safeguards tying the use of additional powers to APRA's prudential responsibilities would make the proposal more acceptable.
2.2 Effective powers to direct a transfer of business from a regulated entity	
2.2.1 Widen the scope of application of the Business Transfer Act to related entities of general insurers and life companies	The ICA disagrees with this proposal because it doubts that APRA has the commercial judgement to make better, more informed decisions than the insurer's Board about the placement of related entities. Careful consideration needs to be given to the impact, if any, of proposed transfers on reinsurance and sub debt arrangements.
2.2.2 Remove the requirement in the Business Transfer Act that complementary State or Territory legislation be in place	The ICA can agree to this proposal.
2.3 New direction powers for superannuation	
2.3.1 Potential new direction triggers	Not relevant to general insurance
2.3.2 Contents of a direction	Not relevant to general insurance
2.3.3 Breach of a direction	Not relevant to general insurance
2.4 Other proposed technical amendments to direction-making provisions	Not relevant to general insurance
3. AUSTRALIAN BRANCHES OF FOREIGN ENTITIES	
3.1 Providing APRA with more powers in relation to foreign branches	
3.1.1 Appointing a statutory manager to the Australian business of a foreign branch	Consistent with our response to 1.1.2, the ICA does not see the need to apply the statutory management regime to general insurance
3.1.2 Enable APRA to apply to the Court for the winding up of the Australian business of a foreign ADI	Not relevant to general insurance.
3.1.3 Enable APRA to revoke the authorisation of a foreign-regulated entity if the foreign regulated entity's authorisation is revoked by its home regulator	The Insurance Council supports this proposal.
3.2 Extending APRA's direction powers	
3.2.1 Harmonising the power to direct that a foreign branch not transfer assets out of Australia across the industry Acts	The Insurance Council can agree to this proposal.
3.2.2 Directing a compulsory transfer of business to or	The ICA considers that APRA's ability to require the transfer of an insurance business be tightly limited to when both the head office

from a foreign branch	and the branch of the financial institution are in financial difficulties. In all other situations, the power should be restricted to the Federal Court.
4. ENHANCING THE STATUTORY MANAGEMENT AND JUDICIAL MANAGEMENT LEGISLATIVE FRAMEWORKS	
4.1 Appointing a statutory or judicial manager	
4.1.1 Broaden the grounds for appointing a statutory manager to enable earlier appointment	Not relevant to general insurance.
4.1.2 Enable a statutory or judicial manager to be appointed to a regulated entity if an authorised NOHC is placed into external administration	The ICA can agree that appointment of a judicial manager can be triggered where a general insurer's authorised NOHC comes under external administration.
4.1.3 Broaden the grounds to appoint a judicial manager to an insurer	Given that the failure of a general insurer does not raise issues of financial system stability, the ICA does not see the need for the proposed change.
4.1.4 Enable a statutory manager to be appointed to a bridge bank or bridge insurer	Not relevant to general insurance.
4.1.5 Clarify that the appointment of a statutory/judicial manager (or a compulsory transfer of business) does not enable a party to a contract with a regulated entity to access security/collateral lodged under the contract	The ICA agrees with the proposal in so far as it relates to judicial management.
4.1.6 Clarify the effect the appointment of a statutory manager or judicial manager has on a deed of company arrangement	The ICA agrees with the proposal in so far as it relates to judicial management.
4.2 Moratorium provisions	
4.2.1 Widen the moratorium provisions applicable where a statutory and judicial manager is appointed	The ICA supports the proposal.
4.3 Powers and immunity of statutory and judicial managers	
4.3.1 Ensure that a statutory manager's ability to manage an ADI's business is not compromised by the priority provision in the Banking Act	Not relevant to general insurance.
4.3.2 Statutory immunity for statutory and judicial managers	The ICA supports the proposal.
4.4 Removing statutory managers	
4.4.1 Enable APRA to terminate its control of an ADI or to remove a statutory manager	Not relevant to general insurance.

4.4.2 Replacement of a statutory manager	Not relevant to general insurance.
4.5 Obtaining information from entities under statutory or judicial management	
4.5.1 Require directors to submit a report to statutory or judicial managers	The ICA supports the proposal provided there is clarity as to what the required report is to cover and appropriate protection from self incrimination.
4.5.2 Power to obtain information under judicial management	The ICA supports the proposal.
4.6 Minor and technical amendments	
	The ICA supports the proposed amendments.
5. POWERS IN RELATION TO WINDING UP AND EXTERNAL ADMINISTRATION OF REGULATED ENTITIES	
5.1 Clarifying the winding up regime under the industry Acts and Corporations Act	
5.1.1 Clarifying provisions in the industry Acts regarding the winding up of regulated entities	The ICA can agree to the proposal in order to remove uncertainty.
5.1.2 Clarifying that voidable transactions are applicable where a winding up order has been made under an industry Act	The ICA agrees to the proposal.
5.1.3 Specifying the relation-back day	The ICA agrees to the proposal.
5.2 Expanding the scope of the winding up and external administration provisions in the industry Acts	
5.2.1 Ensuring that APRA's existing powers in the winding up of a regulated entity extend to where a provisional liquidator is appointed to the regulated entity	The ICA agrees to the proposal.
5.2.2 APRA to apply for the winding up of an ADI without the ADI having first been placed in statutory management	Not relevant to general insurance.
5.2.3 Providing APRA with notice of proposed applications for external administration	The ICA agrees to the proposal.
5.2.4 Harmonising the industry Acts on APRA's involvement in the external administration of regulated entities	The ICA agrees to the proposal.
5.2.5 Ensuring that a judicial manager may be appointed to an insolvent insurer	The ICA agrees to the proposal.
5.3 Clarifying circumstances surrounding 'courses of action' for	The ICA can agree to the proposed amendments.

insurers under judicial management	
6. THE FINANCIAL CLAIMS SCHEME	
6.1 Proposed enhancements to the FCS framework for both ADIs and general insurers	
6.1.1 Automatic declaration of the FCS	The ICA is supportive in principle of automatic declaration but would appreciate explanation of why the trigger is application to a Court for judicial management rather than granting of the application.
6.1.2 Enabling the FCS to be used to facilitate a transfer of insurance business from a failed general insurer where this is more cost-efficient than effecting a payout to claimants	The ICA agrees to the proposal.
6.1.3 Enabling APRA to obtain information from third parties in relation to the FCS	The ICA agrees to the proposal.
6.1.4 Ensuring certainty of payment of FCS entitlements made by APRA	The ICA agrees to the proposal.
6.2 Proposed enhancements specific to the ADI FCS framework	
6.2.1 Enabling regulations to be prescribed for refining the definition of 'net credit balance' to suit particular circumstances	Not relevant to general insurance.
6.2.2 Enabling the suspension of FCS payments in respect of accounts that are the subject of a suspension, injunction or freezing order pending a determination is appropriate	Not relevant to general insurance.
6.3 Proposed enhancements specific to the general insurance FCS framework	
6.3.1 Ensuring that the liquidator of a general insurer in respect of which the FCS is declared provides reasonable assistance to APRA in administering the FCS	The ICA agrees to the proposal.
6.3.2 Ensuring the effective payout of FCS entitlements to third party claimants of a policyholder of a failed general insurer where the policyholder is in liquidation	The ICA agrees to the proposal.
6.3.3 Enabling APRA to make interim payments to claimants under the FCS	The ICA agrees to the proposal.
6.3.4 Extending the interim period of notional insurance coverage to 90 days	Extending the notional period of insurance coverage may result in increased pay outs and so greater eventual industry reimbursement of Government. The ICA would appreciate an example of where a period of 90 days may be necessary. Providing an unnecessary extension of notional coverage may hinder the move to alternative cover.
6.3.5 Clarifying that APRA	The ICA would see the same claim settlement requirements applying

need not make separate decisions in relation to claim validity/quantum and claimant eligibility in every case of a claim made under the FCS	under the FCS as would be in place with a commercial insurer. The key consideration is that the policyholder should be no worse off.
6.3.6 Clarifying that APRA may do various things in determining a claim under the FCS	The ICA agrees to the proposal.
6.4 Minor drafting amendments to the Banking Act and Insurance Act in respect of the FCS	
	The ICA can agree to the proposed amendments.
7. FINANCIAL MARKET INFRASTRUCTURE	
7.1 Statutory management regime, external administration and insolvency	
7.1.1 Establishing a statutory management regime and extending related direction powers for FMIs	Not relevant to general insurance.
7.1.2 Extending the proposals relating to foreign branches to FMIs	Not relevant to general insurance.
7.1.3 Cross-border Insolvency	Not relevant to general insurance.
7.1.4 Enhancing the statutory management regime	Not relevant to general insurance.
7.1.5 External administration and harmonisation	Not relevant to general insurance.
7.2 Directions powers	
7.2.1 Extending the proposed direction powers to FMIs	Not relevant to general insurance.
7.2.2 Extend the application of the Business Transfer Act to FMIs	Not relevant to general insurance.
PART B — SIMPLIFICATION AND STREAMLINING	
8. SIMPLIFICATION AND STREAMLINING OF ACTS ADMINISTERED BY APRA	
8.1 Streamlining of authorisation provisions of the industry Acts	
8.1.1 Enabling APRA to require a NOHC of a regulated entity to be authorised	The ICA opposes this proposal. It is unnecessary in general insurance and potentially would require the restructuring of a simple group. An example is a medical indemnity insurer that has a mutual at its head. There would be considerable costs and little gain in terms of regulatory efficiency if the mutual was required to set up an authorised NOHC. The proposal would be more acceptable if there were a safeguard under either of the options proposed that it be made explicit when APRA could exercise its powers so that insurance groups were aware of what issues /concerns might cause them to be required to restructure or on what basis they could seek an exemption.
8.1.2 Application process for authorisation	The ICA can agree to the proposed amendments.
8.1.3 Provisions to impose, vary and revoke conditions of authorisation	Doesn't require change to general insurance regulation.
8.1.4 Revoking an authorisation	The ICA can agree to the proposed amendments.

8.1.5 Enabling APRA to keep and publish a register of authorised entities	The ICA can agree to the proposed amendments.
8.1.6 Documents to be supplied to APRA in application for authorisation and changes to such documents after authorisation	The ICA can agree to the proposed amendments.
8.1.7 Scope of business requiring authorisation in Australia	Doesn't require change to general insurance regulation.
8.1.8 Consequences of carrying on a regulated business without authorisation	Doesn't require change to general insurance regulation.
8.1.9 Registration of life companies	Doesn't require change to general insurance regulation.
8.2 Simplification of provisions relating to obtaining information and investigation	
8.2.1 Removal of 'show cause' notice in the Insurance Act and Life Insurance Act	As previously explained, given that general insurers do not suddenly collapse without warning, the ICA does not see that time is so critical as to justify removing the "show cause" notice requirement
8.2.2 Modification to grounds for conducting an investigation	The ICA is concerned by the proposal in relation to deterioration of the financial condition of the regulated entity. There may be a material deterioration but the financial condition may still be satisfactory. There should be a threshold for deterioration the breaching of which would be a ground for an investigation.
8.2.3 Rationalise duplication of investigation and information-obtaining powers under the Banking Act	Doesn't require change to general insurance regulation.
8.2.4 Enabling APRA itself to investigate an ADI, an authorised NOHC and a subsidiary	Doesn't require change to general insurance regulation.
8.2.5 Extending the ability for APRA to appoint a person to investigate a life insurance company, its registered NOHC or a subsidiary	Doesn't require change to general insurance regulation.
8.2.6 Provide an appointed investigator with the power to conduct an examination of persons relevant to its investigation	Doesn't require change to general insurance regulation.
8.2.7 Persons not to disclose information obtained during an investigation	The proposed direction not to disclose information obtained during an investigation must not conflict with obligations that the person may have to bring such information to the attention of others.
8.2.8 Persons APRA may seek assistance from during investigations	The ICA would appreciate an explanation of why certain categories were excluded in the first place from the definition of 'prescribed persons' under the Insurance Act.
8.2.9 APRA may investigate and obtain information in respect of group matters	Consistent with concerns previously expressed about the unnecessary extension of APRA's powers, the ICA submits that there should be some linkage between its prudential responsibilities and APRA's ability to investigate and obtain information in respect of group matters.
8.2.10 Simplify	Doesn't require change to general insurance regulation.

information-obtaining powers	
8.2.11 Investigate the unauthorised carrying on of regulated business	Doesn't require change to general insurance regulation.
8.2.12 Requirements regarding investigation reports	ICA members are concerned that under the proposal, APRA could discontinue an investigation and decide not to prepare a report. This would deprive the regulated entity concerned of an opportunity to understand what APRA had found and its reasons for discontinuation.
8.2.13 Strengthening of actuarial investigation powers	The ICA could support some tightening of the timing provisions. For example, the insurer could have seven days to appoint an APRA approved actuary. There may be merit in exploring the potential for the actuary to be appointed by the Institute of actuaries or the role undertaken by the Government Actuary.
8.2.14 Requirement to notify APRA where prudential requirements are breached	To 'immediately' inform is an onerous obligation. It should apply in relation to breaches that raise material concerns about the regulated entity's prudential strength.
8.2.15 Enhance the application of the whistleblower protection provisions	The ICA agrees to the proposal.
8.2.16 Ensure that the whistleblower protection provisions apply to former employees, directors, etc	The ICA agrees to the proposal.
8.3 Enhancement of data collection and publication provisions	
8.3.1 Broaden the definition of 'regulated entity' under the FSCODA to include subsidiaries of registered life companies and NOHCs	Doesn't require change to general insurance regulation.
8.3.2 Provide that a NOHC is not a registrable corporation under the FSCODA	The ICA agrees to the proposal.
8.3.3 Redefine the term 'registrable corporations' under the FSCODA	From the perspective of effective regulation, the ICA cannot see the benefit of defining 'registrable corporations' in regulation rather than in FSCODA.
8.3.4 Consequences of late, incorrect, incomplete or misleading data submissions	The ICA could consider some shortening of the time period for the correction of data but the proposed four day period is inadequate. Also, it would be unnecessarily harsh to make submission of incorrect data an offence in all cases. There seems to be little point in punishing inadvertent errors.
8.3.5 Clarify that the FSCODA does not apply to a discretionary mutual fund established or controlled under state legislation	Doesn't require change to general insurance regulation.
8.3.6 Harmonise which auditors and actuaries APRA may provide protected documents to	The ICA agrees to the proposal.
8.3.7 Broaden the public disclosure of information by the institutions themselves or by APRA	The proposal is very broad and does not specify limits to APRA's ability to require disclosure or to have a nexus with its prudential responsibilities.
8.4 Introducing independent experts and Streamlining provisions on auditors and actuaries	
8.4.1 Make it an offence to mislead actuaries	The ICA can support the proposal in principle. However, it requires clarification that the offence will relate to deliberately misleading an

	actuary. Also, it needs to make allowance for the fact that, without constituting undue coercion, vigorous discussion can take place between a regulated entity and an actuary on particular issues.
8.4.2 Auditors and actuaries providing information to APRA and regulated entities to treat this information as confidential	The ICA is concerned that this proposal, as currently framed, could put auditors and actuaries in untenable positions by requiring them to treat as confidential information that they should make known to the regulated entity.
8.4.3 Streamline provisions on roles, duties and functions of auditors and actuaries	The ICA can agree to the proposal.
8.4.4 APRA to determine the appointment, termination and functions and duties of auditors and actuaries in its standards	The ICA can agree to the proposal.
8.4.5 Auditors and actuaries to notify APRA or regulated entity (or its related entities) of certain matters	The ICA can agree to the proposal.
8.4.6 Auditor and actuary provisions to apply to authorised NOHCs and subsidiaries	The ICA does not see the need for the auditor and actuary provisions to apply to subsidiaries of an authorised NOHC that are not themselves authorised.
8.4.7 Streamline the protection from liability provisions in the industry Acts	The ICA can agree to the proposal.
8.4.8 Appointment of independent experts	The proposal is very broad and the ICA is concerned that it may impose a significant expense on an insurer (particularly onerous for the smaller insurers) without a substantial prudential justification.
8.5 Refinement of the scope of the prudential standards	
8.5.1 Refinement and simplification of the definition of 'prudential matters'	The ICA is concerned that the broadened definition of "prudential matters" lacks sufficient connection to APRA's responsibilities and may dilute its focus. For example <ul style="list-style-type: none"> a. Re "protection of policyholders", this has the capacity to permit APRA to intrude into areas covered by the Corporations Act. By broadening the definition, duplication or a clash could be created between the financial services provisions of the Corporations Act and ASIC Regulatory Guides and APRA Prudential Standards? b. Broadening supervision to groups generally and also to specified members of group, especially in part (b) of the definition, spreads APRA standards beyond any link to financial services. Consequently, a retailer or miner for example could be impacted with APRA unable to judge whether they are conducting their affairs with appropriate professional skills.
8.5.2 Simplify which entities must comply with the prudential standards	Doesn't require change to general insurance regulation.
8.6 Enhance APRA's ability to disqualify individuals from acting as responsible persons	
8.6.1 Streamlining the definition of 'disqualified person'	The ICA can agree to the proposal.

8.6.2 Court to consider prudential standards in disqualification proceedings	The ICA can agree to the proposal.
8.6.3 Extend disqualification in one regulated industry to disqualification in other regulated industries	The ICA supports Option A provided the suggested safeguard is available.
8.7 Other proposals	
8.7.1 Enhance and simplify the record-keeping provisions	The ICA can agree to the proposal.
8.7.2 Harmonise provisions enabling APRA to apply for a judicial direction to comply	The ICA can agree to the proposal.
8.7.3 Insurance Act and Life Insurance Act to have effect despite the Corporations Act	The ICA can agree to the proposal.
8.7.4 Provide APRA with the right to intervene in Court proceedings	The ICA can agree to the proposal.
8.7.5 Service of documents	The ICA can agree to the proposal.
8.7.6 Facilitating cooperation by APRA with foreign regulators on on-site reviews and information collection	The ICA can agree in-principle to the proposal but the confidentiality of information gathered by or to be shared with a foreign regulator must be strongly protected.
8.7.7 Minor drafting amendments to the industry Acts	The ICA can agree to the proposed Insurance Act amendments.
PART C — MISCELLANEOUS AND TECHNICAL AMENDMENTS	
9. PROPOSALS SPECIFIC TO ACTS SUPERVISED BY APRA	
9.1 Banking Act	
9.1.1 Enabling APRA to obtain information from, and investigate representative offices of, overseas banks	Not relevant to general insurance.
9.2 Insurance Act	
9.2.1 Clarifying the role and responsibilities of an agent in Australia of a foreign general insurer	The ICA can agree to the proposal.
9.2.2 Amending the definition of 'subsidiary' under the Insurance Act to align with the corresponding definition under the Banking Act and Life Insurance Act	Support, ICA requested this some time ago.
9.2.3 Amending the definition of 'pre-authorisation liability' to ensure it extends to liabilities assumed by a general insurer under certain circumstances	The ICA can agree to the proposal.
9.2.4 Clarify the meaning of assets in Australia as regards foreign reinsurance	The proposal needs work to remove a number of ambiguities. For example, whether reinsurance recoverables under contracts with Lloyd's underwriters will be assets in Australia and will be fully exempt

recoverables	<p>where there is:</p> <ul style="list-style-type: none"> a. a contract not requiring payment in Australia; b. recoverables paid to brokers in the London market. <p>The last sentence in the second dot point makes it unclear (in the case of a non-Lloyds reinsurer) whether a payment to a broker outside Australia which is then paid by the broker to the insurer in Australia would be considered a payment in Australia.</p>
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9.3 Life Insurance Act

9.3.1 Streamlining prudential regulation by moving technical material from the Life Insurance Act and its regulations to prudential standards	Not relevant to general insurance.
9.3.2 Amending the Life Insurance Act to facilitate the implementation of changes arising from the LAGIC project	Not relevant to general insurance.
9.3.3 Amending paragraphs 16B(2)(a) and 16B(2)(b) of the Life Insurance Act in regard to the benefit fund rules of a friendly society	Not relevant to general insurance.
9.3.4 Rationalising the use of Part 9 of the Life Insurance Act relating to transfers and amalgamations of life insurance business with Part 3 of the Business Transfer Act as it relates to voluntary transfers of life insurance business	Not relevant to general insurance
9.3.5 Enabling APRA to vary and revoke a declaration made under section 12A and 12B of the Life Insurance Act that certain business is to be treated as life insurance business	Not relevant to general insurance.
9.3.6 Amending section 234 of the Life Insurance Act to provide that a life company may in certain circumstances be prohibited from carrying on general insurance business	Not relevant to general insurance.
9.3.7 Establish a custodian requirement and clarify other requirements for eligible foreign life insurance companies	Not relevant to general insurance.

9.4 Superannuation Industry (Supervision) Act

9.4.1 For APRA to be given discretionary power to appoint an acting trustee in circumstances where APRA	Not relevant to general insurance.
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has taken all reasonable steps to identify or locate a trustee	
9.4.2 To treat Limited Liability Partnerships consistently with body corporates in relation to investment managers	Not relevant to general insurance.
9.4.3 To extend APRA's powers so that it can investigate any contravention as far as it relates to a superannuation interest, superannuation entity or an RSE licensee	Not relevant to general insurance.
9.4.4 To expand APRA's disqualification powers under section 126H of the SIS Act	Not relevant to general insurance.
9.5 Financial Sector (Shareholdings) Act 1998 (FSSA)	
9.5.1 Narrowing the requirement for approval under the FSSA	The ICA can agree to the proposal.
9.6 Minor drafting amendments to the industry Acts and other APRA-administered Acts	The ICA can agree to the proposed Insurance Act amendments.