

APPENDIX 3.4: SIMPLIFIED REPRESENTATION OF DEPOSITOR AND POLICYHOLDER PRIORITIES

Claimants ranked in order of priority					
Authorised deposit-taking institutions ¹		Life insurance ²		General insurance ³	
Claimants	Legislation	Claimants	Legislation	Claimants	Legislation
Deposit liabilities in Australia	Part 2 Division 2 — <i>Banking Act 1959</i>	Secured creditors		Secured creditors	
Secured creditors		Priority claims	Part 5.6 Division 6 — <i>Corporations Act 2001</i>	Priority Claims (including policyholders against reinsurance assets)	Part 5.6 Division 6 — <i>Corporations Act 2001</i>
Priority claims	Part 5.6 Division 6 — <i>Corporations Act 2001</i>	Policyholders	Part 8 Division 2 — <i>Life Insurance Act 1995</i>	Floating charges	
Floating charges		Floating charges		Australian Unsecured Creditors (including policyholders against other assets)	Subsection 116(3) — <i>Insurance Act 1973</i>
Unsecured creditors		Unsecured creditors		Foreign unsecured creditors	
Shareholders		Shareholders		Shareholders	

Study of Financial System Guarantees

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.