

## APPENDIX 3.3: SUMMARY OF APRA'S MANAGING FAILURE POWERS

Power	Authorised deposit-taking institutions (ADIs) <sup>1</sup>	Life insurance <sup>2</sup>	General insurance <sup>3</sup>	Superannuation
Directions	<p>APRA has a broad range of directions powers at its disposal aimed at ensuring compliance with prudential standards and protecting the interests of depositors.</p> <p>The directions powers allow APRA to exert control over the company with the objective of returning it to a sound prudential position.</p>	<p>APRA has a broad range of directions powers at its disposal aimed at ensuring compliance with prudential standards and protecting the interests of policyholders.</p> <p>The directions powers allow APRA to exert control over the company with the objective of returning it to a sound prudential position.</p>	<p>APRA has a more limited range of directions powers at its disposal aimed at ensuring compliance with prudential standards and protecting the interests of policyholders.</p> <p>The directions powers allow APRA to take action in relation to breaches by insurers.</p>	<p>APRA may suspend or remove a trustee and, if it does so, it must appoint an acting trustee.</p> <p>APRA may direct an acting trustee.</p>
External administration	<p>APRA or a body under its control may, in certain circumstances, assume control of an ADI.</p>	<p>APRA may apply to the Court to appoint a Judicial Manager to assume control of a life insurer. It remains subject to the control of the Court. APRA may apply to the Court for instructions to be given to the Judicial Manager.</p>	<p>APRA may apply to the Court for directions to be given to a liquidator.</p>	<p>APRA may suspend or remove a trustee and, if it does so, it must appoint an acting trustee.</p> <p>APRA may direct an acting trustee.</p>
Transfer of business	<p>Compulsory transfer of business power is available under the <i>Financial Sector (Transfers of Business) Act 1999</i>.</p>	<p>Compulsory transfer of business power is available under the <i>Financial Sector (Transfers of Business) Act 1999</i>.</p>	<p>APRA may direct a company to assign its liabilities to another company if APRA is revoking an authority.</p>	<p>APRA may formulate a scheme leading to the winding-up or dissolution of a superannuation fund.</p>

### Summary of APRA's managing failure powers (continued)

Power	Authorised deposit-taking institutions (ADIs) <sup>1</sup>	Life insurance <sup>2</sup>	General insurance <sup>3</sup>	Superannuation
Wind-up	<p>APRA may apply to the Federal Court for an order that an ADI be wound-up.</p> <p>The distribution of assets would be subject to the <i>Banking Act 1959</i> and the liquidator would be subject to direction by the Court.</p>	<p>APRA or the Judicial Manager may apply to the Court for an order that a life insurer be wound-up.</p> <p>The distribution of statutory fund assets would be subject to the <i>Life Insurance Act 1995</i> and the liquidator would be subject to direction by the Court.</p>	<p>APRA may apply to the Court for an order that a general insurer be wound-up.</p> <p>The distribution of assets would be subject to the <i>Insurance Act 1973</i> and the liquidator would be subject to direction by the Court.</p>	<p>APRA may formulate a scheme leading to the winding-up or dissolution of a superannuation fund.</p>

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### Notes

#### 1 Authorised Deposit-taking Institutions (ADIs)

- The *Banking Act 1959* (Section 13A) requires ADIs to inform Australia Prudential Regulation Authority (APRA) of distress and hold assets in Australia in excess of deposit liabilities in Australia.
- APRA has standing to determine a compulsory Transfer of Business.
- Only APRA has standing to act as a Statutory Manager or appoint an Administrator. APRA may direct an Administrator. Other parties may seek appointment of receivers should APRA not choose to act.
- If a Statutory Manager has been appointed, only APRA has standing to seek winding-up of an ADI which occurs under the *Corporations Act 2001*.

#### 2 Life Insurance

- The *Life Insurance Act 1995* requires life insurance companies (LICs) to maintain statutory funds, to maintain solvency, capital adequacy and management capital and restricts encumbrance of fund assets.
- APRA has standing to determine a compulsory Transfer of Business.
- APRA or the LIC (having provided notice to APRA) may seek Court appointment of a Judicial Manager. The Court may direct a Judicial Manager, and APRA may apply to Court for direction. The Court decides upon its orders upon the recommendation of the Judicial Manager.
- APRA (after investigation) and the Judicial Manager have standing to seek winding-up of a LIC which occurs under the *Corporations Act*.

#### 3 General Insurance

- The *Insurance Act 1973* requires insurance companies to hold assets in excess of liabilities.
- APRA must pre-approve a scheme for a voluntary Transfer of Business before Federal Court consideration. Other parties may seek appointment of receivers should APRA not choose to act.
- APRA may not seek appointment of an Official Manager, but may appoint an inspector and direct an insurance company.
- Section 562A of the *Corporations Act 2001* provides that the proceeds of reinsurance assets is available to policyholders above other priority claims.
- APRA has joint standing to seek winding-up of an insurance company under the *Corporations Act* (Section 462(3)) — on the grounds that an Inspector has been appointed or liabilities exceed assets.

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