



Superannuation Industry (Supervision) Act 1993

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About this compilation

This compilation

This is a compilation of the *Superannuation Industry (Supervision) Act 1993* that shows the text of the law as amended and in force on 1 January 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision for the supervision of certain entities engaged in the superannuation industry, and for related purposes

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Superannuation Industry (Supervision) Act 1993*.

2 Commencement

- (1) Subject to this section, Parts 1, 2, 21, 27, 28, 29, 30, 31 and 32 commence on the day on which this Act receives the Royal Assent.
- (2) Part 1 (in so far as it relates to section 117) and section 117 are taken to have commenced on 21 October 1992.
- (3) Parts 18, 19, 20, 23 and 24 and section 342 commence on 1 July 1994.
- (4) The remaining provisions commence on 1 December 1993, but do not apply to a fund, scheme or trust in relation to a year of income of the fund, scheme or trust earlier than the 1994-95 year of income.

3 Object of Act

Supervision of certain superannuation entities

- (1) The main object of this Act is to make provision for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and for their supervision by APRA, ASIC and the Commissioner of Taxation.

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Basis for supervision

- (2) The basis for supervision is that those funds and trusts are subject to regulation under the Commonwealth's powers with respect to corporations or pensions (for example, because the trustee is a corporation). In return, the supervised funds and trusts may become eligible for concessional taxation treatment.

Whole industry not covered

- (3) The Act does not regulate other entities engaged in the superannuation industry.

4 Summary of provisions

The Act contains provisions dealing with the following matters:

Part No.	Matter dealt with
1	interpretation
2A	licensing of trustees and groups of individual trustees
2B	registrable superannuation entities
2C	MySuper
3	operating standards for funds and trusts
3A	Prudential standards concerning registrable superannuation entities
3B	superannuation data and payment standards for funds and employers
4	accounts, audit and reporting obligations for superannuation entities
5	notices about complying fund status
6	governing rules of funds and trusts
7	rules applying only to regulated superannuation funds
8	in-house asset rules applying to regulated superannuation funds

Section 4

Part No.	Matter dealt with
9	equal representation of employers and members in relation to employer-sponsored funds
10	rules applying only to approved deposit funds
11	rules applying only to pooled superannuation trusts
11A	General fees rules
12	statutory duties of trustees of superannuation entities
14	other provisions relating to funds and trusts
15	standards for trustees, custodians and investment managers of superannuation entities
16	actuaries and auditors of superannuation entities
17	suspension or removal of trustees of superannuation entities
18	amalgamation of funds
19	rules about dealing with superannuation interests in public offer entities
20	administrative directions and penalties for contraventions relating to self managed superannuation funds
21	civil and criminal consequences of serious breaches of the Act
22	infringement notices
23	financial assistance to funds that suffer loss as a result of fraud or theft
24	eligible rollover funds
24A	transitional provisions relating to pre-1 July 1995 automatic rollovers of benefits between funds
24B	the administration by APRA and the Commissioner of Taxation of superannuation funds with fewer than 5 members
25	monitoring and investigating superannuation entities
25A	tax file numbers
26	offences relating to statements and records
27	powers of courts
28	judicial and other proceedings under the Act
29	exemption and modification provisions

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Part No.	Matter dealt with
29A	protections in relation to information
30	miscellaneous provisions
32	additional transitional provisions relating to tax file numbers
33	additional transitional provisions relating to MySuper
34	additional transitional provisions relating to eligible rollover funds

6 General administration of Act

- (1) Subject to subsections (3) and (4):
- (a) APRA has the general administration of the following provisions, to the extent that administration of the provisions is not conferred on ASIC by paragraph (da) or the Commissioner of Taxation by paragraph (e), (ea), (fa), or (g):
 - (i) Parts 2A, 2B and 2C (other than subsection 29SAA(3) and sections 29QB and 29QC);
 - (ia) Part 3A;
 - (ib) Divisions 2 and 3 of Part 3B;
 - (ii) Parts 4 to 5;
 - (iii) section 60A;
 - (iv) Part 7 (other than sections 64A and 68A);
 - (v) Parts 8 to 11A (other than section 99F);
 - (vi) Part 12 (other than sections 101, 103 and 105);
 - (vii) Part 14 to 16;
 - (viii) Part 17;
 - (ix) Part 21;
 - (x) Parts 22 to 24A;
 - (xi) Division 3 of Part 25;
 - (xii) Part 25A;
 - (xiii) Part 32; and

- (b) APRA also has the general administration of Parts 3 and 6 (other than section 60A) and section 105 to the extent that that administration is not conferred on any of the following:
 - (i) the Chief Executive Medicare by paragraph (ba);
 - (ii) ASIC by paragraph (d);
 - (iii) the Commissioner of Taxation by paragraph (f) or (g);and
- (ba) the Chief Executive Medicare has the general administration of regulations made under Part 3 to the extent that the regulations relate to making determinations that an amount of benefits in a superannuation entity may be released on compassionate grounds; and
- (c) ASIC has the general administration of:
 - (ia) subsection 29SAA(3) and sections 29QB and 29QC;and
 - (i) sections 64A and 68A; and
 - (iia) section 99F; and
 - (ii) sections 101 and 103; and
 - (iii) Part 19;to the extent that administration is not conferred on the Commissioner of Taxation by paragraph (e); and
- (d) ASIC also has the general administration of Parts 3 and 6 (other than section 60A) and section 105 to the extent to which they relate to:
 - (i) the keeping of reports to members of, or beneficiaries in, funds; or
 - (ii) disclosure of information to members of, or beneficiaries in, funds; or
 - (iii) disclosure of information about funds (including disclosure of information to ASIC but not including disclosure of information to APRA); or
 - (iv) any other matter prescribed by the regulations for the purposes of this paragraph; and

Section 6

- (da) ASIC also has the general administration of Part 16 (other than Division 2 and section 128P) to the extent that it relates to auditors of self managed superannuation funds; and
- (e) the Commissioner of Taxation has the general administration of the following provisions to the extent that they relate to self managed superannuation funds:
 - (ia) Division 2 of Part 3B;
 - (i) Parts 4, 5, 7 (other than section 68A) and 8;
 - (ii) Part 12 (other than section 105);
 - (iii) Parts 13 and 14;
 - (iv) Part 15;
 - (v) Division 2 of Part 16 and section 128P;
 - (vi) Part 17 (other than section 140);
 - (vii) Parts 20, 21 and 24;
 - (viii) Divisions 2, 3, 4 and 5 of Part 25A; and
- (ea) the Commissioner of Taxation also has the general administration of Part 16 (other than section 128N) to the extent that:
 - (i) it relates to self managed superannuation funds; and
 - (ii) that administration is not conferred on ASIC by paragraph (da); and
- (f) the Commissioner of Taxation also has the general administration of Parts 3 and 6 (other than section 60A) and section 105:
 - (i) to the extent that they relate to self managed superannuation funds; and
 - (ia) to the extent that administration is not conferred on the Chief Executive Medicare by paragraph (ba); and
 - (ii) to the extent that administration is not conferred on ASIC by paragraph (d); and
- (fa) the Commissioner of Taxation has the general administration of:
 - (i) Division 1 of Part 3B; and
 - (ii) Division 2 of Part 3B, to the extent it relates to employers; and

- (iii) Division 2 of Part 3B, to the extent it relates to payments and information given to the Commissioner of Taxation; and
- (iv) Division 4 of Part 3B; and
- (g) the Commissioner of Taxation also has the general administration of:
 - (i) Division 3 of Part 3 (Portability forms); and
 - (ii) Division 1 of Part 25A, section 299NA, Division 3A of Part 25A and subsection 299U(2A) (about tax file numbers).

Note: An effect of a provision being administered by the Commissioner of Taxation (see paragraphs (e), (f) and (g)) is that people who acquire information under the provision are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) Powers and duties are also conferred by Parts 1, 25 (other than Division 3) and 26 to 28, 29 (other than section 332) and 30 on:
 - (a) APRA for the purposes of APRA's administration of the provisions it administers; and
 - (b) ASIC for the purposes of ASIC's administration of the provisions it administers.

Note: Generally neither APRA nor ASIC are referred to in these provisions, Regulator is used instead. See the definition of **Regulator** in section 10.

- (2AA) Despite paragraph (2)(b):
 - (a) powers and duties conferred on ASIC by section 255 are conferred only in relation to persons who are relevant persons in relation to superannuation entities; and
 - (b) powers and duties conferred on ASIC by section 256 are conferred only in relation to the affairs of superannuation entities.
- (2A) Powers and duties are also conferred by Parts 1, 25 (other than Division 3), 26 to 28, 29 (other than section 332) and 30 (other than section 342) on the Commissioner of Taxation for the

Section 6

purposes of the administration of the provisions he or she administers.

Note: Generally, the Commissioner of Taxation is not referred to in these provisions, **Regulator** is used instead.

(2AB) Despite subsection (2A), powers and duties conferred on the Commissioner of Taxation by Divisions 4 to 8 of Part 25 (other than section 285) are conferred only in relation to:

- (a) persons who are relevant persons in relation to superannuation entities; and
- (b) the affairs of superannuation entities.

(2AC) Nothing in subsection (2AB) limits the powers and duties conferred on the Commissioner of Taxation by Part 25 (as mentioned in subsection (2A)) in relation to contributing employers.

Note: The Commissioner of Taxation's powers and duties under Part 25 in relation to contributing employers are found in sections 255 and 256, with related provisions in Divisions 7, 8 and 9 of that Part.

(2B) Powers and duties are also conferred on APRA by section 332 for the purposes of the administration of provisions administered by APRA or by the Commissioner of Taxation.

(3) The Minister may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

(4) Despite subsection (1):

- (a) if an entity is not a self managed superannuation fund on the last day of a year of income, APRA has (subject to any later application of this subsection) the general administration of subsections 40(1) and (2), in relation to the entity, in respect of the following:
 - (i) the doing of anything after the end of that year of income, in relation to that year of income;
 - (ii) the doing of anything after the end of that year of income, in relation to any previous year of income; and

- (b) if an entity is a self managed superannuation fund on the last day of a year of income, the Commissioner of Taxation has (subject to any later application of this subsection) the general administration of subsections 40(1) and (2), in relation to the entity, in respect of the following:
 - (i) the doing of anything after the end of that year of income, in relation to that year of income;
 - (ii) the doing of anything after the end of that year of income, in relation any previous year of income; and
- (c) the following rules apply in relation to the general administration of subparagraphs 42(1AA)(b)(ii) and (c)(ii), subsection 42(1AC), subparagraphs 42A(3)(c)(ii) and (d)(ii) and subsection 42A(4):
 - (i) subject to subparagraph (ii), APRA has the general administration of those provisions;
 - (ii) if another person or body is specified in regulations under subsection 19(4) in respect of a class of superannuation funds, that person or body has the general administration of those provisions to the extent that they relate to funds belonging to that class.

7 Application of Act not to be excluded or modified

This Act applies to a superannuation entity despite any provision in the governing rules of the entity, including any provision that purports to substitute, or has the effect of substituting, the provisions of the law of a State or Territory or of a foreign country for all or any of the provisions of this Act.

8 Act extends to external Territories

This Act extends to all the external Territories.

9 Crown to be bound

- (1) This Act binds the Crown in all its capacities.

Section 9A

- (2) The Crown is not liable to be prosecuted for an offence against, or arising out of, this Act.

9A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Division 2—Interpretation

10 Definitions

- (1) In this Act, unless the contrary intention appears:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

accrued default amount, for a member of a regulated superannuation fund, has the meaning given by section 20B.

acquirable asset has the meaning given by section 67A.

activity fee has the meaning given by subsection 29V(7).

ADI (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) a State bank.

administration fee has the meaning given by subsection 29V(2).

adopted child, in relation to a person, means a person adopted by the first-mentioned person:

- (a) under the law of a State or Territory relating to the adoption of children; or
- (b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or Territory.

advice fee has the meaning given by subsection 29V(8).

amend, in relation to the governing rules of a superannuation entity, includes the insertion of a provision in, or the omission of a provision from, those rules.

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annuity includes a benefit provided by a life insurance company or a registered organisation, if the benefit is taken, under the regulations, to be an annuity for the purposes of this Act.

approved deposit fund means a fund that:

- (a) is an indefinitely continuing fund; and
- (b) is maintained by an RSE licensee that is a constitutional corporation; and
- (c) is maintained solely for approved purposes.

approved form has the meaning given by section 11A.

approved guarantee has the meaning given by section 11E.

approved purposes, in relation to a fund, means:

- (a) the purpose of receiving on deposit:
 - (i) amounts of roll-over superannuation benefits (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (ia) amounts of directed termination payments (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*); and
 - (ii) amounts paid under Part 24 of this Act; and
 - (iii) amounts paid under section 65 of the *Superannuation Guarantee (Administration) Act 1992*; and
- (b) the purpose of dealing with such amounts, in accordance with the rules of the fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the fund; and
- (c) subject to any inconsistent requirement in the standards from time to time applicable to the fund under section 32, the purpose of paying to beneficiaries, or to the legal personal representatives of beneficiaries, upon request, amounts equal to the beneficiary's interest in the fund; and
- (d) such other purposes (if any) as APRA approves in writing.

approved SMSF auditor means a person who is registered under section 128B, but does not include:

Section 10

- (a) a person for whom an order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, is in force under section 130F; or
- (b) a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D.

APRA means the Australian Prudential Regulation Authority.

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

ASIC means the Australian Securities and Investments Commission.

asset means any form of property and, to avoid doubt, includes money (whether Australian currency or currency of another country).

associate has the meaning given by section 12.

Australian court means:

- (a) the High Court; or
- (b) a court created by the Parliament; or
- (c) a court of a State or Territory.

Australian resident means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

authorised person means a person authorised by the Regulator under section 298A for the purposes of the provision in which the expression occurs.

beneficiary, in relation to a fund, scheme or trust, means a person (whether described in the governing rules as a member, a depositor or otherwise) who has a beneficial interest in the fund, scheme or trust and includes, in relation to a superannuation fund, a member of the fund despite the express references in this Act to members of such funds.

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books includes:

- (a) any record; or
- (b) any accounts or accounting records, however compiled, recorded or stored; or
- (c) a document.

buy-sell spread has the meaning given by subsection 29V(4).

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

child, in relation to a person, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the person; and
- (b) a child of the person's spouse; and
- (c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

choice product: A class of beneficial interest in a regulated superannuation fund is a **choice product** unless:

- (a) all the members of the fund who hold that class of beneficial interest in the fund are defined benefit members; or
- (b) that class of beneficial interest in the fund is a MySuper product.

civil penalty order means a declaration or order made under section 196.

civil penalty provision has the meaning given by section 193.

class, in relation to an RSE licensee, means (except in subsections 29E(7) and (8)) a class of RSE licence provided for under subsection 29B(2) or (3), or under regulations made for the purposes of subsection 29B(4).

Commissioner means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987*, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act.

connected entity, in relation to an RSE licensee of a registrable superannuation entity, means:

- (a) a subsidiary of the RSE licensee (where the RSE licensee is a body corporate); and
- (b) any other entity of a kind prescribed by the regulations.

constitutional corporation means a body corporate that is:

- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution).

contributing employer means an employer having obligations under Part 3B (about the superannuation data and payment regulations and standards).

corporate trustee, in relation to a fund, scheme or trust, means a body corporate that is a trustee of the fund, scheme or trust.

Corporations Law means the Corporations Law set out in the *Corporations Act 1989*.

court means any court, when exercising jurisdiction under this Act.

Court means the Federal Court of Australia or the Supreme Court of a State or a Territory.

custodian, in relation to a superannuation entity, means a person (other than a trustee of the entity) who, under a contract with a trustee or an investment manager of the entity, performs custodial functions in relation to any of the assets of the entity.

data and payment regulations and standards relating to RSAs has the same meaning as in the *Retirement Savings Accounts Act 1997*.

data processing device means any article or material (for example, a disc) from which information is capable of being reproduced with or without the aid of any other article or device.

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death benefit: see section 68AA.

deed includes an instrument having the effect of a deed.

defined benefit fund has (except in Division 3A of Part 8 and in Part 23) the meaning given by the regulations.

defined benefit member:

- (a) in the definition of **choice product** in this subsection, section 20B and Part 2C—has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*; and
- (b) in Division 3A of Part 8 and in Part 23—has the meaning given by section 83A; and
- (c) in any other provision of this Act—has the meaning given by the regulations;

subject to subsection (1A).

dependant, in relation to a person, includes the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship.

director, in relation to a body corporate, has the same meaning as in the *Corporations Act 2001*.

disclose, in relation to information, means give, reveal or communicate in any way.

education direction: see subsection 160(2).

eligible rollover fund: a regulated superannuation fund is an **eligible rollover fund** if an RSE licensee is authorised under section 242F to operate the fund as an eligible rollover fund.

eligible superannuation entity means a regulated superannuation fund or an approved deposit fund.

employee has the meaning given by section 15A.

employer has the meaning given by section 15A.

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employer representative, in relation to a group of trustees of a fund, a policy committee of a fund or the board of directors of a corporate trustee of a fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the employer or employers of the members of the fund; or
- (b) an organisation representing the interests of that employer or those employers.

employer-sponsor has the meaning given by subsection 16(1).

employer-sponsored fund has the meaning given by subsection 16(3).

enhanced director obligations means:

- (a) for MySuper products—the obligations imposed by:
 - (i) section 29VO; and
 - (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced director obligations for MySuper products; and
- (b) for eligible rollover funds—the obligations imposed by:
 - (i) section 242L; and
 - (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced director obligations for eligible rollover funds.

enhanced trustee obligations means:

- (a) for MySuper products—the obligations imposed by:
 - (i) covenants referred to in section 52, as enhanced by the obligations imposed under section 29VN; and
 - (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced trustee obligations for MySuper products; and
- (b) for eligible rollover funds—the obligations imposed by:
 - (i) covenants referred to in section 52, as enhanced by the obligations imposed under section 242K; and

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- (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced trustee obligations for eligible rollover funds.

entity means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a partnership;
- (d) a trust.

entry fee has the meaning given by subsection 99B(2).

excluded approved deposit fund means an approved deposit fund:

- (a) in which there is only one beneficiary; and
- (b) that satisfies such other conditions (if any) as are specified in the regulations.

excluded instalment trust, of a superannuation fund, means a trust:

- (a) that arises because a trustee or investment manager of the superannuation fund makes an investment under which a listed security (the **underlying security**) is held in trust until the purchase price of the underlying security is fully paid; and
- (b) where the underlying security, and property derived from the underlying security, is the only trust property; and
- (c) where an investment in the underlying security held in trust would not be an in-house asset of the superannuation fund.

executive officer, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body.

exempt public sector superannuation scheme means a public sector superannuation scheme that is specified in regulations made for the purposes of this definition.

exit fee has the meaning given by subsection 29V(6).

expert, in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter.

fees rules, in relation to MySuper products, means the rules in Division 5 of Part 2C.

financial product has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

financial product advice has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

financial services licensee has the meaning given by Chapter 7 of the *Corporations Act 2001*.

function includes duty.

general fees rules means the rules in Part 11A.

governing rules, in relation to a fund, scheme or trust, means:

- (a) any rules contained in a trust instrument, other document or legislation, or combination of them; or
- (b) any unwritten rules;

governing the establishment or operation of the fund, scheme or trust.

group of individual trustees means a group of trustees each of whom is an individual trustee.

group of trustees, in relation to a fund, scheme or trust, means a board, committee or other group of trustees of the fund, scheme or trust.

half-year means a period of 6 months ending on 30 June or 31 December.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

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independent director, in relation to a corporate trustee of a fund, means a director of the corporate trustee who:

- (a) is not a member of the fund; and
- (b) is neither an employer-sponsor of the fund nor an associate of such an employer-sponsor; and
- (c) is neither an employee of an employer-sponsor of the fund nor an employee of an associate of such an employer-sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more employer-sponsors of the fund.

Note: Subsection (2) sets out the circumstances in which a director of a corporate trustee of a fund is not taken to be an associate of an employer-sponsor of the fund.

independent trustee, in relation to a fund, means a trustee of the fund who:

- (a) is not a member of the fund; and
- (b) is neither an employer-sponsor of the fund nor an associate of such an employer-sponsor; and
- (c) is neither an employee of an employer-sponsor of the fund nor an employee of an associate of such an employer-sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more employer-sponsors of the fund.

individual trustee, in relation to a fund, scheme or trust, means an individual who is a trustee of the fund, scheme or trust.

insolvent under administration means a person who:

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- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
- (b) under the law of a country other than Australia or the law of an external Territory, has the status of an undischarged bankrupt;

and includes:

- (c) a person any of whose property is subject to control under:
 - (i) section 50 or 188 of the *Bankruptcy Act 1966*; or
 - (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
- (d) a person who has executed a personal insolvency agreement under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;if a certificate has not been given under section 232 of that Act or the corresponding provision of the law of the external Territory or foreign country, as the case may be, in respect of the agreement.

inspector has the meaning given by section 265.

instalment receipt means an investment under which:

- (a) a listed security is held in a trust until the purchase price of the security is fully paid; and
- (b) the security, and property derived from the security, is the only trust property.

insurance fee has the meaning given by subsection 29V(9).

interdependency relationship has the meaning given by section 10A.

invest means:

- (a) apply assets in any way; or
- (b) make a contract;

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for the purpose of gaining interest, income, profit or gain.

investment fee has the meaning given by subsection 29V(3).

investment manager means a person appointed by a trustee of a fund or trust to invest on behalf of the trustee, or the trustees, of the fund or trust.

involved, in relation to a contravention, has the meaning given by section 17.

lawyer means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

lease arrangement means any agreement, arrangement or understanding in the nature of a lease (other than a lease) between a trustee of a superannuation fund and another person, under which the other person is to use, or control the use of, property owned by the fund, whether or not the agreement, arrangement or understanding is enforceable, or intended to be enforceable, by legal proceedings.

legal personal representative means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

licensing transition period means the period:

- (a) starting on the commencement of Part 1 of Schedule 1 to the *Superannuation Safety Amendment Act 2004*; and
- (b) ending immediately before the commencement of Part 2 of that Schedule.

life insurance company means:

- (a) a body corporate registered under section 21 of the *Life Insurance Act 1995*; or
- (b) a public authority:
 - (i) that is constituted by a law of a State or Territory; and

- (ii) that carries on life insurance business within the meaning of section 11 of that Act.

listed security has the meaning given by subsection 66(5).

loan includes the provision of credit or any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings.

lodge means lodge with the Regulator.

market value, in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale.

member has a meaning affected by section 15B.

member of staff means:

- (a) in relation to APRA—a person who is an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*; and
- (b) in relation to ASIC—a person who is a staff member within the meaning of the *Australian Securities and Investments Commission Act 2001*; and
- (c) in relation to the Commissioner of Taxation—a taxation officer.

member representative, in relation to a group of trustees of a fund, a policy committee of a fund or the board of directors of a corporate trustee of a fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the members of the fund; or

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(b) a trade union, or other organisation, representing the interests of those members.

modifications includes additions, omissions and substitutions.

MySuper member: A member of a regulated superannuation fund is a **MySuper member** of the fund if the member holds a beneficial interest in the fund of a class that the RSE licensee of the fund is authorised to offer as a MySuper product.

MySuper product: A class of beneficial interest in a regulated superannuation fund is a **MySuper product** if an RSE licensee is authorised under section 29T to offer that class of beneficial interest in the fund as a MySuper product.

occurrence of an event includes the coming into existence of a state of affairs.

old-age pensions has the same meaning as in paragraph 51(xxiii) of the Constitution.

Part 8 associate has the meaning given by Subdivision B of Division 1 of Part 8.

pension, except in the expression **old-age pension**, includes a benefit provided by a fund, if the benefit is taken, under the regulations, to be a pension for the purposes of this Act.

permanent incapacity: a member of a superannuation fund or an approved deposit fund is suffering **permanent incapacity** if the member is taken, under the regulations, to be suffering permanent incapacity for the purposes of this Act.

permanent incapacity benefit: see section 68AA.

personal advice has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

policy committee, in relation to a regulated superannuation fund, means a board, committee or other body that:

- (a) advises a trustee of the fund about such matters as are specified in the regulations; and
- (b) is established by or under the governing rules of the fund.

pooled superannuation trust means a unit trust:

- (a) the trustee of which is a constitutional corporation; and
- (b) that, under the regulations, is a unit trust to which this definition applies.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) any land or place (whether enclosed or built on or not); and
- (c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

private sector fund means a superannuation fund covered by paragraph (a) of the definition of ***superannuation fund***, other than a public sector fund.

procure includes cause.

produce includes permit access to.

prudential matter has the meaning given by subsection 34C(4).

prudential standard means a standard determined by APRA under subsection 34C(1).

public offer entity means:

- (a) a public offer superannuation fund; or
- (b) an approved deposit fund that is not an excluded approved deposit fund; or
- (c) a pooled superannuation trust.

public offer entity licence means an RSE licence of a class provided for under subsection 29B(2).

public offer superannuation fund has the meaning given by section 18.

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public sector fund means a superannuation fund that is:

- (a) covered by paragraph (a) of the definition of **superannuation fund**; and
- (b) part of a public sector superannuation scheme.

public sector superannuation scheme means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of the Commonwealth or of a State or Territory; or
- (b) under the authority of:
 - (i) the Commonwealth or the government of a State or Territory; or
 - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory.

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October.

rectification direction: see subsection 159(2).

rectify, in relation to a contravention of this Act or the regulations that has occurred in relation to a superannuation entity, includes put in operation managerial or administrative arrangements that could reasonably be expected to ensure that there are no further contraventions of a similar kind.

redeem, in relation to an interest in an approved deposit fund, includes pay an amount equal to the interest pursuant to a covenant of a kind referred to in section 53 that is contained, or taken to be contained, in the governing rules of the fund.

registered organisation means:

- (a) an association registered under a law of a State or Territory as a trade union; or

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- (b) a society registered under a law of a State or Territory providing for the registration of friendly or benefit societies; or
- (c) an association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*.

registrable superannuation entity means:

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) a pooled superannuation trust;

but does not include a self managed superannuation fund.

regulated document, in relation to a public offer entity, means a document:

- (a) issued, or authorised to be issued, by the trustee of the entity; and
- (b) that the trustee knows, or ought reasonably to know (having regard to the trustee's abilities, experience, qualifications and other attributes), may influence a person's decision:
 - (i) whether to apply to have a superannuation interest in the entity issued to a person; or
 - (ii) whether to apply to become a standard employer-sponsor of the entity.

regulated superannuation fund has the meaning given by section 19.

Regulator means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC; and

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- (c) the Commissioner of Taxation if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner of Taxation; and
- (d) the Chief Executive Medicare if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Chief Executive Medicare under paragraph 6(1)(ba).

related, in relation to bodies corporate, has the meaning given by section 20.

related party, of a superannuation fund, means any of the following:

- (a) a member of the fund;
- (b) a standard employer-sponsor of the fund;
- (c) a Part 8 associate of an entity referred to in paragraph (a) or (b).

related trust, of a superannuation fund, means a trust that a member or a standard employer-sponsor of the fund controls (within the meaning of section 70E), other than an excluded instalment trust of the fund.

relative of an individual means the following:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or of his or her spouse;
- (b) a spouse of the individual or of any other individual referred to in paragraph (a).

Note: Subsection (5) may be relevant to determining relationships for the purposes of paragraph (a) of the definition of **relative**.

relevant person means:

- (a) in relation to a fund or trust:
 - (i) if the trustee or an investment manager of the fund or trust is or includes an individual—that individual; or

- (ii) if the trustee or an investment manager of the fund or trust is or includes a body corporate—a responsible officer of that body corporate; or
 - (iii) an auditor of the fund or trust; or
 - (iv) an actuary of the fund or trust; or
 - (v) a person who is a custodian in relation to the fund or trust; or
- (b) in relation to an approved SMSF auditor:
- (i) the approved SMSF auditor; or
 - (ii) a person who is a relevant person under paragraph (a) in relation to a self managed superannuation fund of which the approved SMSF auditor is or was an auditor; or
- (c) in relation to an audit of a self managed superannuation fund:
- (i) the person who is conducting, or conducted, the audit; or
 - (ii) a person who is a relevant person under paragraph (a) in relation to the self managed superannuation fund.

resident approved deposit fund has the meaning given by section 20A.

resident regulated superannuation fund means a regulated superannuation fund that is an Australian superannuation fund within the meaning of the *Income Tax Assessment Act 1997*.

responsible officer, in relation to a body corporate, means:

- (a) a director of the body; or
- (b) a secretary of the body; or
- (c) an executive officer of the body.

reviewable decision means:

- (a) a decision of APRA under subsection 18(6) or (7) to make a declaration; or
- (aa) a decision of APRA under subsection 18(7A) to make a declaration under subsection 18(7) subject to conditions; or

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- (ab) a decision of APRA under subsection 18(7C) to revoke a declaration that a superannuation fund is not a public offer superannuation fund or;
- (b) a decision of APRA under subsection 18(10) to revoke a declaration; or
- (dd) a decision of APRA under subsection 29CA(2) to treat an application for an RSE licence as having been withdrawn; or
- (de) a decision of APRA under subsection 29D(2) refusing an application for an RSE licence; or
- (df) a decision of APRA under subsection 29EA(1) to impose additional conditions on an RSE licence; or
- (dg) a decision of APRA under subsection 29FA(2) to treat an application for variation of an RSE licence so that it is an RSE licence of a different class as having been withdrawn; or
- (dh) a decision of APRA under subsection 29FA(2) to treat an application for variation or revocation of a condition imposed on an RSE licence as having been withdrawn; or
- (di) a decision of APRA to refuse to vary an RSE licence under subsection 29FC(1) so that it is an RSE licence of a different class; or
- (dj) a decision of APRA to refuse to vary or revoke under subsection 29FC(1) any conditions imposed on an RSE licence; or
- (dk) a decision of APRA under subsection 29FD(1) to vary or revoke any conditions imposed on an RSE licence; or
- (dl) a decision of APRA under subsection 29G(1) to cancel an RSE licence; or
- (dm) a decision of APRA under subsection 29M(2) refusing an application for registration of a registrable superannuation entity; or
- (dn) a decision of APRA under subsection 29N(2) to cancel the registration of a registrable superannuation entity; or
- (doa) a decision of APRA under subsection 29T(2) to refuse to authorise an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; or

- (dob) a decision of APRA under subsection 29U(1) to cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; or
- (doc) a decision to determine, vary or revoke a prudential standard referred to in paragraph 34C(1)(e) or (f); or
- (dod) a decision of the Regulator to give or vary a direction under section 34P or 34Q; or
- (dp) a decision of the Regulator refusing to give an approval under paragraph 35A(2)(b); or
- (dq) a decision of the Regulator to give such an approval subject to conditions under subsection 35A(3); or
- (e) a decision of the Regulator to give a notice under section 40; or
- (f) a decision of the Regulator refusing to give a notice under section 40; or
- (fa) a decision of the Regulator under subsection 42(1AA) or (1AC) or paragraph 50(1)(c); or
- (fb) a refusal of the Regulator to give an approval under subparagraph 62(1)(b)(v); or
- (g) a decision of the Regulator to give a direction under section 63; or
- (h) a decision of the Regulator refusing to revoke a direction under section 63; or
- (ha) a decision of the Regulator to make a determination under subsection 70A(1); or
- (hb) a decision of the Regulator refusing to revoke a determination under subsection 70A(1); or
- (i) a decision of the Regulator refusing to make a determination under paragraph 71(1)(e); or
- (j) a decision of the Regulator to revoke a determination under paragraph 71(1)(e); or
- (k) a decision of the Regulator to make a determination under subsection 71(4); or
- (l) a decision of the Regulator refusing to revoke a determination under subsection 71(4); or

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- (m) a decision of APRA under section 92 refusing to grant an arrangement approval; or
- (n) a decision of APRA under section 92 revoking an arrangement approval; or
- (na) a decision of APRA under subsection 93A(2) or (3) to approve or not approve a higher percentage; or
- (nb) a decision of APRA under subsection 93A(4) to specify conditions to which an approval is subject; or
- (nc) a decision of APRA under subsection 93A(5) to vary an approval; or
- (o) a decision of APRA under subsection 95(2) refusing to approve a borrowing; or
- (p) a decision of APRA under subsection 117(6) refusing to waive a requirement; or
- (q) a decision of APRA under subparagraph 123(2)(b)(ii) or (3)(c)(ii); or
- (qa) a decision of the Regulator under subsection 126A(1), (2) or (3) to disqualify an individual; or
- (qb) a decision of the Regulator under subsection 126A(5) refusing to revoke the disqualification of an individual; or
- (r) a decision of the Regulator under subsection 126B(4) refusing to allow a longer period than 14 days to make an application for waiver; or
- (ra) a decision of the Regulator under subsection 126D(3) refusing to make a declaration waiving an applicant's status as a disqualified person; or
- (rb) a decision of the Regulator under subsection 126F(3) refusing to waive, in whole or in part, the requirement to pay an amount under subsection 126F(2); or
- (rc) a decision of the Regulator under section 128B refusing an application made under section 128A; or
- (rd) a decision of the Regulator under section 128D imposing or varying conditions, or additional conditions, on a person's registration as an approved SMSF auditor; or
- (re) a decision of the Regulator refusing an application to vary or revoke conditions, or additional conditions, imposed under

- section 128D on a person's registration as an approved SMSF auditor; or
- (rf) a decision of the Regulator under subsection 128E(2) cancelling a person's registration as an approved SMSF auditor; or
 - (rg) a decision of the Regulator refusing an application to waive the payment of the whole or a part of a fee under subsection 128L(4); or
 - (rh) a decision of the Regulator to make an order under subsection 130F(2); or
 - (ri) a decision of the Regulator refusing an application to revoke an order under subsection 130F(8); or
 - (s) a decision of the Regulator to make a disqualification order under section 131; or
 - (t) a decision of the Regulator refusing to revoke a disqualification order under section 131; or
 - (ta) a decision of APRA to give a direction under section 131AA, other than a direction on the ground mentioned in paragraph 133AA(2)(a); or
 - (taa) a decision of the Regulator to suspend or remove a trustee of a superannuation entity under section 133; or
 - (u) a decision of the Regulator under section 141; or
 - (ua) a decision of APRA under subsection 242F(2) to refuse to authorise an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund; or
 - (ub) a decision of APRA under subsection 242J(1) to cancel an authority to operate a regulated superannuation fund as an eligible rollover fund; or
 - (z) a decision of the Regulator under section 328 to make an exemption that applies to a particular person or a particular group of individual trustees; or
 - (zb) a decision of the Regulator under section 332 to make a declaration that applies to a particular person or a particular group of individual trustees; or
 - (zd) a decision of the Regulator under section 335 to vary or revoke an exemption or declaration that applies to a
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particular person or a particular group of individual trustees;
or

- (ze) a decision of APRA refusing to give a notice under subsection 342(2) in relation to a fund; or
- (zf) a decision of APRA to give a notice under subsection 342(6) in relation to a fund; or
- (zg) a decision of the Regulator under subsection 347A(9).

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSE actuary means a person who is appointed as an actuary of a registrable superannuation entity.

RSE auditor means a person who is appointed as an auditor of a registrable superannuation entity.

RSE licence means a licence granted under section 29D.

RSE licensee means a constitutional corporation, body corporate, or group of individual trustees, that holds an RSE licence granted under section 29D.

RSE licensee law means:

- (a) this Act or the regulations; and
- (aa) prudential standards; and
- (b) the *Financial Sector (Collection of Data) Act 2001*; and
- (c) the *Financial Institutions Supervisory Levies Collection Act 1998*; and
- (d) the provisions of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of **regulatory provision** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as applying in relation to superannuation interests; and

- (e) any other provisions of any other law of the Commonwealth specified in regulations made for the purposes of this paragraph.

salary or wages has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

self managed superannuation fund has the meaning given by sections 17A and 17B.

Note: Subsection (4) of this section extends the meaning of **self managed superannuation fund** for the purposes of sections 6, 42 and 42A.

signed, in relation to a body corporate, means executed by or on behalf of the body corporate in a way that is effective in law and that binds the body corporate.

SMSF actuary means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

SMSF auditor number, of an approved SMSF auditor, means the number stated under paragraph 128B(6)(b) in a certificate under subsection 128B(6) relating to the auditor's registration under section 128B.

spouse of a person includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

standard employer-sponsor has the meaning given by subsection 16(2).

standard employer-sponsored fund has the meaning given by subsection 16(4).

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standard employer-sponsored member has the meaning given by subsection 16(5).

subsidiary has the same meaning as in the *Corporations Act 2001*.

superannuation account has the meaning given by subsection 108A(3).

superannuation actuary means:

- (a) an RSE actuary; or
- (b) an SMSF actuary.

superannuation auditor means:

- (a) an RSE auditor; or
- (b) an approved SMSF auditor.

Superannuation Complaints Tribunal means the Superannuation Complaints Tribunal established by the *Superannuation (Resolution of Complaints) Act 1993*.

superannuation data and payment matter has the meaning given by subsection 34K(5).

superannuation data and payment regulations and standards means:

- (a) the regulations made under section 34K; and
- (b) the standards issued by the Commissioner of Taxation under that section.

superannuation data and payment standard means a standard issued by the Commissioner of Taxation under section 34K.

superannuation entity means:

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) a pooled superannuation trust.

superannuation entity affected by a reviewable decision, in relation to a reviewable decision, means the superannuation entity in relation to which the decision was made.

superannuation entity director has the meaning given by subsection 29VO(3).

superannuation fund means:

- (a) a fund that:
 - (i) is an indefinitely continuing fund; and
 - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme.

superannuation interest means a beneficial interest in a superannuation entity.

suspended SMSF auditor means a person for whom an order suspending a person's registration as an approved SMSF auditor is in force under section 130F.

switching fee has the meaning given by subsection 29V(5).

taxation officer means:

- (a) a Second Commissioner of Taxation; or
- (b) a Deputy Commissioner of Taxation; or
- (c) a person engaged under the *Public Service Act 1999*, or an officer or employee of an authority of the Commonwealth, performing duties in the Australian Taxation Office; or
- (d) a person engaged to provide services relating to the Australian Taxation Office.

trustee, in relation to a fund, scheme or trust, means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund, scheme or trust—the trustee; or
- (b) in any other case—the person who manages the fund, scheme or trust.

unit trust means:

Section 10

- (a) a unit trust within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936* (whether established by a law of the Commonwealth or of a State or Territory, by a government agency or otherwise); or
 - (b) the trustee of such a trust;
- as appropriate.

value means market value, and includes amount.

year of income, in relation to a fund, scheme or trust, means a period that is, for the purposes of the Income Tax Assessment Act, a year of income of the fund scheme, or trust (subsection 6(2A) of that Act applies accordingly).

- (1A) The regulations may prescribe:
 - (a) circumstances in which a member of a superannuation fund is not a **defined benefit member** for the purposes of this Act, or a provision of this Act; and
 - (b) circumstances in which a member of a superannuation fund who is not otherwise a **defined benefit member** for the purposes of this Act, or a provision of this Act, is to be taken to be a **defined benefit member** for the purposes of this Act, or that provision.
- (2) For the purposes of paragraph (b) of the definition of **independent director** in subsection (1), a director of a corporate trustee of a fund that is also an employer-sponsor of the fund is not taken to be an associate of that employer-sponsor by reason only of being such a director.
- (3) Without limiting the meaning of the expression **member** in this Act, that expression, in relation to a self managed superannuation fund, includes a person:
 - (a) who receives a pension from the fund; or
 - (b) who has deferred his or her entitlement to receive a benefit from the fund.

Section 10A

- (4) Treat an entity that is a superannuation fund as a self managed superannuation fund for the purposes of sections 6, 42 and 42A, and Part 20, if:
 - (a) it has ceased being a self managed superannuation fund for the purposes of the rest of this Act; and
 - (b) the trustee of the fund is not an RSE licensee.
- (5) For the purposes of paragraph (a) of the definition of *relative* in subsection (1), if one individual is the child of another individual because of the definition of *child* in subsection (1), relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

10A Interdependency relationship

- (1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an *interdependency relationship* if:
 - (a) they have a close personal relationship; and
 - (b) they live together; and
 - (c) one or each of them provides the other with financial support; and
 - (d) one or each of them provides the other with domestic support and personal care.
- (2) Subject to subsection (3), for the purposes of this Act, if:
 - (a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
 - (b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
 - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;they have an *interdependency relationship*.

Section 11

- (3) The regulations may specify:
- (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship*; and
 - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship*.

11 Approvals, determinations etc. by Regulator

If:

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

the Regulator is authorised to give the approval, make the determination or do the act or thing.

11A Approved forms

- (1) In this Act, a reference to an *approved form* is a reference to a form approved by the Regulator, in writing, for the purposes of the provision in which the expression appears.
- (2) An approved form may require particular information to be included in the completed form.
- (3) An approved form may do either or both of the following:
 - (a) require or permit the form to be attached to, or to form part of, another document;
 - (b) require or permit the form to be given on a specified kind of data processing device or by specified electronic transmission, in accordance with specified software or other requirements.

Section 11B

- (4) An approved form may require the form to be signed by a particular person or persons. This applies whether or not a provision of this Act also requires the form to be signed.
- (5) An approved form may make different requirements to be complied with according to whether or not the form is given in a way that is required or permitted as mentioned in paragraph (3)(b).
- (6) If an approved form makes a requirement as mentioned in subsection (2), (3) or (4), a purported use of the form is not effective for the purposes of this Act unless the requirement has been complied with.

11B Electronic lodgment of approved forms

- (1) If a person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b):
 - (a) the form is taken to constitute a written notice; and
 - (b) if the form includes the electronic signature of a person—the form is taken to be signed by that person.
- (2) The person's *electronic signature* is a unique identification, in an electronic form, that is approved by the Regulator for use by the person.
- (3) A person commits an offence if:
 - (a) the person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
 - (b) either:
 - (i) the form purports to be given by another person; or
 - (ii) the form purports to be given on behalf of another person, and that other person has not consented to the giving of the form.

Penalty: 50 penalty units.

Section 11C

- (4) A person commits an offence if:
- (a) the person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
 - (b) the form includes the electronic signature of another person who has not consented to the inclusion of the signature.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) are offences of strict liability within the meaning of section 6.1 of the *Criminal Code*.

11C Declaration required if approved form lodged electronically on trustee's behalf

- (1) This section applies if:
- (a) the Regulator is given an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
 - (b) the form is given to the Regulator by a person on behalf of the trustee, or one or more of the trustees, of a superannuation entity.

In this section, the trustee, or each of the trustees, on whose behalf the form is given is referred to as the *responsible trustee*.

- (2) The responsible trustee commits an offence if the responsible trustee does not, before the form is given to the Regulator, make a signed declaration that states that:
- (a) the person is authorised to give the form to the Regulator on the responsible trustee's behalf; and
 - (b) the information in the form is correct.

Penalty: 50 penalty units.

- (3) The responsible trustee commits an offence if the responsible trustee does not retain the declaration for 5 years after it is made.

Penalty: 50 penalty units.

Section 11D

- (4) The responsible trustee commits an offence if:
 - (a) within the 5 year period, the Regulator requests the responsible trustee to produce the declaration to the Regulator; and
 - (b) the responsible trustee does not comply with the request.

Penalty: 50 penalty units.

- (5) Subsections (2), (3) and (4) are offences of strict liability within the meaning of section 6.1 of the *Criminal Code*.

11D Electronic lodgment—documents other than approved forms

- (1) A document that is not required to be lodged in an approved form may be lodged with the Regulator electronically only if:
 - (a) the Regulator and the person seeking to lodge it (either on the person's own behalf or on another person's behalf) have agreed, in writing, that it may be lodged electronically; or
 - (b) the Regulator has approved, in writing, the electronic lodgment of documents of that kind.
- (2) The document is taken to be lodged with the Regulator if it is lodged in accordance with the agreement or approval (including any requirements of the agreement or approval as to authentication).

11E Approved guarantees

In this Act, an *approved guarantee* is:

- (a) a guarantee given by an ADI; or
- (b) a guarantee given by or on behalf of the Commonwealth, a State or a Territory;

that meets the requirements that APRA, by legislative instrument, determines.

Section 12

12 Associates

- (1) The question whether a person is an associate of another person for the purposes of this Act is to be determined in the same way as that question would be determined under the *Corporations Act 2001* if the assumptions set out in subsection (2) were made.
- (2) The assumptions are as follows:
 - (a) that sections 12 and 14 and paragraphs 15(1)(b) and 16(1)(b) and (c) of that Act had not been enacted;
 - (b) that section 13 of that Act were not limited to Chapter 7, but extended to all provisions of that Act.

13 Single trustees

For the purposes of this Act:

- (a) a fund, scheme or trust has a single corporate trustee if, and only if, there is only one trustee of the fund, scheme or trust and that trustee is a corporate trustee; and
- (b) a fund, scheme or trust has a single individual trustee if, and only if, there is only one trustee of the fund, scheme or trust and that trustee is an individual trustee.

13A RSE licensees that are groups of individual trustees

- (1) Subject to this section, for the purposes of this Act, the regulations and the prudential standards, a change in the composition of a group of individual trustees that is an RSE licensee does not affect the continuity of the group of individual trustees for the duration of the period during which the RSE licence continues in force.

Note: So, for example, an RSE licence granted to a group of individual trustees will not cease to continue in force, merely because of a change in the membership of the group.

- (2) An obligation that would be imposed on an RSE licensee that is a group of individual trustees of a registrable superannuation entity by a provision of this Act, the regulations or the prudential

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standards is imposed instead on each of the trustees but, subject to the entity's governing rules, may be discharged by any of them.

- (3) A person who is a member of a group of individual trustees that is an RSE licensee is not liable under any offence of strict liability or civil penalty provision of this Act or the regulations in respect of any breach of a provision of this Act or the regulations, or failure, by the RSE licensee if the person proves that he or she:
- (a) made all inquiries (if any) that were reasonable in the circumstances; and
 - (b) after doing so, believed on reasonable grounds that the obligations of the RSE licensee were being complied with.

Note: In a prosecution for an offence of strict liability against a provision of this Act or the regulations, a defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4 of the *Criminal Code*).

- (4) If a group of individual trustees is an RSE licensee, a direction, notice or other document is taken, for the purposes of a provision of this Act, the regulations or the prudential standards, to be given to the RSE licensee if it is given to any member of the group.
- (5) If a group of individual trustees of a registrable superannuation entity is an RSE licensee, a request is taken, for the purposes of a provision of this Act, the regulations or the prudential standards, to have been made to the RSE licensee if it is made to any member of the group and, subject to the entity's governing rules, may be dealt with by any member of the group.
- (6) Any requirement under this Act, the regulations or the prudential standards that a document be signed by an RSE licensee is taken, if the RSE licensee is a group of individual trustees, to be a requirement that the document be signed by each of the members of the group.
- (7) An RSE licensee that is a group of individual trustees is taken, for the purposes of a provision of this Act, the regulations or the prudential standards, to have provided something to a person if one of the members of the group has provided that thing to the person.

Section 14

- (8) For the purposes of this Act and the regulations, if an RSE licensee that is a group of individual trustees is affected by a reviewable decision, each member of the group is taken to be affected by that decision.
- (9) The regulations may exclude or modify the effect of the subsections of this section (other than subsections (2) and (3)) in relation to specified provisions.
- (10) This section has effect subject to a contrary intention in a provision of this Act or regulations made for the purposes of subsection (9).

14 Indefinitely continuing fund—application of rules against perpetuities

If the governing rules of a fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, that provision does not prevent the fund from being treated as an indefinitely continuing fund for the purposes of the definition of *approved deposit fund* or *superannuation fund* in section 10.

15 Approved deposit funds—payments by trustees

- (1) For the purposes of paragraph (c) of the definition of *approved purposes* in section 10 and for the purposes of section 53, if:
 - (a) a beneficiary has an interest in a fund; and
 - (b) on the request of the beneficiary, an amount equal to the beneficiary's interest is paid by the fund:
 - (i) to a life insurance company or registered organisation for the purchase of an annuity in the name of the beneficiary; or
 - (ii) into an RSA specified by the beneficiary;the trustee of the fund is taken to have paid the amount to the beneficiary on request.
- (1A) For the purposes of paragraph (c) of the definition of *approved purposes* in section 10 and for the purposes of section 53, if:
 - (a) a beneficiary has an interest in a fund; and

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- (b) on the request of the beneficiary, an amount equal to the beneficiary's interest is paid by the fund to:
 - (i) an approved deposit fund; or
 - (ii) a regulated superannuation fund;the trustee of the first-mentioned fund is taken to have paid the amount to the beneficiary on request.
- (1B) For the purposes of paragraph (c) of the definition of ***approved purposes*** in section 10, if a payment is not made immediately on request but is deferred for a period determined by the trustee concerned, the payment is taken to have been made on request.
- (2) A reference in subsection (1) or (1A) to a beneficiary includes a reference to the legal personal representative of a beneficiary.

15A Definitions of *employee* and *employer*

- (1) Subject to this section, in this Act, ***employee*** and ***employer*** have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (10):
 - (a) expand the meaning of those terms; and
 - (b) make particular provision to avoid doubt as to the status of certain persons.
- (2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.
- (3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.
- (4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth.
- (5) A member of the Parliament of a State is an employee of the State.

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- (6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.
- (7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.
- (8) For the purposes of this Act:
 - (a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment; and
 - (b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment; and
 - (c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.
- (9) Subject to subsection (10), a person who:
 - (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or
 - (b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);is an employee of the Commonwealth, the State or the Territory, as the case requires.
- (10) A person who holds office as a member of a local government council is an employee of the council.

15B Modified meaning of *member*

- (1) The regulations may provide that a person is to be treated, or is not to be treated, as being a ***member*** of a superannuation fund for the purposes of this Act or specified provisions of this Act.
- (2) This Act applies with such modifications (if any) as are prescribed in relation to a person who is a member of a superannuation fund because of regulations made for the purposes of this section.

16 Definitions associated with employer-sponsorship

Employer-sponsor

- (1) An ***employer-sponsor*** of a regulated superannuation fund is an employer who:
 - (a) contributes to the fund; or
 - (b) would, apart from a temporary cessation of contributions, contribute to the fund;for the benefit of:
 - (c) a member of the fund who is an employee of:
 - (i) the employer; or
 - (ii) an associate of the employer; or
 - (d) the dependants of such a member in the event of the death of the member.

Standard employer-sponsor

- (2) If an employer so contributes, or would contribute, wholly or partly pursuant to an arrangement between the employer and a trustee of the regulated superannuation fund concerned, the employer is a ***standard employer-sponsor*** of the fund (as well as being an employer-sponsor of the fund). If the employer only so contributes, or would contribute, pursuant to arrangements between the employer and a member or members of the fund, the employer is not a standard employer-sponsor.

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Employer-sponsored fund

- (3) An **employer-sponsored fund** is a regulated superannuation fund that has at least one employer-sponsor.

Standard employer-sponsored fund

- (4) If a regulated superannuation fund has at least one standard employer-sponsor, the fund is a **standard employer-sponsored fund** (as well as being an employer-sponsored fund).

Standard employer-sponsored member

- (5) A **standard employer-sponsored member** is a member of a regulated superannuation fund in respect of whom an employer-sponsor contributes, or would contribute, as mentioned in subsection (1) wholly or partly pursuant to an arrangement between the employer-sponsor and a trustee of the fund.

17A Definition of **self managed superannuation fund**

Basic conditions—funds other than single member funds

- (1) Subject to this section, a superannuation fund, other than a fund with only one member, is a **self managed superannuation fund** if and only if it satisfies the following conditions:
- (a) it has fewer than 5 members;
 - (b) if the trustees of the fund are individuals—each individual trustee of the fund is a member of the fund;
 - (c) if the trustee of the fund is a body corporate—each director of the body corporate is a member of the fund;
 - (d) each member of the fund:
 - (i) is a trustee of the fund; or
 - (ii) if the trustee of the fund is a body corporate—is a director of the body corporate;
 - (e) no member of the fund is an employee of another member of the fund, unless the members concerned are relatives;

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- (f) no trustee of the fund receives any remuneration from the fund or from any person for any duties or services performed by the trustee in relation to the fund;
- (g) if the trustee of the fund is a body corporate—no director of the body corporate receives any remuneration from the fund or from any person (including the body corporate) for any duties or services performed by the director in relation to the fund.

Note: Section 17B contains exceptions to paragraphs (1)(f) and (g).

Basic conditions—single member funds

- (2) Subject to this section, a superannuation fund with only one member is a ***self managed superannuation fund*** if and only if:
 - (a) if the trustee of the fund is a body corporate:
 - (i) the member is the sole director of the body corporate; or
 - (ii) the member is one of only 2 directors of the body corporate, and the member and the other director are relatives; or
 - (iii) the member is one of only 2 directors of the body corporate, and the member is not an employee of the other director; and
 - (b) if the trustees of the fund are individuals:
 - (i) the member is one of only 2 trustees, of whom one is the member and the other is a relative of the member; or
 - (ii) the member is one of only 2 trustees, and the member is not an employee of the other trustee; and
 - (c) no trustee of the fund receives any remuneration from the fund or from any person for any duties or services performed by the trustee in relation to the fund;
 - (d) if the trustee of the fund is a body corporate—no director of the body corporate receives any remuneration from the fund or from any person (including the body corporate) for any duties or services performed by the director in relation to the fund.

Note: Section 17B contains exceptions to paragraphs (2)(c) and (d).

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Certain other persons may be trustees

- (3) A superannuation fund does not fail to satisfy the conditions specified in subsection (1) or (2) by reason only that:
- (a) a member of the fund has died and the legal personal representative of the member is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during the period:
 - (i) beginning when the member of the fund died; and
 - (ii) ending when death benefits commence to be payable in respect of the member of the fund; or
 - (b) the legal personal representative of a member of the fund is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during any period when:
 - (i) the member of the fund is under a legal disability; or
 - (ii) the legal personal representative has an enduring power of attorney in respect of the member of the fund; or
 - (c) if a member of the fund is under a legal disability because of age and does not have a legal personal representative:
 - (i) the parent or guardian of the member is a trustee of the fund in place of the member; or
 - (ii) if the trustee of the fund is a body corporate—the parent or guardian of the member is a director of the body corporate in place of the member; or
 - (d) an appointment under section 134 of an acting trustee of the fund is in force.

Circumstances in which entity that does not satisfy basic conditions remains a self managed superannuation fund

- (4) Subject to subsection (5), if a superannuation fund that is a self managed superannuation fund would, apart from this subsection, cease to be a self managed superannuation fund, it does not so cease until the earlier of the following times:
- (a) the time an RSE licensee of the fund is appointed;

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- (b) 6 months after it would so cease to be a self managed superannuation fund.

Subsection (4) does not apply if admission of new members

- (5) Subsection (4) does not, except for the purposes of section 29J, apply if the reason, or one of the reasons, why the superannuation fund would cease to be a self managed superannuation fund was the admission of one or more new members to the fund.

*Extended meaning of **employee** in certain circumstances*

- (6) For the purposes of this section, a member of a fund, who is an employee of an employer-sponsor of the fund, is also taken to be an employee of another person (the **other person**), if the employer-sponsor is:
 - (a) a relative of the other person; or
 - (b) either of the following:
 - (i) a body corporate of which the other person, or a relative of the other person, is a director;
 - (ii) a body corporate related to that body corporate; or
 - (c) a trustee of a trust of which the other person, or a relative of the other person, is a beneficiary; or
 - (d) a partnership, where:
 - (i) the other person, or a relative of the other person, is a partner in the partnership; or
 - (ii) the other person, or a relative of the other person, is a director of a body corporate that is a partner in the partnership; or
 - (iii) the other person, or a relative of the other person, is a beneficiary of a trust, if a trustee of the trust is a partner in the partnership.

Note 1: An effect of this subsection is that a fund will not be a self managed superannuation fund if a member is employed by an employer-sponsor of the fund, and another member (who is not a relative) has a specified interest in that employer-sponsor: see paragraph (1)(e). An example of this would be where the employer-sponsor is a company of which another member is a director.

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Note 2: Another effect is that a fund will not be a self managed superannuation fund if its single member is employed by an employer-sponsor of the fund in which the other trustee of the fund (who is not a relative) has a specified interest: see subsection (2).

- (7) Subsection (6) does not limit the meaning of the term **employee**.

Regulations

- (8) For the purposes of this section:
- (a) a member of a fund is taken to be an employee of a person belonging to a class specified in the regulations for the purposes of this paragraph; and
 - (b) despite subsections (6) and (7) and section 15A, a member of a fund is not taken to be an employee of a person belonging to a class specified in the regulations for the purposes of this paragraph.

Meaning of relative

- (9) In this section:

relative, in relation to an individual, means:

- (a) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her spouse or former spouse; or
 - (b) a spouse or former spouse of the individual, or of an individual referred to in paragraph (a).
- (9A) For the purposes of paragraph (a) of the definition of **relative** in subsection (9), if one individual is the child of another individual because of the definition of **child** in subsection 10(1), relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

Disqualified persons

- (10) For the avoidance of doubt, subsection (3) does not permit a person, in the capacity of legal personal representative of a disqualified person (within the meaning of section 120), to be a trustee of a self managed superannuation fund or a director of a body corporate that is a trustee of a self managed superannuation fund.

17B Definition of *self managed superannuation fund*—remuneration of trustees etc.

- (1) Paragraphs 17A(1)(f) and (2)(c) do not apply to remuneration for any duties or services performed by a trustee of a fund, if:
- (a) the trustee performs the duties or services other than in the capacity of trustee; and
 - (b) the trustee is appropriately qualified, and holds all necessary licences, to perform the duties or services; and
 - (c) the trustee performs the duties or services in the ordinary course of a business, carried on by the trustee, of performing similar duties or services for the public; and
 - (d) the remuneration is no more favourable to the trustee than that which it is reasonable to expect would apply if the trustee were dealing with the relevant other party at arm's length in the same circumstances.
- (2) Paragraphs 17A(1)(g) and (2)(d) do not apply to remuneration for any duties or services performed by a director of a body corporate that is a trustee of a fund, if:
- (a) the director performs the duties or services other than:
 - (i) in the capacity of director; and
 - (ii) in connection with the body corporate's capacity of trustee; and
 - (b) the director is appropriately qualified, and holds all necessary licences, to perform the duties or services; and

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- (c) the director performs the duties or services in the ordinary course of a business, carried on by the director, of performing similar duties or services for the public; and
- (d) the remuneration is no more favourable to the director than that which it is reasonable to expect would apply if the director were dealing with the relevant other party at arm's length in the same circumstances.

18 Public offer superannuation fund

Definition

- (1) A superannuation fund is a ***public offer superannuation fund*** if:
 - (a) one of the following subparagraphs applies to the fund:
 - (i) it is a regulated superannuation fund that is not a standard employer-sponsored fund;
 - (ii) it is a standard employer-sponsored fund that has at least one member:
 - (A) who is not a standard employer-sponsored member; and
 - (B) who is not a member of a prescribed class;
 - (iii) it is a standard employer-sponsored fund in relation to which an election under subsection (2) has been made;
 - (iv) a declaration under subsection (6) (which allows for funds to be declared to be public offer superannuation funds) is in force in relation to the fund; and
 - (aa) the fund is not a self managed superannuation fund; and
 - (b) no declaration under subsection (7) (which allows for funds to be declared not to be public offer superannuation funds) is in force in relation to the fund.

Election to be a public offer superannuation fund

- (2) The trustee of a standard employer-sponsored fund may elect that the fund is to be treated as a public offer superannuation fund.

How an election is made

- (3) An election must be made by giving APRA a written notice that is:
- (a) in the approved form; and
 - (b) signed by the trustee.

Trustee has power to make election despite anything in the governing rules

- (4) The trustee has the power to make an election despite anything in the governing rules of the fund.

Election is irrevocable

- (5) An election is irrevocable.

Declaration that fund is a public offer superannuation fund

- (6) APRA may, in writing, declare a superannuation fund to be a public offer superannuation fund.

Declaration that fund is not a public offer superannuation fund

- (7) APRA may, in writing, declare a superannuation fund not to be a public offer superannuation fund.
- (7A) A declaration that a superannuation fund is not a public offer superannuation fund may be subject to conditions.
- (7B) If a condition has been breached the trustee must immediately notify APRA, in writing, of the breach.

Penalty: 30 penalty units.

- (7BA) Subsection (7B) is an offence of strict liability.

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

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

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- (7C) If APRA is satisfied, whether because of a notification under subsection (7B) or otherwise, that a condition to which the declaration is subject has been breached:
- (a) APRA may revoke the declaration; and
 - (b) the superannuation fund is taken, with effect from the revocation, to have become a public offer superannuation fund.

Commencement of declaration

- (8) A declaration comes into force when it is made, or, if a later time is specified in the declaration as the time when it comes into force, it comes into force at that later time.

Cessation of declaration

- (9) A declaration remains in force:
- (a) if a time is specified in the declaration as the time when it stops being in force—until that time, or until the declaration is revoked, whichever occurs first; or
 - (b) otherwise—until the declaration is revoked.

Revocation of declaration

- (10) APRA may, in writing, revoke a declaration.

APRA must have regard to guidelines when making or revoking a declaration

- (11) When making or revoking a declaration, APRA must have regard to any written guidelines determined by APRA under this subsection.

Copy of declaration or revocation to be given to trustee

- (12) As soon as practicable after making or revoking a declaration, APRA must give the trustee of the superannuation fund concerned a copy of the instrument making or revoking the declaration.

19 Regulated superannuation fund

Definition

- (1) A regulated superannuation fund is a superannuation fund in respect of which subsections (2) to (4) have been complied with.

Fund must have a trustee

- (2) The superannuation fund must have a trustee.

Trustee must be a constitutional corporation or fund must be a pension fund

- (3) Either of the following must apply:
- (a) the trustee of the fund must be a constitutional corporation pursuant to a requirement contained in the governing rules;
 - (b) the governing rules must provide that the sole or primary purpose of the fund is the provision of old-age pensions.

Election by trustee

- (4) The trustee or trustees must have given to APRA, or such other body or person as is specified in the regulations, a written notice that is:
- (a) in the approved form; and
 - (b) signed by the trustee or each trustee;
- electing that this Act is to apply in relation to the fund.

Note: The approved form of written notice may require the trustee or the trustees to set out the tax file number of the fund. See subsection 299U(1).

Regulations

- (4A) Without limiting subsection (4), regulations for the purposes of that subsection may specify that notices are to be given to different persons or bodies in respect of different classes of superannuation funds.

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Election is irrevocable

- (5) An election made as mentioned in subsection (4) is irrevocable.

Trustee has power to make election despite anything in the governing rules etc.

- (6) The trustee or trustees have the power to make an election as mentioned in subsection (4) despite anything in the governing rules of the fund.

Certain funds must become regulated superannuation funds

- (7) If all of the following conditions are satisfied in relation to a superannuation fund at any time during the period beginning on the day on which this Act received the Royal Assent and ending at the end of the fund's 1993-94 year of income:

- (a) the fund has a trustee;
- (b) either:
 - (i) the trustee of the fund is a constitutional corporation; or
 - (ii) the governing rules of the fund provide that the sole or primary purpose of the fund is the provision of old-age pensions;
- (c) the fund is not a public sector superannuation scheme;
- (d) there is in force a notice under section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stating that the Commissioner is satisfied that the fund satisfied, or should be treated as if it had satisfied, the superannuation fund conditions in relation to a particular year of income;
- (e) there is not in force a notice under section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stating that the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions in relation to a year of income later than the year of income mentioned in paragraph (d);

the trustee of the fund must use its best endeavours to ensure that the fund becomes a regulated superannuation fund at or before the beginning of the fund's 1994-95 year of income.

Contravention of subsection (7) is not an offence

- (8) A contravention of subsection (7) is not an offence. However, a contravention of subsection (7) is a ground for the grant of an injunction under section 315.

References to repealed provisions of OSSA

- (9) A reference in this section to a provision of the *Occupational Superannuation Standards Act 1987* includes a reference to the provision as it continues to apply, despite its repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*.

20 Related bodies corporate

The question whether bodies corporate are related to each other for the purposes of this Act is to be determined in the same way as that question would be determined under the *Corporations Act 2001*.

20A Resident approved deposit funds

Resident approved deposit funds

- (1) For the purposes of this Act, an approved deposit fund is a **resident approved deposit fund** at a particular time if, and only if:
- (a) either:
 - (i) the fund was established in Australia; or
 - (ii) at that time, any asset of the fund is situated in Australia; and
 - (b) at that time, the central management and control of the fund is in Australia; and
 - (c) at that time, the percentage worked out using the following formula is not less than 50%:

$$\frac{\text{Accumulated entitlements of resident members}}{\text{Total assets of fund}} \times 100$$

where:

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Accumulated entitlements of resident members means the sum of so much of the value of the assets of the fund at that time as is attributable to:

- (i) deposits made to the fund before that time by or in respect of members of the fund who are residents at that time; and
- (ii) income or accretions arising from those deposits.

Total assets of fund means the value of the assets of the fund at that time.

Definitions

- (2) In this section:

Australia has the same meaning as in the *Income Tax Assessment Act 1936*.

member includes depositor.

resident has the same meaning as in the *Income Tax Assessment Act 1936*.

20B *Accrued default amounts*

- (1) Subject to this section, the total amount attributed by the trustee, or the trustees, of a regulated superannuation fund to a member of the fund is an ***accrued default amount*** for the member if subsection (1A) or (1B) is satisfied.
- (1A) This subsection is satisfied if the member has given the trustee, or the trustees, of the fund no direction on the investment option under which the asset (or assets) of the fund attributed to the member in relation to the amount (the ***member's underlying asset(s)***) is to be invested.
- (1B) This subsection is satisfied if the investment option under which the asset (or assets) of the fund attributed to the member in relation to the amount (the ***member's underlying asset(s)***) is invested is

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one which, under the current governing rules of the fund, would be the investment option for a new member if no direction were given.

- (2) Such an amount is not an ***accrued default amount*** to the extent that the amount is attributed to the member in relation to a MySuper product.
- (3) Such an amount is not an ***accrued default amount***:
 - (a) if the member is a defined benefit member of the fund; or
 - (b) if the fund is an eligible rollover fund; or
 - (c) to the extent that the member's underlying asset(s) is invested in one or more of the following:
 - (i) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;
 - (ii) a life policy under which the benefit to the member (or a relative or dependant of the member) is based only on the realisation of a risk, not the performance of an investment;
 - (iii) an investment account contract the only beneficiaries of which are the member, and relatives and dependants of the member;
 - (iv) an investment option under which the investment is held as cash; or
 - (d) to the extent that a pension is payable out of the member's underlying asset(s), because the member has satisfied a condition of release of benefits specified in a standard made under paragraph 31(2)(h).
- (3A) For the purposes of subsection (1A), if:
 - (a) benefits of a person in a regulated superannuation fund (the ***earlier fund***) are transferred to another regulated superannuation fund (the ***later fund***); and
 - (b) the person gave or (because of a previous application of this subsection) is taken to have given the trustee, or the trustees, of the earlier fund a direction on the investment option under

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which an asset (or assets) of the earlier fund is to be invested;
and

- (c) an amount attributable to the person is invested under an equivalent investment option offered by the later fund (the ***equivalent investment option***);

the person is taken to have given the trustee, or the trustees, of the later fund a direction to invest in the equivalent investment option any asset (or assets) of the later fund that is attributed to the person in relation to an amount attributed to the person.

- (4) In this section:

investment account contract has the same meaning as in the *Life Insurance Act 1995*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

Part 2A—Licensing of trustees and groups of individual trustees

Division 1—Object of this Part

29A Object of this Part and the relationship of this Part to other provisions

- (1) The object of this Part is to set out provisions relating to the granting of RSE licences to:
 - (a) constitutional corporations; and
 - (b) other bodies corporate; and
 - (c) groups of individual trustees.
- (2) The following is a simplified outline showing some key relationships between this Part and other provisions of the Act and the regulations that trustees should be aware of:

Certain provisions may be contravened if unlicensed trustees carry out particular activities (e.g.: sections 29J and 152). The trustee, or group of individual trustees, of a fund or trust may obtain an RSE licence under this Part.

Note 1: If the trustee is a constitutional corporation, the trustee obtaining an RSE licence may result in a fund or trust becoming an approved deposit fund or pooled superannuation trust, which are each registrable superannuation entities.

Note 2: If the trustee or group of individual trustees makes an election under section 19, the fund may become a regulated superannuation fund. Regulated superannuation funds other than self managed superannuation funds are registrable superannuation entities.

Part 2A Licensing of trustees and groups of individual trustees

Division 1 Object of this Part

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A trustee, or group of individual trustees, that has obtained an RSE licence may have a registrable superannuation entity registered under Part 2B. Certain provisions may be contravened if certain activities are carried out while a registrable superannuation entity is not registered (e.g.: accepting contributions while the entity is unregistered may lead to an offence under section 34.)

Note: A failure to register the fund or trust may also lead to a breach of an RSE licence condition and possible loss of the RSE licence.

Division 2—Classes of RSE licences

29B Classes of RSE licences

- (1) There are to be classes of RSE licences.
- (2) One class of RSE licences is to be a class that enables a trustee that holds a licence of that class to be a trustee of:
- (a) any public offer entity; and
 - (b) any other registrable superannuation entity included in a class of registrable superannuation entities specified in regulations made for the purposes of this subsection;
- subject to any condition imposed on that licence under subsection 29EA(3).

Note 1: An RSE licence of this class is called a **public offer entity licence**: see subsection 10(1).

Note 2: Only constitutional corporations may hold public offer entity licences: see paragraph 29D(1)(g).

- (3) Another class of RSE licences is to be a class that enables a trustee that:
- (a) holds a licence of that class; or
 - (b) is a member of a group of individual trustees that holds a licence of that class;
- to be a trustee of any registrable superannuation entity included in a class of registrable superannuation entities (other than a class of public offer entities) specified in regulations made for the purposes of this subsection, subject to any condition imposed on that licence under subsection 29EA(3).
- (4) The regulations may provide for other classes of RSE licences. For each such class, the regulations must specify the classes of registrable superannuation entities of which a trustee that:
- (a) holds a licence of that class; or
 - (b) is a member of a group of individual trustees that holds a licence of that class;

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is enabled to be a trustee, subject to any condition imposed on that licence under subsection 29EA(3).

- (5) The classes of registrable superannuation entity that the regulations may specify in relation to a particular class of RSE licence may include one or more classes of registrable superannuation entity that the regulations specify in relation to another class of RSE licence.

Division 3—Applying for RSE licences

29C Applications for RSE licences

Who may apply for RSE licences

- (1) A constitutional corporation may apply to APRA for an RSE licence of any class.
- (2) A body corporate that is not a constitutional corporation may apply to APRA for an RSE licence of any class other than a class that would enable it to be a trustee of a public offer entity.
- (3) A group of individual trustees may apply to APRA for an RSE licence of any class other than a class that would enable each of the members of the group to be a trustee of a public offer entity.

Requirements for applications

- (4) An application for an RSE licence must:
 - (a) be in the approved form; and
 - (b) contain the information required by the approved form; and
 - (c) be accompanied by the application fee (if any) prescribed by regulations made for the purposes of this paragraph.
- (5) Regulations made for the purposes of paragraph (4)(c) may prescribe different application fees for applications for different classes of RSE licences.

Notifying certain changes while applications are pending

- (6) If:
 - (a) a body corporate applies for an RSE licence; and
 - (b) after the application is made, but before APRA decides the application, another director is added to, or removed from the board;

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the body corporate must notify APRA, in the approved form, about the change to the membership of the board as soon as practicable after that change occurs.

Note: Part 9 has requirements about equal representation rules.

(7) If:

- (a) a group of individual trustees applies for an RSE licence; and
- (b) after the application is made, but before APRA decides the application, another trustee is added to, or removed from the group;

a member of the group must notify APRA, in the approved form, about the change to the membership of the group as soon as practicable after that change occurs.

Note: Part 9 has requirements about equal representation rules.

(9) An application is taken not to comply with this section if subsection (6) or (7) is contravened.

Note: APRA cannot grant an RSE licence while the application does not comply with this section: see paragraph 29D(1)(c).

29CA APRA may request further information

- (1) If a body corporate or group of individual trustees has applied for an RSE licence, APRA may give the body corporate or a member of the group a notice requesting the body or group to give APRA, in writing, specified information relating to the application by a specified time that is reasonable in the circumstances.
- (2) APRA may decide to treat an application by a body corporate or group of individual trustees for an RSE licence as having been withdrawn if the body or group:
 - (a) does not comply with a request to provide information under this section; and
 - (b) does not have a reasonable excuse for not complying.
- (3) If APRA decides under subsection (2) to treat an application for an RSE licence as having been withdrawn, APRA must take all reasonable steps to ensure that the body that made the application,

or a member of the group that made the application, is given a notice informing the body or group of:

- (a) APRA's decision; and
 - (b) the reasons for that decision;
- as soon as practicable after making the decision.

29CB Period etc. for deciding applications from existing trustees in licensing transition period

Statements of intention to apply

- (1) A person who was a trustee of a registrable superannuation entity at the start of the licensing transition period may give APRA a written statement that:
 - (a) is in the approved form; and
 - (b) indicates whether the person intends to apply under section 29C for an RSE licence; and
 - (c) lists the registrable superannuation entities that the person intends to apply to have registered under Part 2B if the RSE licence is granted.

Period for deciding applications

- (2) Subject to subsection (3), APRA must decide an application for an RSE licence before the end of the licensing transition period if:
 - (a) the application is received by APRA during that period; and
 - (b) the application is for an RSE licence to be granted to:
 - (i) a body corporate that was a trustee of a registrable superannuation entity at the start of the licensing transition period; or
 - (ii) a group of individual trustees that has a member who was a trustee of a registrable superannuation entity at the start of the licensing transition period.
- (3) At any time in the last 6 months of the licensing transition period, APRA may refuse to consider under subsection (2) any further applications for RSE licences that are received by APRA in the last

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6 months before the end of the licensing transition period for RSE licences to be granted to:

- (a) bodies corporate that were trustees of registrable superannuation entities at the start of the licensing transition period; or
 - (b) groups of individual trustees with one or more members who were each a trustee of a registrable superannuation entity at the start of the licensing transition period.
- (4) If APRA decides to refuse, under subsection (3), to consider under subsection (2) any further applications, APRA must, as soon as practicable after making the decision, publish a notice stating APRA's decision in a daily newspaper that circulates generally in each State and Territory.
- (5) If APRA decides to refuse, under subsection (3), to consider under subsection (2) an application, that application is taken, at the end of the licensing transition period, to have been received by APRA immediately after the end of the licensing transition period.

29CC Period for deciding other applications

- (1) APRA must decide an application for an RSE licence within 90 days after receiving it if:
- (a) the application is received by APRA after the end of the licensing transition period; or
 - (b) the application is received by APRA during the licensing transition period and is for an RSE license to be granted to:
 - (i) a body corporate that was not a trustee of a registrable superannuation entity at the start of the licensing transition period; or
 - (ii) a group of individual trustees that has no members that were a trustee of a registrable superannuation entity at the start of the licensing transition period;
- unless APRA extends the period for deciding the application under subsection (2).

- (2) APRA may extend the period for deciding an application covered by paragraph (1)(a) or (b) by up to 30 days if APRA informs the body corporate, or a member of the group, that made the application of the extension:
 - (a) in writing; and
 - (b) within 90 days after receiving the application.
- (3) If APRA extends the period for deciding the application, it must decide the application within the extended period.
- (4) If APRA has not decided the application by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Division 4—Grant of RSE licences

29D Grant of RSE licences

- (1) APRA must grant an RSE licence to a body corporate, or group of individual trustees, that has applied for an RSE licence if, and only if:
 - (a) APRA has no reason to believe that:
 - (i) if the application is made by a body corporate—the body corporate; or
 - (ii) if the application is made by a group of individual trustees—the group as a whole or any member of the group;would fail to comply with the RSE licensee law if the RSE licence were granted; and
 - (b) APRA has no reason to believe that:
 - (i) if the application is made by a body corporate—the body corporate; or
 - (ii) if the application is made by a group of individual trustees—the group as a whole or any member of the group;would fail to comply with any condition imposed on the RSE licence if it were granted; and
 - (c) the application for the licence complies with section 29C and is for a class of licence that the body corporate or group of individual trustees may apply for under that section; and
 - (d) APRA is satisfied that:
 - (i) if the application is made by a body corporate—the body corporate meets the requirements of the prudential standards relating to fitness and propriety for RSE licensees; or
 - (ii) if the application is made by a group of individual trustees—the group as a whole meets the requirements of the prudential standards relating to fitness and propriety for RSE licensees and each of the members of

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the group meets the requirements of the prudential standards relating to fitness and propriety for members of groups of trustees that are RSE licensees; and

- (f) in a case where the applicant is not a constitutional corporation—APRA is satisfied that:
 - (i) if the application is made by a body corporate—the body corporate; or
 - (ii) if the application is made by a group of individual trustees—each member of the group;
only intends to act as a trustee of one or more superannuation funds that have governing rules providing that the sole or primary purpose of the fund is the provision of old-age pensions; and
- (g) in a case where the application is for a licence of a class that enables a trustee that holds a licence of the class to be a trustee of a public offer entity subject to any condition imposed under subsection 29EA(3)—APRA is satisfied that the applicant is a constitutional corporation; and
- (h) the application has not been withdrawn, treated as withdrawn under subsection 29CA(2), refused consideration under subsection 29CB(3) or taken to have been refused under subsection 29CC(4).

Note 1: Conditions apply to all RSE licences. See Division 5.

Note 2: An RSE licence may only be granted to a body corporate or a group of individual trustees because only bodies corporate and groups of individual trustees may apply for RSE licences. See section 29C.

- (2) Otherwise APRA must refuse the application.

29DB Notice of class of licence

If APRA decides to grant an RSE licence to a body corporate or group of individual trustees, APRA must give the body corporate or group an RSE licence that specifies the class of licence granted.

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29DC Documents required to bear ABNs

- (1) An RSE licensee must ensure that its ABN is included in:
 - (a) each document that it gives to APRA in the capacity of an RSE licensee; and
 - (b) any other document in which it identifies itself as an RSE licensee of a registrable superannuation entity; and
 - (c) if the RSE licensee is a body corporate—any document in which the body corporate identifies itself as a trustee of a registrable superannuation entity; or
 - (d) if the RSE licensee is a group of individual trustees—any document in which a member of the group identifies itself as a trustee of a registrable superannuation entity or as a member of a group of individual trustees that are the RSE licensee of a registrable superannuation entity.
- (2) However, an RSE licensee is not required to comply with subsection (1) in respect of a particular document if it has been given written approval by APRA not to be required to ensure that its ABN is included in that document or in a class of documents that includes that document.

29DD Licence period

- (1) An RSE licence comes into force at the later of:
 - (a) the time when it is granted; or
 - (b) the time specified on the licence as the time when it comes into force.
- (2) An RSE licence continues in force, subject to:
 - (a) any imposition of licence conditions under Division 5; or
 - (b) any variation or revocation of the licence conditions, or variation of the licence class, under Division 6;until the RSE licence is cancelled under Division 7.

29DE APRA to give notice of refusal of applications

If APRA refuses an application by a body corporate or a group of individual trustees for an RSE licence, APRA must take all reasonable steps to ensure that the body or a member of the group is given a notice informing the body or group of:

- (a) APRA's refusal of the application; and
 - (b) the reasons for that refusal;
- as soon as practicable after refusing the application.

Division 5—Conditions on RSE licences

29E Conditions imposed on all licences and on groups of licences

Conditions imposed on all RSE licences

- (1) The following conditions are imposed on all RSE licences:
- (a) the RSE licensee and, if the RSE licensee is a group of individual trustees, each of the members of the group, must comply with the RSE licensee law;
 - (b) the duties of a trustee in respect of each registrable superannuation entity of which it is an RSE licensee must be properly performed by:
 - (i) if the RSE licensee is a body corporate—the body corporate; or
 - (ii) if the RSE licensee is a group of individual trustees—each of the members of the group;
 - (ba) the RSE licensee must:
 - (i) have an ABN; or
 - (ii) have made an application for an ABN that has not been refused under the *A New Tax System (Australian Business Number) Act 1999*;
 - (d) the RSE licensee must ensure that each registrable superannuation entity of which it is the RSE licensee is:
 - (i) registered under Part 2B; or
 - (ii) the subject of an application for registration under Part 2B that has not been finally determined or otherwise disposed of;
 - (ea) the RSE licensee must ensure that each registrable superannuation entity of which it is an RSE licensee has an ABN;
 - (f) the RSE licensee must notify APRA of any change in the composition of the RSE licensee (see subsection (2)) within 14 days after the change takes place;

- (g) the RSE licensee must comply with any other conditions prescribed by regulations made for the purposes of this paragraph.

- Note 1: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).
- Note 2: An RSE licensee must notify APRA if the RSE licensee breaches a licence condition: see section 29JA.
- Note 3: Additional conditions may be imposed on various types of RSE licences (see subsections (3) to (7)) or a particular RSE licence (see section 29EA).

Change in the composition of the RSE licensee

- (2) For the purposes of paragraph (1)(f), a ***change in the composition of the RSE licensee*** is:
- (a) if the RSE licensee is a body corporate—a person becoming, or ceasing to be, a director of the body corporate; or
 - (b) if the RSE licensee is a group of individual trustees—an individual becoming, or ceasing to be, a member of the group.
- (3) An additional condition is imposed on each RSE licence that enables a trustee that holds a licence of that class to be a trustee of a public offer entity. The condition is that the RSE licensee that holds the licence must continue to be a constitutional corporation.

Licences held by RSE licensees that are not constitutional corporations

- (4) The following additional condition is imposed on each RSE licence that is not held by a constitutional corporation:
- (a) if the RSE licensee that holds the licence is a body corporate—that the body; or
 - (b) if the RSE licensee is a group of individual trustees—that the members of the group;

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only act as a trustee of superannuation funds that have governing rules providing that the sole or primary purpose of the fund is the provision of old-age pensions.

Licences held by groups of individual trustees

- (5) The following additional conditions are imposed on each RSE licence held by a group of individual trustees:
- (a) the members of the group must make all reasonable efforts to ensure that the group always has at least 2 members;
 - (b) any continuous period for which the group has less than 2 members must be 90 days or less.

Note: Paragraph 29E(1)(f) requires APRA to be notified of any change in the composition of the RSE licensee.

Licences held by RSE licensees of transferee funds

- (6) An additional condition is imposed on each RSE licence held by an RSE licensee of a fund that has had benefits of members and beneficiaries transferred to it from a transferor fund under Part 18 (whether while the RSE licensee was the RSE licensee of the fund or earlier). The condition is that, while the RSE licensee is the RSE licensee of the fund, the RSE licensee assumes the obligation to pay benefits to those who were members or beneficiaries of the transferor fund immediately before the transfer.

RSE licensees authorised to offer MySuper products

- (6A) The following additional conditions are imposed on each RSE licensee that is authorised to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product:
- (a) the RSE licensee must ensure that the governing rules of the fund are not varied so that section 29TC is no longer satisfied in relation to that class of interest;
 - (b) the RSE licensee must ensure that the governing rules of the fund relating to that class of interest are not contravened.

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RSE licensees who apply for authority to offer MySuper product

- (6B) An additional condition is imposed on each RSE licensee who makes an application under section 29S for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product. The condition is that the RSE licensee must give effect to elections made in accordance with sections 29SAA, 29SAB and 29SAC.

RSE licensees who apply for authority to operate eligible rollover funds

- (6C) An additional condition is imposed on each RSE licensee who makes an application under section 242A for authority to operate a regulated superannuation fund as an eligible rollover fund. The condition is that the RSE licensee must give effect to an election made in accordance with section 242B.

RSE licensees authorised to operate eligible rollover funds

- (6D) An additional condition is imposed on each RSE licensee that is authorised to operate a regulated superannuation fund as an eligible rollover fund. The condition is that the RSE licensee must ensure that the governing rules of the fund are not varied so that:
- (a) the only purpose of the fund is no longer to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; or
 - (b) a single diversified investment strategy is no longer adopted in relation to assets of the fund.

Complying with rules relating to merging multiple accounts in a superannuation entity

- (6E) The following additional condition is imposed on each RSE licence that relates to a superannuation entity for which the RSE licensee has obligations under section 108A. The condition is that the RSE licensee must ensure that the rules that that section requires in relation to the superannuation entity are complied with.

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Prescribed conditions imposed on classes of licences

- (7) An additional condition prescribed by a regulation made for the purposes of this subsection as a condition applying to all RSE licences of a specified class is imposed on each RSE licence of that class.
- (8) A specified class mentioned in subsection (7) may be a class other than a class provided for under subsection 29B(2) or (3) or under regulations made for the purposes of subsection 29B(4).

29EA Additional conditions imposed on individual licences by APRA

- (1) APRA may, at any time, impose an additional condition on an RSE licence by giving the RSE licensee a notice setting out the additional condition.
- (2) A condition imposed under subsection (1) must not be inconsistent with any condition imposed by, or under, section 29E on an RSE licence.

Note 1: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).

Note 2: An RSE licensee must notify APRA if the RSE licensee breaches a licence condition: see section 29JA.

Note 3: RSE licensees may apply to APRA to have conditions imposed under this section varied or revoked: see section 29F.

- (2A) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) Without limiting subsection (1), an additional condition imposed under that subsection on an RSE licence may provide that the body corporate that is the RSE licensee, or each of the members of a group of individual trustees that is the RSE licensee, must not act as a trustee under that RSE licence for a registrable superannuation entity other than:

- (a) a registrable superannuation entity specified in the condition;
or
 - (b) a registrable superannuation entity included in the class of registrable superannuation entities specified in the condition.
- (4) Without limiting subsection (1), an additional condition imposed under that subsection on an RSE licence may provide that the RSE licensee must ensure that a fund specified in the condition, or in a class of funds specified in the condition, must comply with the alternative agreed representation rules whenever section 92 applies to the fund. However, before imposing such a condition, APRA must have regard to any written guidelines determined by APRA under this subsection.
- (5) If the RSE licensee is also a financial services licensee:
 - (a) APRA must consult ASIC before imposing a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and
 - (b) APRA must inform ASIC about the imposition of any condition not covered by paragraph (a) within one week after the condition is imposed.
- (6) A failure to comply with a requirement of subsection (5) does not invalidate the imposition of any condition.
- (7) An additional condition imposed under this section comes into force on the later of:
 - (a) the day on which APRA gives the RSE licensee the notice of the condition; or
 - (b) the day specified in the notice as the day on which the condition comes into force.

29EB Directions to comply with licence conditions

APRA may direct an RSE licensee to comply with a specified condition of its RSE licence by a specified time if APRA has

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reasonable grounds to believe that the RSE licensee has breached the condition. The direction must:

- (a) be by notice in writing given to the RSE licensee; and
- (b) specify a time that is reasonable in the circumstances.

Note: A failure to comply with a direction may lead to cancellation of the RSE licence (see section 29G) and may be an offence (see section 29JB).

Division 6—Varying RSE licences

29F Applications for variation of RSE licences

- (1) An RSE licensee may apply to APRA for one or both of the following:
 - (a) variation of its RSE licence so that the RSE licence is an RSE licence of a different class;
 - (b) variation or revocation of a condition that APRA has imposed on its RSE licence under section 29EA.
- (2) An application under this section must:
 - (a) be in the approved form; and
 - (b) contain the information required by the approved form; and
 - (c) if the application is for a variation of an RSE licence so that it is an RSE licence of a different class—be accompanied by the application fee (if any) prescribed for the type of variation by regulations made for the purposes of this paragraph.

29FA APRA may request further information

- (1) APRA may give an RSE licensee that makes an application under section 29F a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application by a specified time that is reasonable in the circumstances.
- (2) APRA may decide to treat an application under section 29F as having been withdrawn if the RSE licensee:
 - (a) does not comply with a request to provide information under this section; and
 - (b) does not have a reasonable excuse for not complying.
- (3) If APRA decides to treat an application under section 29F as having been withdrawn, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee of:

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- (a) APRA's decision; and
 - (b) the reasons for that decision;
- as soon as practicable after making the decision.

29FB Period for deciding applications

- (1) APRA must decide an application under section 29F within 60 days of receiving the application, unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application under section 29F by up to 60 days if APRA informs the RSE licensee of the extension:
 - (a) in writing; and
 - (b) within 60 days of receiving the application.
- (3) If APRA extends the period for deciding an application under section 29F, it must decide the application within the extended period.
- (4) If APRA has not decided an application under section 29F by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

29FC APRA may vary RSE licences in accordance with applications

- (1) APRA may, by notice to an RSE licensee:
 - (a) vary the RSE licensee's RSE licence so that it is an RSE licence of a different class; or
 - (b) vary or revoke a condition that APRA has imposed on the RSE licence under section 29EA;in accordance with an application under section 29F.
- (2) However:
 - (a) an RSE licence must not be varied so that it becomes an RSE licence of a particular class unless APRA is satisfied that the

- RSE licensee will comply with any conditions imposed on that class of RSE licence; and
- (b) a condition as varied under paragraph (1)(b) must not be inconsistent with any condition imposed by section 29E; and
 - (c) if the RSE licensee is also a financial services licensee:
 - (i) APRA must consult ASIC before varying the RSE licence so that it is an RSE licence of a different class, if, in APRA's opinion, the variation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and
 - (ii) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and
 - (iii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (ii); and
 - (iv) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i), (ii) or (iii) within one week after the condition is varied or revoked.
- (3) A failure to comply with a requirement of paragraph (2)(c) does not invalidate:
- (a) the variation of an RSE licence so that it is an RSE licence of a different class; or
 - (b) the variation or revocation of a licence condition.
- (4) APRA is not required to vary the class of, or vary or revoke any condition of, an RSE licence in the terms requested by an RSE licensee in an application under section 29F.

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29FD APRA may vary or revoke licence conditions on its own initiative

- (1) APRA may, on its own initiative, vary or revoke any condition that it imposed on an RSE licence under section 29EA.
- (2) However:
 - (a) a condition as varied under subsection (1) must not be inconsistent with any condition imposed by section 29E; and
 - (b) if the RSE licensee that holds the licence is also a financial services licensee:
 - (i) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and
 - (ii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (i); and
 - (iii) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i) or (ii) within one week after the condition is varied or revoked.
- (3) A failure to comply with a requirement of paragraph (2)(b) does not invalidate the variation or revocation of a condition.

29FE Notification of APRA's decisions under this Division

- (1) APRA must give a notice to an RSE licensee if APRA:
 - (a) varies the RSE licensee's RSE licence under section 29FC so that it is an RSE licence of a different class; or
 - (b) varies or revokes, under section 29FC or 29FD, a condition that APRA imposed on the RSE licence under section 29EA.
 - (2) The notice must:
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- (a) if paragraph (1)(a) applies—specify the class of the RSE licence after the variation; and
 - (b) if paragraph (1)(b) applies:
 - (i) identify the licence condition being varied or revoked; and
 - (ii) specify any conditions imposed under section 29EA to which the licence is subject after the variation or revocation comes into force; and
 - (c) state the reasons for the variation or revocation; and
 - (d) specify the day, not earlier than the day on which APRA gives the notice, on which the variation or revocation comes into force.
- (3) If APRA refuses an application for a variation or revocation under section 29FC, APRA must take all reasonable steps to ensure that the RSE licensee that made the application is given a notice informing it of:
- (a) APRA's refusal of the application; and
 - (b) the reasons for the refusal;
- as soon as practicable after refusing the application.

29FF When variations or revocations come into force etc.

- (1) If, under section 29FC, APRA varies an RSE licence so that it is an RSE licence of a different class:
 - (a) the variation comes into force on the day specified in the notice under paragraph 29FE(2)(d); and
 - (b) the variation remains in force until:
 - (i) the licence is again varied so that it is an RSE licence of a different class; or
 - (ii) the licence is cancelled.
- (2) If, under section 29FC or 29FD, APRA varies a condition imposed on an RSE licence:
 - (a) the variation comes into force on the day specified in the notice under paragraph 29FE(2)(d); and

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- (b) the variation remains in force until:
 - (i) the condition is varied in an inconsistent manner; or
 - (ii) the condition is revoked; or
 - (iii) the licence is cancelled.
- (3) If, under section 29FC or 29FD, APRA revokes a condition imposed on an RSE licence, the revocation comes into force on the day specified in the notice under paragraph 29FE(2)(d).

Division 7—Cancelling RSE licences

29G Cancellation of RSE licences

- (1) APRA may, in writing, cancel an RSE licence.

Note: In some circumstances, APRA must inform or consult ASIC (see section 29GA).

- (2) Without limiting subsection (1), APRA may cancel an RSE licence under that subsection if:
- (a) the RSE licensee has requested, in the approved form, that the licence be cancelled; or
 - (b) the RSE licensee is a body corporate and is a disqualified person for the purposes of Part 15; or
 - (c) the RSE licensee has breached a condition imposed on the licence; or
 - (d) APRA has reason to believe that the RSE licensee will breach a condition imposed on the licence; or
 - (e) the RSE licensee has failed to comply with a direction by APRA under section 29EB; or
 - (f) APRA has reason to believe that the RSE licensee will fail to comply with a direction by APRA under section 29EB.
- (4) If APRA cancels an RSE licence it must take all reasonable steps to ensure that the body corporate or a member of the group that held the RSE licence is given a notice informing the body corporate or group:
- (a) that APRA has cancelled the licence; and
 - (b) of the reasons for the cancellation.

29GA Cancellation of RSE licences of financial services licensees

- (1) Before cancelling the RSE licence of an RSE licensee that is also a financial services licensee, APRA must consult ASIC if, in APRA's opinion, the cancellation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the

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financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides.

- (2) If APRA cancels the RSE licence of an RSE licensee that is also a financial services licensee, APRA must inform ASIC of the cancellation within one week after the cancellation.
- (3) A failure to comply with a requirement of this section does not invalidate the cancellation of an RSE licence.

29GB APRA may allow RSE licence to continue in effect

In a notice that APRA gives to an RSE licensee cancelling its RSE licence, APRA may specify that the RSE licence continues in effect as though the cancellation had not happened for the purposes of:

- (a) a specified provision, administered by APRA, of this Act, the regulations or the prudential standards; or
- (b) a specified provision, administered by APRA, of any other law of the Commonwealth;

in relation to specified matters, a specified period, or both.

Division 9—Offences and self-incrimination

29J Being trustee of a registrable superannuation entity while unlicensed etc.

- (1) A person must not be a trustee, or act as a trustee, of a registrable superannuation entity unless at least one of the following paragraphs apply:
- (a) the person holds an RSE licence that enables the person to be the trustee of the entity;
 - (b) the person is a member of a group of individual trustees that holds an RSE licence that enables the members of the group to each be a trustee of the entity.
- (2) Despite subsection 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to any matter in subsection (1) of this section.

- (3) A person that contravenes subsection (1) commits an offence.

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

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

- (4) A person must not be a trustee of a registrable superannuation entity, or act as a trustee of a registrable superannuation entity, if the person:
- (a) is a body corporate; and
 - (b) is not the only trustee of the registrable superannuation entity.

- (5) A person that contravenes subsection (4) commits an offence.

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

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

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- (6) This section does not prevent an RSE licensee from engaging or authorising persons to act on its behalf.

29JA Failing to notify breach of licence condition

- (1) If an RSE licensee becomes aware that:
- (a) the RSE licensee has breached or will breach a condition imposed on its RSE licence; and
 - (b) the breach is or will be significant (see subsection (1A));
- the RSE licensee must give APRA a written report about the breach as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.
- (1A) For the purposes of subsection (1), a breach is or will be **significant** if the breach is or will be significant having regard to any one or more of the following factors:
- (a) the number or frequency of similar previous breaches;
 - (b) the impact the breach has or will have on the RSE licensee's ability to fulfil its obligations as trustee of the superannuation entity;
 - (c) the extent to which the breach indicates that the RSE licensee's arrangements to ensure compliance with the RSE licensee law might be inadequate;
 - (d) the actual or potential financial loss arising or that will arise from the breach to the beneficiaries of the entity or to the RSE licensee;
 - (e) any other matters prescribed by regulations made for the purposes of this paragraph.
- (2) A person commits an offence if:
- (a) the person is:
 - (i) a body corporate that is an RSE licensee; or
 - (ii) a member of a group of individual trustees that is an RSE licensee; and
 - (b) the RSE licensee is in breach of subsection (1).

Penalty: 50 penalty units.

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- (3) Subsection (2) is an offence of strict liability.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

29JB Not complying with direction to comply with licence conditions

- (1) An RSE licensee must comply with a direction given to it under section 29EB within the time specified in the direction.
- (2) A person commits an offence if:
- (a) the person is:
 - (i) a body corporate that is an RSE licensee; or
 - (ii) a member of a group of individual trustees that is an RSE licensee; and
 - (b) the RSE licensee is in breach of subsection (1).

Penalty: 60 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

29JCA False representation about status as RSE licensee

- (1) A person commits an offence if:
- (a) the person makes a representation; and
 - (b) the representation is that the person is, or is a member of a group that is, an RSE licensee; and
 - (c) the representation is false.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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

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29JD Breach does not affect validity of issue of superannuation interests etc.

A breach of section 29J, 29JA or 29JB does not affect the validity of the issue of a superannuation interest or of any other act.

Part 2B—Registrable superannuation entities

Division 1—Object of this Part

29K Object etc. of this Part

- (1) The object of this Part is to provide for the registration of registrable superannuation entities.
- (2) Registration is significant because an RSE licensee may breach the licence condition imposed by paragraph 29E(1)(d) if a registrable superannuation entity of which it is the RSE licensee is not registered.

Note: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).

Division 2—Applying for registration

29L Applications for registration

Who may apply for registration

- (1) An RSE licensee may apply to APRA for registration of a registrable superannuation entity.

Requirements for applications

- (2) An application for registration of a registrable superannuation entity must:
- (a) be in the approved form; and
 - (b) contain the information required by the approved form; and
 - (ba) state the RSE licensee's and the entity's ABNs; and
 - (c) be accompanied by an up-to-date copy of the trust deed by which the registrable superannuation entity is constituted (except to the extent that the trust deed is constituted by the governing rules of the entity); and
 - (d) be accompanied by an up-to-date copy of the governing rules of the registrable superannuation entity (except to the extent that the governing rules are constituted by the law of the Commonwealth or by unwritten rules).

Note: If the RSE licensee is a group of individual trustees, the copy or statement must be signed by each of the members of the group: see subsection 13A(6).

Notifying certain changes while applications are pending

- (3) If:
- (a) an RSE licensee applies for registration of a registrable superannuation entity; and
 - (b) after the application is made but before APRA decides the application, the trust deed (other than the governing rules of the entity) by which the entity is constituted is varied or revoked and replaced;

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the RSE licensee must lodge an up-to-date copy of the trust deed with APRA as soon as practicable after the trust deed is varied or revoked and replaced.

(4) If:

- (a) an RSE licensee applies for registration of a registrable superannuation entity; and
- (b) after the application is made but before APRA decides the application, any governing rules of the entity (that are not constituted by the law of the Commonwealth or by unwritten rules) are varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the governing rules (that are not constituted by the law of the Commonwealth or by unwritten rules) with APRA as soon as practicable after the governing rules are varied or revoked and replaced.

(6) An application is taken not to comply with this section if subsection (3) or (4) is contravened.

Note: APRA cannot register an entity while the application does not comply with this section: see paragraph 29M(1)(a).

Lapsed applications

(7) An application for registration lapses if:

- (a) it was made by an RSE licensee; and
- (b) the RSE licensee ceases to be an RSE licensee before:
 - (i) APRA makes a decision on the application for registration; or
 - (ii) if APRA's decision with respect to the application is subject to review under this Act—before the review is finally determined or otherwise disposed of.

29LA APRA may request further information

APRA may give an RSE licensee that has applied for registration of a registrable superannuation entity a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application.

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Note: A failure to give the requested information delays the time within which APRA must decide the application: see paragraph 29LB(1)(b).

29LB Period for deciding applications for registration

- (1) APRA must decide an application by an RSE licensee for registration of a registrable superannuation entity:
 - (a) within 21 days after receiving the application; or
 - (b) if the applicant was requested to provide information under section 29LA—within 21 days after:
 - (i) receiving from the RSE licensee all of the information the RSE licensee was requested to provide under that section; or
 - (ii) all notices relating to that information being disposed of;unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application by an RSE licensee for registration of a registrable superannuation entity by up to 7 days if APRA informs the RSE licensee of the extension:
 - (a) in writing; and
 - (b) within the period in which it would otherwise be required to decide the application under subsection (1).
- (3) If APRA extends the period for deciding an application for registration of a registrable superannuation entity, it must decide the application within the extended period.
- (4) If APRA has not decided an application for registration of a registrable superannuation entity by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Division 3—Registration**29M Registration of registrable superannuation entity**

- (1) APRA must register a registrable superannuation entity if, and only if:
 - (a) the application for registration complies with section 29L;
and
 - (b) the applicant has provided to APRA all information that the applicant was requested, under section 29LA, to provide, or the request has been disposed of; and
 - (c) APRA is satisfied that nothing in the governing rules of the entity conflicts with Part 6; and
 - (e) the applicant for registration holds an RSE licence that enables:
 - (i) if the applicant is a body corporate—the body corporate;
or
 - (ii) if the applicant is a group of individual trustees—each member of the group;
to be a trustee of that entity.
- (2) Otherwise APRA must refuse to register the entity.

29MA Notice of registration

If APRA registers a registrable superannuation entity, APRA must notify the RSE licensee of the entity in writing of the registration.

29MB Documents required to bear ABNs

- (1) After a registrable superannuation entity is registered, the RSE licensee of the entity must ensure that the entity's ABN is included in:
 - (a) each document that the RSE licensee gives to APRA that relates to the entity; and

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- (b) any other document in which the RSE licensee identifies itself as the RSE licensee of the entity; and
 - (c) if the RSE licensee is a body corporate—any document in which the body corporate identifies itself as a trustee of the entity; and
 - (d) if the RSE licensee is a group of individual trustees—any document that a member of the group gives to APRA or in which a member of the group identifies itself as a trustee of the entity or as a member of a group of individual trustees that are the RSE licensee of the entity.
- (2) However, an RSE licensee is not required to comply with subsection (1) in respect of a particular document if the RSE licensee has been given written approval by APRA not to ensure that the ABN is included in that document or in a class of documents that includes that document.

29MC APRA to give notice of refusal of applications

If APRA refuses an application by an RSE licensee for registration of a registrable superannuation entity, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice:

- (a) informing it of APRA's refusal of the application; and
 - (b) setting out the reasons for the refusal;
- as soon as practicable after refusing the application.

Division 4—Cancelling registration

29N Cancelling registration

- (1) APRA must cancel the registration of a registrable superannuation entity if a document that:
 - (a) is a reporting document within the meaning of the *Financial Sector (Collection of Data) Act 2001*; and
 - (b) relates to the entity; and
 - (c) was given to APRA under that Act;states that the entity has been wound up.
- (1A) APRA may cancel the registration of a superannuation entity that has become a self managed superannuation fund.
- (2) APRA may cancel the registration of a registrable superannuation entity if APRA is satisfied, on reasonable grounds, that:
 - (a) the entity has no beneficiaries and no assets; and
 - (b) there are no outstanding claims against the entity for benefits or other payments; and
 - (c) other circumstances (if any) prescribed by regulations made for the purposes of this paragraph exist.
- (3) If APRA cancels the registration of a registrable superannuation entity under subsection (2), APRA must take all reasonable steps to ensure that the RSE licensee of the entity is given a notice:
 - (a) stating that APRA has cancelled the registration of the entity; and
 - (b) setting out the reasons for the cancellation;as soon as practicable after cancelling the registration of the entity.

Division 5—Offences

29QB Certain information required to be made publicly available

- (1) An RSE licensee of a registrable superannuation entity must ensure that the following is made publicly available, and kept up to date, at all times on the registrable superannuation entity's website:
 - (a) details of the remuneration of:
 - (i) if the RSE licensee is a body corporate—each executive officer in relation to the RSE licensee; and
 - (ii) if the RSE licensee is a group of individual trustees—each trustee of the registrable superannuation entity; being details of a kind prescribed by the regulations;
 - (b) any other document or information prescribed by the regulations.
- (2) A person commits an offence if:
 - (a) the person is:
 - (i) a body corporate that is an RSE licensee; or
 - (ii) a member of a group of individual trustees that is an RSE licensee; and
 - (b) the RSE licensee contravenes subsection (1).

Penalty: 50 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal liability and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

29QC Obligation to give consistent information

- (1) Subject to subsection (2), if:

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- (a) an RSE licensee is required to give information to APRA under a reporting standard (within the meaning of the *Financial Sector (Collection of Data) Act 2001*); and
 - (b) under the reporting standard, the information is required to be calculated in a particular way; and
 - (c) the same or equivalent information is given by the RSE licensee to a person other than an agency of the Commonwealth or of a State or Territory, whether or not by publishing the information on a website;the RSE licensee must ensure that the information given to the other person is calculated in the same way as the information given to APRA.
- (2) Subsection (1) does not apply to information given to the other person in circumstances prescribed by the regulations.
- (3) A person commits an offence if:
 - (a) the person is:
 - (i) a body corporate that is an RSE licensee; or
 - (ii) a member of a group of individual trustees that is an RSE licensee; and
 - (b) the RSE licensee contravenes subsection (1).

Penalty: 50 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal liability and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

Part 2C—MySuper

Division 1—Object of this Part

29R Object of this Part

- (1) It is intended that all MySuper products will be simple products sharing common characteristics.
- (2) The object of this Part is to ensure that a class of beneficial interest in a regulated superannuation fund is not offered as a MySuper product unless it has those characteristics.
- (3) This is done by requiring the RSE licensee of a regulated superannuation fund to obtain authority from APRA before offering a class of beneficial interest in the fund as a MySuper product.
- (4) The ability of an RSE licensee to offer a MySuper product is significant for the purposes of the *Superannuation Guarantee (Administration) Act 1992*. Under that Act, employers will need to pay contributions for an employee who has no chosen fund into a fund that offers a MySuper product, in order to meet the choice of fund requirements and so avoid an increased individual superannuation guarantee shortfall for the employee.

Division 2—Applying for authority

29S Application for authority to offer a MySuper product

Who may apply?

- (1) An RSE licensee may apply to APRA for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.

Requirements for applications

- (2) An application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product must:
 - (a) be in the approved form; and
 - (b) contain the information required by the approved form; and
 - (c) state the RSE licensee's and the fund's ABNs; and
 - (d) be accompanied by an up-to-date copy of the trust deed by which the fund is constituted (except to the extent that the trust deed is constituted by governing rules of the fund); and
 - (e) be accompanied by an up-to-date copy of the governing rules of the fund (except to the extent that the governing rules are constituted by the law of the Commonwealth or by unwritten rules); and
 - (f) be accompanied by elections made in accordance with each of the following sections:
 - (i) section 29SAA;
 - (ii) section 29SAB;
 - (iii) section 29SAC.

Notifying certain changes while applications are pending

- (3) If:
 - (a) an RSE licensee applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and

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- (b) after the application is made but before APRA decides the application, the trust deed (other than the governing rules of the fund) by which the fund is constituted is varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the trust deed with APRA as soon as practicable after the trust deed is varied or revoked and replaced.

(4) If:

- (a) an RSE licensee applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and
- (b) after the application is made but before APRA decides the application, any governing rules of the fund (that are not constituted by the law of the Commonwealth or by unwritten rules) are varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the governing rules (that are not constituted by the law of the Commonwealth or by unwritten rules) with APRA as soon as practicable after the governing rules are varied or revoked and replaced.

(5) If:

- (a) an RSE licensee applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and
- (b) after the application is made, but before APRA decides the application, information contained in the application ceases to be correct;

the RSE licensee must give APRA the correct information, in writing, as soon as practicable after the information in the application ceases to be correct.

- (6) An application is taken not to comply with this section if subsection (3), (4) or (5) is contravened.

Note: APRA cannot give authority to offer a class of beneficial interest in the fund as a MySuper product while the application does not comply with this section: see paragraph 29T(1)(a).

Lapsed applications

- (7) An application for authority lapses if:
- (a) it was made by an RSE licensee; and
 - (b) the RSE licensee ceases to be an RSE licensee before:
 - (i) APRA makes a decision on the application for authority; or
 - (ii) if APRA's decision with respect to the application is subject to review under this Act—the review is finally determined or otherwise disposed of.

29SAA Election to transfer accrued default amounts

- (1) An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:
- (a) the RSE licensee elects that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, the RSE licensee will:
 - (i) attribute to the MySuper product each amount that is an accrued default amount for a member of the fund who is eligible to hold the MySuper product, unless the member directs the RSE licensee in writing to attribute the amount to another MySuper product or an investment option within a choice product in the fund; and
 - (ii) do so before the end of a period of 30 days beginning on the day on which notice of authority to offer the class of beneficial interest in the fund as a MySuper product is given to the RSE licensee under section 29TD; and
 - (b) the RSE licensee elects that the RSE licensee will, before the end of the action period, take the action required under the prudential standards in relation to the following:
 - (i) each amount that is an accrued default amount for a member of the fund who is not eligible to hold a MySuper product offered by the fund;

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- (ii) each amount that is an accrued default amount for a member of another regulated superannuation fund of the RSE licensee that does not offer a MySuper product; and
 - (c) the election is in writing; and
 - (d) the election is in the approved form.
- (2) The ***action period***, for the purposes of paragraph (1)(b), in relation to an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, ends at the end of a period of 90 days beginning on:
 - (a) if APRA authorises the RSE licensee to offer the class of beneficial interest in the fund as a MySuper product—the day on which notice of that authority is given to the RSE licensee under section 29TD; or
 - (b) if APRA refuses the application—the day on which notice of the refusal is given to the RSE licensee under section 29TE.
- (3) If an RSE licensee makes an election under this section, the RSE licensee must comply with any requirements prescribed in the regulations in relation to:
 - (a) notices to be given to a member of the fund for whom there is an accrued default amount before the amount is attributed, or a decision is taken to continue to attribute the amount, to a MySuper product or an investment option within a choice product in the fund; and
 - (b) notices to be given to a member of the fund for whom there is an accrued default amount before the amount is moved to another fund.

29SAB Election to transfer assets attributed to a MySuper product if authorisation cancelled

An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:

- (a) the RSE licensee elects:

- (i) to take the action required under the prudential standards in relation to any asset or assets of the fund that are attributed to the MySuper product, if the authority to offer the relevant class of beneficial interest in the fund as a MySuper product is cancelled under subsection 29U(1); and
 - (ii) to do so before the end of a period of 90 days beginning on the day on which notice of the cancellation is given to the RSE licensee under subsection 29U(3); and
- (b) the election is in writing; and
- (c) the election is in the approved form.

29SAC Election not to charge MySuper members for payment of conflicted remuneration

- (1) An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:
 - (a) the RSE licensee elects that, if the authority is given, the RSE licensee will not charge any MySuper member a fee in relation to the MySuper product, all or part of which relates directly or indirectly to costs incurred by a trustee or the trustees of the fund:
 - (i) in paying conflicted remuneration to a financial services licensee, or a representative of a financial services licensee; or
 - (ii) in paying an amount to another person that a trustee of the fund knows, or reasonably ought to know, relates to conflicted remuneration paid by that other person to a financial services licensee, or a representative of a financial services licensee; and
 - (b) the election is in writing; and
 - (c) the election is in the approved form.
- (2) In this section:

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conflicted remuneration has the same meaning as in Part 7.7A of the *Corporations Act 2001*, subject to the extension of that meaning in subsection (3).

representative, of a financial services licensee, has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

- (3) In this section, **conflicted remuneration** also has the meaning it would have if:
- (a) financial product advice provided to the RSE licensee mentioned in subsection (1) by a financial services licensee, or a representative of a financial services licensee, mentioned in subparagraph (1)(a)(i) or (ii) were provided to the RSE licensee as a retail client; and
 - (b) financial product advice provided to the other person mentioned in subparagraph (1)(a)(ii) by a financial services licensee, or a representative of a financial services licensee, mentioned in that subparagraph were provided to the other person as a retail client.

29SA APRA may request further information

APRA may give an RSE licensee that has applied for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application.

Note: A failure to give the requested information delays the time within which APRA must decide the application: see paragraph 29SB(1)(b).

29SB Period for deciding applications for authority

- (1) APRA must decide an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product:
- (a) within 60 days after receiving the application; or
 - (b) if the applicant was requested to provide information under section 29SA—within 60 days after:

- (i) receiving from the RSE licensee all of the information the RSE licensee was requested to provide under that section; or
 - (ii) all notices relating to that information being disposed of;
- unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product by up to 60 days if APRA informs the RSE licensee of the extension:
 - (a) in writing; and
 - (b) within the period in which it would otherwise be required to decide the application under subsection (1).
 - (3) If APRA extends the period for deciding an application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, it must decide the application within the extended period.
 - (4) If APRA has not decided an application for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Division 3—Authority

29T Authority to offer a MySuper product

- (1) APRA must authorise an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product if, and only if:
- (a) the application for authority complies with section 29S; and
 - (b) the applicant has provided to APRA all information that the applicant was requested, under section 29SA, to provide, or the request has been disposed of; and
 - (c) the fund is registered under Part 2B; and
 - (d) either:
 - (i) the fund has 5 or more members; or
 - (ii) APRA is satisfied that the fund will, if authority is given, have 5 or more members within a period specified in the authority; and
 - (e) the fund is not an eligible rollover fund; and
 - (f) one of the following subparagraphs applies:
 - (i) the licensee is not already authorised to offer another class of beneficial interest in the fund as a MySuper product;
 - (ii) the licensee is already authorised to offer another class of beneficial interest in the fund as a MySuper product, but section 29TA or 29TB is satisfied, in relation to the class of beneficial interest in the fund to which the application relates, at the time APRA gives authority;
 - (iii) the licensee is already authorised to offer another class of beneficial interest in the fund as a MySuper product, but section 29TA or 29TB was satisfied in relation to each class of beneficial interest that the RSE licensee is already authorised to offer as a MySuper product, at the time APRA gave that earlier authority; and
 - (g) APRA is satisfied that section 29TC is satisfied in relation to that class of beneficial interest; and

- (h) APRA is satisfied that:
 - (i) where the RSE licensee is a body corporate—the RSE licensee; or
 - (ii) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees; is likely to comply with the enhanced trustee obligations for MySuper products; and
- (ha) where the RSE licensee is a body corporate—APRA is satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for MySuper products; and
- (i) APRA is satisfied that:
 - (i) where the RSE licensee is a body corporate—the RSE licensee; or
 - (ii) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees; is likely to comply with the general fees rules and the fees rules in relation to MySuper products; and
- (j) APRA is satisfied that the RSE licensee is not likely to contravene section 29W, 29WA or 29WB.

(2) Otherwise APRA must refuse to give the authority.

29TA Product in another fund in which there is already material goodwill

This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund (the ***proposed MySuper product***) if:

- (a) the benefits of members and beneficiaries in another regulated superannuation fund (the ***original fund***) are to be transferred to the fund; and
- (b) APRA is satisfied that:
 - (i) some or all of the persons whose benefits are to be transferred hold a class of interest in the original fund that is similar to the proposed MySuper product; and

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- (ii) there is material goodwill in that class of interest in the original fund; and
- (iii) that goodwill could not be maintained unless the RSE licensee were authorised to offer the proposed MySuper product as an additional MySuper product in the fund; and
- (iv) it would be in the best interests of the members of the fund, and those persons whose benefits are to be transferred to the fund, to maintain the distinction between the proposed MySuper product and other MySuper products within the fund.

29TB MySuper products for large employers

- (1) This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund if:
 - (a) under the governing rules of the fund, one employer is specified as a large employer in relation to the fund who is relevant to that class of beneficial interest; and
 - (b) either:
 - (i) that employer is a large employer in relation to the fund (see subsection (2)); or
 - (ii) APRA is satisfied that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, that employer will be a large employer in relation to the fund by the end of the period specified in the authority; and
 - (c) under the governing rules of the fund, a person is not entitled to hold an interest of that class in the fund unless the person is:
 - (i) an employee or a former employee of the large employer; or
 - (ii) an employee or a former employee of an associate of the large employer; or
 - (iii) a relative or dependant of an employee or a former employee mentioned in subparagraph (i) or (ii); and

- (d) under the governing rules of the fund:
 - (i) where the large employer or an associate of the large employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for an employee of the large employer, any employee of the large employer who is not a defined benefit member of the fund may hold an interest of that class in the fund; and
 - (ii) where the large employer or an associate of the large employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for an employee of an associate of the large employer, any employee of that associate who is not a defined benefit member of the fund may hold an interest of that class in the fund.
- (2) An employer is a **large employer** in relation to a regulated superannuation fund if there are 500 or more members of the fund who are any of the following:
 - (a) a member of the fund:
 - (i) who is an employee of the employer; and
 - (ii) in relation to whom the employer or an associate of the employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund;
 - (b) a member of the fund:
 - (i) who is an employee of an associate of the employer; and
 - (ii) in relation to whom either the employer or an associate of the employer contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund.
- (3) In working out under subsection (2) whether an employer is a **large employer**, disregard defined benefit members of the fund.

29TC Characteristics of a MySuper product

- (1) This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund if, under the governing rules of the fund:
- (a) a single diversified investment strategy is to be adopted in relation to assets of the fund, to the extent that they are attributed to that class of beneficial interest in the fund; and
 - (b) all members who hold a beneficial interest of that class in the fund are entitled to access the same options, benefits and facilities except to the extent that a benefit is provided by taking out risk insurance; and
 - (c) amounts are attributed to members in relation to their beneficial interest of that class in the fund in a way that does not stream gains or losses that relate to any assets of the fund to only some of those members, except to the extent permitted under a lifecycle exception (see subsection (2)); and
 - (d) the same process is to be adopted in attributing amounts to members in relation to their beneficial interest of that class in the fund, except to the extent that a different process is necessary to allow for fee subsidisation by employers; and
 - (e) if fee subsidisation by employers is permitted, that subsidisation does not favour one member who holds a beneficial interest of that class in the fund and is an employee of a subsidising employer over another such member who is an employee of that employer; and
 - (f) the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of that class in the fund are those permitted under subsection (3); and
 - (g) a beneficial interest of that class in the fund cannot be replaced with a beneficial interest of another class in the fund, unless:
 - (i) the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; or

- (ii) the person who holds the interest has died and the interest is replaced with a beneficial interest of another class in the fund of a kind, and in the circumstances, prescribed by the regulations; and
 - (h) a beneficial interest of that class in the fund (the *old interest*) cannot be replaced with a beneficial interest (the *new interest*) in another superannuation entity unless:
 - (ii) the replacement is permitted, or is required, under a law of the Commonwealth; or
 - (iii) the person who holds the old interest consents in writing to the replacement with the new interest no more than 30 days before it occurs; and
 - (i) to the extent that assets of the fund are attributed to beneficial interests of that class, a pension is not payable out of those assets by the trustee, or trustees, of the fund on the satisfaction of a condition of release of benefits specified in a standard made under paragraph 31(2)(h) by a person who holds a beneficial interest of that class, unless the payment is derived from a benefit of the kind mentioned in subparagraph 62(1)(b)(ii) provided to the fund by an insurer; and
- Note: Subparagraph 62(1)(b)(ii) is about benefits payable when a person ceases work due to ill-health.
- (j) no member who holds a beneficial interest of that class in the fund is precluded from holding a beneficial interest of another class in the fund because of that fact; and
 - (k) no member is precluded from holding a beneficial interest of that class in the fund because the member holds a beneficial interest of another class in the fund.
- (2) A *lifecycle exception* is a rule under the governing rules of the fund that allows gains and losses from different classes of asset of the fund to be streamed to different subclasses of the members of the fund who hold a MySuper product:
- (a) on the basis, and only on the basis, of the age of those members; or

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- (b) on the basis of the age of those members and other prescribed factors; or
 - (c) on the basis of the age of those members and other prescribed factors in prescribed circumstances.
- (3) A limitation on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of a particular class in a regulated superannuation fund is permitted for the purposes of paragraph (1)(f) if:
 - (a) the limitation is of a prescribed kind; or
 - (b) the limitation is imposed by or under the general law or another law of the Commonwealth.

29TD Notice of authority

If APRA authorises an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, APRA must notify the RSE licensee in writing of the authority.

29TE APRA to give notice of refusal of authority

If APRA refuses an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice:

- (a) informing it of APRA's refusal of the application; and
 - (b) setting out the reasons for the refusal;
- as soon as practicable after refusing the application.

Division 4—Cancelling authority

29U Cancelling authority to offer MySuper product

- (1) APRA may, in writing, cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.
- (2) Without limiting subsection (1), APRA may cancel an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product if:
 - (a) APRA is no longer satisfied that section 29TC is satisfied in relation to that class of beneficial interest in the fund; or
 - (b) authority was given to offer that class of beneficial interest in the fund as a MySuper product because section 29TB was satisfied in relation to the class and either:
 - (i) in a case where that section was satisfied because APRA was satisfied that an employer would be a large employer by the end of a period specified in the authority—the employer was not a large employer at that time; or
 - (ii) in any case—that section was no longer satisfied in relation to the class on the last day of the immediately preceding year of income; or
 - (c) APRA is no longer satisfied that:
 - (i) where the RSE licensee is a body corporate—the RSE licensee; or
 - (ii) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees; is likely to comply with the enhanced trustee obligations for MySuper products (whether because of a previous failure to do so, or for any other reason); or
 - (ca) where the RSE licensee is a body corporate—APRA is no longer satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for

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- MySuper products (whether because of a previous failure to do so, or for any other reason); or
- (d) APRA is no longer satisfied that:
 - (i) where the RSE licensee is a body corporate—the RSE licensee; or
 - (ii) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees; is likely to comply with the general fees rules and the fees rules in relation to MySuper products (whether because of a previous failure to do so, or for any other reason); or
 - (e) APRA is no longer satisfied that the RSE licensee is not likely to contravene section 29W, 29WA or 29WB (whether because of a previous contravention of that section, or for any other reason); or
 - (f) the fund ceases to be registered under Part 2B; or
 - (g) either:
 - (i) in a case where authority was given to offer the class of beneficial interest in the fund as a MySuper product on the basis that the fund would have 5 or more members within a period specified in the authority—the fund does not have 5 or more members at the end of that period; or
 - (ii) in any case—the fund has ceased to have 5 or more members; or
 - (h) paragraph 29T(1)(e) is no longer satisfied in relation to the fund (no longer an eligible rollover fund); or
 - (i) APRA is satisfied that:
 - (i) where the RSE licensee is a body corporate—the RSE licensee; or
 - (ii) where the RSE licensee is made up of a group of individual trustees—one of those individual trustees; has contravened a provision of the governing rules of the fund relating to the MySuper product; or
 - (j) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 29SAA (election to transfer accrued default amounts to a MySuper product); or

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- (k) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 29SAC (election not to pass costs of conflicted remuneration to MySuper members).
- (3) If APRA cancels an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product it must take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee:
 - (a) that APRA has cancelled the authority; and
 - (b) of the reasons for the cancellation.
- (4) If:
 - (a) APRA cancels an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and
 - (b) as a result of the cancellation, the fund no longer offers any MySuper product;APRA must also notify the Fair Work Commission in writing of that fact.

29UA Cancellation of authority of an RSE licensee that is also a financial services licensee

- (1) Before cancelling an authority of an RSE licensee that is also a financial services licensee, APRA must consult ASIC if, in APRA's opinion, the cancellation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides.
- (2) If APRA cancels the authority of an RSE licensee that is also a financial services licensee, APRA must inform ASIC of the cancellation within one week after the cancellation.
- (3) A failure to comply with a requirement of this section does not invalidate the cancellation of an authority to offer a class of

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beneficial interest in a regulated superannuation fund as a MySuper product.

29UB APRA may allow authority to continue in effect

In a notice that APRA gives to an RSE licensee cancelling an authority, APRA may specify that the authority continues in effect as though the cancellation had not happened for the purposes of:

- (a) a specified provision, administered by APRA, of this Act, the regulations or the prudential standards; or
- (b) a specified provision, administered by APRA, of any other law of the Commonwealth;

in relation to specified matters, a specified period, or both.

Division 5—Fees rules for MySuper products

29V Fees that may be charged in relation to a MySuper product

- (1) The trustee, or the trustees, of a regulated superannuation fund that offers a MySuper product may only charge fees of one or more of the following kinds in relation to that product:
 - (a) an administration fee;
 - (b) an investment fee;
 - (c) a buy-sell spread;
 - (d) a switching fee;
 - (e) an exit fee;
 - (f) an activity fee;
 - (g) an advice fee;
 - (h) an insurance fee.
- (2) An **administration fee** is a fee that relates to the administration or operation of a superannuation entity and includes costs incurred by the trustee, or the trustees, of the entity that:
 - (a) relate to the administration or operation of the fund; and
 - (b) are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.
- (3) An **investment fee** is a fee that relates to the investment of the assets of a superannuation entity and includes:
 - (a) fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees); and
 - (b) costs incurred by the trustee, or the trustees, of the entity that:
 - (i) relate to the investment of assets of the entity; and
 - (ii) are not otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.

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- (4) A **buy-sell spread** is a fee to recover transaction costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the sale and purchase of assets of the entity.
- (5) A **switching fee** is a fee to recover the costs of switching all or part of a member's interest in a superannuation entity from one class of beneficial interest in the entity to another.
- (6) An **exit fee** is a fee to recover the costs of disposing of all or part of members' interests in a superannuation entity.
- (7) A fee is an **activity fee** if:
 - (a) the fee relates to costs incurred by the trustee, or the trustees, of a superannuation entity that are directly related to an activity of the trustee, or the trustees:
 - (i) that is engaged in at the request, or with the consent, of a member; or
 - (ii) that relates to a member and is required by law; and
 - (b) those costs are not otherwise charged as an administration fee, an investment fee, a buy-sell spread, a switching fee, an exit fee, an advice fee or an insurance fee.
- (8) A fee is an **advice fee** if:
 - (a) the fee relates directly to costs incurred by the trustee, or the trustees, of a superannuation entity because of the provision of financial product advice to a member by:
 - (i) a trustee of the entity; or
 - (ii) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the entity; and
 - (b) those costs are not otherwise charged as an administration fee, an investment fee, a switching fee, an exit fee, an activity fee or an insurance fee.
- (9) A fee is an **insurance fee** if:
 - (a) the fee relates directly to either or both of the following:
 - (i) insurance premiums paid by the trustee, or the trustees, of a superannuation entity in relation to a member or members of the entity;

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- (ii) costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the provision of insurance for a member or members of the entity; and
- (b) the fee does not relate to any part of a premium paid or cost incurred in relation to a life policy or a contract of insurance that relates to a benefit to the member that is based on the performance of an investment rather than the realisation of a risk; and
- (c) the premiums and costs to which the fee relates are not otherwise charged as an administration fee, an investment fee, a switching fee, an exit fee, an activity fee or an advice fee.

29VA Charging rules

- (1) The trustee, or the trustees, of a regulated superannuation fund that offers a MySuper product may only charge a fee in relation to the MySuper product during a period if it satisfies one of the charging rules set out in this section in relation to that period.

All MySuper members charged same flat fee

- (2) This rule is satisfied if:
 - (a) the fee is charged in relation to all members of the fund who hold the MySuper product; and
 - (b) the amount of the fee is the same for each of those members.

All MySuper members charged same percentage of account balance

- (3) This rule is satisfied if:
 - (a) the fee is charged in relation to all members of the fund who hold the MySuper product; and
 - (b) the amount of the fee charged in relation to one member is a percentage of so much of the member's account balance with the fund that relates to the MySuper product; and
 - (c) the amount of the fee charged in relation to each other member of the fund who holds the MySuper product is the

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same percentage of so much of that member's account balance with the fund that relates to the MySuper product.

All MySuper members charged combination of same flat fee and same percentage of account balance

- (4) This rule is satisfied if:
- (a) the fee is charged in relation to all members of the fund who hold the MySuper product; and
 - (b) the amount of the fee charged in relation to one member is the sum of a fixed amount (the **flat fee**) and another amount that is a percentage of so much of the member's account balance with the fund that relates to the MySuper product; and
 - (c) the amount of the fee charged in relation to each other member of the fund who holds the MySuper product is the sum of the flat fee and the same percentage of so much of that member's account balance with the fund that relates to the MySuper product.

All MySuper members to whom action relates charged same flat fee

- (5) This rule is satisfied if:
- (a) the fee is a buy-sell spread, a switching fee, an exit fee or an activity fee; and
 - (b) the fee is only charged in relation to those members of the fund:
 - (i) who hold the MySuper product; and
 - (ii) in relation to whom a relevant action is taken by the trustee or trustees of the fund; and
 - (c) the amount of the fee charged is the same for each member to whom it is charged.

All MySuper members to whom action relates charged same percentage of account balance

- (6) This rule is satisfied if:
-

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- (a) the fee is a buy-sell spread, a switching fee, an exit fee or an activity fee; and
- (b) the fee is only charged in relation to those members of the fund:
 - (i) who hold the MySuper product; and
 - (ii) in relation to whom a relevant action is taken by the trustee or trustees of the fund; and
- (c) the amount of the fee charged in relation to one of those members is a percentage of so much of the member's account balance with the fund:
 - (i) that relates to the MySuper product; and
 - (ii) in relation to which the relevant action is taken; and
- (d) the amount of the fee charged in relation to each of the other of those members is the same percentage of so much of that member's account balance with the fund:
 - (i) that relates to the MySuper product; and
 - (ii) in relation to which the relevant action is taken.

All MySuper members to whom action relates charged combination of same flat fee and same percentage of account balance

- (7) This rule is satisfied if:
- (a) the fee is a buy-sell spread, a switching fee, an exit fee or an activity fee; and
 - (b) the fee is only charged in relation to those members of the fund:
 - (i) who hold the MySuper product; and
 - (ii) in relation to whom a relevant action is taken by the trustee or trustees of the fund; and
 - (c) the amount of the fee charged in relation to one of those members is the sum of a fixed amount (the ***flat fee***) and another amount that is a percentage of so much of the member's account balance with the fund:
 - (i) that relates to the MySuper product; and
 - (ii) in relation to which the relevant action is taken; and

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- (d) the amount of the fee charged in relation to each of the other of those members is the sum of the flat fee and the same percentage of so much of that member's account balance with the fund:
 - (i) that relates to the MySuper product; and
 - (ii) in relation to which the relevant action is taken.

Administration fee exemption for employees of an employer-sponsor

- (8) This rule is satisfied if:
 - (a) the fee is an administration fee charged in relation to one or more members of the fund who hold the MySuper product in accordance with the administration fee exemption for employees of an employee-sponsor (see section 29VB); and
 - (b) in relation to those members of the fund who hold the MySuper product but in relation to whom the administration fee is not charged in accordance with the administration fee exemption for employees of an employee-sponsor (the **remaining members**)—the fee would satisfy the charging rule in subsection (2), (3) or (4) if the remaining members were the only members of the fund who held the MySuper product.

Note: In some circumstances, the RSE licensee may wish to offer a MySuper product for the employees of a large employer or its associates (see sections 29T and 29TB). Any fee set for that MySuper product may differ from the equivalent fee set for another MySuper product within the fund. In other circumstances, a separate MySuper product may not be offered, but instead a lower administration fee charged to the employees of a particular employer-sponsor (see section 29VB).

Lifecycle differentiated investment fees

- (9) This rule is satisfied if:
 - (a) the fee is an investment fee; and
 - (b) the fee would satisfy one of the charging rules in subsections (2) to (4) if the rule were applied to an age cohort identified in the governing rules in relation to the MySuper

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product for the purposes of this subsection, rather than in relation to all members of the fund who hold the MySuper product; and

- (c) the governing rules identify no more than 4 age cohorts in relation to the MySuper product for the purposes of this subsection; and
- (d) the investment fees for the age cohorts reflect a fair and reasonable attribution of the investment costs of the fund between the age cohorts.

Advice fees

(9A) This rule is satisfied if:

- (a) the fee is an advice fee that relates directly to financial product advice provided to a member; and
- (b) the member holds a MySuper product; and
- (c) the fee is charged to the member.

Insurance fees

(10) This rule is satisfied if:

- (a) the fee is an insurance fee that relates directly to either or both of the following:
 - (i) insurance premiums paid by the trustee, or the trustees, of a superannuation entity in relation to a member;
 - (ii) costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the provision of insurance for a member; and
- (b) the member holds a MySuper product; and
- (c) the fee is charged to the member.

29VB Administration fee exemption for employees of an employer-sponsor

- (1) An administration fee charged to members of a regulated superannuation fund who hold a MySuper product is charged in

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accordance with the *administration fee exemption for employees of an employer-sponsor* if:

- (aa) although the trustee, or the trustees, of the fund are authorised to offer the MySuper product, it is not on the basis that section 29TB was satisfied in relation to that class of beneficial interest in the fund; and
- (a) the fee is charged in relation to all members of the fund who hold the MySuper product; and
- (b) an employer-sponsor contributes to the fund or would, apart from a temporary cessation of contributions, contribute to the fund for the benefit of those members of the fund (the *employee members*) who hold the MySuper product and who are:
 - (i) employees of the employer-sponsor, or an associate of the employer-sponsor; or
 - (ii) the relatives or dependants of those employees; and
- (c) the trustee, or the trustees, of the fund have entered into an arrangement with the employer-sponsor that secures lower administration fees for the employee members; and
- (d) the fee is in accordance with subsection (2), (3) or (4); and
- (e) the fee is in accordance with subsection (5).

All employees charged same flat fee

- (2) The amount of the administration fee is the same for each of the employee members.

All employees charged same percentage of account balance

- (3) Each of the following is satisfied:
 - (a) the amount of the administration fee charged in relation to one of the employee members is a percentage of so much of the member's account balance with the fund that relates to the MySuper product;
 - (b) the amount of the administration fee charged in relation to each of the other employee members is the same percentage

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of so much of that member's account balance with the fund that relates to the MySuper product.

All employees charged combination of same flat fee and same percentage of account balance

- (4) Each of the following is satisfied:
 - (a) the amount of the administration fee charged in relation to one of the employee members is the sum of a fixed amount (the **flat fee**) and another amount that is a percentage of so much of the member's account balance with the fund that relates to the MySuper product;
 - (b) the amount of the administration fee charged in relation to each of the other employee members is the sum of the flat fee and the same percentage of so much of that member's account balance with that fund that relates to the MySuper product.
- (5) The total amount of the administration fee charged in relation to the employee members is at least equal to an amount that reasonably relates to costs that:
 - (a) are incurred by the trustee, or the trustees, of the fund in the administration and operation of the fund in relation to those members; and
 - (b) are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.

29VC Activity fees and insurance fees to be charged on a cost recovery basis

- (1) If the trustee, or the trustees, of a regulated superannuation fund charge an activity fee or an insurance fee to a member in relation to a MySuper product, the fee must be no more than it would be if it were charged on a cost recovery basis.

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- (2) The regulations may prescribe the way in which an activity fee or an insurance fee charged on a cost recovery basis is to be worked out.

29VD Performance-based fees

- (1) This section applies if:
- (a) a regulated superannuation fund offers a MySuper product; and
 - (b) the trustee, or the trustees, of the fund enter into an arrangement with an investment manager for the investment of an asset or assets of the fund attributed, in whole or in part, to the MySuper product; and
 - (c) under the arrangement, a fee payable to the investment manager is determined, in whole or in part, by reference to the performance of the investments made by the investment manager on behalf of the trustee or trustees of the fund (a *performance-based fee*).
- (2) The trustee, or the trustees, of the regulated superannuation fund must ensure that the arrangement complies with this section.

Base fee must be set or adjusted to give incentive to obtain performance-based fee

- (3) If, under the arrangement, a fee is or fees are payable to the investment manager in addition to the performance-based fee, the other fee or fees must be set or adjusted so that they are lower than they would be if the arrangement did not include the performance-based fee.

Period to which performance-based fee relates

- (4) The period over which entitlement to the performance-based fee is determined under the arrangement must be appropriate to the kinds of investment to which the performance-based fee relates.

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Performance of investment must be measured against an appropriate benchmark

- (5) Under the arrangement, the performance of the investment must be measured by comparison with the performance of investments of a similar kind.

Performance-based fee to be worked out on after-costs, after-tax basis

- (6) For the purposes of working out the performance-based fee payable under the arrangement, the performance of the investment must be determined on an after-costs and, where possible, an after-tax basis.

Disincentives to underperformance

- (7) Under the arrangement, the performance-based fee must be calculated in a way that includes disincentives for poorly performing investments.

Best interests of MySuper members

- (8) A trustee of a regulated superannuation fund does not breach this section to the extent that the asset or assets of the fund invested under the arrangement are attributed by the trustee or the trustees of the fund to a MySuper product if, despite the fact that the arrangement does not comply with one or more of the provisions of this section, the arrangement promotes the financial interests of the beneficiaries of the fund who hold the MySuper product.

29VE Percentage-based administration fees may be capped

If, under the governing rules of a regulated superannuation fund:

- (a) all or part of the administration fee in relation to a MySuper product is charged to those members of the fund who hold the product as a percentage of so much of the account balance of each of those members that relates to the MySuper product; and

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- (b) the amount of the administration fee is capped at a specified amount; and
 - (c) the cap is the same for all of those members; and
 - (d) but for the fact that the administration fee is capped in that way, a charging rule in section 29VA would be satisfied in relation to the administration fee;
- that charging rule is taken to be satisfied in relation to the administration fee.

Division 6—Trustee obligations relating to MySuper

29VN Additional obligations of a trustee in relation to a MySuper product

Each trustee of a regulated superannuation fund that includes a MySuper product must:

- (a) promote the financial interests of the beneficiaries of the fund who hold the MySuper product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes); and
- (b) determine on an annual basis whether the beneficiaries of the fund who hold the MySuper product are disadvantaged, in comparison to the beneficiaries of other funds who hold a MySuper product within those other funds, because the financial interests of the beneficiaries of the fund who hold the MySuper product are affected:
 - (i) because the number of beneficiaries of the fund who hold the MySuper product is insufficient; or
 - (ii) because the number of beneficiaries of the fund is insufficient; or
 - (iii) where the assets of the fund that are attributed to the MySuper product are, or are to be, pooled with other assets of the fund or assets of another entity or other entities—because that pool of assets is insufficient; or
 - (iv) in a case to which subparagraph (iii) does not apply—because the assets of the fund that are attributed to the MySuper product are insufficient; and
- (c) include in the investment strategy for the MySuper product the details of the trustee's determination of the matters mentioned in paragraph (b); and
- (d) include in the investment strategy for the MySuper product, and update each year:

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- (i) the investment return target over a period of 10 years for the assets of the fund that are attributed to the MySuper product; and
- (ii) the level of risk appropriate to the investment of those assets.

29VO Additional obligations of a director of a corporate trustee in relation to a MySuper product

- (1) Each director of a corporate trustee of a regulated superannuation fund that includes a MySuper product must exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the obligations referred to in section 29VN.
- (2) The reference in subsection (1) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.
- (3) A *superannuation entity director* is a person whose profession, business or employment is or includes acting as director of a corporate trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

29VP Contravention of section 29VN

- (1) A person must not contravene section 29VN.
- (2) A contravention of subsection (1) is not an offence and a contravention of that subsection does not result in the invalidity of a transaction.
- (3) A person who suffers loss or damage as a result of the conduct of another person that was engaged in in contravention of subsection (1) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

- (4) An action under subsection (3) may be begun at any time within 6 years after the day on which the cause of action arose.

29VPA Contravention of section 29VO

- (1) A person must not contravene section 29VO.
- (2) A contravention of subsection (1) is not an offence and a contravention of that subsection does not result in the invalidity of a transaction.
- (3) A person who suffers loss or damage as a result of the conduct of another person that was engaged in in contravention of subsection (1) may, with the leave of the court, recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (4) A person may, within 6 years after the day on which the cause of action arose, seek the leave of the court to bring such an action.
- (5) In deciding whether to grant leave to bring such an action, the court must take into account whether:
- (a) the applicant is acting in good faith; and
 - (b) there is a serious question to be tried.
- (6) The court may, in granting leave to bring such an action, specify a period within which the action may be brought.

29VQ Governing rules void to the extent that they are inconsistent with obligations under section 29VN or 29VO

A provision of the governing rules of a regulated superannuation fund is void to the extent that it is inconsistent with:

- (a) the obligations that apply to a trustee of the fund under section 29VN; or
- (b) if the trustee of the fund is a body corporate—the obligations that apply to the directors of the body corporate under section 29VO.

Division 7—Offences

29W Offering a product as a MySuper product when not authorised to do so

- (1) A person commits an offence if:
- (a) the person makes a representation; and
 - (b) the representation is that a class of beneficial interest in a regulated superannuation fund is a MySuper product; and
 - (c) the RSE licensee for the fund does not have authority to offer a beneficial interest of that class in the fund as a MySuper product.

Penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

- (2) Subsection (1) is an offence of strict liability.

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

29WA Contributions in relation to which no election is made are to be paid into MySuper product

- (1) This section applies if:
- (a) a person is a member of a regulated superannuation fund (other than a defined benefit member); and
 - (b) a contribution to the fund is made for the benefit of the person; and
 - (c) either:
 - (i) the person has not given the trustee, or the trustees, of the fund a direction that the contribution is to be invested under one or more specified investment options; or
 - (ii) the person has given the trustee, or the trustees, of the fund a direction that some of the contribution is to be

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invested under one or more specified investment options, but no such direction has been made in relation to the remainder of the contribution.

- (2) The trustee, or trustees, of the fund must treat any contribution to the fund in relation to which no direction has been given, and any part of a contribution to the fund in relation to which no direction has been given, as a contribution to be paid into a MySuper product of the fund.
- (3) A trustee commits an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

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

Directions

- (4) For the purposes of this section, a direction that it is alleged was given to the trustee, or the trustees, of the fund after 31 March 2013 is taken not to have been given if:
- (a) the direction was not given in writing; or
 - (b) a copy of the direction is not held by or on behalf of the trustee, or the trustees, of the fund.
- (5) The regulations may prescribe circumstances in which a direction given to the trustee, or the trustees, of one regulated superannuation fund is to be taken to be a direction given to the trustee, or the trustees, of another regulated superannuation fund for the purposes of this section.

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Exception—life policies, investment account contracts and cash investment options

- (6) If an asset (or assets) attributed to the person mentioned in subsection (1) is invested in one or more of the following on 31 March 2013:
- (a) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;
 - (b) a life policy under which the benefit to the person (or a relative or dependant of the person) is based only on the realisation of a risk, not the performance of an investment;
 - (c) an investment account contract the only beneficiaries of which are the person, and relatives and dependants of the person;
 - (d) an investment option under which the investment is held as cash;
- subsection (2) does not apply to the extent that a contribution to the fund for the benefit of the person is invested in the life policy, under the investment account contract or in the cash investment option.

29WB Contributions by large employer in relation to which no election is made to be paid into large employer MySuper product

- (1) This section applies if:
- (a) the trustee, or the trustees, of a regulated superannuation fund are authorised to offer a class of beneficial interest in the fund as a MySuper product on the basis that section 29TB is satisfied in relation to that class of beneficial interest; and
 - (b) a member (other than a defined benefit member) is entitled to hold the MySuper product; and
 - (c) a contribution is made for the benefit of the member; and
 - (d) either:

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- (i) the member has not given the trustee, or the trustees, of the fund a direction that the contribution is to be invested under one or more specified investment options; or
 - (ii) the member has given the trustee, or the trustees, of the fund a direction that some of the contribution is to be invested under one or more specified investment options, but no such direction has been made in relation to the remainder of the contribution.
- (2) The trustee, or the trustees, of the fund must treat so much of the contribution in relation to which no direction is given as a contribution to be paid into the MySuper product.
- (3) A trustee commits an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

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

Directions

- (4) For the purposes of this section, a direction that it is alleged was given to the trustee, or the trustees, of the fund after 31 March 2013 is taken not to have been given if:
 - (a) the direction was not given in writing; or
 - (b) a copy of the direction is not held by or on behalf of the trustee, or the trustees, of the fund.
- (5) The regulations may prescribe circumstances in which a direction given to the trustee, or the trustees, of one regulated superannuation fund is to be taken to be a direction given to the trustee, or the trustees, of another regulated superannuation fund for the purposes of this section.

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Exception—life policies, investment account contracts and cash investment options

- (6) If an asset (or assets) attributed to the member mentioned in subsection (1) is invested in one or more of the following on 31 March 2013:
- (a) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;
 - (b) a life policy under which the benefit to the member (or a relative or dependant of the member) is based only on the realisation of a risk, not the performance of an investment;
 - (c) an investment account contract the only beneficiaries of which are the member, and relatives and dependants of the member;
 - (d) an investment option under which the investment is held as cash;
- subsection (2) does not apply to the extent that a contribution to the fund for the benefit of the member is invested in the life policy, under the investment account contract or in the cash investment option.

Division 8—Other matters

29X Prudential standards dealing with accrued default amounts

A prudential standard determined under section 34C may include provisions:

- (a) requiring an RSE licensee of a regulated superannuation fund who holds an accrued default amount:
 - (i) for a member of the fund who is not eligible to hold a MySuper product offered by the fund; or
 - (ii) for a member of a regulated superannuation fund of the RSE licensee that does not offer a MySuper product; to transfer that amount to another regulated superannuation fund that includes a MySuper product; and
- (b) setting out the requirements that must be met in relation to the transfer of such an accrued default amount; and
- (c) dealing with other matters relating to such an accrued default amount.

29XA Prudential standards dealing with assets attributed to former MySuper products

A prudential standard determined under section 34C may include provisions:

- (a) requiring an RSE licensee who is authorised to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product to transfer any asset or assets of the fund that are attributed to the MySuper product into another MySuper product within the fund, or a MySuper product within another fund, if the authority is cancelled under subsection 29U(1); and
- (b) setting out the requirements that must be met in relation to the transfer of such an asset or assets; and
- (c) dealing with other matters relating to such an asset or assets.

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29XB No liability for certain transfers

A trustee of a regulated superannuation fund is not subject to any liability to a member of the fund:

- (a) for an action taken to give effect to an election made in accordance with section 29SAA or 29SAB; or
- (b) for an action of the kind mentioned in subsection 55C(1).

29XC Public sector superannuation scheme ceases to be exempt

If APRA becomes aware that:

- (a) a public sector superannuation scheme has ceased to be an exempt public sector superannuation scheme; and
- (b) the scheme is not a regulated superannuation fund that offers a MySuper product;

APRA must notify the Fair Work Commission of that fact.

Part 3—Operating standards

Division 1—Object of Part

30 Object of Part

The object of this Part is to provide for a system of prescribed standards applicable to:

- (a) the operation of regulated superannuation funds, approved deposit funds and pooled superannuation trusts; and
- (b) the trustees and RSE licensees of those funds and trusts.

Division 2—Operating standards

31 Operating standards for regulated superannuation funds

- (1) The regulations may prescribe standards applicable to the operation of regulated superannuation funds (***funds***) and to trustees and RSE licensees of those funds.
- (2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:
 - (a) the persons who may contribute to funds;
 - (b) the vesting in beneficiaries in funds of benefits arising directly or indirectly from amounts contributed to the funds;
 - (c) the amount of contributions that a fund may accept;
 - (d) the circumstances in which a fund may accept contributions;
 - (da) the charging of fees (including the calculation of the amount of fees) to:
 - (i) members of a fund; and
 - (ii) members who hold a particular class of beneficial interest in a fund;
 - (db) the attribution of costs between classes of beneficial interest in a fund;
 - (e) the form in which benefits may be provided by funds;
 - (ea) the kinds of benefits that must not be provided by taking out insurance, or insurance of a particular kind;
 - (eb) the kinds of benefits that must not be provided other than by taking out insurance, or insurance of a particular kind;
 - (f) the actuarial standards that will apply to funds;
 - (g) the preservation of benefits arising directly or indirectly from amounts contributed to funds;
 - (h) the payment by funds of benefits arising directly or indirectly from amounts contributed to the funds;
 - (i) the portability of benefits arising directly or indirectly from amounts contributed to funds;

- (j) the levels of benefits that may be provided by funds and the levels of assets that may be held by funds;
- (k) the application by funds of money no longer required to meet payments of benefits to beneficiaries because the beneficiaries have ceased to be entitled to receive those benefits;
- (l) the investment of assets of funds and the management of the investment;
- (m) the number of trustees, and the composition of boards or committees of trustees, of funds;
- (ma) the requirements relating to fitness and propriety for RSE licensees of funds and trustees of funds;
- (n) the keeping and retention of records in relation to funds;
- (o) the financial and actuarial reports to be prepared in relation to funds;
- (p) the disclosure of information to beneficiaries in funds;
- (pa) the disclosure of information by a trustee of a fund who is a member of a group of individual trustees to the other trustees in that group;
- (q) the disclosure of information about funds to the Regulator;
- (r) the disclosure of information about funds to persons other than beneficiaries or the Regulator;
- (s) the financial position of funds;
- (sa) the outsourcing arrangements relating to the operation of funds;
- (sb) the adequacy of resources (including human resources, technical resources, and financial resources) of, or available to, trustees of funds;
- (t) the funding and solvency of funds;
- (u) the winding-up of funds.

32 Operating standards for approved deposit funds

- (1) The regulations may prescribe standards applicable to the operation of approved deposit funds (***funds***) and to trustees and RSE licensees of those funds.

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- (2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:
- (a) the kinds of amounts that may be deposited with funds;
 - (aa) the circumstances in which amounts may be deposited with funds;
 - (b) the preservation of amounts deposited with funds, and of earnings on such amounts;
 - (c) the payment out of funds of amounts deposited with the funds, and of earnings on such amounts;
 - (d) the portability of amounts deposited with funds, and of earnings on such amounts;
 - (e) the form in which benefits may be paid out of funds;
 - (f) the investment of assets of funds and the management of the investment;
 - (fa) the requirements relating to fitness and propriety for RSE licensees of funds and trustees of funds;
 - (g) the keeping and retention of records in relation to funds;
 - (h) the financial and actuarial reports to be prepared in relation to funds;
 - (i) the disclosure of information to beneficiaries in funds;
 - (j) the disclosure of information about funds to the Regulator;
 - (k) the disclosure of information about funds to persons other than beneficiaries or the Regulator;
 - (l) the financial position of funds;
 - (la) the outsourcing arrangements relating to the operation of funds;
 - (lb) the adequacy of resources (including human resources, technical resources, and financial resources) of, or available to, trustees of funds;
 - (m) the funding and solvency of funds;
 - (n) the winding-up of funds.

33 Operating standards for pooled superannuation trusts

- (1) The regulations may prescribe standards applicable to the operation of pooled superannuation trusts (*trusts*) and to trustees and RSE licensees of those trusts.
- (2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:
 - (aa) the circumstances in which units in trusts may be acquired;
 - (a) the ownership and disposal of units in trusts;
 - (b) the investment of assets of trusts and the management of the investment;
 - (ba) the requirements relating to fitness and propriety for RSE licensees of trusts and trustees of trusts;
 - (c) the persons who may be trustees of trusts;
 - (d) the number of trustees, and the composition of boards or committees of trustees, of trusts;
 - (e) the keeping and retention of records in relation to trusts;
 - (f) the financial and actuarial reports to be prepared in relation to trusts;
 - (g) the disclosure of information to unit-holders in trusts;
 - (h) the disclosure of information about trusts to the Regulator;
 - (i) the disclosure of information about trusts to persons other than unit-holders or the Regulator;
 - (j) the financial position of trusts;
 - (ja) the outsourcing arrangements relating to the operation of trusts;
 - (jb) the adequacy of resources (including human resources, technical resources and financial resources) of, or available to, trustees of trusts;
 - (k) the funding and solvency of trusts.

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33A Relationship between operating standards, this Act and the regulations

- (1) A standard applicable to the operation of a superannuation entity may be prescribed that elaborates, supplements or otherwise deals with any aspect of:
 - (a) a matter relating to the operation of the entity to which a covenant referred to in sections 52 to 53 or prescribed under section 54A relates; or
 - (b) a matter relating to the operation of the entity to which a provision of this Act or another provision of the regulations relates.
- (2) However, a standard applicable to the operation of a superannuation entity is of no effect to the extent that it conflicts with this Act.

34 Prescribed operating standards must be complied with

Standards must be complied with

- (1) Each trustee of a superannuation entity must ensure that the prescribed standards applicable to the operation of the entity are complied with at all times.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

Offence

- (2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

Validity of transaction not affected by contravention of (1)

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

Division 3—Portability forms

34A Portability forms

- (1) For the purposes of standards made under Division 2, and without limiting that Division, the regulations may prescribe a scheme under which:
- (a) a beneficiary of:
 - (i) a regulated superannuation fund; or
 - (ii) an approved deposit fund;gives to the Commissioner of Taxation a request for the benefits held for the beneficiary in the fund to be rolled-over or transferred; and
 - (b) the Commissioner may pass the request on to the trustee of the fund.

Note: The standards may require the trustee to act on the request. See paragraphs 31(2)(i) and 32(2)(d).

- (2) The regulations may provide that the request must be given to the Commissioner in the approved form.

Note: The approved form may require the beneficiary to set out his or her tax file number. See subsection 299U(2A).

Part 3A—Prudential standards

34B Object of this Part

The object of this Part is to provide for a system of standards in relation to prudential matters concerning registrable superannuation entities.

34C APRA may determine *prudential standards*

- (1) APRA may determine (in writing) standards (*prudential standards*) relating to prudential matters that must be complied with by:
 - (a) all RSE licensees of registrable superannuation entities; or
 - (b) the connected entities of all RSE licensees of registrable superannuation entities; or
 - (c) a specified class of RSE licensees of registrable superannuation entities; or
 - (d) a specified class of connected entities of RSE licensees of registrable superannuation entities; or
 - (e) one or more specified RSE licensees of registrable superannuation entities; or
 - (f) one or more specified connected entities of RSE licensees of registrable superannuation entities.
- (2) A prudential standard may impose different requirements to be complied with:
 - (a) by different classes of RSE licensees of registrable superannuation entities or connected entities of RSE licensees of registrable superannuation entities; or
 - (b) in different situations; or
 - (c) in respect of different activities.
- (3) Without limiting the prudential matters in relation to which APRA may determine a prudential standard, a prudential standard may

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require the following entities to ensure that the entity's connected entities (or particular connected entities), or the entity and the entity's connected entities (or particular connected entities), collectively satisfy particular requirements:

- (a) each RSE licensee of a registrable superannuation entity;
 - (b) each RSE licensee of a registrable superannuation entity included in a specified class of RSE licensees;
 - (c) a specified RSE licensee of a registrable superannuation entity;
 - (d) each of 2 or more RSE licensees of registrable superannuation entities.
- (4) A **prudential matter** is a matter relating to:
- (a) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the registrable superannuation entity, or the affairs of a connected entity of the RSE licensee, in such a way as to:
 - (i) protect the interests of the beneficiaries of the registrable superannuation entity; or
 - (ii) meet the reasonable expectations of the beneficiaries of the registrable superannuation entity; or
 - (b) the conduct by a connected entity of an RSE licensee of a registrable superannuation entity of the affairs of the connected entity in such a way as to:
 - (i) protect the interests of the beneficiaries of the registrable superannuation entity; or
 - (ii) meet the reasonable expectations of the beneficiaries of the registrable superannuation entity; or
 - (c) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the licensee in such a way as:
 - (i) to keep itself in a sound financial position; or
 - (ii) not to cause or promote instability in the Australian financial system; or
 - (d) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the registrable

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- superannuation entity in such a way as not to cause or promote instability in the Australian financial system; or
- (e) the conduct by a connected entity of an RSE licensee of a registrable superannuation entity of the affairs of the connected entity in such a way as:
 - (i) to keep itself in a sound financial position; or
 - (ii) not to cause or promote instability in the Australian financial system; or
 - (f) the conduct by an RSE licensee of a registrable superannuation entity, or a connected entity of the RSE licensee, of any of its affairs that are relevant to the registrable superannuation entity with integrity, prudence and professional skill; or
 - (g) the appointment of auditors and actuaries; or
 - (h) the conduct of audits and actuarial investigations.
- (5) The prudential standards may provide for APRA to exercise powers and discretions under the standards, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to the following:
- (a) a particular RSE licensee of a registrable superannuation entity;
 - (b) a particular connected entity of an RSE licensee of a registrable superannuation entity;
 - (c) specified RSE licensees of registrable superannuation entities;
 - (d) specified connected entities of RSE licensees of registrable superannuation entities.
- (6) APRA may, in writing, vary or revoke a standard.
- (7) A standard referred to in paragraph (1)(e) or (f), or a variation of a standard referred to in those paragraphs, comes into force on the later of:
- (a) the day on which APRA satisfies subsection 34E(1) in relation to the standard or variation (obligation to give a copy

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- to each RSE licensee and connected entity to which it applies); and
- (b) if APRA includes with the copy of the standard or variation a notice that the standard or variation will come into force on a later day—that later day.
- (8) The revocation of a standard referred to in paragraph (1)(e) or (f) comes into force on the later of:
- (a) the day on which APRA satisfies subsection 34E(2) in relation to the revocation (obligation to give notice of the revocation to each RSE licensee or connected entity to which the standard relates); and
- (b) the day specified in that notice as the day on which the revocation comes into force.
- (9) The following instruments made under this section are not legislative instruments:
- (a) a standard referred to in paragraph (1)(e) or (f);
- (b) an instrument varying or revoking a standard referred to in paragraph (1)(e) or (f).
- (10) Otherwise, an instrument made under this section is a legislative instrument.

34D Relationship between prudential standards, this Act and the regulations

- (1) A prudential standard may be determined that elaborates, supplements or otherwise deals with any aspect of:
- (a) a prudential matter to which a covenant referred to in sections 52 to 53 or prescribed under section 54A relates; or
- (b) a prudential matter to which a provision of this Act or the regulations relates.
- (2) However, a prudential standard is of no effect to the extent that it conflicts with this Act or the regulations.

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34E Notice of determination, variation or revocation of certain prudential standards

- (1) If APRA determines or varies a prudential standard referred to in paragraph 34C(1)(e) or (f), APRA must give a copy of the standard or of the variation to each RSE licensee and connected entity to which the standard applies.
- (2) If APRA revokes a prudential standard referred to in paragraph 34C(1)(e) or (f), APRA must give notice of the revocation to each RSE licensee and connected entity to which the standard applies.

34F APRA to monitor prudential matters

The functions of APRA include:

- (a) collecting and analysing information on prudential matters concerning RSE licensees of registrable superannuation entities and connected entities of RSE licensees of registrable superannuation entities; and
- (b) encouraging and promoting the carrying out of sound practices in relation to prudential matters by RSE licensees of registrable superannuation entities and connected entities of RSE licensees of registrable superannuation entities; and
- (c) evaluating the effectiveness and carrying out of those practices.

Part 3B—Superannuation data and payment regulations and standards

Division 1—Superannuation data and payment regulations and standards

34H Object of Part

- (1) The object of this Part is to further the interests of beneficiaries of eligible superannuation entities by improving the productivity of the superannuation system.
- (2) The Part does this by providing for a system of standards relating to payments and information connected with the operation of eligible superannuation entities.

34J Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to an employer were, by express provision, confined to an employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

34K Superannuation data and payment regulations and standards

- (1) The regulations may make provision for and in relation to superannuation data and payment matters, to be complied with by:
 - (a) trustees of eligible superannuation entities; and
 - (b) employers in their dealings with eligible superannuation entities.
- (2) The regulations may prescribe different requirements for different classes of eligible superannuation entity or employer.
- (3) The Commissioner of Taxation may, by legislative instrument, determine standards (*superannuation data and payment*)

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standards) relating to superannuation data and payment matters, applicable to:

- (a) trustees of eligible superannuation entities; and
- (b) employers in their dealings with eligible superannuation entities.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (4) The superannuation data and payment standards may specify different requirements for different classes of eligible superannuation entity or employer.
- (5) A **superannuation data and payment matter** is a matter relating to the manner in which payments and information of a kind mentioned in subsection (6):
 - (a) relating to:
 - (i) a member of an eligible superannuation entity; or
 - (ii) an employee for whose benefit a contribution to an eligible superannuation entity is to be made by an employer; and
 - (b) connected with the operation of the eligible superannuation entity;
are dealt with.
- (6) The kinds of payments and information are:
 - (a) transactions, including payments, contributions, roll-over superannuation benefits (within the meaning of the *Income Tax Assessment Act 1997*), allocations, transfers and refunds; and
 - (b) reports; and
 - (c) records, including registrations; and
 - (d) unique identifiers for use with such transactions, reports and records; and
 - (e) any other kind of payment or information that is prescribed by the regulations for the purposes of this paragraph; and

- (f) to avoid doubt, any payment or information of a kind mentioned in paragraphs (a) to (e) and made or provided by the Commissioner of Taxation.

Adoption of other instruments

- (7) The regulations or standards may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (8) Subsection (7) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

Consultations in preparing superannuation data and payment standards

- (9) The Commissioner of Taxation must consult with APRA in preparing the superannuation data and payment standards.

Note: For further consultation requirements, see section 17 of the *Legislation Act 2003*.

- (10) A failure to comply with subsection (9) does not affect the validity or enforceability of the superannuation data and payment standards.

34L Relationship between standards and other law

- (1) A superannuation data and payment standard may elaborate on or supplement any aspect of regulations made under this Part.
- (2) However, a superannuation data and payment standard is of no effect to the extent that it conflicts with this Act or the regulations.

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Division 2—Compliance with superannuation data and payment regulations and standards

34M Compliance requirement—trustees of eligible superannuation entities

- (1) Each trustee of an eligible superannuation entity must ensure that payments and information relating to a member of the eligible superannuation entity, or a person for whose benefit a contribution to the eligible superannuation entity is to be made, are dealt with in a manner that complies with any applicable:
 - (a) regulations made under this Part; and
 - (b) superannuation data and payment standards.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 20 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

34N Compliance requirement—employers

- (1) An employer must deal with payments and information relating to an employee, for whose benefit a contribution to an eligible superannuation entity is to be made, in a manner that complies with any applicable:
 - (a) regulations made under this Part; and
 - (b) superannuation data and payment standards.

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Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 20 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

**34P Regulator's power to give directions in certain circumstances—
trustees of eligible superannuation entities**

- (1) The Regulator may give a trustee of an eligible superannuation entity a direction of a kind specified in subsection (4) if the Regulator reasonably believes that a trustee of the eligible superannuation entity has contravened, or is likely to contravene:
- (a) a particular regulation made under this Part; or
 - (b) a particular superannuation data and payment standard.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
- (a) the extent (if any) to which the eligible superannuation entity is operating in a way that is contrary to the object of this Part;
 - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the trustee of the eligible superannuation entity.
- (4) The kinds of direction that a trustee of an eligible superannuation entity may be given are directions to do any one or more of the following by a specified time:

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- (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
 - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The trustee of the eligible superannuation entity must ensure the direction is complied with by the specified time.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

Strict liability offence

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the trustee of the eligible superannuation entity, vary the direction or the time specified if, at the time of the variation, the Regulator considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the trustee of the eligible superannuation entity. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

34Q Regulator's power to give directions in certain circumstances—employers

- (1) The Regulator may give an employer a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the employer has contravened, or is likely to contravene:
 - (a) a particular regulation made under this Part; or
 - (b) a particular superannuation data and payment standard.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
 - (a) the extent (if any) to which the employer is operating in a way that is contrary to the object of this Part;
 - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the employer.
- (4) The kinds of direction that the employer may be given are directions to do any one or more of the following by a specified time:
 - (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
 - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The employer must comply with the direction by the specified time.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

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Strict liability offence

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the employer, vary the direction or the time specified if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the employer. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

Division 3—Infringement notices

34R When an infringement notice may be given

- (1) If the Regulator has reasonable grounds to believe that a person has contravened an offence of strict liability in Division 2, the Regulator may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
 - (a) 2 or more alleged contraventions of an offence of strict liability in Division 2; and
 - (b) alleged contraventions of 2 or more offences of strict liability in Division 2.

34S Matters to be included in notice

- (1) An infringement notice must:
 - (a) state the day on which it is given; and
 - (b) state the name of the person to whom it is given; and
 - (c) state the name of the person who gave the notice; and
 - (d) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for the contravention; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (e) state the amount that is payable under the notice; and
 - (f) give an explanation of how payment of the amount is to be made; and
 - (g) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then

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- (unless the notice is withdrawn) the person is not liable to be prosecuted in a court in relation to the alleged contravention; and
- (h) state that payment of the amount is not an admission of guilt or liability; and
 - (i) state that the person may apply to the Regulator to have the period in which to pay the amount extended; and
 - (j) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court in relation to the alleged contravention; and
 - (k) set out how the notice can be withdrawn; and
 - (l) state that if the notice is withdrawn:
 - (i) any amount paid under the notice must be refunded; and
 - (ii) the person may be prosecuted in a court for the alleged contravention; and
 - (m) state that the person may make written representations to the Regulator seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(e), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum penalty that a court could impose on the person for that contravention.

34T Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the Regulator for an extension of the period referred to in paragraph 34S(1)(g).
- (2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.
- (3) If the Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 34S(1)(g) is taken to be a reference to that period as so extended.

- (4) If the Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 34S(1)(g) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 34S(1)(g);
 - (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend.
- (5) The Regulator may extend the period more than once under subsection (2).

34U Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may, within 21 days after the day the notice is given, make written representations to the Regulator seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Regulator:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Regulator; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of an offence of strict liability in Division 2;
 - (ii) the circumstances of the alleged contravention;

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- (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of an offence of strict liability in Division 2 if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
- (iv) any other matter the Regulator considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) that the infringement notice is withdrawn; and
 - (d) that the person may be prosecuted in a court in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
 - (a) the Regulator withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

34V Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 34S(1)(g):
 - (a) any liability of the person for the alleged contravention is discharged; and
 - (b) the person may not be prosecuted in a court for the alleged contravention; and

- (c) the person is not regarded as having been convicted of the alleged offence; and
 - (d) the person is not regarded as having admitted guilt or liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

34W Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of an offence of strict liability in Division 2; or
- (b) affect the liability of a person for an alleged contravention of an offence of strict liability in Division 2 if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of an offence of strict liability in Division 2; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an offence of strict liability in Division 2.

Division 4—Information

Subdivision A—Correction and rectification of information

34X Correction and rectification of information

- (1) The Commissioner of Taxation may alter information in his or her possession for the purposes of ensuring the information complies with:
 - (a) any applicable regulations made under this Part; and
 - (b) any applicable superannuation data and payment standards.
- (2) An alteration made by the Commissioner of Taxation under subsection (1) does not have the effect of discharging any liability of a person for a contravention of a provision of this Part relating to the information.

Subdivision B—Register of information about certain funds and schemes

34Y Register of information about certain funds and schemes

- (1) The Commissioner of Taxation must keep a register of information for the purposes of this Part.
- (2) The Commissioner of Taxation is to keep the register by electronic means.
- (3) The register is not a legislative instrument.
- (4) The Commissioner of Taxation may cause the contents of all or part of the register to be made available to:
 - (a) entities that must comply with the superannuation data and payment regulations and standards; and
 - (b) entities that must comply with the data and payment regulations and standards relating to RSAs; and
 - (c) exempt public sector superannuation schemes.

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Contents of the register

- (5) The register must contain the information given to the Commissioner of Taxation in accordance with section 34Z.
- (6) The trustee of an exempt public sector superannuation scheme may give the Commissioner of Taxation information that both:
 - (a) relates to the scheme; and
 - (b) is of the kind given to the Commissioner of Taxation in accordance with section 34Z.

The Commissioner of Taxation may include that information on the register.

34Z Trustees to provide information for inclusion in register

- (1) The following matters may be prescribed by regulation:
 - (a) information that is required to be given to the Commissioner of Taxation in accordance with this section in relation to prescribed eligible superannuation entities;
 - (b) the manner and form (including electronic form) in which the prescribed information is to be provided;
 - (c) the time at which, or period within which, the prescribed information is to be provided.
- (2) Each trustee of a prescribed eligible superannuation entity must ensure that the prescribed information in relation to the entity is given to the Commissioner of Taxation in accordance with the regulation.

Contravening requirement to give information

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 25 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Part 4—Accounts, audit and reporting obligations for superannuation entities

Division 1—Objects

35 Objects of Part

The objects of this Part are:

- (a) to set out rules about the accounts, statements and audits of superannuation entities; and
- (b) to require certain reports and returns relating to superannuation entities to be given to the Regulator.

Division 2—Obligations for registrable superannuation entities

35A Accounting records

Accounting records must be kept etc.

- (1) Each trustee of a registrable superannuation entity must ensure that:
 - (a) accounting records that correctly record and explain the transactions and financial position of the RSE licensee for the entity and the entity are kept; and
 - (b) the accounting records of the RSE licensee and the entity are kept in a way that enables:
 - (i) the preparation of reporting documents referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
 - (ii) the preparation of any other documents required to be audited under the RSE licensee law; and
 - (c) the accounting records of the RSE licensee and the entity are kept in a way that enables those reporting documents and other documents to be conveniently and properly audited in accordance with the RSE licensee law.
- (2) If accounting records of an RSE licensee or a registrable superannuation entity are kept in accordance with subsection (1), each trustee of the entity must ensure that:
 - (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
 - (b) the records are kept either:
 - (i) in Australia; or
 - (ii) in another country if the Regulator gives written approval for the records to be kept in that country, and the conditions (if any) specified in the approval are met; and

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- (c) the records are kept:
 - (i) in writing in the English language; or
 - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.
- (3) An approval given under subparagraph (2)(b)(ii) may be given subject to specified conditions.

Notification of address where accounting records are kept

- (4) A trustee of a registrable superannuation entity must notify APRA, in the approved form, of the address where the accounting records of the RSE licensee and the entity are kept:
 - (a) if, immediately before the commencement of this subsection, APRA has not already been notified of the current address where the accounting records of the RSE licensee or the entity are kept—within 28 days after that commencement; or
 - (b) otherwise—within 28 days after the entity is registered under section 29M.
- (5) If:
 - (a) a trustee of a registrable superannuation entity has notified APRA of the address where the accounting records of the RSE licensee and the entity are kept; and
 - (b) the entity moves the accounting records to a new address; a trustee of the entity must notify APRA, in the approved form and within 28 days after the day on which the accounting records are moved to the new address, of the new address where the accounting records are kept.

Offences

- (6) A trustee commits an offence if the trustee contravenes subsection (1), (2), (4) or (5).

Penalty: 100 penalty units.

- (7) A trustee commits an offence of strict liability if the trustee contravenes subsection (1), (2), (4) or (5).

Penalty: 50 penalty units.

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

35AB Auditor requests for documents

- (1) If the auditor of a registrable superannuation entity requests, in writing, a trustee of the entity to give the auditor a document, each trustee of the entity must ensure that the document is given to the auditor within 14 days of the request being made. An auditor may only request documents that are relevant to the preparation of a report about the operations of the entity or the RSE licensee of the entity.

- (2) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: Imprisonment for 2 years.

- (3) A trustee commits an offence of strict liability if the trustee contravenes subsection (1).

Penalty: 50 penalty units.

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

35AC Appointed auditor's functions and duties

- (1) This section applies if the RSE licensee law:
 - (a) requires an auditor of a registrable superannuation entity to be appointed; or
 - (b) requires or permits a function or duty to be performed, or a power to be exercised, by an auditor.
- (2) The RSE licensee of the registrable superannuation entity must not appoint a person as an auditor of the entity unless the RSE licensee is reasonably satisfied that the person:
 - (a) meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; and

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- (b) has not been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D.
- (3) A person who is appointed as an auditor must perform the functions and duties set out in the RSE licensee law that are relevant to the person's appointment.
- (4) The appointed auditor must comply with the RSE licensee law in performing the functions and duties.
- (5) The trustee of the registrable superannuation entity to whom the RSE licensee law applies must make any arrangements that are necessary to enable the appointed auditor to perform the functions and duties.
- (6) The RSE licensee of the registrable superannuation entity must end the appointment of a person as an auditor of the entity if the RSE licensee becomes aware that the person:
 - (a) no longer meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; or
 - (b) has been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D.

35AD Appointed actuary's functions and duties

- (1) This section applies if the RSE licensee law:
 - (a) requires an actuary of a registrable superannuation entity to be appointed; or
 - (b) requires or permits a function or duty to be performed, or a power to be exercised, by an actuary.
- (2) The RSE licensee of a registrable superannuation entity must not appoint a person as an actuary of the entity unless the RSE licensee is reasonably satisfied that the person:
 - (a) meets the eligibility criteria for actuaries of registrable superannuation entities set out in the prudential standards; and

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- (b) has not been disqualified from being or acting as an actuary of a registrable superannuation entity under section 130D.
- (3) A person who is appointed as an actuary must perform the functions and duties set out in the RSE licensee law that are relevant to the person's appointment.
- (4) The appointed actuary must comply with the RSE licensee law in performing the functions and duties.
- (5) The trustee of the registrable superannuation entity to whom the RSE licensee law applies must make any arrangements that are necessary to enable the appointed actuary to perform the functions and duties.
- (6) The RSE licensee of a registrable superannuation entity must end the appointment of a person as an actuary of the entity if the RSE licensee becomes aware that the person:
 - (a) no longer meets the eligibility criteria for actuaries of registrable superannuation entities set out in the prudential standards; or
 - (b) has been disqualified from being or acting as an actuary of a registrable superannuation entity under section 130D.

Division 3—Obligations for self managed superannuation funds

35AE Accounting records

Accounting records must be kept etc.

- (1) Each trustee of a superannuation entity that is a self managed superannuation fund must ensure that:
 - (a) accounting records that correctly record and explain the transactions and financial position of the entity are kept; and
 - (b) the accounting records of the entity are kept in a way that enables the following to be prepared:
 - (i) the accounts and statements of the entity referred to in section 35B;
 - (ii) the returns of the entity referred to in section 35D; and
 - (c) the accounting records of the entity are kept in a way that enables those accounts, statements and returns to be conveniently and properly audited in accordance with this Act.
- (2) If accounting records of a superannuation entity that is a self managed superannuation fund are kept in accordance with subsection (1), each trustee of the superannuation entity must ensure that:
 - (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
 - (b) the records are kept in Australia; and
 - (c) the records are kept:
 - (i) in writing in the English language; or
 - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.

Offences

- (3) A trustee commits an offence if the trustee contravenes subsection (1) or (2).

Penalty: 100 penalty units.

- (4) A trustee commits an offence of strict liability if the trustee contravenes subsection (1) or (2).

Penalty: 50 penalty units.

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

35B Accounts and statements

- (1) Each trustee of a superannuation entity that is a self managed superannuation fund must, in respect of each year of income of the fund, ensure that the following accounts and statements are prepared in respect of the entity:
- (a) except where the regulations provide that this paragraph does not apply—a statement of financial position;
 - (b) except where the regulations provide that this paragraph does not apply—an operating statement;
 - (c) the accounts and statements specified in the regulations.
- (2) The regulations may provide for or in relation to the preparation of accounts and statements covered by subsection (1). If the regulations do so, the accounts and statements covered by subsection (1) must be prepared in accordance with the regulations.
- (3) The accounts and statements prepared in accordance with subsection (1) must be signed as follows:
- (a) if there is a single corporate trustee—by:
 - (i) if there is only one director of the corporate trustee—that director; or
 - (ii) otherwise—at least 2 directors of the corporate trustee; or

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- (b) if there is a group of individual trustees—by at least 2 of those trustees.
- (4) Each trustee must ensure that the accounts and statements prepared in accordance with subsection (1) are retained for a period of 5 years after the end of the year of income to which they relate.
- (5) A person commits an offence if the person contravenes this section.

Penalty: 100 penalty units.

- (6) A person commits an offence if the person contravenes this section. This is an offence of strict liability.

Penalty: 50 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Section 166 imposes an administrative penalty for a contravention of this section.

35C Audit of accounts and statements

- (1) For each year of income, each trustee of a superannuation entity that is a self managed superannuation fund must ensure that an approved SMSF auditor is appointed to give the trustee or trustees a report, in the approved form, of the operations of the entity for that year. The appointment must be made within whichever of the periods set out in the regulations applies to the entity.
- (2) If an auditor requests, in writing, a trustee of a superannuation entity that is a self managed superannuation fund to give the auditor a document, each trustee of the entity must ensure that the document is given to the auditor within 14 days of the request being made. Only documents that are relevant to the preparation of the report may be requested.
- (3) A trustee commits an offence if the trustee contravenes subsection (1) or (2).

Penalty: Imprisonment for 2 years.

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- (4) A trustee commits an offence if the trustee contravenes subsection (1) or (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

- (5) Without limiting subsection (1), an approved form:
- (a) must either:
 - (i) relate solely to the audit of the accounts and statements referred to in subsection 35B(1) and prepared in respect of a year of income; or
 - (ii) relate only to the audit of those accounts and statements and of any other accounts and statements, prepared in respect of a year of income, that are identified in the form; and
 - (b) must include a statement by the auditor as to the extent of the auditor's compliance with the auditor independence requirements referred to in paragraph 128F(d); and
 - (c) must include a statement by the auditor as to whether, in the auditor's opinion, each trustee of the entity has, during the year of income, complied with the provisions of this Act and the regulations that are identified in the form.
- (6) The auditor must give the report to each trustee of the entity within the prescribed period after the end of the year of income.
- (8) The auditor commits an offence if the auditor contravenes subsection (6). This is an offence of strict liability.

Penalty: 50 penalty units.

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

35D Trustee to lodge annual returns

Lodgment

- (1) Each trustee of a superannuation entity that was a self managed superannuation fund at any time during a year of income must,

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within the reporting period, or within such longer period as the Commissioner of Taxation allows, ensure that the Commissioner of Taxation is given a return under this section.

Period for lodgment

- (2) The **reporting period** is the period that begins at the end of the year of income and whose length is:
- (a) prescribed by the regulations for the purposes of this paragraph; or
 - (b) if the length of the period is not prescribed—specified, by legislative instrument, by the Commissioner of Taxation.

Form of return

- (3) The return must:
- (a) be in the approved form; and
 - (b) contain the information required by the form in relation to the fund in respect of that year of income or in relation to another year of income, or both.

Note: The approved form of return may require a trustee to set out the tax file number of the entity. See subsection 299U(2).

- (4) A person commits an offence if the person contravenes this section.

Penalty: 50 penalty units.

- (5) A person commits an offence if the person contravenes this section. This is an offence of strict liability.

Penalty: 25 penalty units.

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

Part 5—Notices about complying fund status

Division 1—Objects and interpretation

37 Objects of Part

The objects of this Part are:

- (a) to provide for a system of notices about complying fund status in relation to a year of income (see Division 2); and
- (b) to provide for those notices to be used to determine complying fund status for tax purposes (see Division 3).

38 Meaning of *entity*

In this Part:

entity means a fund, scheme or trust.

Division 2—The Regulator may give notices about complying fund status

38A Meaning of *regulatory provision*

In this Division:

regulatory provision, in relation to a superannuation entity, means:

- (a) a provision of this Act or the regulations; or
- (aa) a provision of the *Financial Sector (Collection of Data) Act 2001*; or
- (ab) for a superannuation entity that is a self managed superannuation fund—any of the following provisions in Schedule 1 to the *Taxation Administration Act 1953*:
 - (i) subsections 284-75(1) and (4) and section 284-95;
 - (ii) Division 390;
 - (iii) subsection 136-80(1); or
- (b) any of the following provisions of the *Corporations Act 2001* as applying in relation to financial products (within the meaning of Chapter 7 of that Act) that are interests in the superannuation entity:
 - (i) subsection 1013K(1) or (2);
 - (ii) subsection 1016A(2) or (3);
 - (iii) subsection 1017B(1);
 - (iv) subsection 1017C(2), (3) or (5);
 - (v) subsection 1017D(1);
 - (vi) subsection 1017DA(3);
 - (vii) subsection 1017E(3) or (4);
 - (viii) subsection 1020E(8) or (9);
 - (ix) subsection 1021C(1) or (3);
 - (x) subsection 1021D(1);
 - (xi) subsection 1021E(1);
 - (xii) subsection 1021O(1) or (3);
 - (xiii) section 1041E;

- (xiv) subsection 1041F(1);
- (xv) subsection 1043A(1) or (2);
- (xvi) any other provisions that are specified in regulations made for the purposes of this subparagraph; or
- (c) any of the following provisions of the *Corporations Act 2001*:
 - (i) subsection 1021NA(1), (2) or (3);
 - (ii) subsection 1021NB(1), (2) or (3);
 - (iii) subsection 1021NC(1), (2), (3) or (4).

39 Meaning of *contravention*

- (1) For the purposes of this Division, a contravention of a regulatory provision is to be ignored unless the contravention is:
 - (a) an offence; or
 - (b) a contravention of a civil penalty provision; or
 - (c) a contravention of a provision mentioned in paragraph 38A(ab).
- (1A) In relation to a regulatory provision that states that a person commits an offence if they engage, or fail to engage, in specified conduct, a person is, for the purposes of this Division, taken to contravene the provision if the person engages, or fails to engage, in that conduct.
- (1B) To avoid doubt, for the purposes of this Division, treat conduct giving rise to an administrative penalty under subsection 284-75(1) or (4) in Schedule 1 to the *Taxation Administration Act 1953* as a contravention of that subsection.
- (2) For the purposes of this Division, it is sufficient if a contravention is established on the balance of probabilities.

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40 Notices by the Regulator to trustee

Notice about complying fund status

- (1) The Regulator may give a written notice to a trustee of an entity stating:
- (a) whether the entity is or is not a complying superannuation fund; or
 - (b) whether the entity is or is not a complying approved deposit fund; or
 - (c) whether the entity is or is not a pooled superannuation trust; as the case may be, in relation to a year of income specified in the notice.

Reasons

- (2) If the Regulator gives a notice to a trustee of an entity stating that:
- (a) the entity is not a complying superannuation fund; or
 - (b) the entity is not a complying approved deposit fund; or
 - (c) the entity is not a pooled superannuation trust;
- as the case may be, in relation to a year of income, the notice must set out the reasons why the Regulator so stated.

Commissioner of Taxation to be told about notice

- (3) When the APRA gives a notice under this section, APRA must give particulars of the notice to the Commissioner of Taxation.

Note: A statement of the tax file number of the entity may accompany the particulars of the notice. See subsection 299U(3).

Revocation

- (4) If:
- (a) the Regulator gives a notice under this section (the **original notice**) to a trustee of an entity stating that:
 - (i) the entity is a complying superannuation fund; or
 - (ii) the entity is a complying approved deposit fund; or

- (iii) the entity is a pooled superannuation trust;
as the case may be, in relation to a year of income; and
- (b) the Regulator subsequently gives a notice under this section (the **second notice**) to a trustee of the entity stating that:
 - (i) the entity is not a complying superannuation fund; or
 - (ii) the entity is not a complying approved deposit fund; or
 - (iii) the entity is not a pooled superannuation trust;
as the case may be, in relation to the year of income;the second notice is taken to revoke the original notice.

Note: Because “the Regulator” is whichever of APRA or the Commissioner of Taxation is administering this provision in respect of a fund, a notice could initially be given to a fund by APRA under paragraph 40(4)(a), and later the Commissioner of Taxation could give a notice to the same fund under paragraph 40(4)(b). This is because the fund could have become a self managed superannuation fund after the first notice was given.

41 When the Regulator obliged to give notice of compliance

- (1) Except as provided by subsection (2), the Regulator is not obliged to give a notice under section 40.
- (2) The Regulator must give a notice under section 40 to a trustee of an entity stating that the entity is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust, as the case may be, in relation to a year of income (the **current year of income**) if:
 - (a) the entity is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust, as the case requires, in relation to the current year of income; and
 - (b) either:
 - (i) the Regulator has not given a notice to a trustee of the entity under section 40 stating that the entity is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust, as the case requires, in relation to a previous year of income; or

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- (ii) both:
 - (A) the Regulator has given a notice to a trustee of the entity under section 40 stating that the entity is not a complying superannuation fund, is not a complying approved deposit fund or is not a pooled superannuation trust, as the case requires, in relation to a previous year of income; and
 - (B) the Regulator has not given a notice to a trustee of the entity under section 40 stating that the fund is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust, as the case requires, in relation to a year of income that is later than that previous year of income and earlier than the current year of income.
- (3) Despite section 2, a previous year mentioned in subsection (2) may be a year of income earlier than the 1994-95 year of income (see section 49). However, despite section 49, for the purposes of the application of subsection (2) to a complying superannuation fund, if the fund was not a regulated superannuation fund at all times during the current year of income when the fund was in existence, paragraph (2)(b) does not apply unless the previous year of income is the 1994-95 year of income or a later year of income.
- (4) For the purposes of this section, if a notice under section 40 is revoked, or the decision to give the notice is set aside, the notice is taken never to have been given.

42 Complying superannuation fund

- (1) An entity is a complying superannuation fund in relation to a year of income for the purposes of this Division if:
 - (a) either:
 - (i) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence; or

- (ii) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence other than a time, before it became a resident regulated superannuation fund, when the entity was a resident approved deposit fund; and
 - (b) either of the following conditions is satisfied:
 - (i) no trustee of the entity contravened any of the regulatory provisions in relation to the entity in respect of the year of income;
 - (ii) both:
 - (A) a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of the year of income on one or more occasions; and
 - (B) the entity did not fail the culpability test set out in subsection (1A) in relation to any of those contraventions; and
 - (c) the entity was not a self managed superannuation fund at any time during the year of income.
- (1AA) An entity is also a complying superannuation fund in relation to the 1994-95 year of income or a later year of income if:
- (a) the entity:
 - (i) is a superannuation fund that came into existence during the year of income; or
 - (ii) was a resident approved deposit fund that became a superannuation fund during the year of income; and
 - (b) the entity complied with subsections 19(2) to (4):
 - (i) within 60 days after the day on which it came into existence or became a superannuation fund, as the case may be; or
 - (ii) within such further period, if any, as APRA (whether before or after the end of the period of 60 days) allows; and
 - (c) either of the following conditions is satisfied:

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- (i) no trustee of the entity contravened any of the regulatory provisions in relation to the entity in respect of the whole of the period (the *pre-lodgment period*) that began when the entity came into existence or became a superannuation fund, as the case may be, and ended when the entity complied with subsections 19(2) to (4);
 - (ii) a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of the pre-lodgment period on one or more occasions but APRA is satisfied that, because of special circumstances that existed in relation to the fund during the pre-lodgment period, it would be reasonable for the fund to be treated as if it had satisfied the regulatory provisions; and
 - (d) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the pre-lodgment period; and
 - (da) the entity was not a self managed superannuation fund at any time during the year of income; and
 - (e) either of the conditions stated in paragraph (1)(b) is satisfied in relation to the entity in respect of the part of the year of income occurring after the end of the pre-lodgment period.
- (1AB) In determining for the purpose of paragraph (1AA)(c) whether any of the regulatory provisions were contravened in respect of the entity in respect of the pre-lodgment period, the regulatory provisions are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.
- (1AC) An entity is also a complying superannuation fund in relation to the 1994-95 year of income or a later year of income if:
- (a) the trustee, or the trustees, of the entity have purported to make an election under subsection 19(4); and
 - (b) the requirements of subsections 19(2) to (4) (to the extent that they have not already been complied with) are complied with within 28 days after a trustee of the entity finds out

- (whether by written notice from APRA or otherwise) that they were not complied with, or within such further period, if any, as APRA (whether before or after the end of the period of 28 days) allows; and
- (c) except where a trustee of the entity received written notice from APRA about the non-compliance—a trustee of the entity tells APRA in writing of the compliance within 7 days after the requirements are complied with or within such further period, if any, as APRA (whether before or after the end of the period of 7 days) allows; and
- (d) either of the following conditions is satisfied:
- (i) no trustee of the entity contravened any of the regulatory provisions in relation to the entity in respect of the whole of the period (the *rectification period*) that began when the trustee, or the trustees, of the entity lodged the purported election under subsection 19(4) and ended when the entity complied with subsections 19(2) to (4);
 - (ii) a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of the rectification period on one or more occasions but APRA is satisfied that, because of special circumstances that existed in relation to the fund during the rectification period, it would be reasonable for the fund to be treated as if it had satisfied the regulatory provisions; and
- (e) if the fund was in existence before the beginning of its 1994-95 year of income—under regulations made for the purposes of section 50, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period that began at the beginning of the fund's 1994-95 year of income and ended when the trustee, or the trustees, of the entity lodged the purported election under subsection 19(4); and
- (f) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the rectification period; and

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- (fa) the entity was not a self managed superannuation fund at any time during the year of income; and
 - (g) either of the conditions stated in paragraph (1)(b) is satisfied in relation to the entity in respect of the part of the year of income occurring after the end of the rectification period.
- (1AD) In determining for the purpose of paragraph (1AC)(d) whether any of the regulatory provisions were contravened in respect of the entity in respect of the rectification period, the regulatory provisions are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.

Note: Subsection 50(2) provides that certain superannuation funds that have been wound up or terminated are taken to have been complying superannuation funds before the winding up or termination.

- (1A) For the purposes of subparagraph (1)(b)(ii), an entity fails the culpability test in relation to a particular contravention of a regulatory provision if:
- (a) both:
 - (i) all of the members of the entity were in any way directly or indirectly knowingly concerned in, or party to, the contravention; and
 - (ii) the Regulator, after considering:
 - (A) the taxation consequences that would arise if the entity were to be treated as a non-complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to the year of income concerned; and
 - (B) the seriousness of the contravention; and
 - (C) all other relevant circumstances;thinks that a notice should be given stating that the entity is not a complying superannuation fund in relation to the year of income concerned; or
 - (b) all of the following conditions are satisfied:

- (i) one or more members of the entity were in any way directly or indirectly knowingly concerned in, or party to, the contravention;
- (ii) one or more members of the entity (the ***innocent members***) were not in any way directly or indirectly knowingly concerned in, or party to, the contravention;
- (iii) none of the innocent members would suffer any substantial financial detriment if the entity were to be treated as a non-complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to the year of income concerned;
- (iv) the Regulator, after considering:
 - (A) the taxation consequences that would arise if the entity were to be treated as a non-complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to the year of income concerned; and
 - (B) the seriousness of the contravention; and
 - (C) all other relevant circumstances;thinks that a notice should be given stating that the entity is not a complying superannuation fund in relation to the year of income concerned.

Note: The culpability test is still relevant to a fund that has been a self managed fund during only part of a year of income—see subparagraph 42A(2)(b)(ii), paragraph 42A(3)(g) and subparagraph 42A(4)(f)(ii).

- (1B) For the purposes of subsection (1A), if there is a question whether a person was in any way directly or indirectly knowingly concerned in, or party to, a particular contravention, that question may be decided on the balance of probabilities.
- (2) In this section, a reference to a member of an entity means, if the entity is an approved deposit fund, a beneficiary of the fund.
- (3) If a person or body is specified in the regulations for the purposes of subsection 19(4), a reference to APRA in

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subparagraph (1AA)(b)(ii) or (c)(ii) or subsection (1AC) of this section is taken to be a reference to that person or body.

42A Complying superannuation fund—fund that has been a self managed superannuation fund at any time during a year

Entity that was a self managed superannuation fund throughout a year of income

- (1) An entity that was a self managed superannuation fund at all times during a year of income is a complying superannuation fund in relation to that year of income for the purposes of this Division if:
 - (a) either:
 - (i) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence; or
 - (ii) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence other than a time, before it became a resident regulated superannuation fund, when the entity was a resident approved deposit fund; and
 - (b) the entity passes the test in subsection (5) in relation to the year of income.

Entity that was a self managed superannuation fund during only part of a year of income

- (2) An entity that was a self managed superannuation fund during a part or parts of a year of income is a complying superannuation fund in relation to that year of income for the purposes of this Division if:
 - (a) either:
 - (i) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence; or
 - (ii) the entity was a resident regulated superannuation fund at all times during the year of income when the entity

was in existence other than a time, before it became a resident regulated superannuation fund, when the entity was a resident approved deposit fund; and

(b) both:

- (i) the entity passes the test in subsection (5) in respect of the part or parts of the year of income during which the entity was a self managed superannuation fund; and
- (ii) if a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of any other part or parts of the year of income—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Funds coming into existence during year of income etc.

(3) An entity that:

- (a) is a superannuation fund that came into existence during the year of income and at that time or later in the year of income became a self managed superannuation fund; or
- (b) was a resident approved deposit fund that became a superannuation fund during the year of income;

is also a complying superannuation fund in relation to the year of income if:

- (c) the entity complied with subsections 19(2) to (4):
 - (i) within 60 days after the day on which it came into existence or became a superannuation fund, as the case may be; or
 - (ii) within such further period, if any, as APRA (whether before or after the end of the period of 60 days) allows; and
- (d) either of the following conditions is satisfied:
 - (i) no trustee of the entity contravened any of the regulatory provisions in relation to the entity during the whole of the period (the *pre-lodgment period*) that began when the entity came into existence or became a

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- superannuation fund, as the case may be, and ended when the entity complied with subsections 19(2) to (4);
- (ii) a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity during the pre-lodgment period on one or more occasions but APRA is satisfied that, because of special circumstances that existed in relation to the fund during the pre-lodgment period, it would be reasonable for the fund to be treated as if it had satisfied the regulatory provisions; and
- (e) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the pre-lodgment period; and
- after the pre-lodgment period:
- (f) the entity passed the test in subsection (5) in respect of the part or parts of the year of income, occurring after the pre-lodgment period, during which the entity was a self managed superannuation fund; and
- (g) if a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of any part or parts of the year of income, occurring after the pre-lodgment period, during which the entity was not a self managed superannuation fund—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Trustee makes an election

- (4) An entity that was a self managed superannuation fund at some time, or at all times, during a year of income is also a complying superannuation fund in relation to the year of income if:
- (a) the trustee, or the trustees, of the entity have purported to make an election under subsection 19(4); and
- (b) if, when the election was made, the requirements of subsections 19(2) to (4) are not complied with:
- (i) the requirements of subsections 19(2) to (4) (to the extent that they have not already been complied with)

- are complied with within 28 days after a trustee of the entity finds out (whether by written notice from APRA or otherwise) that they were not complied with, or within such further period, if any, as APRA (whether before or after the end of the period of 28 days) allows; and
- (ii) except where a trustee of the entity received written notice from APRA about the non-compliance—a trustee of the entity tells APRA in writing of the compliance within 7 days after the requirements are complied with or within such further period, if any, as APRA (whether before or after the end of the period of 7 days) allows; and
- (c) either of the following conditions is satisfied:
- (i) no trustee of the entity contravened any of the regulatory provisions in relation to the entity during the whole of the period (the **rectification period**) that began when the trustee, or the trustees, of the entity lodged the purported election under subsection 19(4) and ended when the entity complied with subsections 19(2) to (4);
- (ii) a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity during the rectification period on one or more occasions but APRA is satisfied that, because of special circumstances that existed in relation to the fund during the rectification period, it would be reasonable for the fund to be treated as if it had satisfied the regulatory provisions; and
- (d) if the fund was in existence before the beginning of its 1994-95 year of income—under regulations made for the purposes of section 50, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period that began at the beginning of the fund's 1994-95 year of income and ended when the trustee, or the trustees, of the entity lodged the purported election under subsection 19(4); and

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- (e) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the rectification period; and
- (f) in respect of the part of the year of income occurring after the end of the rectification period, both:
 - (i) the entity passed the test in subsection (5) in respect of the part or parts of the year of income occurring after the end of the rectification period, during which the entity was a self managed superannuation fund; and
 - (ii) if a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity in respect of any other part or parts of the year of income occurring after the end of the rectification period, during which the entity was not a self managed superannuation fund—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Circumstances in which entity passes the test in this subsection

- (5) An entity passes the test in this subsection in relation to a year of income or part of a year of income if:
 - (a) no trustee of the entity contravened any of the regulatory provisions in relation to the entity during the year of income or the part of the year of income; or
 - (b) if a trustee of the entity contravened one or more of the regulatory provisions in relation to the entity during the year of income or the part of the year of income, the Regulator, after considering:
 - (i) the taxation consequences that would arise if the entity were to be treated as a non-complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to the year of income concerned; and
 - (ii) the seriousness of the contravention or contraventions; and
 - (iii) all other relevant circumstances;

thinks that a notice should nevertheless be given stating that the entity is a complying superannuation fund in relation to the year of income concerned.

Determining whether contravention

- (6) In determining for the purposes of this section whether any of the regulatory provisions were contravened in respect of the entity in respect of the pre-lodgment period or the rectification period, the regulatory provisions are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.

References to APRA

- (7) If a person or body is specified in the regulations for the purposes of subsection 19(4), a reference to APRA in subparagraph (3)(c)(ii), (3)(d)(ii), or subsection (4) is taken to be a reference to that person or body.

43 Complying approved deposit fund

An entity is a complying approved deposit fund in relation to a year of income for the purposes of this Division if:

- (a) at all times during the year of income when the entity was in existence, the entity was a resident approved deposit fund; and
- (b) any of the following conditions is satisfied:
 - (i) the trustee did not contravene any of the regulatory provisions in relation to the entity in respect of the year of income;
 - (ii) both:
 - (A) the trustee contravened one or more of the regulatory provisions in relation to the entity in respect of the year of income on one or more occasions; and
 - (B) each contravention was rectified within a period of 30 days after the trustee became aware of the

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contravention or within such further period as APRA allows;

(iii) both:

(A) the trustee contravened one or more of the regulatory provisions in relation to the entity in respect of the year of income on one or more occasions; and

(B) APRA is satisfied that the seriousness or frequency, or both, of the contraventions does not warrant the giving of a notice stating that the entity is not a complying approved deposit fund in relation to the year of income;

(iv) APRA, after considering all relevant circumstances, thinks that a notice should be given stating that the entity is a complying approved deposit fund in relation to the year of income.

44 Pooled superannuation trust

An entity is a pooled superannuation trust in relation to a year of income for the purposes of this Division if:

(a) at all times during the year of income when the entity was in existence, the entity was a pooled superannuation trust; and

(b) any of the following conditions is satisfied:

(i) the trustee did not contravene any of the regulatory provisions in relation to the entity in respect of the year of income;

(ii) both:

(A) the trustee contravened one or more of the regulatory provisions in relation to the entity in respect of the year of income on one or more occasions; and

(B) each contravention was rectified within a period of 30 days after the trustee became aware of the contravention or such further period as APRA allows;

- (iii) both:
 - (A) the trustee contravened one or more of the regulatory provisions in relation to the entity in respect of the year of income on one or more occasions; and
 - (B) APRA is satisfied that the seriousness or frequency, or both, of the contraventions does not warrant the giving of a notice stating that the entity is not a pooled superannuation trust in relation to the year of income;
- (iv) APRA, after considering all relevant circumstances, thinks that a notice should be given stating that the entity is a pooled superannuation trust in relation to the year of income.

Division 3—Complying fund status for tax purposes

45 Complying superannuation fund

- (1) A fund is a complying superannuation fund for the purposes of the Income Tax Assessment Act in relation to a year of income (the *current year of income*) if, and only if:
 - (a) the Regulator has given a notice to a trustee of the fund under section 40 stating that the fund is a complying superannuation fund in relation to the current year of income; or
 - (b) the Regulator has given a notice to a trustee of the fund under section 40 stating that the fund is a complying superannuation fund in relation to a previous year of income and has not given a notice to a trustee of the fund under that section stating that the fund was not a complying superannuation fund in relation to:
 - (i) the current year of income; or
 - (ii) a year of income that is:
 - (A) later than that previous year of income; and
 - (B) earlier than the current year of income.
- (2) Despite section 2, the previous year mentioned in paragraph (1)(b) may be a year of income earlier than the 1994-95 year of income (see section 49). However, despite section 49, if the fund was not a regulated superannuation fund at all times during the current year of income when the fund was in existence, paragraph (1)(b) does not apply unless the previous year of income is the 1994-95 year of income or a later year of income.
- (3) For the purposes of this section, if a notice under section 40 is revoked, or the decision to give the notice is set aside, the notice is taken never to have been given.
- (4) Section 170 of the Income Tax Assessment Act does not prevent the amendment of an assessment at any time for the purposes of giving effect to subsection (3).

- (5) For the purposes of this section, if a notice under section 40 is given in relation to a fund in relation to a year of income, the notice is taken to have been given at the beginning of the year of income.
- (6) Despite subsection (1), if, at all times during a year of income when a fund was in existence, the fund was, or was part of, an exempt public sector superannuation scheme, the fund is a complying superannuation fund in relation to the year of income for the purposes of the Income Tax Assessment Act.

46 Complying superannuation scheme—superannuation guarantee charge

An exempt public sector superannuation scheme is taken to be a complying superannuation scheme for the purposes of the *Superannuation Guarantee (Administration) Act 1992*.

47 Complying approved deposit fund

- (1) A fund is a complying approved deposit fund for the purposes of the Income Tax Assessment Act in relation to a year of income (the ***current year of income***) if, and only if:
 - (a) APRA has given a notice to the trustee under section 40 stating that the fund is a complying approved deposit fund in relation to the current year of income; or
 - (b) APRA has given a notice to the trustee under section 40 stating that the fund is a complying approved deposit fund in relation to a previous year of income and has not given a notice to the trustee under that section stating that the fund was not a complying approved deposit fund in relation to:
 - (i) the current year of income; or
 - (ii) a year of income that is:
 - (A) later than that previous year of income; and
 - (B) earlier than the current year of income.

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- (2) Despite section 2, the previous year mentioned in paragraph (1)(b) may be a year of income earlier than the 1994-95 year of income (see section 49).
- (3) For the purposes of this section, if a notice under section 40 is revoked, or the decision to give the notice is set aside, the notice is taken never to have been given.
- (4) Section 170 of the Income Tax Assessment Act does not prevent the amendment of an assessment at any time for the purposes of giving effect to subsection (3).
- (5) For the purposes of this section, if a notice under section 40 is given in relation to a fund in relation to a year of income, the notice is taken to have been given at the beginning of the year of income.

48 Pooled superannuation trust

- (1) A unit trust is a pooled superannuation trust for the purposes of the Income Tax Assessment Act in relation to a year of income (the ***current year of income***) if, and only if:
 - (a) APRA has given a notice to the trustee under section 40 stating that the trust is a pooled superannuation trust in relation to the current year of income; or
 - (b) APRA has given a notice to the trustee under section 40 stating that the trust is a pooled superannuation trust in relation to a previous year of income and has not given a notice to the trustee under that section stating that the trust was not a pooled superannuation trust in relation to:
 - (i) the current year of income; or
 - (ii) a year of income that is:
 - (A) later than that previous year of income; and
 - (B) earlier than the current year of income.
- (2) Despite section 2, the previous year mentioned in paragraph (1)(b) may be a year of income earlier than the 1994-95 year of income (see section 49).

- (3) For the purposes of this section, if a notice under section 40 is revoked, or the decision to give the notice is set aside, the notice is taken never to have been given.
- (4) Section 170 of the Income Tax Assessment Act does not prevent the amendment of an assessment at any time for the purposes of giving effect to subsection (3).
- (5) For the purposes of this section, if a notice under section 40 is given in relation to a trust in relation to a year of income, the notice is taken to have been given at the beginning of the year of income.

**49 Transitional—notices under the repealed provisions of the
*Occupational Superannuation Standards Act 1987***

Superannuation funds—positive

- (1) For the purposes of paragraph 41(2)(b) and this Division, if:
 - (a) a notice under repealed section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is satisfied that:
 - (i) a fund satisfied the superannuation fund conditions in relation to a year of income; or
 - (ii) a fund should be treated as if it had satisfied the superannuation fund conditions in relation to a year of income; and
 - (b) the year of income is the 1993-94 year of income or an earlier year of income;the notice has effect as if it were a notice under section 40 stating that the fund is a complying superannuation fund in relation to the year of income.

ADFs—positive

- (2) For the purposes of paragraph 41(2)(b) and this Division, if:
 - (a) a notice under repealed section 14 or 15 of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is satisfied that:

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- (i) a fund satisfied the approved deposit fund conditions in relation to a year of income; or
- (ii) a fund should be treated as if it had satisfied the approved deposit fund conditions in relation to a year of income; and

- (b) the year of income is the 1993-94 year of income or an earlier year of income;

the notice has effect as if it were a notice under section 40 stating that the fund is a complying approved deposit fund in relation to the year of income.

PSTs—positive

- (3) For the purposes of paragraph 41(2)(b) and this Division, if:

- (a) a notice under repealed section 15B or 15C of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is satisfied that:

- (i) a trust satisfied the pooled superannuation trust conditions in relation to a year of income; or
- (ii) a trust should be treated as if it had satisfied the pooled superannuation trust conditions in relation to a year of income; and

- (b) the year of income is the 1993-94 year of income or an earlier year of income;

the notice has effect as if it were a notice under section 40 stating that the trust is a pooled superannuation trust in relation to the year of income.

Superannuation funds—negative

- (4) For the purposes of paragraph 41(2)(b) and this Division, if:

- (a) a notice under the repealed section 12 or 13 of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is not satisfied that a fund satisfied the superannuation fund conditions in relation to a year of income; and

- (b) the year of income is the 1993-94 year of income or an earlier year of income;

the notice has effect as if it were a notice under section 40 stating that the fund is not a complying superannuation fund in relation to the year of income.

ADFs—negative

- (5) For the purposes of paragraph 41(2)(b) and this Division, if:
 - (a) a notice under the repealed section 14 or 15 of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is not satisfied that a fund satisfied the approved deposit fund conditions in relation to a year of income; and
 - (b) the year of income is the 1993-94 year of income or an earlier year of income;the notice has effect as if it were a notice under section 40 stating that the fund is not a complying approved deposit fund in relation to the year of income.

PSTs—negative

- (6) For the purposes of paragraph 41(2)(b) and this Division, if:
 - (a) a notice under the repealed section 15B or 15C of the *Occupational Superannuation Standards Act 1987* stated that the Commissioner is not satisfied that a trust satisfied the pooled superannuation trust conditions in relation to a year of income; and
 - (b) the year of income is the 1993-94 year of income or an earlier year of income;the notice has effect as if it were a notice under section 40 stating that the trust is not a pooled superannuation trust in relation to the year of income.

OSSA—continued operation

- (7) A reference in this section to a provision of the *Occupational Superannuation Standards Act 1987* includes a reference to that

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provision as it continues to apply, despite its repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*.

50 Transitional—late lodgment of elections by trustees of superannuation funds

28 days late

- (1) For the purposes of subsection 41(3), paragraph 42(1)(a) and subsection 45(2), if:
 - (a) on a particular day (the ***lodgment day***), the trustee, or the trustees, of a superannuation fund have lodged or lodge an election under section 19; and
 - (b) the lodgment day was or is after 28 July 1994; and
 - (c) the Regulator is satisfied that this subsection should apply in relation to the fund; and
 - (d) the trustee, or the trustees, of the fund have complied with such requirements relating to notifying members of the fund about:
 - (i) the delay in lodging the election; and
 - (ii) the reasons for the delay;as are set out in regulations made for the purposes of this paragraph; and
 - (e) under the regulations, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period (the ***pre-lodgment period***):
 - (i) beginning at the beginning of the fund's 1994-95 year of income; and
 - (ii) ending at the end of the lodgment day;the fund is taken to be a regulated superannuation fund at all times during the pre-lodgment period.
- (2) For the purposes of this Part, if:
 - (a) a superannuation fund is wound up or terminated; and
 - (b) the winding up or termination is completed on a particular day (the ***termination day***); and

- (c) the termination day is before a day named by the Regulator in a written notice given to a trustee of the fund for the purposes of this paragraph; and
- (d) the trustee, or the trustees, of the fund told the Regulator in writing before the commencement of this subsection that they:
 - (i) did not intend to lodge an election under section 19 in respect of the fund; and
 - (ii) intended to take advantage of the subsection (4A) that, immediately before 1 July 1996, was taken to be inserted in this section by a declaration made under subsection 333(1); and
- (e) the trustee, or the trustees, have complied with such requirements relating to notifying members and prospective members of the fund that:
 - (i) the fund would be wound up or terminated; and
 - (ii) the trustee, or trustees, of the fund intended to take advantage of the subsection (4A) mentioned in subparagraph (d)(ii);as were set out in regulations made for the purposes of that subsection (4A); and
- (f) as soon as practicable after the termination day, a trustee of the fund tells the Regulator in writing that the winding up or termination of the fund had been completed; and
- (g) under the regulations, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period (the ***pre-termination period***):
 - (i) beginning at the beginning of the fund's 1994-95 year of income; and
 - (ii) ending at the end of the termination day;the fund is taken to have been a complying superannuation fund at all times during the pre-termination period.

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Regulations may apply OSS system

- (5) Regulations made for the purposes of paragraph (1)(e) or (2)(g) may:
- (a) confer functions or powers on the Regulator; and
 - (b) make provision for or in relation to a matter by applying, adopting or incorporating, with such modifications as are prescribed, the provisions, or the repealed provisions, of:
 - (i) the *Occupational Superannuation Standards Act 1987*;
or
 - (ii) regulations made for the purposes of section 7 of that Act;(including those provisions as they continue to apply, despite their repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*).

Section 14 of the Legislation Act 2003

- (6) Subsection (5) of this section does not limit the application of section 14 of the *Legislation Act 2003* to regulations made for the purposes of this section.

Part 6—Provisions relating to governing rules of superannuation entities

51 Object of Part

The object of this Part is to set out rules about the content of the governing rules of superannuation entities.

51A Covenants are cumulative

To avoid doubt, each covenant referred to in sections 52 to 53 or prescribed under section 54A, and each obligation referred to in sections 29VN and 29VO, that applies to a trustee of a superannuation entity, or a director of a corporate trustee of a superannuation entity, applies in addition to every other covenant or obligation referred to in those sections that applies to the trustee or director.

52 Covenants to be included in governing rules—registrable superannuation entities

Governing rules taken to contain covenants

- (1) If the governing rules of a registrable superannuation entity do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.

General covenants

- (2) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
 - (a) to act honestly in all matters concerning the entity;
 - (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity

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- of which it is trustee and on behalf of the beneficiaries of which it makes investments;
- (c) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;
 - (d) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:
 - (i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
 - (ii) to ensure that the duties to the beneficiaries are met despite the conflict; and
 - (iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
 - (iv) to comply with the prudential standards in relation to conflicts;
 - (e) to act fairly in dealing with classes of beneficiaries within the entity;
 - (f) to act fairly in dealing with beneficiaries within a class;
 - (g) to keep the money and other assets of the entity separate from any money and assets, respectively:
 - (i) that are held by the trustee personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;
 - (h) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers;
 - (i) if there are any reserves of the entity—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
 - (j) to allow a beneficiary of the entity access to any prescribed information or any prescribed documents.

Superannuation trustee

- (3) In paragraph (2)(b), a **superannuation trustee** is a person whose profession, business or employment is or includes acting as a trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

Obligations to beneficiaries override obligations under certain other Acts

- (4) The obligations of the trustee under paragraph (2)(d) override any conflicting obligations an executive officer or employee of the trustee has under:
- (a) Part 2D.1 of the *Corporations Act 2001*; or
 - (b) Subdivision A of Division 3 of Part 2-2 of the *Public Governance, Performance and Accountability Act 2013* (which deals with general duties of officials) or any rules made for the purposes of that Subdivision.

Trustee not prevented from engaging or authorising persons to act on trustee's behalf

- (5) A covenant referred to in paragraph (2)(h) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.

Investment covenants

- (6) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
- (a) to formulate, review regularly and give effect to an investment strategy for the whole of the entity, and for each investment option offered by the trustee in the entity, having regard to:
 - (i) the risk involved in making, holding and realising, and the likely return from, the investments covered by the strategy, having regard to the trustee's objectives in relation to the strategy and to the expected cash flow requirements in relation to the entity; and

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- (ii) the composition of the investments covered by the strategy, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification; and
- (iii) the liquidity of the investments covered by the strategy, having regard to the expected cash flow requirements in relation to the entity; and
- (iv) whether reliable valuation information is available in relation to the investments covered by the strategy; and
- (v) the ability of the entity to discharge its existing and prospective liabilities; and
- (vi) the expected tax consequences for the entity in relation to the investments covered by the strategy; and
- (vii) the costs that might be incurred by the entity in relation to the investments covered by the strategy; and
- (viii) any other relevant matters;
- (b) to exercise due diligence in developing, offering and reviewing regularly each investment option;
- (c) to ensure the investment options offered to each beneficiary allow adequate diversification.

Insurance covenants

- (7) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
 - (a) to formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing each of the following matters:
 - (i) the kinds of insurance that are to be offered to, or acquired for the benefit of, beneficiaries;
 - (ii) the level, or levels, of insurance cover to be offered to, or acquired for the benefit of, beneficiaries;
 - (iii) the basis for the decision to offer or acquire insurance of those kinds, with cover at that level or levels, having regard to the demographic composition of the beneficiaries of the entity;

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- (iv) the method by which the insurer is, or the insurers are, to be determined;
- (b) to consider the cost to all beneficiaries of offering or acquiring insurance of a particular kind, or at a particular level;
- (c) to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries;
- (d) to do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success.

Covenants relating to risk

- (8) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
 - (a) to formulate, review regularly and give effect to a risk management strategy that relates to:
 - (i) the activities, or proposed activities, of the trustee, to the extent that they are relevant to the exercise of the trustee's powers, or the performance of the trustee's duties and functions, as trustee of the entity; and
 - (ii) the risks that arise in operating the entity;
 - (b) to maintain and manage in accordance with the prudential standards financial resources (whether capital of the trustee, a reserve of the entity or both) to cover the operational risk that relates to the entity.

52A Covenants relating to directors to be included in governing rules—registrable superannuation entities*Governing rules taken to contain covenants*

- (1) If the governing rules of a registrable superannuation entity of which a trustee is a body corporate do not contain covenants to the effect of the covenants set out in subsection (2), those governing rules are taken to contain covenants to that effect.

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The covenants

- (2) The covenants referred to in subsection (1) are the following covenants by each director of a corporate trustee of the entity:
- (a) to act honestly in all matters concerning the entity;
 - (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation entity director would exercise in relation to an entity where he or she is a director of the trustee of the entity and that trustee makes investments on behalf of the entity's beneficiaries;
 - (c) to perform the director's duties and exercise the director's powers as director of the corporate trustee in the best interests of the beneficiaries;
 - (d) where there is a conflict between the duties of the director to the beneficiaries, or the interests of the beneficiaries, and the duties of the director to any other person or the interests of the director, the corporate trustee or an associate of the director or corporate trustee:
 - (i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
 - (ii) to ensure that the duties to the beneficiaries are met despite the conflict; and
 - (iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
 - (iv) to comply with the prudential standards in relation to conflicts;
 - (e) not to enter into any contract, or do anything else, that would:
 - (i) prevent the director from, or hinder the director in, properly performing or exercising the director's functions and powers as director of the corporate trustee; or
 - (ii) prevent the corporate trustee from, or hinder the corporate trustee in, properly performing or exercising the corporate trustee's functions and powers as trustee of the entity;

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- (f) to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the covenants referred to in section 52.

Obligations to beneficiaries override obligations under certain other Acts

- (3) The obligations of the director under paragraph (2)(d) override any conflicting obligations the director has under:
 - (a) Part 2D.1 of the *Corporations Act 2001*; or
 - (b) Subdivision A of Division 3 of Part 2-2 of the *Public Governance, Performance and Accountability Act 2013* (which deals with general duties of officials) or any rules made for the purposes of that Subdivision.

Director not prevented from engaging or authorising persons to act on behalf of the trustee

- (4) A covenant referred to in paragraph (2)(e) does not prevent the director from engaging or authorising persons to do acts or things on behalf of the trustee.

Using reasonable care and diligence to ensure compliance by corporate trustee

- (5) The reference in paragraph (2)(f) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the circumstances of the corporate trustee.

Covenants operate as if director party to the governing rules

- (6) A covenant referred to in subsection (2) operates as if the director were a party to the governing rules.

Section 52B

52B Covenants to be included in governing rules—self managed superannuation funds

Governing rules taken to contain covenants

- (1) If the governing rules of a self managed superannuation fund do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.

The covenants

- (2) The covenants referred to in subsection (1) are the following covenants by each trustee of the fund:
- (a) to act honestly in all matters concerning the fund;
 - (b) to exercise, in relation to all matters affecting the fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
 - (c) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;
 - (d) to keep the money and other assets of the fund separate from any money and assets, respectively:
 - (i) that are held by the trustee personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the fund;
 - (e) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers;
 - (f) to formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the fund including, but not limited to, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from, the fund's investments, having

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- regard to its objectives and its expected cash flow requirements;
- (ii) the composition of the fund's investments as a whole including the extent to which the investments are diverse or involve the fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the fund's investments, having regard to its expected cash flow requirements;
 - (iv) the ability of the fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the fund—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary of the fund access to any prescribed information or any prescribed documents.

Trustee not prevented from engaging or authorising persons to act on trustee's behalf

- (3) A covenant referred to in paragraph (2)(e) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.

Covenant referred to in paragraph (2)(f)

- (4) An investment strategy is taken to be in accordance with paragraph (2)(f) even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the trustee, where:
- (a) the directions relate to the strategy to be followed by the trustee in relation to the investment of a particular asset or assets of the fund; and
 - (b) the directions are given in circumstances prescribed by regulations made for the purposes of this paragraph.

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52C Covenant relating to directors to be included in governing rules—self managed superannuation funds

Governing rules taken to contain covenant

- (1) If the governing rules of a self managed superannuation fund of which a trustee is a body corporate do not contain a covenant to the effect of the covenant set out in subsection (2), those governing rules are taken to contain a covenant to that effect.

The covenant

- (2) The covenant referred to in subsection (1) is a covenant by each director of a corporate trustee of the fund to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the covenants referred to in section 52B.

Reasonable degree of care and diligence

- (3) The reference in subsection (2) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of director of the corporate trustee would exercise in the corporate trustee's circumstances.

Covenant operates as if director party to the governing rules

- (4) The covenant referred to in subsection (2) operates as if the director were a party to the governing rules.

53 Covenants to repay amounts to beneficiaries in approved deposit funds

Governing rules to contain 2 covenants

- (1) If the governing rules of an approved deposit fund (other than an excluded approved deposit fund) do not contain covenants to the effect of those set out in subsection (2), they are taken to contain covenants to that effect.

Content of the covenants

- (2) The covenants are:
- (a) that, if:
 - (i) a beneficiary, by written notice given to the trustee, requests the trustee to pay to the beneficiary an amount equal to the beneficiary's interest in the fund; and
 - (ii) compliance by the trustee with the request would not be inconsistent with the standards applicable to the fund under section 32;the trustee will pay that amount within a period (not being more than 12 months) determined by the trustee; and
 - (b) that each director of the trustee will ensure that the trustee gives effect to the covenant in paragraph (a).

Legal personal representatives of beneficiaries

- (2A) A reference in subsection (2) to a beneficiary includes a reference to the legal personal representative of a beneficiary.

Note: Section 15 sets out additional rules relating to the interpretation of subsection (2).

Directors taken to be parties to governing rules

- (3) The covenant in paragraph (2)(b) has effect as if each director were a party to the governing rules.

Period for payments to beneficiaries

- (4) The trustee is to determine the period within which amounts are to be paid to beneficiaries under the covenant referred to in paragraph (2)(a).

Variation of payment period

- (5) When the trustee has determined the period under subsection (4), the trustee may make a further determination varying that period if, and only if:
- (a) ASIC has consented in writing to the variation; or

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- (b) the requirements of section 54 have been complied with.

54 Prerequisites to variation of repayment period

- (1) The requirements referred to in paragraph 53(5)(b) are as follows:
 - (a) the question whether the variation should be made has been voted on at a meeting of the beneficiaries;
 - (b) the trustee convened the meeting by sending by post, to the last-known address of each of the beneficiaries, at least 21 days before the meeting, a notice that set out:
 - (i) the date, time and place of the meeting; and
 - (ii) the reason for convening the meeting;
 - (c) the beneficiaries who, at the meeting, vote (whether in person or by proxy) on the question hold interests equal in value to at least the prescribed percentage of the total value of all the interests in the fund;
 - (d) the prescribed percentage of the beneficiaries who voted on the question cast their votes in favour of making the variation.
- (2) For the purposes of paragraph (1)(c), the value of an interest is the price at which the trustee would have to make a payment in respect of the interest if the trustee were required to do so, under the covenant referred to in section 53, on the day immediately before the day when the meeting is held.

54A Regulations may prescribe other covenants

- (1) The regulations may prescribe a covenant to be included in the governing rules of a superannuation entity and, if the governing rules of such a superannuation entity do not contain a covenant to the effect of the prescribed covenant, those rules are taken to contain a covenant to that effect.

Prescribed covenants may deal with same matters as other requirements

- (2) Without limiting the generality of subsection (1), the regulations may prescribe, for the purposes of that subsection, a covenant that elaborates, supplements, or otherwise deals with, any aspect of:
- (a) a matter to which a covenant in sections 52 to 53 relates; or
 - (b) a matter to which a provision of this Act relates.

But prescribed covenants must be capable of operating concurrently with other requirements

- (3) However, a covenant prescribed under subsection (1) must be capable of operating concurrently with:
- (a) all the covenants referred to in sections 52 to 53; and
 - (b) this Act.
- (4) The regulations may specify that a covenant prescribed under subsection (1) is to form part of the enhanced trustee obligations, or the enhanced director obligations, for MySuper products or eligible rollover funds.

55 Consequences of contravention of covenant

Covenants must be complied with

- (1) A person must not contravene a covenant contained, or taken to be contained, in the governing rules of a superannuation entity.

Breach of covenant not an offence and does not result in invalidity

- (2) A contravention of subsection (1) is not an offence and a contravention of that subsection does not result in the invalidity of a transaction.

Breach of covenant may result in action to recover loss or damage

- (3) Subject to subsection (4A), a person who suffers loss or damage as a result of conduct of another person that was engaged in in

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contravention of subsection (1) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

- (4) Unless an action under subsection (3) is of a kind dealt with in subsections (4A) to (4D), it may be begun at any time within 6 years after the day on which the cause of action arose.

Leave of court required where directors' covenants contravened

- (4A) If:

- (a) the person who is alleged to have contravened subsection (1) is or was a director of a corporate trustee of a registrable superannuation entity; and
- (b) it is alleged that the contravention is of a covenant that is contained, or taken to be contained, in the governing rules of the entity, and is:
 - (i) a covenant of the kind mentioned in subsection 52A(2); or
 - (ii) a covenant prescribed under section 54A that relates to the conduct of the director of a corporate trustee of a registrable superannuation entity;

an action under subsection (3) may be brought only with the leave of the court.

- (4B) A person may, within 6 years after the day on which the cause of action arose, seek the leave of the court to bring such an action.
- (4C) In deciding whether to grant an application for leave to bring such an action, the court must take into account whether:
- (a) the applicant is acting in good faith; and
 - (b) there is a serious question to be tried.
- (4D) The court may, in granting leave to bring such an action, specify a period within which the action may be brought.

Defences in actions to recover loss or damage

- (5) It is a defence to an action for loss or damage suffered by a person as a result of the making of an investment by or on behalf of a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to each act, or failure to act, that resulted in the loss or damage.
- (6) It is a defence to an action for loss or damage suffered by a person as a result of the management of any reserves by a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to each act, or failure to act, that resulted in the loss or damage.
- (7) Subsections (5) and (6) apply to an action for loss or damage, whether brought under subsection (3), section 29VP or otherwise.

55A Rules about cashing benefits after death of members

- (1) The governing rules of a regulated superannuation fund must not permit a fund member's benefits to be cashed after the member's death otherwise than in accordance with standards prescribed for the purposes of section 31.
- (2) If the governing rules of a fund are inconsistent with subsection (1):
 - (a) subsection (1) prevails; and
 - (b) the governing rules are invalid, to the extent of the inconsistency.

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55B Governing rules do not prevent giving effect to certain elections

A provision in the governing rules of a regulated superannuation fund is void to the extent that it would prevent a trustee or trustees of the fund from giving effect to:

- (a) an election made in accordance with section 29SAA (election to transfer accrued default amounts to a MySuper product); or
- (b) an election made in accordance with section 29SAB (election to transfer assets attributed to a MySuper product if authorisation cancelled); or
- (c) a requirement in regulations made for the purposes of subsection 29SAA(3); or
- (d) an election made in accordance with section 29SAC (election not to pass costs of paying conflicted remuneration onto MySuper members); or
- (e) an election made in accordance with section 242B (election to transfer amounts held in an eligible rollover fund if authorisation cancelled); or
- (f) an election made in accordance with section 242C (election not to pass costs of paying conflicted remuneration to members of eligible rollover fund).

55C Governing rules do not prevent transfer from pre-MySuper default option to MySuper product

- (1) A provision of the governing rules of a regulated superannuation fund is void to the extent that it would prevent a trustee or trustees of the fund from attributing an amount to a MySuper product for a member, instead of attributing the amount to a pre-MySuper default option.
- (2) A ***pre-MySuper default option***, in relation to an amount attributed to a member of a regulated superannuation fund, is an investment option under which an asset (or assets) of the fund attributed to the member in relation to the amount would be invested, under the governing rules of the fund, if the member gave no direction in relation to the amount.

56 Indemnification of trustee from assets of entity

- (1) Subject to subsections (2) and (2A), a provision in the governing rules of a superannuation entity is void if:
 - (a) it purports to preclude a trustee of the entity from being indemnified out of the assets of the entity in respect of any liability incurred while acting as trustee of the entity; or
 - (b) it limits the amount of such an indemnity.
- (2) A provision in the governing rules of a superannuation entity is void in so far as it would have the effect of exempting a trustee of the entity from, or indemnifying a trustee of the entity against:
 - (a) liability for breach of trust if the trustee:
 - (i) fails to act honestly in a matter concerning the entity; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the entity, the degree of care and diligence that the trustee was required to exercise; or
 - (b) liability for a monetary penalty under a civil penalty order; or
 - (c) the payment of any amount payable under an infringement notice; or
 - (d) liability for the costs of undertaking a course of education in compliance with an education direction; or
 - (e) liability for an administrative penalty imposed by section 166.
- (2A) A provision in the governing rules of a registrable superannuation entity is void in so far as it would have the effect of allowing a trustee of the entity:
 - (a) to indemnify itself out of the assets of the entity for any amount expended out of capital of the trustee managed and maintained by the trustee to cover the operational risk of the entity; or
 - (b) to indemnify itself out of any assets of the entity that do not form part of a reserve maintained for the purpose of covering the operational risk relating to the entity, any amount that relates to that risk, without first exhausting the reserve and

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any other financial resources managed and maintained by the trustee to cover the risk.

- (3) Nothing in the governing rules of a superannuation entity prohibits a trustee of the entity from seeking advice from any person in respect of any matter relating to performance of the duties or the exercise of the powers of a trustee. A provision in the governing rules that purports to preclude a trustee of the entity from being indemnified out of assets of the entity in respect of the cost of obtaining such advice, or to limit the amount of such an indemnity, is void.

57 Indemnification of directors of trustee from assets of entity

- (1) Subject to subsection (2), the governing rules of a superannuation entity may provide for a director of the trustee to be indemnified out of the assets of the entity in respect of a liability incurred while acting as a director of the trustee.
- (2) A provision of the governing rules of a superannuation entity is void in so far as it would have the effect of indemnifying a director of the trustee against:
- (a) a liability that arises because the director:
 - (i) fails to act honestly in a matter concerning the entity; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the entity, the degree of care and diligence that the director is required to exercise; or
 - (b) liability for a monetary penalty under a civil penalty order; or
 - (c) the payment of any amount payable under an infringement notice; or
 - (d) liability for the costs of undertaking a course of education in compliance with an education direction; or
 - (e) liability for an administrative penalty imposed by section 166.
- (3) A director of the trustee of a superannuation entity may be indemnified out of the assets of the entity in accordance with

provisions of the entity's governing rules that comply with this section.

- (4) This section has effect despite section 241 of the *Corporations Act 2001*.

58 Trustee not to be subject to direction

- (1) Subject to subsection (2), the governing rules of a superannuation entity other than a superannuation fund with fewer than 5 members or an excluded approved deposit fund must not permit a trustee to be subject, in the exercise of any of the trustee's powers under those rules, to direction by any other person.
- (2) Subsection (1) does not apply to:
- (a) a direction given by a court; or
 - (b) a direction given by the Regulator; or
 - (c) a direction given by a beneficiary or a group of beneficiaries that relates to benefits payable to that beneficiary or those beneficiaries, as the case may be; or
 - (d) a direction given by a beneficiary to take up, dispose of or alter the amount invested in an investment option, where:
 - (i) the entity is a registrable superannuation entity; and
 - (ii) the direction is given in circumstances prescribed by the regulations for the purposes of this paragraph; or
 - (da) a direction given by a member of a regulated superannuation fund to attribute (or continue to attribute) an amount that is an accrued default amount for the member to a MySuper product or an investment option within a choice product in the fund; or
 - (e) if the entity is an employer-sponsored fund—a direction given by an employer-sponsor, or an associate of an employer-sponsor, in circumstances prescribed by the regulations; or
 - (f) a direction given by the Superannuation Complaints Tribunal; or

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- (g) a direction given by a member (within the meaning of the *Superannuation Contributions Tax (members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*) that is permitted to be given by subsection 15(8A) of that Act.
- (3) If the governing rules of a superannuation entity are inconsistent with subsection (1), that subsection prevails, and the governing rules are, to the extent of the inconsistency, invalid.

58A Service providers and investments cannot be limited to particular persons or associates

Does not apply to self managed superannuation funds

- (1) This section does not apply to a regulated superannuation fund that is a self managed superannuation fund.

Service providers

- (2) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies a person or persons (whether by name or in any other way, directly or indirectly) from whom the trustee, or one or more of the trustees, of the fund may or must acquire a service.

Investments in entities

- (3) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies an entity or entities (whether by name or in any other way, directly or indirectly) in or through which one or more of the assets of the fund may or must be invested.

Financial products

- (4) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies (whether by name or by reference to an entity) a financial product or financial products:

- (a) in or through which one or more of the assets of the fund may or must be invested; or
- (b) that may or must be purchased using assets of the fund; or
- (c) in relation to which one or more assets of the fund may or must be used to make payments.

Exception

- (5) Subsections (2), (3) and (4) do not apply if the relevant person, entity or financial product is specified in a law of the Commonwealth or of a State or Territory, or is required to be specified under such a law.

58B Service providers and investments

- (1) This section applies if a trustee, or the trustees, of a regulated superannuation fund does one or more of the following:
 - (a) acquires a service from an entity;
 - (b) invests assets of the fund in or through an entity;
 - (c) invests assets of the fund in or through a financial product;
 - (d) purchases a financial product using assets of the fund;
 - (e) uses assets of the fund to make payments in relation to a financial product.
 - (2) If the trustee, or the trustees, would not breach:
 - (a) a provision of any of the following:
 - (i) this or any other Act;
 - (ii) a legislative instrument made under this or any other Act;
 - (iii) the prudential standards;
 - (iv) the operating standards;
 - (v) the governing rules of the fund; or
 - (b) any covenant referred to in this Part or prescribed under this Part;
- in doing one or more of the things mentioned in subsection (1), the general law relating to conflict of interest does not apply to the

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extent that it would prohibit the trustee, or the trustees, from doing the thing.

59 Exercise of discretion by person other than trustee

- (1) Subject to subsection (1A), the governing rules of a superannuation entity other than a self managed superannuation fund must not permit a discretion under those rules that is exercisable by a person other than a trustee of the entity to be exercised unless:
 - (a) those rules require the consent of the trustee, or the trustees, of the entity to the exercise of that discretion; or
 - (b) if the entity is an employer-sponsored fund:
 - (i) the exercise of the discretion relates to the contributions that an employer-sponsor will, after the discretion is exercised, be required or permitted to pay to the fund; or
 - (ii) the exercise of the discretion relates solely to a decision to terminate the fund; or
 - (iii) the circumstances in which the discretion was exercised are covered by regulations made for the purposes of this subparagraph.
- (1A) Despite subsection (1), the governing rules of a superannuation entity may, subject to a trustee of the entity complying with any conditions contained in the regulations, permit a member of the entity, by notice given to a trustee of the entity in accordance with the regulations, to require a trustee of the entity to provide any benefits in respect of the member on or after the member's death to a person or persons mentioned in the notice, being the legal personal representative or a dependant or dependants of the member.
- (2) If the governing rules of a superannuation entity are inconsistent with subsection (1), that subsection prevails, and the governing rules are, to the extent of the inconsistency, invalid.

60 Amendment of governing rules

- (1) The governing rules of a superannuation entity other than a self managed superannuation fund must not permit those rules to be amended unless:
 - (a) the trustee, or the trustees, of the entity have consented to the amendment; or
 - (b) if the entity is an employer-sponsored fund:
 - (i) the amendment relates to the contributions that an employer-sponsor will, after the amendment, be required or permitted to pay to the fund; or
 - (ii) the amendment relates solely to the termination of the fund; or
 - (iii) the circumstances in which the amendment was made are covered by regulations made for the purposes of this subparagraph; or
 - (c) the amendment is made solely for the purpose of conferring on the trustee, or the trustees, the power to consent to amendments of those rules.
- (2) The governing rules of a regulated superannuation fund must not permit those rules to be amended in such a way that:
 - (a) a person other than a constitutional corporation would be eligible to be appointed as trustee unless the rules provide, and will continue to provide after the amendment is made, that the fund has, as its sole or primary purpose, the provision of old-age pensions; or
 - (b) the sole or primary purpose of the fund would be a purpose other than the provision of old-age pensions unless the rules provide, and will continue to provide after the amendment is made, that the trustee must be a constitutional corporation.
- (3) If the governing rules of the superannuation entity are inconsistent with subsection (1) or (2), the subsection concerned prevails, and the governing rules are, to the extent of the inconsistency, invalid.

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60A Dismissal of trustee of public offer entity

- (1) Subject to subsection (2), the governing rules of a public offer entity must not permit the trustee to be removed by a person other than APRA.

Note: Part 17 provides for the removal of trustees by APRA.

- (2) Subsection (1) does not apply to a removal of a kind specified in regulations made for the purposes of this subsection.
- (3) If the governing rules of the public offer entity are inconsistent with subsection (1), that subsection prevails, and the governing rules are, to the extent of the inconsistency, invalid.

Part 7—Provisions applying only to regulated superannuation funds

61 Object of Part

The object of this Part is to set out special rules which apply only to regulated superannuation funds.

62 Sole purpose test

- (1) Each trustee of a regulated superannuation fund must ensure that the fund is maintained solely:
 - (a) for one or more of the following purposes (the *core purposes*):
 - (i) the provision of benefits for each member of the fund on or after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund);
 - (ii) the provision of benefits for each member of the fund on or after the member's attainment of an age not less than the age specified in the regulations;
 - (iii) the provision of benefits for each member of the fund on or after whichever is the earlier of:
 - (A) the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or
 - (B) the member's attainment of an age not less than the age prescribed for the purposes of subparagraph (ii);
 - (iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:

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- (A) the death occurred before the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (v) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred before the member attained the age prescribed for the purposes of subparagraph (ii); and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both; or
- (b) for one or more of the core purposes and for one or more of the following purposes (the *ancillary purposes*):
 - (i) the provision of benefits for each member of the fund on or after the termination of the member's employment with an employer who had, or any of whose associates had, at any time, contributed to the fund in relation to the member;
 - (ii) the provision of benefits for each member of the fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged and the cessation is on account of ill-health (whether physical or mental);
 - (iii) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund); and

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- (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
 - (iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred after the member attained the age prescribed for the purposes of subparagraph (a)(ii); and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
 - (v) the provision of such other benefits as the Regulator approves in writing.
- (1A) Subsection (1) does not imply that a trustee of a regulated superannuation fund is required to maintain the fund so that the same kind of benefits will be provided:
- (a) to each member of the fund; or
 - (b) in respect of each member of the fund.
- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.
- (3) An approval given by the Regulator for the purposes of subsection (1) may be expressed to relate to:
- (a) a specified fund; or
 - (b) a specified class of funds.

62A Self managed superannuation funds—investment in collectables and personal use assets

The regulations may prescribe rules in relation to the trustees of regulated superannuation funds that are self managed superannuation funds making, holding and realising investments involving:

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- (a) artwork (within the meaning of the *Income Tax Assessment Act 1997*); or
- (b) jewellery; or
- (c) antiques; or
- (d) artefacts; or
- (e) coins or medallions; or
- (f) postage stamps or first day covers; or
- (g) rare folios, manuscripts or books; or
- (h) memorabilia; or
- (i) wine; or
- (j) cars; or
- (k) recreational boats; or
- (l) memberships of sporting or social clubs; or
- (m) assets of a particular kind, if assets of that kind are ordinarily used or kept mainly for personal use or enjoyment (not including land).

Note: The regulations may prescribe penalties of not more than 10 penalty units for offences against the regulations. See paragraph 353(1)(d).

63 Certain regulated superannuation funds not to accept employer contributions in certain circumstances

Directions

- (1) The Regulator may give a trustee of a regulated superannuation fund a written notice directing the trustee, or the trustees, not to accept any contributions made to the fund by an employer-sponsor.

Pre-1994-95 directions

- (2) The Commissioner may only give a direction under this section to the trustee of a fund before the fund's 1994-95 year of income (whether in accordance with section 4 of the *Acts Interpretation Act 1901* or otherwise) if the direction takes effect at the beginning of that year of income and, at a time during the period:

- (a) beginning on the day on which this Act received the Royal Assent; and
- (b) ending immediately before the beginning of that year of income;

when:

- (c) the fund was in existence; and
- (d) there were in force regulations for the purposes of subsection 7(1) of the *Occupational Superannuation Standards Act 1987* prescribing standards applicable to the fund;

the fund did not comply with any or all of those standards.

Post-1993-94 directions

- (3) The Regulator must not give a direction under this section to a trustee of a fund after the beginning of the fund's 1994-95 year of income unless:
 - (a) a trustee of the fund has contravened one or more of the regulatory provisions (as defined in section 38A) on one or more occasions after the beginning of that year of income; and
 - (b) the Regulator is satisfied that the seriousness or frequency, or both, of the contraventions warrants the giving of the direction.

Reasons

- (4) A direction under this section must be accompanied by, or included in the same document as, a statement giving the reasons for the direction.

Revocation

- (5) The Regulator may revoke a direction under this section if the Regulator is satisfied that there is, and is likely to continue to be, substantial compliance by each trustee of the fund with the regulatory provisions (as defined in section 38A) applicable to the fund.

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Contravention of equal representation rules

- (6) For the purposes of subsections (3) and (5), if a fund does not comply with Part 9 (which deals with equal representation), the trustee of the fund is, or the trustees of the fund are, taken to have contravened the applicable provisions of that Part.

Offence of contravening direction

- (7) A trustee of a fund must not, without reasonable excuse, contravene a direction under this section.

Penalty: 100 penalty units.

- (7A) Subsection (7) is an offence of strict liability.

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

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

Additional rule for certain funds not complying with equal representation rules

- (7B) An RSE licensee of a fund that is not a public offer superannuation fund must not, while subsection (7D) applies to the fund, accept any contributions made to the fund by an employer-sponsor.

Penalty: 60 penalty units.

- (7C) Subsection (7B) is an offence of strict liability.

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

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

- (7D) This subsection applies to the fund if:

- (a) the fund is failing to comply with subsection 92(4) or 93(4) (whichever is applicable); or
- (b) having previously failed to comply, the fund does so comply but the RSE licensee has not given to APRA a notice in the approved form that:

- (i) states that the fund so complies; and
- (ii) if the RSE licensee is a group of individual trustees and the compliance is as a result of the appointment of one or more other individual trustees to the group—states the appointee's name or the appointees' names; and
- (iii) if the RSE licensee is a body corporate and the compliance is as a result of the appointment of one or more directors to the board of directors of the body corporate—states the appointee's name or the appointees' names.

Refund of contributions

- (8) A contravention of subsection (7) or (7B) does not result in the invalidity of a transaction. However, if a contribution is accepted in contravention of either of those subsections, a trustee of the fund concerned must refund the contribution within 28 days or such further period as the Regulator allows.

Notification to employer-sponsors

- (9) If a trustee of a fund is given a direction under this section, each trustee of the fund must ensure that all reasonable steps are taken to notify the direction to each employer-sponsor of the fund.

Offence of contravening subsection (8) or (9)

- (10) A person who, without reasonable excuse, contravenes subsection (8) or (9) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.
- (10A) Subsection (10) is an offence of strict liability.

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

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

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Refunded contributions to be ignored for the purposes of income tax and superannuation guarantee charge

- (11) For the purposes of the Income Tax Assessment Act and the *Superannuation Guarantee (Administration) Act 1992*, if a contribution is refunded under this section, the person who made the contribution is taken never to have made the contribution.

Superannuation guarantee charge—shortfall component to be treated as employer contribution

- (12) This section has effect as if the payment of a shortfall component to a fund under section 65 of the *Superannuation Guarantee (Administration) Act 1992* were a contribution made to the fund by an employer-sponsor.

OSSA

- (13) A reference in this section to subsection 7(1) of the *Occupational Superannuation Standards Act 1987* includes a reference to that subsection as it continues to apply, despite its repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*.

64 Superannuation contributions—deductions from salary or wages to be remitted promptly

Application

- (1) This section applies if:
- (a) an employer of an employee is authorised (whether by the employee, by force of law or otherwise) to:
 - (i) deduct an amount from salary or wages payable by the employer to the employee; and
 - (ii) pay to a trustee of a regulated superannuation fund the amount of the deduction for the purposes of making provision for superannuation benefits for, or for dependants of, the employee; and
 - (b) the employer makes such a deduction.

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Prompt remission

- (2) The employer must pay to a trustee of the superannuation fund the amount of the deduction before the end of the 28-day period beginning immediately after the end of the month in which the deduction was made.
- (2A) Subsection (2) does not apply if:
- (a) the employer pays to an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) the amount of the deduction before the end of the period mentioned in that subsection; and
 - (b) the approved clearing house accepts the payment.
- (3) The employer commits an offence if the employer contravenes subsection (2).

Penalty: 100 penalty units.

- (3A) The employer commits an offence if the employer contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

Part-time domestic workers counted

- (5) For the purposes of this section, the *Superannuation Guarantee (Administration) Act 1992* has effect as if subsection 11(2) of that Act had not been enacted.

64A Compliance with determinations of the Superannuation Complaints Tribunal

- (1) If:
- (a) a complaint has been made to the Superannuation Complaints Tribunal under section 14 of the *Superannuation (Resolution*

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- of Complaints) Act 1993* concerning a disability benefit (whether under a contract of insurance or otherwise); and
- (b) the Tribunal decides that a person other than a trustee or an insurer is responsible for determining the existence of the disability; and
 - (c) the Tribunal joins the person under paragraph 18(1)(d) of that Act as a party to the complaint;
- the person must comply with any determination made in respect of the person by the Tribunal.

- (2) In this section:

Superannuation Complaints Tribunal means the Superannuation Complaints Tribunal established under section 6 of the *Superannuation (Resolution of Complaints) Act 1993*.

65 Lending to members of regulated superannuation fund prohibited

Prohibition

- (1) A trustee or an investment manager of a regulated superannuation fund must not:
- (a) lend money of the fund to:
 - (i) a member of the fund; or
 - (ii) a relative of a member of the fund; or
 - (b) give any other financial assistance using the resources of the fund to:
 - (i) a member of the fund; or
 - (ii) a relative of a member of the fund.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) by a trustee in relation to a self managed superannuation fund.

Exception—private sector funds

- (2) Subsection (1) does not prohibit the lending of money of a private sector fund established before 16 December 1985 to a member if the trustee of the fund, on or before that date:
- (a) had express power to lend money to members; or
 - (b) lent money to members and that lending was not expressly prohibited by the governing rules of the fund.

Exception—public sector funds

- (3) Subsection (1) does not prohibit the lending of money of a public sector fund established before 25 May 1988 to a member if the trustee of the fund, on or before that date:
- (a) had express power to lend money to members; or
 - (b) lent money to members and that lending was not expressly prohibited by the governing rules of the fund.

Variation of governing rules

- (4) If:
- (a) subsection (2) or (3) applies to a regulated superannuation fund; and
 - (b) at the beginning of the fund's 1994-95 year of income, a provision included in the governing rules of the fund authorised the lending of the fund's money to members;
- a variation of that provision is void unless the variation:
- (c) limits the power to lend the fund's money to members; or
 - (d) removes the power to lend the fund's money to members.

Civil penalty provision

- (5) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

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Effect of Part 8

- (7) Nothing in Part 8 limits the operation of this section.

66 Acquisitions of certain assets from members of regulated superannuation funds prohibited

Prohibition

- (1) Subject to subsection (2), a trustee or an investment manager of a regulated superannuation fund must not intentionally acquire an asset from a related party of the fund.

Exception—acquisitions of business real property and listed securities

- (2) Subsection (1) does not prohibit a trustee or investment manager acquiring an asset from a related party of the fund if:
- (a) the asset is a listed security acquired at market value; or
 - (b) if the fund is a superannuation fund with fewer than 5 members—the asset is business real property of the related party acquired at market value; or
 - (c) the trustee of a regulated superannuation fund acquired the asset under a merger between regulated superannuation funds; or
 - (d) the asset is an asset of a kind which the Regulator, by legislative instrument, determines may be acquired by:
 - (i) any fund; or
 - (ii) a class of funds in which the fund is included.

Exception—certain in-house assets

- (2A) Subsection (1) does not prohibit the acquisition of an asset by a trustee or investment manager of a superannuation fund from a related party of the fund if:
- (a) the acquisition of the asset constitutes an investment that:
 - (i) is an in-house asset of the fund within the meaning of subsection 71(1); or

- (ii) would be an in-house asset of the fund within the meaning of subsection 71(1) apart from the operation of Subdivision D of Part 8; or
 - (iii) is a life insurance policy issued by a life insurance company (other than a policy acquired from a member of the fund or from a relative of a member); or
 - (iv) is referred to in paragraph 71(1)(b), (ba), (c), (d), (e), (f), (h) or (j); and
- (b) the asset is acquired at market value; and
 - (c) the acquisition of the asset would not result in the level of in-house assets of the superannuation fund exceeding the level permitted by Part 8.

Exception—breakdown of relationships

- (2B) Subsection (1) does not prohibit a trustee or investment manager acquiring an asset from a related party of the fund (the **acquiring fund**) if:
- (a) the asset is acquired:
 - (i) for the benefit of a particular member of the acquiring fund; and
 - (ii) from a trustee or investment manager of another regulated superannuation fund (the **transferring fund**); and
 - (b) at the time of the acquisition:
 - (i) the member and his or her spouse or former spouse are separated; and
 - (ii) there is no reasonable likelihood of cohabitation being resumed; and
 - (c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and
 - (d) the asset represents the whole, or a part, of either:
 - (i) the member's own interests in the transferring fund; or
 - (ii) the member's entitlements as determined under Part VIIIB of the *Family Law Act 1975* in relation to the

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interests of the member's spouse, or former spouse, in the transferring fund.

- (2C) For the purposes of subsection (2B), the question whether the spouses, or former spouses, have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

Prohibition of avoidance schemes

- (3) A person must not enter into, commence to carry out, or carry out a scheme if the person entered into, commenced to carry out, or carried out the scheme or any part of the scheme with the intention that:
- (a) the scheme would result, or be likely to result, in the acquisition of an asset by a trustee or an investment manager of a regulated superannuation fund, where the asset is acquired from a person who has a connection (either direct or indirect through one or more interposed companies, partnerships or trusts) with a related party of the fund; and
 - (b) that acquisition would avoid the application of subsection (1) to the fund.

Offence

- (4) A person who contravenes subsection (1) or (3) commits an offence punishable on conviction by imprisonment for a term not exceeding 1 year.

Definitions

- (5) In this section:

acquire an asset does not include accept money.

business includes any profession, trade, employment, vocation or calling carried on for the purposes of profit, including:

- (a) the carrying on of primary production; and
- (b) the provision of professional services;

but does not include occupation as an employee.

business real property, in relation to an entity, means:

- (a) any freehold or leasehold interest of the entity in real property; or
- (b) any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (c) if another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph—any interest belonging to that class that is held by the entity;

where the real property is used wholly and exclusively in one or more businesses (whether carried on by the entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate.

listed security means a security listed for quotation in the official list of any of the following:

- (a) a licensed market within the meaning of section 761A of the *Corporations Act 2001*; or
- (b) an approved stock exchange within the meaning of the *Income Tax Assessment Act 1997*; or
- (c) a market exempted under section 791C of the *Corporations Act 2001*.

primary production business has the same meaning as in the *Income Tax Assessment Act 1997*.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking:
 - (i) whether express or implied; or
 - (ii) whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

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Real property used in primary production business

- (6) For the purposes of the definition of **business real property** in subsection (5), real property used in one or more primary production businesses does not cease to be used wholly and exclusively in that business or those businesses only because:
- (a) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
 - (b) the area is also used primarily for domestic or private purposes;
- provided that the use for domestic or private purposes referred to in paragraphs (a) and (b) is not the predominant use of the real property.

67 Borrowing

Prohibition

- (1) Subject to this section and section 67A, a trustee of a regulated superannuation fund must not:
- (a) borrow money; or
 - (b) maintain an existing borrowing of money.

Note 1: Section 67A contains an exception for certain limited recourse borrowing arrangements.

Note 2: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

Exception—temporary borrowing to pay beneficiary

- (2) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:
- (a) the purpose of the borrowing is to enable the trustee to make a payment to a beneficiary which the trustee is required to make by law or by the governing rules and which, apart from the borrowing, the trustee would not be able to make; and
 - (b) the period of the borrowing does not exceed 90 days; and

- (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.
- (2A) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:
 - (a) the purpose of the borrowing is to enable the trustee to make a payment of surcharge or advance instalment which the trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and which, apart from the borrowing, the trustee would not be able to make; and
 - (b) the period of the borrowing does not exceed 90 days; and
 - (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

Exception—temporary borrowing to cover settlement of securities transactions

- (3) Subsection (1) does not prohibit a trustee of a regulated superannuation fund from borrowing money if:
 - (a) the purpose of the borrowing is to enable the trustee to cover settlement of a transaction for the acquisition of any of the following:
 - (i) bonds, debentures, stock, bills of exchange or other securities;
 - (ii) shares in a company;
 - (iii) units in a unit trust;
 - (iv) futures contracts;
 - (v) forward contracts;
 - (vi) interest rates swap contracts;
 - (vii) currency swap contracts;
 - (viii) forward exchange rate contracts;
 - (ix) forward interest rate contracts;

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- (x) a right or option in respect of such a security, share, unit, contract or policy;
- (xi) any similar financial instrument;
- (xii) foreign currency; and
- (b) both:
 - (i) at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and
 - (ii) the borrowing is not taken, under a determination made, by legislative instrument, by the Regulator, to be exempt from this paragraph; and
- (c) the period of the borrowing does not exceed 7 days; and
- (d) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

Exception—private sector funds

- (5) Subsection (1) does not prohibit a trustee of a private sector fund from maintaining an existing borrowing of money if:
 - (a) the trustee had, at a time before 12 June 1986, borrowed the money in circumstances that did not comply with the standard set out in paragraph 16(1)(b) of the Occupational Superannuation Standards Regulations; and
 - (b) the maintenance occurs before whichever is the earliest of the following:
 - (i) the day on which the trustee made such arrangements as were necessary to comply with that standard;
 - (ii) the day on which the trustee makes such arrangements as are necessary to comply with subsection (1);
 - (iii) 1 July 1995.

Exception—public sector funds

- (6) Subsection (1) does not prohibit the trustee of a public sector fund from maintaining an existing borrowing of money if:
 - (a) the trustee had, at a time before 2 July 1990, borrowed the money in circumstances that did not comply with the

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standard set out in paragraph 16(1)(b) of the Occupational Superannuation Standards Regulations; and

- (b) the maintenance occurs before whichever is the earliest of the following:
- (i) the day on which the trustee made such arrangements as were necessary to comply with that standard;
 - (ii) the day on which the trustee makes such arrangements as are necessary to comply with subsection (1);
 - (iii) 1 July 2000.

Civil penalty provision

- (7) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

67A Limited recourse borrowing arrangements

Exception

- (1) Subsection 67(1) does not prohibit a trustee of a regulated superannuation fund (the **RSF trustee**) from borrowing money, or maintaining a borrowing of money, under an arrangement under which:
- (a) the money is or has been applied for the acquisition of a single acquirable asset, including:
 - (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset); and
- Example: Conveyancing fees, stamp duty, brokerage or loan establishment costs.
- (ii) money applied to refinance a borrowing (including any accrued interest on a borrowing) to which this subsection applied (including because of section 67B) in

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relation to the single acquirable asset (and no other acquirable asset); and

- (b) the acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset; and
- (c) the RSF trustee has a right to acquire legal ownership of the acquirable asset by making one or more payments after acquiring the beneficial interest; and
- (d) the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
 - (i) the borrowing; or
 - (ii) the sum of the borrowing and charges related to the borrowing;are limited to rights relating to the acquirable asset; and

Example: Any right of a person to be indemnified by the RSF trustee because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the acquirable asset.

- (e) if, under the arrangement, the RSF trustee has a right relating to the acquirable asset (other than a right described in paragraph (c))—the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the acquirable asset; and
- (f) the acquirable asset is not subject to any charge (including a mortgage, lien or other encumbrance) except as provided for in paragraph (d) or (e).

*Meaning of **acquirable asset***

- (2) An asset is an **acquirable asset** if:
 - (a) the asset is not money (whether Australian currency or currency of another country); and
 - (b) neither this Act nor any other law prohibits the RSF trustee from acquiring the asset.

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- (3) This section and section 67B apply to a collection of assets in the same way as they apply to a single asset, if:
- (a) the assets in the collection have the same market value as each other; and
 - (b) the assets in the collection are identical to each other.

Example: A collection of shares of the same class in a single company.

- (4) For the purposes of this section and section 67B, the regulations may provide that, in prescribed circumstances, an acquirable asset ceases to be that particular acquirable asset.

RSF trustee

- (5) Paragraphs (1)(d) and (e) do not apply to a right of:
- (a) a member of the regulated superannuation fund; or
 - (b) another trustee of the regulated superannuation fund;
- to damages against the RSF trustee for a breach by the RSF trustee of any of the RSF trustee's duties as trustee.
- (6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to a right of any person against the RSF trustee includes a reference to a right of a person who is the RSF trustee, if the person holds the right in another capacity.

67B Limited recourse borrowing arrangements—replacement assets

- (1) Subsection (2) applies to:
- (a) a reference in paragraph 67A(1)(b), (c), (d), (e) or (f) to an acquirable asset (the ***original asset***); or
 - (b) a reference in subsection 71(8) to an acquirable asset (the ***original asset***) mentioned in paragraph 67A(1)(b);
- (including a reference resulting from a previous application of subsection (2) of this section).
- (2) Treat the reference as being a reference to another single acquirable asset (the ***replacement asset***) if:
- (a) the replacement asset replaces the original asset; and

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- (b) subsection (3), (4), (5), (6), (7) or (8) applies.
- (3) This subsection applies if:
 - (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or
 - (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in that company, or a collection of shares in that company; or
 - (ii) a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) at the time the replacement occurs, the original asset and the replacement asset have the same market value.
- (4) This subsection applies if:
 - (a) the original asset consists of an instalment receipt that confers a beneficial interest in:
 - (i) a share in a company; or
 - (ii) a collection of shares in a company; and
 - (b) the replacement asset consists of that share or collection.
- (5) This subsection applies if:
 - (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or
 - (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in another company, or a collection of shares in another company; or
 - (ii) a unit in another unit trust, or a collection of units in another unit trust; and

- (c) the replacement occurs as a result of a takeover, merger, demerger or restructure of the company or unit trust mentioned in paragraph (a).
- (6) This subsection applies if:
 - (a) the original asset consists of a share in a company, or a collection of shares in a company; and
 - (b) the replacement asset consists of a stapled security, or a collection of stapled securities; and
 - (c) each of those stapled securities consists of a single share, or a single collection of shares of the same class, stapled together with a single unit, or a single collection of units of the same class, in a unit trust; and
 - (d) the replacement occurs under a scheme of arrangement of the company.
- (7) This subsection applies if:
 - (a) the original asset consists of a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) the replacement occurs as a result of an exercise of a discretion granted under the trust deed of that unit trust to the trustee of that unit trust.
- (8) This subsection applies in the circumstances (if any) prescribed by the regulations for the purposes of this subsection.

68 Victimisation of trustees etc.*Prohibition*

- (1) A person must not commit an act of victimisation against:
 - (a) a trustee of an employer-sponsored fund; or
 - (b) a responsible officer of a corporate trustee of an employer-sponsored fund.

Penalty: Imprisonment for 2 years.

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

Act of victimisation against trustee

- (2) For the purposes of this section, a person is taken to commit an act of victimisation against a trustee of an employer-sponsored fund if, and only if, the person subjects, or threatens to subject, the trustee to a detriment on the grounds that:
- (a) the trustee has fulfilled, is fulfilling, or is proposing to fulfil, an obligation imposed on the trustee; or
 - (b) the trustee has exercised, is exercising, or is proposing to exercise, the trustee's powers in a particular way.

Act of victimisation against officer of corporate trustee

- (3) For the purposes of this section, a person is taken to commit an act of victimisation against a responsible officer of a corporate trustee of an employer-sponsored fund if, and only if, the person subjects, or threatens to subject, the responsible officer to a detriment on the grounds that:
- (a) the trustee or officer has fulfilled, is fulfilling, or is proposing to fulfil, an obligation imposed on the trustee or officer; or
 - (b) the trustee or officer has exercised, is exercising, or is proposing to exercise, any of the trustee's powers or the officer's powers, as the case may be, in a particular way.

Employers

- (4) For the purposes of this section, an employer is taken to subject an employee to a detriment if the employer:
- (a) dismisses the employee; or
 - (b) injures the employee in his or her employment; or
 - (c) alters the position of the employee to the employee's prejudice.

However, for the purposes of this section, an employer is taken not to subject an employee to a detriment if the employer:

- (a) permanently ceases to be an employer-sponsor of a superannuation fund of which the employee is a member; or
- (b) temporarily ceases to contribute to a superannuation fund in respect of a class of members in which the employee is included; or
- (c) reduces the level of contributions to a superannuation fund in respect of a class of members in which the employee is included.

Reasons

- (5) In civil proceedings arising out of this section:
 - (a) it is not necessary for the plaintiff to prove the defendant's reason for the alleged action; and
 - (b) it is a defence if the defendant proves that the action was not motivated (whether in whole or in part) by the alleged reason.

Obligations

- (6) A reference in this section to an obligation imposed on a trustee or a responsible officer is a reference to an obligation imposed on the trustee or officer by this Act, the regulations or the prudential standards, by the governing rules of the entity concerned or otherwise.

Powers

- (7) A reference in this section to the powers of a trustee or a responsible officer is a reference to the powers conferred on the trustee or the officer by this Act, the regulations or the prudential standards, by the governing rules of the entity concerned or otherwise.

Civil liability

- (8) If:
 - (a) a person (the ***defendant***) commits an act of victimisation against:

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- (i) a trustee of an employer-sponsored fund; or
 - (ii) a responsible officer of a corporate trustee of an employer-sponsored fund; and
 - (b) the trustee or officer suffers loss or damage because of the act of victimisation;
- the trustee or officer may recover the amount of the loss or damage by action against the defendant.

*Special meaning of **employee** and **employer***

- (9) The meaning of the expressions **employee** and **employer**, when used in this section, is to be determined as if subsections 12(3) and (8) of the *Superannuation Guarantee (Administration) Act 1992* had not been enacted. (Those subsections deem certain contractors to be employees.)

68AA Benefits for permanent incapacity and death—MySuper members

Requirement to provide permanent incapacity benefit and death benefit by taking out insurance

- (1) Each trustee of a regulated superannuation fund must ensure the following:
 - (a) that the fund provides permanent incapacity benefit to each MySuper member of the fund;
 - (b) that the fund provides death benefit in respect of each MySuper member of the fund;
 - (c) that the benefits referred to in paragraphs (a) and (b) are provided by taking out insurance.

Note: A failure to comply with subsection (1) is a breach of a condition of the RSE licence (see paragraph 29E(1)(a)).

- (2) The trustees of a regulated superannuation fund are not required to provide permanent incapacity benefit or death benefit if the conditions determined under subsection (3) in relation to the benefit are not met.

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- (3) The trustees of a regulated superannuation fund may determine reasonable conditions to which the provision of:
- (a) permanent incapacity benefit; or
 - (b) death benefit;
- is subject.
- (4) Without limiting subsection (3), conditions determined under subsection (3) in relation to a benefit are reasonable if they are the same as the terms and conditions of the policy of insurance taken out to provide the benefit.

Requirement to allow MySuper members to elect not to receive permanent incapacity benefit or death benefit

- (5) Each trustee of a regulated superannuation fund must ensure that each MySuper member of the fund may elect either or both of the following:
- (a) that permanent incapacity benefit will not be provided to the member by the fund;
 - (b) that death benefit will not be provided in respect of the member by the fund.
- Note: A failure to comply with subsection (5) is a breach of a condition of the RSE licence (see paragraph 29E(1)(a)).
- (6) The trustees of a regulated superannuation fund may require that MySuper members who wish to make an election in accordance with subsection (5):
- (a) must make the election in relation to both permanent incapacity benefit and death benefit; or
 - (b) must make the election in relation to death benefit if they make the election in relation to permanent incapacity benefit.

- (7) Subsection (5) does not apply to a MySuper member of a regulated superannuation fund if the circumstances prescribed by the regulations for the purposes of this subsection are met.
- (8) If a MySuper member of a regulated superannuation fund makes an election in accordance with subsection (5) in relation to a benefit,

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subsection (1) does not apply in relation to the member and the benefit.

- (9) This section does not apply to:
- (a) a defined benefit member; or
 - (b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or
 - (c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person's superannuation by the Commonwealth.

Death benefit and permanent incapacity benefit

- (10) For the purposes of this Act:

death benefit means a benefit provided in respect of a member of a regulated superannuation fund in, and only in, the event of the death of the member.

permanent incapacity benefit means a benefit provided to a member of a regulated superannuation fund if, and only if, the member is suffering permanent incapacity.

68A Conduct relating to fund membership

- (1) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not:
- (a) supply, or offer to supply, goods or services to a person; or
 - (b) supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;
- on the condition that one or more of the employees of the person will be, or will apply or agree to be, members of the fund.

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- (2) However, subsection (1) does not apply in relation to a supply of a kind prescribed in the regulations for the purposes of this subsection.
- (3) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not refuse:
 - (a) to supply, or offer to supply, goods or services to a person; or
 - (b) to supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) to give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;for the reason that one or more of the employees of the person are not, or have not applied or agreed to be, members of the fund.
- (4) However, subsection (3) does not apply in relation to a supply of a kind prescribed in the regulations for the purposes of this subsection.

Civil liability

- (5) If:
 - (a) a person (the **offender**) contravenes subsection (1) or (3); and
 - (b) another person (the **victim**) suffers loss or damage because of the contravention;the victim may recover the amount of the loss or damage by action against the offender.
- (6) The action must be begun within 6 years after the day on which the cause of action arose.
- (7) This section does not affect any liability that the offender or another person has under any other provision of this Act or under any other law.

68B Promotion of illegal early release schemes

- (1) A person must not promote a scheme that has resulted, or is likely to result, in a payment being made from a regulated superannuation
-

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fund otherwise than in accordance with payment standards prescribed under subsection 31(1).

- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or being involved in a contravention of, that subsection.

- (3) In this section:

promote, in relation to a scheme, includes the following:

- (a) enter into the scheme;
- (b) induce another person to enter into the scheme;
- (c) carry out the scheme;
- (d) commence to carry out the scheme;
- (e) facilitate entry into, or the carrying out of, the scheme.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking:
 - (i) whether express or implied; or
 - (ii) whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

68C Voting by a director of a corporate trustee—governing rules

- (1) This section applies to a regulated superannuation fund, other than a self managed superannuation fund, of which the trustee is a body corporate.
- (2) A provision in the governing rules of the fund is void to the extent that it purports to preclude a director of the trustee from voting on a matter relating to the fund.

Exception

- (3) Subsection (2) does not apply to a provision in the governing rules of the fund to the extent that the provision:
- (a) precludes a director of the trustee of the fund from voting on a matter in which the director has a material personal interest; or
 - (b) otherwise relates to voting by a director of the trustee of the fund on a matter in which the director has a material personal interest; or
 - (c) precludes a director of the trustee of the fund from voting where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or
 - (d) otherwise relates to voting by a director of the trustee of the fund where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or
 - (e) precludes a director of the trustee of the fund from exercising a casting vote; or
 - (f) ensures compliance by the trustee of the fund, or a director of the trustee of the fund, with a prudential standard that deals with conflicts of interest or duty.

68D Voting by an individual trustee—governing rules

- (1) This section applies to a regulated superannuation fund, other than a self managed superannuation fund, of which the trustee, or each of the trustees, is an individual.
- (2) A provision in the governing rules in the fund is void to the extent that it purports to preclude a trustee of the fund from voting on a matter relating to the fund.

Exception

- (3) Subsection (2) does not apply to a provision in the governing rules of the fund to the extent that the provision:
- (a) precludes a trustee of the fund from voting on a matter in which the trustee has a material personal interest; or

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- (b) otherwise relates to voting by a trustee of the fund on a matter in which the trustee has a material personal interest; or
- (c) precludes a trustee of the fund from voting where there is a conflict of a kind described in paragraph 52(2)(d); or
- (d) otherwise relates to voting by a trustee of the fund where there is a conflict of a kind described in paragraph 52(2)(d);
or
- (e) precludes a trustee of the fund from exercising a casting vote;
or
- (f) ensures compliance by a trustee of the fund with a prudential standard that deals with conflicts of interest or duty.

Part 8—In-house asset rules applying to regulated superannuation funds

Division 1—Object and interpretation

Subdivision A—General

69 Object of Part

The object of this Part is to set out rules about the level of the in-house assets of regulated superannuation funds.

69A Sub-funds to be treated as funds

A sub-fund within a regulated superannuation fund is taken for the purposes of this Part to be a regulated superannuation fund if the sub-fund satisfies the following conditions:

- (a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries; and
- (b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund.

70A The Regulator may determine a person to be a standard employer-sponsor

- (1) For the purposes of this Part, the Regulator may determine in writing that a person, who is not a standard employer-sponsor of a regulated superannuation fund within the meaning of subsection 16(2), is taken to be a standard employer-sponsor of the fund.
- (2) If the Regulator makes a determination under subsection (1) or revokes a determination so made, the Regulator must as soon as practicable after making or revoking the determination, inform a trustee of the regulated superannuation fund concerned, in writing, of the making or revocation of the determination.

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Subdivision B—Part 8 associates

70B Part 8 associates of individuals

For the purposes of this Part, each of the following is a **Part 8 associate** of an individual (the **primary entity**), whether or not the primary entity is in the capacity of trustee:

- (a) a relative of the primary entity;
- (b) if the primary entity is a member of a superannuation fund with fewer than 5 members:
 - (i) each other member of the fund; and
 - (ii) if the fund is a single member self managed superannuation fund whose trustee is a company—each director of that company; and
 - (iii) if the fund is a single member self managed superannuation fund whose trustees are individuals—those individuals;
- (c) a partner of the primary entity or a partnership in which the primary entity is a partner;
- (d) if a partner of the primary entity is an individual—the spouse or a child of that individual;
- (e) a trustee of a trust (in the capacity of trustee of that trust), where the primary entity controls the trust;
- (f) a company that is sufficiently influenced by, or in which a majority voting interest is held by:
 - (i) the primary entity; or
 - (ii) another entity that is a Part 8 associate of the primary entity because of another paragraph of this section or because of another application of this paragraph; or
 - (iii) 2 or more entities covered by the preceding subparagraphs.

70C Part 8 associates of companies

For the purposes of this Part, each of the following is a **Part 8 associate** of a company (the **primary entity**), whether or not the primary entity is in the capacity of trustee:

- (a) a partner of the primary entity or a partnership in which the primary entity is a partner;
- (b) if a partner of the primary entity is an individual—the spouse or a child of that individual;
- (c) a trustee of a trust (in the capacity of trustee of that trust), where the primary entity controls the trust;
- (d) another entity (in this paragraph called the **controlling entity**) where the primary entity is sufficiently influenced by, or a majority voting interest in the primary entity is held by:
 - (i) the controlling entity; or
 - (ii) another entity that is a Part 8 associate of the controlling entity because of section 70B or 70D, another paragraph of this section or another application of this paragraph; or
 - (iii) 2 or more entities covered by the preceding subparagraphs;
- (e) another company (in this paragraph called the **controlled company**) where the controlled company is sufficiently influenced by, or where a majority voting interest in the controlled company is held by:
 - (i) the primary entity; or
 - (ii) another entity that is a Part 8 associate of the primary entity because of another paragraph of this section or because of another application of this paragraph; or
 - (iii) 2 or more entities covered by the preceding subparagraphs;
- (f) if a third entity is a Part 8 associate of the primary entity because of paragraph (d) of this subsection—an entity that is a Part 8 associate of that third entity because of section 70B or 70D or because of another paragraph of this section.

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70D Part 8 associates of partnerships

For the purposes of this Part, each of the following is a **Part 8 associate** of a partnership (the **primary entity**):

- (a) a partner in the partnership;
- (b) if a partner in the partnership is an individual—any entity that is a Part 8 associate of that individual because of section 70B;
- (c) if a partner in the partnership is a company—any entity that is a Part 8 associate of that company because of section 70C.

70E Meanings of terms used in sections 70B, 70C and 70D

Sufficient influence/majority voting interest

- (1) For the purposes of sections 70B, 70C and 70D:
 - (a) a company is sufficiently influenced by an entity or entities if the company, or a majority of its directors, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and
 - (b) an entity or entities hold a majority voting interest in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

Control of trust

- (2) For the purposes of sections 70B, 70C and 70D, an entity **controls** a trust if:
 - (a) a group in relation to the entity has a fixed entitlement to more than 50% of the capital or income of the trust; or
 - (b) the trustee of the trust, or a majority of the trustees of the trust, is accustomed or under an obligation (whether formal

or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a group in relation to the entity (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); or

- (c) a group in relation to the entity is able to remove or appoint the trustee, or a majority of the trustees, of the trust.

Group in relation to an entity

- (3) For the purposes of subsection (2):

group, in relation to an entity, means:

- (a) the entity acting alone; or
- (b) a Part 8 associate of the entity acting alone; or
- (c) the entity and one or more Part 8 associates of the entity acting together; or
- (d) 2 or more Part 8 associates of the entity acting together.

Definitions

- (4) For the purposes of sections 70B, 70C and 70D:

company has the same meaning as in the *Income Tax Assessment Act 1997*.

partnership has the same meaning as in the *Income Tax Assessment Act 1997*.

Subdivision C—In-house assets

71 Meaning of *in-house asset*

Basic meaning

- (1) For the purposes of this Part, an in-house asset of a superannuation fund is an asset of the fund that is a loan to, or an investment in, a related party of the fund, an investment in a related trust of the

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fund, or an asset of the fund subject to a lease or lease arrangement between a trustee of the fund and a related party of the fund, but does not include:

- (a) a life policy issued by a life insurance company; or
- (b) a deposit with an ADI; or
- (c) an investment in a pooled superannuation trust, where a trustee of the fund and the trustee of the pooled superannuation trust acted at arm's length in relation to the making of that investment; or
- (d) an asset of a public sector fund, where the asset consists of an investment in securities issued under the authority of:
 - (i) the Commonwealth or a government of a State or a Territory; or
 - (ii) a public authority constituted by or under a law of the Commonwealth, a State or a Territory, where the public authority is neither a standard employer-sponsor, nor an associate of a standard employer-sponsor, of the fund; or
- (e) an asset which the Regulator, by written notice given to a trustee of the fund, determines is not an in-house asset of the fund; or
- (f) an asset which the Regulator, by legislative instrument, determines is not an in-house asset of:
 - (i) any fund; or
 - (ii) a class of funds in which the fund is included; or
- (g) if the superannuation fund has fewer than 5 members—real property subject to a lease, or to a lease arrangement enforceable by legal proceedings, between a trustee of the fund and a related party of the fund, if, throughout the term of the lease or lease arrangement, the property is business real property (within the meaning of subsection 66(5)) of the fund; or
- (h) an investment in a widely held unit trust; or
- (i) property owned by the superannuation fund and a related party as tenants in common, other than property subject to a

lease or lease arrangement between a trustee of the fund and a related party; or

- (j) an asset included in a class of assets specified in the regulations:
- (i) not to be in-house assets of any fund; or
 - (ii) not to be in-house assets of a class of funds to which the fund belongs.

For this purpose, a class of assets may consist of, but is not limited to, assets that are investments in entities that undertake, or do not undertake, specified activities.

Widely held trust

- (1A) For the purposes of paragraph (1)(h), a trust is a ***widely held unit trust*** if:

- (a) it is a unit trust in which entities have fixed entitlements to all of the income and capital of the trust; and
- (b) it is not a trust in which fewer than 20 entities between them have:
 - (i) fixed entitlements to 75% or more of the income of the trust; or
 - (ii) fixed entitlements to 75% or more of the capital of the trust.

For this purpose, an entity and the Part 8 associates of the entity are taken to be a single entity.

Agreements

- (2) If:
- (a) apart from this subsection, an asset of a fund consists of a loan, an investment or an asset that is subject to a lease or lease arrangement, other than an in-house asset; and
 - (b) the loan, investment, lease or lease arrangement was made as a result of entering into or carrying out an agreement; and
 - (c) any of the persons who entered into or carried out the agreement was aware that the result of carrying out the agreement would be that:

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- (i) a loan would be made to, an investment would be made in, or an asset would be subject to a lease or lease arrangement with, a related party of the fund; or
- (ii) an investment would be made in a related trust of the fund;

then the asset is taken, for the purposes of this Part, to be a loan to, an investment in, or an asset subject to a lease or lease arrangement with, that related party or related trust, as the case requires.

Definition

- (2A) In subsection (2):

agreement includes any arrangement, understanding, promise or undertaking whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings.

Exceptions

- (2B) Subsection (2) does not apply to an investment referred to in paragraph 71(1)(a), (b), (c) or (h).

2 or more persons

- (3) Subsection (2) does not stop the same asset from being treated as if it were a loan to, an investment in, or an asset subject to a lease or lease arrangement with, 2 or more persons.

The Regulator's determination

- (4) If:
- (a) apart from this subsection, an asset of a fund consists of a loan, an investment, or an asset subject to a lease or lease arrangement, other than an in-house asset; and
 - (b) the Regulator, by written notice given to a trustee of the fund, determines that the asset is to be treated, with effect from the day on which the notice is given, as if the asset were a loan to, an investment in, or an asset subject to a lease or lease arrangement with, a specified related party or related trust of

the fund, including a person taken to be a standard employer-sponsor of the fund under section 70A;
then, despite paragraphs (1)(a) to (j), the asset is taken, for the purposes of this Part, to be a loan to or an investment in the related party or related trust, or an asset subject to a lease or lease agreement between a trustee of the fund and the related party.

Paragraph (1)(e) determinations or paragraph (1)(j) regulations may be retrospective

- (5) A determination under paragraph (1)(e) or regulations under paragraph (1)(j) may be expressed to have taken effect at a time earlier than the time when the determination or regulations were made.

Public sector superannuation funds

- (7) For the purposes of applying this section to determine what is an in-house asset of a public sector superannuation fund, a reference to a Part 8 associate of an employer-sponsor of the fund is a reference to a body corporate in respect of which either of the following conditions is satisfied:
- (a) the body corporate is sufficiently influenced by, or a majority voting interest in the body corporate is held by, the employer-sponsor;
 - (b) the employer-sponsor is sufficiently influenced by, or a majority voting interest in the employer-sponsor is held by, the body corporate.

Limit on when investments in related trusts are in-house assets

- (8) If, at a time:
- (a) an asset (the **investment asset**) of a superannuation fund is an investment in a related trust of the fund; and
 - (b) the related trust is one described in paragraph 67A(1)(b) in connection with a borrowing, by the trustee of the fund, that is covered by subsection 67A(1); and

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- (c) the only property of the related trust is the acquirable asset mentioned in that paragraph;

the investment asset is an in-house asset of the fund at the time only if the acquirable asset mentioned in that paragraph would be an in-house asset of the fund if it were an asset of the fund at the time.

- (9) Subsections (1), (2) and (4) have effect subject to subsection (8).

Subdivision D—Transitional arrangements in relation to in-house assets

71A Exceptions—pre-11 August 1999 investments and loans

- (1) If:

- (a) at any time (the *post-test time*) after the test time, an asset of a superannuation fund consists of:
 - (i) a loan or an investment made before the test time, or made after the test time under a contract entered into before the test time; or
 - (ii) a share or unit in a unit trust, if the share, or the unit, as the case requires, was acquired before the test time or under a contract entered into before the test time (notwithstanding any payments on the share or unit made to the issuer of the share or unit after the test time and before 1 July 2009); and
 - (b) if the asset was an asset of the fund immediately before the test time—it was not an in-house asset of the fund; and
 - (c) if the asset was not an asset of the fund immediately before the test time—it would not have been an in-house asset if it had been an asset of the fund immediately before the test time; and
 - (d) apart from this Subdivision, the asset would be an in-house asset of the fund at the post-test time;
- the asset is not an in-house asset of the fund at the post-test time.

Payments on partly paid shares and units after 30 June 2009

- (2) However, if:
- (a) the post-test time is after 30 June 2009; and
 - (b) the asset consists of a share or a unit in a unit trust; and
 - (c) one or more payments on the share or unit to the issuer of the share or unit has been made since 30 June 2009;
- then:
- (d) the asset is an in-house asset of the fund at the post-test time; and
 - (e) subsection (3) applies to the share or unit.

Reduced value for the purposes of working out value of in-house assets

- (3) For the purposes of working out the formula component ***Number of whole dollars in value of in-house assets of the fund*** under section 75 at the post-test time, the value of the share or unit at the post-test time is taken to be the number of whole dollars in the amount worked out as follows:

$$\text{Market value of share or unit} \times \frac{\text{Excess amount}}{\text{Total amount}}$$

where:

excess amount means the total of the amounts that, as at the post-test time, had been paid after 30 June 2009 on the share or unit to the issuer of the share or unit.

market value of share or unit means the market value of the share or unit as at the post-test time.

total amount means the total of the amounts that, as at the post-test time had been paid (whether before or after 30 June 2009) on the share or unit to the issuer of the share or unit.

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71B Exceptions—pre-11 August 1999 leases and lease arrangements

(1) If:

- (a) at any time (the *post-test time*) after the test time, an asset of a superannuation fund consists of an asset subject to a lease, or a lease arrangement, between a trustee of the fund and a related party of the fund; and
- (b) the asset was subject to a lease or lease arrangement, or any uninterrupted sequence of leases and lease arrangements, between a trustee of the fund and a related party, throughout the period beginning immediately before the test time and ending at the post-test time; and
- (c) apart from this section, the asset would be an in-house asset of the fund at the post-test time;

the asset is not an in-house asset of the fund at the post-test time.

(2) For the purposes of subsection (1), if:

- (a) before the test time, a lease or a lease arrangement enforceable by legal proceedings, in respect of an asset, was entered into between a trustee of a superannuation fund and a related party of the fund; and
- (b) the lease or lease arrangement came into force after the test time;

the asset is taken to have been subject to a lease or a lease arrangement, between a trustee of the fund and that related party, immediately before the test time.

71C Exceptions—transition period

Investments and loans

(1) If:

- (a) at any time (the *pre-1 July 2001 time*) during the period after the test time but before 1 July 2001, an asset of a superannuation fund consists of a loan or an investment made during the transition period, other than under a contract entered into before the beginning of that period; and

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- (b) if the asset had been an asset of the fund immediately before the test time—the asset would not have been an in-house asset of the fund; and
- (c) apart from this section, the asset would be an in-house asset of the fund at the pre-1 July 2001 time;

the asset is not an in-house asset of the fund at the pre-1 July 2001 time. For this purpose, a loan or an investment is not made during the transition period merely because a contract is entered into during that period for the purpose of gaining interest, income, profit or gain.

Leases and lease arrangements

(2) If:

- (a) at any time (the ***pre-1 July 2001 time***) during the period after the test time but before 1 July 2001, an asset of a superannuation fund consists of an asset subject to a lease, or a lease arrangement, between a trustee of the fund and a related party of the fund; and
- (b) section 71B does not apply to the asset at the pre-1 July 2001 time; and
- (c) the asset became subject to a lease or lease arrangement between a trustee of the fund and a related party at a time (the ***transition time***) during the transition period; and
- (d) the asset was subject to a lease or a lease arrangement, or any uninterrupted sequence of leases and lease arrangements, between a trustee of the fund and a related party, throughout the period beginning at the transition time and ending at the pre-1 July 2001 time; and
- (e) apart from this section, the asset would be an in-house asset of the fund at the post-test time;

the asset is not an in-house asset of the fund at the pre-1 July 2001 time.

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71D Exception—reinvestments

If:

- (a) at any time (the *post-test time*) after the test time, an asset of a superannuation fund consists of an investment (the *post-test time investment*) in an entity (the *original entity*) made during the period:
 - (i) beginning at the test time; and
 - (ii) ending at the end of 30 June 2009; and
- (b) the post-test time investment is not covered by section 71A; and
- (c) if the fund had made the post-test time investment immediately before the test time, it would not have been an in-house asset of the fund; and
- (d) the sum of the purchase price of the post-test time investment and any previous investment to which this section applies does not, at the post-test time, exceed the sum of the following amounts:
 - (i) the sum of the amounts of all dividends or trust distributions received after the test time, but before the end of 30 June 2009, by the superannuation fund from the original entity, which were derived from an investment in the original entity made by the fund before the test time;
 - (ii) the sum of the amounts of all dividends or trust distributions received after the test time, but before the end of 30 June 2009, by the superannuation fund, which were derived from investments of dividends and trust distributions taken into account under subparagraph (i) or this subparagraph;

the asset is not an in-house asset of the fund at the post-test time.

71E Exception—certain geared investments

(1) If:

- (a) at any time (the *post-test time*) after the test time, an asset of a superannuation fund that has fewer than 5 members

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consists of an investment (the *post-test time investment*) in a unit trust or a company (the *first entity*) made during the period:

- (i) beginning at the test time; and
- (ii) ending at the end of 30 June 2009; and
- (b) immediately before the test time, another asset (other than an in-house asset) of the superannuation fund consisted of an investment (the *prior investment*) in the first entity; and
- (c) immediately before the test time, an amount (the *principal*) consisting of the principal of a loan was owed by the first entity to any entity other than the superannuation fund; and
- (d) apart from this Subdivision, the post-test time investment would be an in-house asset of the fund at the post-test time; and
- (e) the trustee, or the trustees, of the fund makes a written election, within:
 - (i) the period of 12 months beginning on the day on which this section commenced; or
 - (ii) such later period as is prescribed by the regulations;that section 71E is to apply to all post-test time investments of the fund in that entity;

Note: Under subsection 103(2A), the trustee, or the trustees, of the fund must keep the election, or a copy of it, for 10 years after it is made.

then subsection (2) or (3), as the case requires, applies, and is taken always to have applied, to the post-test time investment.

Sum of purchase prices of post-test time investments does not exceed the principal—investment not an in-house asset

- (2) The post-test time investment is not an in-house asset of the fund at the post-test time if the sum of the following amounts does not exceed the amount of the principal:
 - (a) the purchase price of the post-test time investment;
 - (b) the purchase price of any previous post-test time investment in the first entity by the fund.

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Sum of purchase prices of post-test time investments exceeds the principal—formula to be applied

- (3) If the sum of the following:
- (a) the purchase price of the post-test time investment;
 - (b) the purchase price of any previous post-test time investment in the first entity by the fund;
- exceeds the amount of the principal, then:
- (c) the post-test time investment is an in-house asset of the fund at the post-test time; and
 - (d) if the post-test time investment is the first post-test time investment in respect of which the sum of the amounts referred to in paragraphs (a) and (b) exceeds the amount of the principal—subsection (4) applies to the investment.

Reduced value for the purposes of working out value of in-house assets

- (4) For the purposes of working out the formula component ***Number of whole dollars in value of in-house assets of the fund*** under section 75 at the post-test time, the value of the post-test time investment at the post-test time is taken to be the number of whole dollars in the amount worked out as follows:

$$\text{Market value of post-test time investment} \times \frac{\text{Excess amount}}{\text{Purchase price of post-test time investment}}$$

where:

excess amount means the amount of the excess under subsection (3).

market value of post-test time investment means the market value of the post-test time investment as at the post-test time.

purchase price of post-test time investment means the purchase price of the post-test time investment.

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Effect of election

- (5) If the trustee, or the trustees, of a fund make an election under paragraph (1)(e) in respect of the post-test time investments of the fund in an entity, then:
- (a) sections 71A and 71D do not apply, and are taken never to have applied, to any post-test time investment by the fund in that entity; and
 - (b) this section applies, and is taken always to have applied, to any post-test time investment of the fund in that entity.

Note: This means that if a fund makes an election, this section would apply to all investments in the entity after the test time and before 1 July 2009, and sections 71A and 71D would not apply to such investments.

Application of section to loans

- (6) A reference in this section to an investment in a trust or company is taken to include a reference to a loan to a trust or company. For this purpose, the purchase price of the loan is taken to be the principal of the loan at the time at which the loan was made.

71EA Relationship breakdowns

Scope

- (1) This section applies if:
- (a) a trustee or an investment manager of a regulated superannuation fund (the **acquiring fund**) acquires an asset:
 - (i) for the benefit of a particular member of the acquiring fund; and
 - (ii) from a trustee or investment manager of another regulated superannuation fund (the **transferring fund**); and
 - (b) at the time of the acquisition:
 - (i) the member and his or her spouse or former spouse are separated; and
 - (ii) there is no reasonable likelihood of cohabitation being resumed; and

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- (c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and
 - (d) the asset represents the whole, or a part, of either:
 - (i) the member's own interests in the transferring fund; or
 - (ii) the member's entitlements as determined under Part VIIIB of the *Family Law Act 1975* in relation to the interests of the member's spouse, or former spouse, in the transferring fund.
- (2) For the purposes of subsection (1), the question whether the spouses, or former spouses, have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

Acquiring fund taken to have always held asset

- (3) For the purposes of applying this Subdivision to the asset at or after the time (the ***acquisition time***) the trustee or investment manager of the acquiring fund acquires the asset, treat:
- (a) the acquisition as having occurred at the time the trustee or investment manager of the transferring fund acquired the asset; and
 - (b) anything done by, for or in relation to the transferring fund in relation to the asset before the acquisition time as having been done by, for or in relation to the acquiring fund; and
 - (c) anything done by, for or in relation to the trustee or investment manager of the transferring fund in relation to the asset before the acquisition time as having been done by, for or in relation to the trustee or investment manager of the acquiring fund.

Section 71E elections

- (4) In addition to their effect apart from this subsection, subsection 103(2A) (duty to keep record of election) and subsection 103(3), to the extent that it relates to

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subsection 103(2A), also have the effect they would have if subsection (3) of this section applied to them.

Note: This means that the trustees of both the transferring fund and the acquiring fund must retain, in accordance with subsection 103(2A), any election made under section 71E in relation to the transferring fund before the transfer of the asset.

- (5) A person commits an offence if:
- (a) the person is a trustee of the transferring fund; and
 - (b) just before the acquisition time, the trustee had a duty under subsection 103(2A) to retain an election, or a copy of an election, under section 71E in relation to the transferring fund; and
 - (c) the trustee does not, within 14 days after the acquisition time, give the election or copy to a trustee or investment manager of the acquiring fund.

Penalty: 50 penalty units.

Note: If the trustee gives the election to the acquiring fund, he or she must retain a copy of the election: see subsection (4).

- (6) An offence against subsection (5) is an offence of strict liability.

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

71F Meaning of certain terms used in Subdivision D

In this Subdivision:

test time means the end of 11 August 1999.

transition period means the period:

- (a) beginning at the test time; and
- (b) ending on the day on which this section commenced.

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Subdivision E—Other provisions in relation to in-house assets

72 How this Part applies if there are 2 or more employer-sponsors of whom at least one is an unrelated employer-sponsor

- (1) For the purposes of this section:
 - (a) a standard employer-sponsor (the *first employer-sponsor*) of a superannuation fund is an unrelated employer-sponsor of the fund if, and only if, there is no other standard employer-sponsor of the fund who is a Part 8 associate of the first employer-sponsor; and
 - (b) 2 or more standard employer-sponsors of a superannuation fund are related to each other if they are Part 8 associates.
- (2) For the purposes of this section:
 - (a) the class of the in-house assets of a fund that corresponds to a particular unrelated employer-sponsor is the class of in-house assets that consists of:
 - (i) loans to, investments in, or assets subject to leases or lease arrangements with, the employer-sponsor or a Part 8 associate of the employer-sponsor; or
 - (ii) loans to, investments in, or assets subject to leases or lease arrangements with, a standard employer-sponsored member of the fund, in respect of whom the employer-sponsor contributes to the fund, or a Part 8 associate of such a member; or
 - (iii) investments in a trust that is controlled by an entity referred to in subparagraph (i) or (ii); and
 - (b) the class of the in-house assets of a fund that corresponds to 2 or more employer-sponsors who are related to each other is the class of in-house assets that consists of:
 - (i) loans to, investments in, or assets subject to leases or lease arrangements with, any of them or a Part 8 associate of any of them; or
 - (ii) loans to, investments in, or assets subject to leases or lease arrangements with, a standard employer-sponsored member of the fund, in respect of whom any of them

- contributes to the fund, or a Part 8 associate of such a member; or
- (iii) investments in a trust that is controlled by an entity referred to in subparagraph (i) or (ii).
- (3) Subsections (4) and (5) apply if:
- (a) there are 2 or more unrelated employer-sponsors of a superannuation fund (whether or not there are also any employer-sponsors of the fund who are related to each other); or
- (b) there are 2 or more employer-sponsors of a superannuation fund who are related to each other and there are also one or more unrelated employer-sponsors of the fund.
- (4) This Part does not apply in relation to the fund in relation to the in-house assets of the fund as a whole.
- (5) However, this Part applies in relation to the fund separately in relation to each of the corresponding classes of in-house assets of the fund.
- (6) This section does not apply to a self managed superannuation fund.

73 Cost of in-house asset

- (1) For the purposes of this Part, if:
- (a) an asset of a superannuation fund was acquired:
- (i) without consideration; or
- (ii) for consideration other than the arm's length value of the asset when it was acquired; or
- (b) the whole or a part of the consideration for which an asset of a superannuation fund was acquired was not money;
- the cost of the asset is taken to be the arm's length value of the asset when it was acquired.

- (2) In this section:

arm's length value, in relation to an asset, means the amount that the acquirer of the asset could reasonably be expected to have been

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required to pay to acquire the asset under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

74 Historical cost ratio of fund's in-house assets

For the purposes of this Part, the historical cost ratio of a fund's in-house assets is the percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in cost of in-house assets of the fund}}{\text{Number of whole dollars in cost of all the assets of the fund}} \times 100$$

75 Market value ratio of fund's in-house assets

- (1) For the purposes of this Part, the market value ratio of a fund's in-house assets is the percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in value of in-house assets of the fund}}{\text{Number of whole dollars in value of all the assets of the fund}} \times 100$$

- (2) Where, because of subsections 72(4) and (5), this Part applies separately to each of the corresponding classes of in-house assets of a superannuation fund, the market value ratio of the in-house assets of each corresponding class is a percentage worked out using the formula:

$$\frac{\text{Number of whole dollars in value of in-house assets of corresponding class} + \text{Number of whole dollars in value of in-house assets that do not correspond to one or more employer-sponsors of the fund}}{\text{Number of whole dollars in value of all the assets of the fund}} \times 100$$

Division 2—Historical cost ratio of fund's in-house assets

76 Private sector funds established on or after 12 March 1985— historical cost ratio for the 1994-95 year of income

- (1) This section applies to a regulated superannuation fund, if the fund is a private sector fund established on or after 12 March 1985.
- (2) At all times during the fund's 1994-95 year of income when the fund was in existence, the historical cost ratio of the fund's in-house assets must not exceed 10%.

77 Private sector funds established before 12 March 1985— historical cost ratio for the 1994-95 year of income

- (1) This section applies to a regulated superannuation fund, if the fund is a private sector fund established before 12 March 1985.
- (2) At all times during the fund's 1994-95 year of income when the fund was in existence, the historical cost ratio of the fund's in-house assets must not exceed whichever is the greater of the following percentages:
 - (a) whichever is the lesser of the following percentages:
 - (i) the percentage equal to the historical cost ratio of the fund's in-house assets as at the end of 11 March 1985;
 - (ii) 70%;
 - (b) 10%.
- (3) Section 72 is to be ignored in working out the percentage mentioned in subparagraph (2)(a)(i).

78 Public sector funds established on or after 1 July 1990—historical cost ratio for the 1994-95 year of income

- (1) This section applies to a regulated superannuation fund, if the fund is a public sector fund established on or after 1 July 1990.

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- (2) At all times during the fund's 1994-95 year of income when the fund was in existence, the historical cost ratio of the fund's in-house assets must not exceed 10%.

79 Public sector funds established before 1 July 1990—historical cost ratio for the 1994-95 year of income

- (1) This section applies to a regulated superannuation fund, if the fund is a public sector fund established before 1 July 1990.
- (2) At all times during the fund's 1994-95 year of income when the fund was in existence, the historical cost ratio of the fund's in-house assets must not exceed whichever is the greater of the following percentages:
 - (a) the percentage equal to the historical cost ratio of the fund's in-house assets as at the end of 1 July 1990;
 - (b) 10%.
- (3) Section 72 is to be ignored in working out the percentage mentioned in paragraph (2)(a).

80 All funds—historical cost ratio for the 1995-96 year of income, the 1996-97 year of income and the 1997-98 year of income

- (1) This section applies to a regulated superannuation fund.
- (2) At all times during the period:
 - (a) beginning at the beginning of the fund's 1995-96 year of income; and
 - (b) ending at the end of the fund's 1997-98 year of income;when the fund was in existence, the historical cost ratio of the fund's in-house assets must not exceed 10%.

Division 3—Market value ratio of fund's in-house assets

80A Division not applicable to certain funds

A superannuation fund is taken not to have been required to comply with this Division in respect of a year of income if:

- (a) Division 3A applied to the fund in respect of that year of income; and
- (b) an actuary has certified that the fund complied with that Division in respect of that year of income.

81 All funds—market value ratio for the 1998-99 year of income and the 1999-2000 year of income

- (1) This section applies to a regulated superannuation fund.
- (2) The market value ratio of the fund's in-house assets as at the end of:
 - (a) the fund's 1998-99 year of income; or
 - (b) the fund's 1999-2000 year of income;must not exceed 10%.

82 All funds—market value ratio for the 2000-2001 year of income and later years of income

- (1) This section applies to a regulated superannuation fund.
- (2) If the market value ratio of the fund's in-house assets as at the end of:
 - (a) the fund's 2000-2001 year of income; or
 - (b) a later year of income;exceeds 5%, the trustee of the fund, or, if the fund has a group of individual trustees, the trustees of the fund, must prepare a written plan.

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- (3) The plan must specify the amount (the ***excess amount***) worked out using the formula:

$$\left[\begin{array}{c} \text{Market value ratio of fund's} \\ \text{in-house assets as at the end of} \\ \text{that year of income} \end{array} - 5\% \right] \times \begin{array}{c} \text{Value of fund's} \\ \text{assets as at the end of that} \\ \text{year of income} \end{array}$$

- (4) The plan must set out the steps which the trustee proposes, or, if the fund has a group of individual trustees, the trustees propose, to take in order to ensure that:
- (a) one or more of the fund's in-house assets held at the end of that year of income are disposed of during the next following year of income; and
 - (b) the value of the assets so disposed of is equal to or more than the excess amount.
- (5) The plan must be prepared before the end of the next following year of income.
- (6) Each trustee of the fund must ensure that the steps in the plan are carried out.

83 Certain new in-house asset investments prohibited

- (1) This section applies to a regulated superannuation fund.
- (2) If the market value ratio of the fund's in-house assets exceeds 5%, a trustee of the fund must not acquire an in-house asset.
- (3) If the market value ratio of the fund's in-house assets does not exceed 5%, a trustee of the fund must not acquire an in-house asset if the acquisition would result in the market value ratio of the fund's in-house assets exceeding 5%.
- (4) For the avoidance of doubt, a reference in this section to acquiring an in-house asset includes a reference to making an investment or a loan, or entering into a lease or a lease arrangement, if the resulting loan or investment, or the asset subject to the lease or the lease arrangement, would be an in-house asset.

Division 3A—Limit on in-house assets of certain defined benefit funds

83A Definitions

In this Division, unless the contrary intention appears:

base amount, in relation to a defined benefit fund at a particular time, means 120% of:

- (a) the fund's liabilities in respect of vested benefits; or
 - (b) the fund's accrued actuarial liabilities;
- at that time, whichever is the greater.

defined benefit fund means:

- (a) a public sector superannuation scheme that:
 - (i) is a regulated superannuation fund; and
 - (ii) has at least one defined benefit member; or
- (b) a regulated superannuation fund (other than a public sector superannuation scheme):
 - (i) that has at least one defined benefit member; and
 - (ii) some or all of the contributions to which (being contributions out of which, together with earnings on those contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount.

defined benefit member means a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
 - (i) the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement or an earlier date; or

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- (ii) the member's salary averaged over a period before retirement;
- (b) a specified amount.

fund's accrued actuarial liabilities, at a particular time, means the total value, as certified by an actuary, of the future benefit entitlements of members of the fund in respect of membership up to that time based on assumptions about future economic conditions and the future of matters affecting membership of the fund, being assumptions made in accordance with applicable professional actuarial standards (if any).

fund's liabilities in respect of vested benefits, at a particular time, means the total value of the benefits payable from the fund to which the members of the fund would be entitled if they all voluntarily terminated their service with their employers at that time.

listed public company means a company any of the shares in the capital of which are listed for quotation in the official list of a stock exchange in Australia or elsewhere.

maximum permitted amount, in relation to a defined benefit fund at a particular time, means the sum of:

- (a) an amount equal to the prescribed percentage of the base amount in relation to the fund at that time; and
- (b) the amount (if any) by which the market value of the fund's assets at that time exceeds that base amount.

prescribed percentage means:

- (a) where the expression is used in relation to a time that occurs during the 1998-99 year of income or the 1999-2000 year of income—10%; or
- (b) where the expression is used in relation to a time that occurs during a later year of income—5%.

voting share has the same meaning as in the *Corporations Act 2001*.

83B Application of Division

- (1) This Division applies to a superannuation fund in respect of the fund's 1998-99 year of income or a later year of income if, and only if:
 - (a) the fund is a defined benefit fund; and
 - (b) at the end of that year of income the employer-sponsor was a listed public company or an associate of a listed public company; and
 - (c) the market value of the fund's assets at the end of that year of income was not less than the base amount in relation to the fund at that time; and
 - (d) the trustee, or the trustees, of the fund have decided that this Division is to apply to the fund in respect of that year of income.
- (2) If the trustee, or the trustees, of the fund make a decision referred to in paragraph (1)(d), each trustee must ensure that the decision is recorded in writing.

83C Maximum permitted market value of in-house assets

The market value of the fund's in-house assets at the end of a year of income must not exceed the maximum permitted amount in relation to the fund at that time.

83D Limit on in-house assets

- (1) The market value of the fund's in-house assets (other than shares in the capital of listed public companies) at the end of a year of income must not exceed the prescribed percentage of the base amount in relation to the fund at that time.
- (2) The fund's in-house assets at the end of a year of income must not include more than 5% of the voting shares in any listed public company that is the employer-sponsor or is an associate of the employer-sponsor.

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83E Acquisition of in-house assets prohibited in certain circumstances

If the market value of the fund's in-house assets at the end of a year of income exceeds the prescribed percentage of the base amount in relation to the fund at that time, a trustee of the fund must not buy, or enter into any contract to buy, on behalf of the fund any in-house assets until the time when an actuary certifies that the market value of the fund's in-house assets has ceased to exceed the prescribed percentage of the base amount in relation to the fund.

Division 4—Enforcement

84 In-house asset rules must be complied with

- (1) Each trustee of a regulated superannuation fund must take all reasonable steps to ensure that the provisions of Division 2, and either Division 3 or 3A (whichever is applicable), are complied with.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.
- (3) A contravention of subsection (1) does not affect the validity of a transaction.

Division 5—Anti-avoidance

85 Prohibition of avoidance schemes

Prohibition

- (1) A person must not enter into, commence to carry out, or carry out, a scheme if the person entered into, commenced to carry out, or carried out the scheme or any part of the scheme with the intention that:
- (a) the scheme would result, or be likely to result, in an artificial reduction in the market value ratio of the fund's in-house assets; and
 - (b) that artificial reduction would avoid the application of any provision of this Part to the fund.

Civil penalty provision

- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or being involved in a contravention of, that subsection.

Validity of transaction not affected by contravention of subsection (1)

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

Scheme

- (4) In this section:

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking:
 - (i) whether express or implied; or

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- (ii) whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

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Part 9—Equal representation of employers and members—employer-sponsored funds

86 Object of Part

The object of this Part is to set out rules about the representation of employers and members in relation to the management and control of standard employer-sponsored funds.

87 Consequences of non-compliance with this Part

It is not an offence to contravene this Part and a failure to comply with this Part does not result in the invalidity of a transaction. However, a contravention of this Part may result in a fund being directed under section 63 not to accept any contributions made to the fund by an employer-sponsor (see subsection 63(6)).

88 This Part does not apply if acting trustee appointed under Part 17

This Part does not apply to a fund if the fund has an acting trustee appointed under Part 17.

89 Basic equal representation rules

Basic rule

- (1) For the purposes of this Part, a fund complies with the basic equal representation rules if:
 - (a) both:
 - (i) the fund has a group of individual trustees;
 - (ii) the group of trustees consists of equal numbers of employer representatives and member representatives;or
 - (b) both:

- (i) the fund has a single corporate trustee;
- (ii) the board of the corporate trustee consists of equal numbers of employer representatives and member representatives.

Additional independent trustee or additional independent director

- (2) For the purposes of the application of the basic equal representation rules to a fund, a group of trustees, or the board of a corporate trustee, is taken to consist of equal numbers of employer representatives and member representatives if:
 - (a) the group or board includes an additional independent trustee or an additional independent director, as the case may be; and
 - (b) the additional independent trustee or additional independent director, as the case may be, is appointed at the request of the employer representatives, or the member representatives, who are the members of the group or board; and
 - (c) provision is made in the governing rules for the appointment of the independent additional trustee or additional independent director, as the case may be; and
 - (d) the governing rules do not allow the additional independent trustee or additional independent director, as the case may be, to exercise a casting vote in any proceedings of the group or board concerned.

Vacancy

- (3) For the purposes of the application of the basic equal representation rules to a fund, if:
 - (a) a vacancy occurs in the membership of a group of trustees or of the board of a corporate trustee; and
 - (b) immediately before the vacancy occurred, the fund complied with the basic equal representation rules; and
 - (c) the vacancy is filled within 90 days after it occurred; and
 - (d) immediately after the vacancy is filled, the fund complies with the basic equal representation rules;

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the fund is taken to have complied with the basic equal representation rules at all times during the period of the vacancy.

90 Pre-1 July 1995 rules—funds with fewer than 200 members

Application

- (1) This section applies to a standard employer-sponsored fund (other than a public offer superannuation fund) with fewer than 200 members, where:
 - (a) the fund is a private sector fund established on or after 16 December 1985; or
 - (b) the fund is a public sector fund established on or after 25 May 1988; or
 - (c) if there are 2 or more standard employer-sponsors of the fund—any one of those employer-sponsors is not an associate of any other of those employer-sponsors.

Pre-1 July 1995

- (2) This section does not apply on or after 1 July 1995.

Rules

- (3) The fund must comply with:
 - (a) the basic equal representation rules; or
 - (b) the alternative agreed representation rule set out in subsection (4).

Alternative agreed representation rule

- (4) For the purposes of this section, a fund complies with the alternative agreed representation rule if any of the trustees of the fund are appointed following nomination by agreement between:
 - (a) either:
 - (i) the members of the fund; or
 - (ii) a trade union, or other organisation, representing the interests of those members; and

- (b) either:
 - (i) the employer or employers of those members; or
 - (ii) an organisation representing the interests of that employer or those employers.

91 Pre-1 July 1995 rules—funds with 200 or more members

Application

- (1) This section applies to a standard employer-sponsored fund with 200 or more members, where:
 - (a) the fund is a private sector fund established on or after 16 December 1985; or
 - (b) the fund is a public sector fund established on or after 25 May 1988; or
 - (c) if there are 2 or more standard employer-sponsors of the fund—any one of those employer-sponsors is not an associate of any other of those employer-sponsors.

Pre-1 July 1995

- (2) This section does not apply on or after 1 July 1995.

Public offer funds

- (3) If the fund is a public offer superannuation fund:
 - (a) either:
 - (i) the trustee of the fund must be an independent trustee; or
 - (ii) the fund must comply with the basic equal representation rules; and
 - (b) if the regulations provide that the fund is subject to rules about the existence, number and functions of policy committees (*prescribed policy committees*)—the fund must comply with those rules; and

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- (c) each prescribed policy committee must consist of equal numbers of employer representatives and member representatives.

Non-public offer funds

- (4) If the fund is not a public offer superannuation fund, the fund must comply with the basic equal representation rules.

Transitional

- (5) If, at a particular time, the number of members of a fund increases from a number less than 200 to 200 or more:
 - (a) the trustee of the fund must make such arrangements (if any) as are necessary to enable the fund to comply with this section; and
 - (b) the fund does not have to comply with this section during the period:
 - (i) beginning at that time; and
 - (ii) ending at whichever is the earlier of the following times:
 - (A) the time at which such arrangements are made;
 - (B) the end of 90 days.

92 Post-30 June 1995 rules—funds with more than 4, but fewer than 50, members

Application

- (1) This section applies to a standard employer-sponsored fund with more than 4, but fewer than 50, members.

Post-30 June 1995

- (2) This section applies on and after 1 July 1995.

Public offer funds

- (3) If the fund is a public offer superannuation fund:
 - (a) either:
 - (i) the trustee of the fund must be an independent trustee; or
 - (ii) the fund must comply with the basic equal representation rules; and
 - (b) if the regulations provide that the fund is subject to rules about the existence, number and functions of policy committees (***prescribed policy committees***)—the fund must comply with those rules; and
 - (c) each prescribed policy committee must consist of equal numbers of employer representatives and member representatives.

Non-public offer funds

- (4) If the fund is not a public offer superannuation fund, the fund must comply with:
 - (a) the basic equal representation rules; or
 - (b) the alternative agreed representation rule set out in subsection (5); or
 - (c) an arrangement in relation to the management and control of the fund that:
 - (i) has been agreed to between a majority of the members of the fund and the employer, or employers, of those members; and
 - (ii) is approved by APRA in writing.

Arrangement approval

- (4A) When deciding whether or not to approve an arrangement under subparagraph (4)(c)(ii), APRA must have regard to any written guidelines determined by APRA under this subsection.
- (4B) The approval of the arrangement given under subparagraph (4)(c)(ii) (the ***arrangement approval***):

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- (a) is subject to the conditions set out in the approval (if any); and
 - (b) may be revoked by APRA by written notice given to a trustee of the fund.
- (4C) Without limiting paragraph (4B)(b), APRA may revoke an arrangement approval if:
 - (a) APRA is satisfied that there has been a contravention of a condition to which the approval is subject; or
 - (b) a trustee of the fund applies in writing for its revocation.
- (4D) APRA may vary or revoke the conditions of the arrangement approval by written notice given to a trustee of the fund.

Alternative agreed representation rule

- (5) For the purposes of this section, a fund complies with the alternative agreed representation rule if:
 - (a) there is a single trustee of the fund who is a constitutional corporation; and
 - (b) the trustee is appointed following nomination by agreement between:
 - (i) a majority of the members of the fund; and
 - (ii) the employer or employers of those members; and
 - (c) the trustee is an RSE licensee; and
 - (ca) a condition imposed under section 29EA on the RSE licensee's RSE licence requires the RSE licensee to ensure that the fund, or a class of funds to which the fund belongs, complies with the alternative agreed representation rule whenever this section applies to the fund; and
 - (d) the trustee is not an associate of a standard employer-sponsor of the fund.

Transitional

- (13) If, at a particular time, the number of members of a fund increases from a number less than 5 to 5 or more, but less than 50:
- (a) the trustee of the fund must make such arrangements (if any) as are necessary to enable the fund to comply with this section; and
 - (b) the fund does not have to comply with this section during the period beginning at that time and ending:
 - (i) at the time at which such arrangements are made; or
 - (ii) 90 days after that time;
 whichever is the earlier.

93 Post-30 June 1995 rules—funds with more than 49 members

Application

- (1) This section applies to a standard employer-sponsored fund with more than 49 members.

Post-30 June 1995

- (2) This section applies on and after 1 July 1995.

Public offer funds

- (3) If the fund is a public offer superannuation fund:
- (a) either:
 - (i) the trustee of the fund must be an independent trustee; or
 - (ii) the fund must comply with the basic equal representation rules; and
 - (b) if the regulations provide that the fund is subject to rules about the existence, number and functions of policy committees (***prescribed policy committees***)—the fund must comply with those rules; and

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- (c) each prescribed policy committee must consist of equal numbers of employer representatives and member representatives.

Non-public offer funds

- (4) If the fund is not a public offer superannuation fund, the fund must comply with the basic equal representation rules.

Transitional

- (5) If, at a particular time, the number of members of a fund increases:
 - (a) from a number less than 5 to 50 or more; or
 - (b) from a number greater than 4, but less than 50, to 50 or more (a *paragraph (b) fund*);

then:

- (c) the trustee of the fund must make such arrangements (if any) as are necessary to enable the fund to comply with this section; and
- (d) the fund does not have to comply with this section during the period beginning at that time and ending:
 - (i) at the time at which such arrangements are made; or
 - (ii) 90 days after that time;whichever is the earlier; and
- (e) for a paragraph (b) fund—despite subsection 92(1), the fund must comply with subsection 92(3) or (4) during the period of time referred to in paragraph (d).

93A A trustee who is an employer-sponsor of a fund may still be an independent trustee

- (1) For the purposes of subparagraphs 92(3)(a)(i) and 93(3)(a)(i), the trustee of a public offer superannuation fund who is an employer-sponsor of the fund will be an independent trustee of the fund:
 - (a) if the trustee satisfies all the requirements of the definition of *independent trustee* in section 10; or

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- (b) if:
 - (i) the trustee together with any other employer-sponsors of the fund who are associates of the trustee are employer-sponsors of not more than the allowable percentage of the members of the fund; and
 - (ii) the value of the accrued benefits of those members of the fund who have as an employer-sponsor either the trustee or an associate of the trustee is not more than the allowable percentage of the value of the assets of the fund; and
 - (iii) the trustee satisfies the requirements in paragraphs (a), (c), (d) and (e) of the definition of *independent trustee* in section 10.
- (2) The allowable percentage of the members of the fund is 10% or such higher percentage as is approved by APRA by notice in writing given to the trustee.
- (3) The allowable percentage of the value of the assets of the fund is 10% or such higher percentage as is approved by APRA by notice in writing given to the trustee.
- (4) If APRA approves a higher percentage under subsection (2) or (3), the approval may be subject to such conditions (if any) as are specified in the notice.
- (5) An approval, including any conditions to which the approval is subject, may be varied at any time by APRA by notice in writing given to the trustee.
- (6) APRA may only exercise the power conferred under subsection (2) or (3) after considering:
 - (a) the effect that the approval of a higher percentage will have on the likelihood of the trustee performing its functions independently and impartially; and
 - (b) all other relevant circumstances.

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Part 10—Provisions applying only to approved deposit funds

94 Object of Part

The object of this Part is to set out rules about borrowing by the trustees of approved deposit funds.

95 Borrowing

- (1) Except with the approval of APRA under subsection (2) or except as provided by subsection (3), the trustee of an approved deposit fund must not borrow money.
- (2) APRA may approve a borrowing by the trustee of an approved deposit fund if the trustee satisfies APRA that special circumstances exist that justify the borrowing.
- (3) Subsection (1) does not prohibit the trustee of an approved deposit fund from borrowing money if:
 - (a) the purpose of the borrowing is to enable the trustee to cover settlement of a transaction for the acquisition of any of the following:
 - (i) bonds, debentures, stock, bills of exchange or other securities;
 - (ii) shares in a company;
 - (iii) units in a unit trust;
 - (iv) futures contracts;
 - (v) forward contracts;
 - (vi) interest rates swap contracts;
 - (vii) currency swap contracts;
 - (viii) forward exchange rate contracts;
 - (ix) forward interest rate contracts;

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- (x) a right or option in respect of such a security, share, unit, contract or policy;
 - (xi) any similar financial instrument;
 - (xii) foreign currency; and
 - (b) both:
 - (i) at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and
 - (ii) the borrowing is not taken, under a determination made, by legislative instrument, by APRA, to be exempt from this paragraph; and
 - (c) the period of the borrowing does not exceed 7 days; and
 - (d) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.
- (5) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

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Part 11—Provisions applying only to pooled superannuation trusts

96 Object of Part

The object of this Part is to set out special rules applying only to pooled superannuation trusts.

97 Borrowing

- (1) Subject to subsection (2), the trustee of a pooled superannuation trust must not borrow money.
- (2) Subsection (1) does not prohibit the trustee of a pooled superannuation trust from borrowing money if:
 - (a) the purpose of the borrowing is to enable the trustee to make a payment to a beneficiary in the trust which the trustee is required to make by law or by the governing rules and which, apart from the borrowing, the trustee would not be able to make; and
 - (b) the period of the borrowing does not exceed 90 days; and
 - (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the trust.
- (3) Subsection (1) does not prohibit the trustee of a pooled superannuation trust from borrowing money if:
 - (a) the purpose of the borrowing is to enable the trustee to cover settlement of a transaction for the acquisition of any of the following:
 - (i) bonds, debentures, stock, bills of exchange or other securities;
 - (ii) shares in a company;
 - (iii) units in a unit trust;
 - (iv) futures contracts;

- (v) forward contracts;
- (vi) interest rates swap contracts;
- (vii) currency swap contracts;
- (viii) forward exchange rate contracts;
- (ix) forward interest rate contracts;
- (x) a right or option in respect of such a security, share, unit, contract or policy;
- (xi) any similar financial instrument;
- (xii) foreign currency; and
- (b) both:
 - (i) at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and
 - (ii) the borrowing is not taken, under a determination made, by legislative instrument, by APRA, to be exempt from this paragraph; and
- (c) the period of the borrowing does not exceed 7 days; and
- (d) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the trust.

98 Lending to unit-holders prohibited

The trustee or an investment manager of a pooled superannuation trust must not:

- (a) lend money of the trust to a beneficiary of the trust; or
- (b) give any other financial assistance using the resources of the trust to a beneficiary of the trust.

99 Civil penalty provisions

Subsection 97(1) and section 98 are civil penalty provisions as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, either of them.

Part 11A—General fees rules

99A Application

The rules set out in this Part do not apply to self managed superannuation funds.

99B No entry fees

- (1) The trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund must not charge entry fees.
- (2) An *entry fee* is a fee, other than a buy-sell spread, that relates, directly or indirectly, to the issuing of a beneficial interest in a superannuation entity to a person who is not already a member of the entity.

99C Buy-sell spreads, switching fees and exit fees to be charged on a cost recovery basis

- (1) If the trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund charge a buy-sell spread, a switching fee or an exit fee, the fee must be no more than it would be if it were charged on a cost recovery basis.
- (2) The regulations may prescribe the way in which a buy-sell spread, a switching fee or an exit fee charged on a cost recovery basis is to be worked out.

99D Cost of advice to employers not to be borne by members

The trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund must not include in any fee charged to any member of the fund an amount that relates to costs incurred by any person, directly or indirectly, in relation to personal advice provided by any person to an employer of one or more members of the fund.

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99E Fair and reasonable attribution of costs between classes of beneficial interest in a regulated superannuation fund

If there is more than one class of beneficial interest in a regulated superannuation fund, the trustee, or the trustees, of the fund must attribute the costs of the fund between the classes fairly and reasonably.

99F Cost of financial product advice

- (1) The trustee or the trustees of a regulated superannuation fund must not directly or indirectly pass the cost of providing financial product advice in relation to a member of the fund (the ***subject member***) on to any other member of the fund, to the extent that:
 - (a) the advice is provided by:
 - (i) a trustee of the fund; or
 - (ii) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the fund; and
 - (b) the advice is personal advice; and
 - (c) the advice is provided in any of the following circumstances:
 - (i) the subject member has not yet acquired a beneficial interest in the fund when the advice is given, and the advice relates to whether the subject member should acquire such an interest;
 - (ii) the advice relates to a financial product that is not a beneficial interest in the fund, a related pension fund for the member and the fund, a related insurance product for the member and the fund or a cash management facility within the fund;
 - (iii) the advice relates to whether the subject member should consolidate that member's beneficial interests in 2 or more superannuation entities into a beneficial interest in a single superannuation entity;
 - (iv) at the time the advice is provided, the subject member reasonably expects that a person mentioned in subparagraph (a)(i) or (ii) will periodically review the advice, provide further personal advice or monitor

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whether recommendations in the original or any later advice are implemented and the results of that implementation;

(v) other prescribed circumstances.

(2) If:

(a) under the governing rules of a regulated superannuation fund (the **first fund**):

- (i) a member of another regulated superannuation fund (the **second fund**) is entitled to become a member of the first fund on the satisfaction of a condition of release of benefits specified in a standard made under paragraph 31(2)(h); and
- (ii) on becoming a member of the first fund, a pension would be payable out of the assets of the first fund to the member; and

(b) the RSE licensee for the first fund is, or is an associate of, the RSE licensee of the second fund;

then the first fund is a **related pension fund** of the second fund for a member of the second fund in relation to whom paragraph (a) is satisfied.

(3) If:

- (a) the trustee, or the trustees, of a regulated superannuation fund provide a benefit to members of the fund who hold a particular class of beneficial interest in the fund by taking out insurance; and
- (b) a person holds a beneficial interest of that class in the fund, or is considering acquiring a beneficial interest of that class in the fund;

a life policy or contract of insurance by which that benefit is or would be provided is a **related insurance product** for the person and the fund.

(4) In this section:

cash management facility has the same meaning as it has for the purposes of subsection 946B(1) of the *Corporations Act 2001*.

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life policy has the same meaning as in the *Life Insurance Act 1995*.

Section 100

Part 12—Duties of trustees and investment managers of superannuation entities

100 Object of Part

The object of this Part is to impose special duties on the trustees and investment managers of superannuation entities.

101 Duty to establish arrangements for dealing with inquiries or complaints

- (1) Each trustee of a regulated superannuation fund other than a self managed superannuation fund, or of an approved deposit fund, must take all reasonable steps to ensure that there are at all times in force arrangements under which:
 - (a) a person referred to in subsection (1A) has the right to make an inquiry or a complaint of the kind specified in that subsection in relation to that person; and
 - (b) an inquiry or complaint so made will be properly considered and dealt with within 90 days after it was made; and
 - (c) if a person referred to in subsection (1A) makes a complaint that relates to the payment of a death benefit:
 - (i) the person is given written reasons for a decision made by the trustee in relation to the complaint when the person is given notice of the decision; or
 - (ii) if no decision is made in relation to the complaint within 90 days after the complaint is made—the person may, by giving notice in writing to a trustee of the fund, request written reasons for the failure to make a decision in relation to the complaint within that period; and
 - (d) if a person referred to in subsection (1A) makes a complaint of another kind specified in that subsection in relation to the person, the person may, by giving notice in writing to a trustee of the fund, request written reasons for:

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- (i) a decision made by the trustee in relation to the complaint; or
 - (ii) if no decision is made in relation to the complaint within 90 days after the complaint is made—the failure to make a decision in relation to the complaint within that period; and
 - (e) if a notice requesting written reasons is given in the circumstances set out in subparagraph (c)(ii) or paragraph (d), the written reasons are given to the person within 28 days after the notice is given, or such longer period as the Regulator, in writing, permits.
- (1A) For the purposes of paragraph (1)(a):
- (a) a beneficiary or former beneficiary of a regulated superannuation fund may make an inquiry into, or complaint about, the operation or management of the fund in relation to that person; and
 - (b) the executor or administrator of the estate of a former beneficiary of such a fund may make an inquiry into, or complaint about, the operation or management of such a fund in relation to the former beneficiary; and
 - (c) without limiting the generality of paragraph (a) or (b), any person may make an inquiry into, or complaint about, a decision of a trustee of such a fund that relates to the payment of a death benefit if:
 - (i) the person has an interest in the death benefit; or
 - (ii) the person claims to be, or to be entitled to death benefits through, a person referred to in subparagraph (i).
- (2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (3) In this section:

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regulated superannuation fund includes an exempt public sector superannuation scheme that is a regulated superannuation fund for the purposes of the *Superannuation (Resolution of Complaints) Act 1993*.

102 Duty to seek information from investment manager

- (1) If the trustee of a superannuation entity, or if a superannuation entity has a group of individual trustees, the trustees of the entity, enter into an agreement with an investment manager under which money of the entity will be placed under the control of the investment manager, the trustee, or the trustees, must:
 - (a) ensure that the agreement contains adequate provision to enable the trustee, or the trustees, of the entity to require the investment manager from time to time:
 - (i) to provide appropriate information as to the making of, and return on, the investments; and
 - (ii) to provide such information as is necessary to enable the trustee, or the trustees, of the entity to assess the capability of the investment manager to manage the investments of the entity; and
 - (b) whenever it is necessary or desirable to do so, require the investment manager to provide the information.
- (2) If:
 - (a) the trustee of a superannuation entity, or if a superannuation entity has a group of individual trustees, the trustees of the entity, entered into an agreement before the commencement of this section with an investment manager under which money of the entity would be placed under the control of the investment manager; and
 - (b) the agreement does not contain a provision of a kind mentioned in paragraph (1)(a);the trustee, or the trustees, of the entity must as soon as practicable ensure that:
 - (c) the agreement is amended so as to contain such a provision; or

- (d) if the investment manager refuses to agree to such an amendment—the agreement is terminated.
- (3) The trustee of a superannuation entity, or if a superannuation entity has a group of individual trustees, the trustees of the superannuation entity:
 - (a) may terminate an agreement under paragraph (2)(d) despite anything in the agreement; and
 - (b) are not under any liability to the investment manager because of the termination.
- (4) A person who intentionally or recklessly contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

103 Duty to keep minutes and records

- (1) If a superannuation entity has a group of individual trustees, the trustees must keep, and retain for at least 10 years, minutes of all meetings of the trustees at which matters affecting the entity were considered.
- (2) If there is only one trustee of a superannuation entity:
 - (a) if the trustee is a corporate trustee—the directors of the trustee must keep, and retain for at least 10 years, minutes of all meetings of the directors at which matters affecting the entity were considered; or
 - (b) if the trustee is an individual—the trustee must keep, and retain for at least 10 years, a record of all decisions made by the trustee in respect of matters affecting the entity.
- (2A) The trustee or trustees must also retain for at least 10 years an election, or a copy of an election, under section 71E.
- (3) A person commits an offence if the person contravenes subsection (1), (2) or (2A). This is an offence of strict liability.

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Penalty: 50 penalty units.

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

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

Note 3: Section 166 imposes an administrative penalty for a contravention of subsection (1), (2) or (2A) in relation to a self managed superannuation fund.

104 Duty to keep records of changes of trustees

- (1) Each trustee of a superannuation entity must ensure that up-to-date records of:
- (a) all changes of trustees of the entity; and
 - (b) all changes of directors of any corporate trustee of the entity; and
 - (c) all consents given under section 118;
- are kept and retained for at least 10 years.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (2) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

104A Trustees etc. of self managed superannuation fund— recognition of obligations and responsibilities

- (1) This section applies to a person if:
- (a) he or she becomes, after 30 June 2007:
 - (i) the trustee of a self managed superannuation fund; or
 - (ii) a director of a body corporate that is the trustee of a self managed superannuation fund; or

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- (b) he or she is a trustee of such a fund or a director of such a body corporate, and another person becomes, after 30 June 2007, a trustee of the fund or a director of the body corporate; or
 - (c) he or she is a trustee of such a fund or a director of such a body corporate and undertakes a course of education in compliance with an education direction.
- (2) The person must:
- (a) if paragraph (1)(a) applies—sign a declaration in the approved form that he or she understands his or her duties as trustee of a self managed superannuation fund (or as director of a body corporate that is such a trustee), no later than 21 days after becoming such a trustee or director; and
 - (b) if paragraph (1)(b) applies—ensure that the other person signs a declaration in the approved form that he or she understands his or her duties as trustee of a self managed superannuation fund (or as director of a body corporate that is such a trustee), within 21 days after becoming such a trustee or director; and
 - (ba) if paragraph (1)(c) applies—sign a declaration in the approved form that he or she understands his or her duties as trustee of a self managed superannuation fund, or as director of a body corporate that is such a trustee (as appropriate), no later than 21 days after completing the course of education; and
 - (c) ensure that the declaration is retained so long as it is relevant, and in any case for at least 10 years; and
 - (d) make the declaration available for inspection by a member of the staff of the Regulator if requested to do so by a member of that staff.
- Note: Section 166 imposes an administrative penalty for a contravention of subsection (2).
- (3) A person commits an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

105 Duty to keep reports

- (1) Each trustee of a regulated superannuation fund or of an approved deposit fund must ensure that:
- (a) copies of all member or beneficiary reports are kept, and retained so long as they are relevant and in any event for at least 10 years; and
 - (b) those copies are made available for inspection by a member of the staff of the Regulator if requested to do so by a member of that staff.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (2) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

- (3) In this section:

member or beneficiary report means a report:

- (a) given under this Act, the *Superannuation (Excluded Funds) Taxation Act 1987* or the governing rules; and
- (b) given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given):
 - (i) in the case of a regulated superannuation fund—to all members of the fund, or to all members included in a particular class of members; or

- (ii) in the case of an approved deposit fund—to all beneficiaries in the fund, or to all beneficiaries included in a particular class of beneficiaries.

106 Duty to notify the Regulator of significant adverse events

- (1) If a trustee of a superannuation entity becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the entity, the trustee must ensure that a trustee of the entity immediately notifies the Regulator in writing of the event.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (2) An event has a significant adverse effect on the financial position of an entity if, as a result of the event, a trustee of the entity will not, or may not, be able, at a time before the next annual report by the trustee, or the trustees, to beneficiaries entitled to the report, to make payments to beneficiaries as and when the obligation to make those payments arises.
- (3) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

106A Duty to notify Commissioner of Taxation of change in status of entity*Trustee's duty to notify Commissioner of Taxation*

- (1) If a trustee of a superannuation entity:
 - (a) has knowledge that the superannuation entity has ceased to be a self managed superannuation fund; or
 - (b) has knowledge that the superannuation entity has become a self managed superannuation fund since first becoming a superannuation entity;

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the trustee must ensure that a written notice is given to the Commissioner of Taxation.

Note 1: A trustee of a fund that was already a self managed superannuation fund when a trustee, or the trustees, of the fund made an election under section 19 does not have to ensure that a notice is given to the Commissioner of Taxation at that time, because the fund became a self managed superannuation fund before (not since) becoming a superannuation entity.

Note 2: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

Timing of notice

- (2) A notice under subsection (1) must be given as soon as practicable, and not later than 21 days, after the trustee first has knowledge that the superannuation fund has ceased to be, or has become, a self managed superannuation fund.

Offence

- (3) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

107 Duty of trustee of employer-sponsored fund to establish procedure for appointing member representatives

- (1) This section applies if the trustee, or the trustees, of a standard employer-sponsored fund (other than a superannuation fund with fewer than 5 members) are required by law:
- (a) if the trustee is a single corporate trustee—to have member representatives on the board of directors of the trustee; or
 - (b) if there is a group of individual trustees—to have member representatives included in the group; or
 - (c) in any other case—to have member representatives on a policy committee of the fund.
- (2) Each trustee of the fund must ensure that:
- (a) rules are established (whether by inclusion in the governing rules or otherwise):

- (i) setting out a procedure for appointing the member representatives; and
 - (ii) ensuring that member representatives so appointed can only be removed by the same procedure as that by which they were appointed, except in the event of:
 - (A) death; or
 - (B) mental or physical incapacity; or
 - (C) retirement; or
 - (D) termination of employment; or
 - (DA) the member representative no longer meeting one or more of the criteria for fitness and propriety relevant to the member representative set out in the prudential standards; or
 - (E) the member representative becoming a disqualified person within the meaning of Part 15; or
 - (F) suspension or removal under Part 17; or
 - (G) other prescribed circumstances; and
 - (b) those rules are published in such a way as will make members of the fund aware of the procedure for appointment and removal of member representatives.
- (3) A trustee is guilty of an offence if the trustee contravenes subsection (2).

Penalty: 100 penalty units.

- (4) A trustee is guilty of an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

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108 Duty of trustee of employer-sponsored fund to establish procedure for appointing independent trustee or independent member of board of directors of corporate trustee

- (1) This section applies if a standard employer-sponsored fund (other than a self managed superannuation fund) relies on subsection 89(2) in order to comply with the basic equal representation rules. (That subsection deals with an additional independent trustee or an additional independent director of a corporate trustee.)
- (2) Each trustee of the fund must ensure that:
 - (a) rules are established (whether by inclusion in the governing rules or otherwise) ensuring that the additional independent trustee or additional independent director, as the case may be, can only be removed by the same procedure as that by which the additional independent trustee or additional independent director was appointed, except in the event of:
 - (i) death; or
 - (ii) mental or physical incapacity; or
 - (ia) the additional independent trustee or additional independent director no longer meeting one or more of the criteria for fitness and propriety relevant to the independent trustee or independent director set out in the prudential standards; or
 - (iii) the additional independent trustee or additional independent director, as the case may be, becoming a disqualified person within the meaning of Part 15; or
 - (iv) suspension or removal under Part 17; or
 - (v) other prescribed circumstances; and
 - (b) those rules are published in such a way as will make members of the fund aware of the procedure for removal of the additional independent trustee or additional independent director, as the case may be.

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- (3) A trustee is guilty of an offence if the trustee contravenes subsection (2).

Penalty: 100 penalty units.

- (4) A trustee is guilty of an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

108A Trustee's duty to identify etc. multiple superannuation accounts of members

- (1) Each trustee of a superannuation entity (other than the trustee of a pooled superannuation trust or a self managed superannuation fund) must ensure that rules are established, which:
- (a) set out a procedure for identifying when a member of the superannuation entity has more than one superannuation account in the superannuation entity; and
 - (b) require the trustee to carry out the procedure to identify such members at least once each financial year; and
 - (c) if the member has 2 or more superannuation accounts in the superannuation entity—require the trustee to merge the accounts so that the member has only one account balance in respect of those accounts, if the trustee reasonably believes that it is in the best interests of the member to do so; and
 - (d) provide that fees are not payable (other than a buy-sell spread) for any merger of superannuation accounts that occurs as a result of paragraphs (a) to (c).
- (2) The requirement in paragraph (1)(c) does not apply if:
- (a) it is not practicable in the circumstances to merge the member's superannuation accounts; or
 - (b) one or more of the superannuation accounts is a defined benefit interest or income stream.

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- (3) A **superannuation account** is a record of the member's benefits, in relation to a superannuation entity in which the member has an interest, which is recorded separately:
- (a) from other benefits of the member in relation to the entity (if any); and
 - (b) from other benefits of any other member in relation to the entity.
- (4) In determining, for the purpose of paragraph (1)(c), whether it is in the best interests of a member to merge his or her superannuation accounts, the trustee must consider the total amount of fees and charges payable by the member in respect of all of his or her accounts in the superannuation entity (including any fees and charges payable by the member for insurance provided in respect of all of his or her accounts).
- (5) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

109 Investments of superannuation entity to be made and maintained on arm's length basis

- (1) A trustee or investment manager of a superannuation entity must not invest in that capacity unless:
- (a) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction; or
 - (b) both:
 - (i) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are not dealing with each other at arm's length in respect of the transaction; and

- (ii) the terms and conditions of the transaction are no more favourable to the other party than those which it is reasonable to expect would apply if the trustee or investment manager, as the case may be, were dealing with the other party at arm's length in the same circumstances.

(1A) If:

- (a) a trustee or investment manager of a superannuation entity invests in that capacity; and
- (b) at any time during the term of the investment the trustee or investment manager is required to deal in respect of the investment with another party that is not at arm's length with the trustee or investment manager;

the trustee or investment manager must deal with the other party in the same manner as if the other party were at arm's length with the trustee or investment manager.

- (2) Subsections (1) and (1A) are civil penalty provisions as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, those subsections.
- (3) A contravention of subsection (1) or (1A) does not affect the validity of a transaction.

Part 14—Other provisions applying to superannuation entities

114 Object of Part

The object of this Part is to set out various rules applying to superannuation entities.

115 Trustee of superannuation entity may maintain reserves

- (1) The trustee of a superannuation entity may maintain a reserve of the entity for a particular purpose, unless the governing rules of the entity prohibit the maintenance of a reserve for that purpose.

Governing rules of an RSE must not prohibit reserves to cover operational risk

- (2) The governing rules of a registrable superannuation entity must not prohibit the maintenance of a reserve to cover the operational risk relating to the entity.
- (3) If the governing rules of a registrable superannuation entity are inconsistent with subsection (2):
 - (a) subsection (2) prevails; and
 - (b) the governing rules are invalid, to the extent of the inconsistency.

116 Agreement between trustee and investment manager

Despite anything in the governing rules of a superannuation entity, any provision of an agreement between a trustee of the entity and an investment manager that purports to exempt the investment manager from liability for negligence, or to limit that liability, is void.

117 Circumstances in which amounts may be paid out of an employer-sponsored fund to an employer-sponsor

Excluded superannuation funds

- (2) This section does not apply to an excluded superannuation fund during the period:
- (a) beginning on 21 October 1992; and
 - (b) ending immediately before the day on which subsection (2A) commenced.

Self managed superannuation funds

- (2A) This section does not apply to a self managed superannuation fund if, at all times after the day on which this subsection commenced when the fund was in existence, the fund was a self managed superannuation fund.

Basic prohibition

- (3) Except as provided by this section, a trustee of a standard employer-sponsored fund must not pay an amount, or permit an amount to be paid, out of the fund to a standard employer-sponsor.
- (3A) Subsection (3) does not apply in circumstances where:
- (a) its application would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution.

Exception—management services

- (4) A reasonable amount may be paid out of any standard employer-sponsored fund to a standard employer-sponsor for services rendered in connection with the management or operation of the fund.

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Exception—special procedures followed

- (5) An amount may be paid out of a standard employer-sponsored fund to a standard employer-sponsor if the following requirements are fulfilled:
- (a) apart from this section, the governing rules would require or permit the amount to be paid to the employer-sponsor;
 - (b) whichever of the following subparagraphs is applicable has been complied with:
 - (i) if the fund has a single corporate trustee:
 - (A) the directors of the trustee have, by resolution, declared their intention to pay the amount out of the fund to the employer-sponsor; and
 - (B) when that resolution was passed, the board of the corporate trustee consisted of equal numbers of employer representatives and member representatives;
 - (ii) if the fund has a group of individual trustees:
 - (A) the trustees have, by resolution, declared their intention to pay the amount out of the fund to the employer-sponsor; and
 - (B) when that resolution was passed, the group of trustees consisted of equal numbers of employer representatives and member representatives;
 - (iii) in any other case—the trustee has declared his or her intention to pay the amount out of the fund to the employer-sponsor;
 - (c) before the resolution referred to in subparagraph (b)(i) or (ii), was passed or before the declaration referred to in subparagraph (b)(iii) was made:
 - (i) an actuary had given a written certificate to the trustee, or the trustees, of the fund stating that, if the amount were paid, the fund would remain in a satisfactory financial position; and

- (ii) the trustee, or the trustees, were satisfied that the payment of the amount and the making of the changes (if any) to the governing rules were reasonable having regard to the interests of the employer-sponsor and of the beneficiaries in the fund;
 - (d) a trustee of the fund gave notice in accordance with the governing rules to all members of the fund:
 - (i) stating the intention to pay the amount to the employer-sponsor; and
 - (ii) stating that an actuary has given a certificate to the trustee, or the trustees, of the fund as required by subparagraph (c)(i); and
 - (iii) setting out particulars of any changes to the governing rules that were proposed to be made if the amount were paid to the employer-sponsor;
 - (e) at the end of 3 months after the notice mentioned in paragraph (d) was given to members, the provisions of whichever of the following subparagraphs is applicable were complied with:
 - (i) if the fund has a single corporate trustee—the directors of the corporate trustee passed a resolution agreeing to pay the amount out of the fund to the employer-sponsor;
 - (ii) if the fund has a group of individual trustees—the trustees passed a resolution agreeing to pay the amount out of the fund to the employer-sponsor;
 - (iii) in any other case—the trustee decided to make the payment;
 - (f) any other requirements made by the regulations.
- (5A) The requirement in paragraph (5)(d) is taken not to have been fulfilled unless the notice is given in a way that enables each trustee of the fund to be reasonably satisfied that the notice came to the attention of all the members of the fund other than members who are ***lost members*** within the meaning of the regulations.

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APRA may waive requirements

- (6) APRA may waive any or all of the requirements specified in subsection (5) in relation to a matter occurring on or after the date of commencement of this section.

Civil penalty provision

- (7) Subsection (3) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

This section does not apply to loans to, or investments in, a standard employer-sponsor

- (8) A reference in this section to the payment of an amount out of a standard employer-sponsored fund to a standard employer-sponsor does not include a reference to the payment of an amount by way of the making of a loan to, or an investment in, the standard employer-sponsor.

Additional independent trustee and additional independent director

- (9) For the purposes of the application of this section to a fund, a group of trustees, or the board of a corporate trustee, is taken to consist of equal numbers of employer representatives and member representatives if:
- (a) the group or board includes an additional independent trustee or an additional independent director, as the case may be; and
 - (b) the additional independent trustee or additional independent director, as the case may be, is appointed at the request of the employer representatives, or the member representatives, who are the members of the group or board; and
 - (c) provision is made in the governing rules for the appointment of the independent additional trustee or additional independent director, as the case may be; and
 - (d) the governing rules do not allow the additional independent trustee or additional independent director, as the case may be,

to exercise a casting vote in any proceedings of the group or board concerned.

Definitions

(10) In this section:

standard employer-sponsor, in relation to a standard employer-sponsored fund, includes:

- (a) if a standard employer-sponsor is a body corporate—another body corporate that is related to the employer-sponsor; or
- (b) if a standard employer-sponsor is an individual—an associate of the employer-sponsor.

(11) For the purposes of this section:

- (a) a reference to a standard employer-sponsored fund includes a reference to a former standard employer-sponsored fund; and
- (b) a reference to a standard employer-sponsor includes a reference to a former standard employer-sponsor.

118 Consents to appointments

A person is not eligible for appointment as a trustee of a superannuation entity, or as a director of a corporate trustee of a superannuation entity, unless the person has consented in writing to the appointment.

Part 15—Standards for trustees, custodians and investment managers of superannuation entities

Division 1—Object of Part and definition of disqualified person

119 Object of Part

The object of this Part is to set out rules about the eligibility of trustees, custodians and investment managers of superannuation entities.

120 Disqualified persons

Individuals

- (1) For the purposes of this Part, an individual is a disqualified person if:
- (a) at any time (including a time before the commencement of this section):
 - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
 - (ii) a civil penalty order was made in relation to the person; or
 - (b) the person is an insolvent under administration; or
 - (c) either:
 - (i) to the extent that the Regulator is the Commissioner of Taxation—the Regulator has disqualified the individual under section 126A; or

- (ii) to the extent that the Regulator is APRA—the Federal Court of Australia has disqualified the individual under section 126H.

Bodies corporate

- (2) For the purposes of this Part, a body corporate is a disqualified person if:
 - (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is:
 - (i) for a person who is a disqualified person only because he or she was disqualified under section 126H—disqualified from being or acting as a responsible officer of the body corporate; or
 - (ii) otherwise—a disqualified person; or
 - (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
 - (c) an administrator has been appointed in respect of the body; or
 - (d) a provisional liquidator has been appointed in respect of the body; or
 - (e) the body has begun to be wound up.

Convictions

- (3) A reference in this section to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence.

Law on spent convictions does not apply

- (4) Division 3 of Part VIIC of the *Crimes Act 1914* does not apply in relation to the disclosure of information about a conviction of the kind mentioned in paragraph (1)(a), if the disclosure is for the purposes of this Part.

Division 2—Requirements for custodians and investment managers

122 Investment manager must not appoint or engage custodian without the trustee's consent

- (1) An investment manager of a superannuation entity must not appoint or engage a custodian of the entity without the written consent of the trustee, or the trustees, of the entity.
- (2) The investment manager commits an offence if the investment manager contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

123 Persons who may be appointed to be custodians of superannuation entities

- (1) A person must not intentionally be the custodian of a superannuation entity (other than a self managed superannuation fund) unless:
 - (a) the person is a body corporate; and
 - (b) any of the following subparagraphs applies:
 - (i) the value of the net tangible assets of the body corporate is not less than the amount prescribed by the regulations;
 - (ii) a trustee of the entity is entitled to the benefit, in respect of the due performance of the body corporate's duties as custodian of the entity, of an approved guarantee of an amount that is not less than the amount prescribed by the regulations;

- (iii) both the conditions specified in subsection (1A) are satisfied.

Penalty: 600 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(a) and (b) (see subsection 13.3(3) of the *Criminal Code*).

- (1A) For the purposes of subparagraph (1)(b)(iii), the following conditions are specified:

- (a) a trustee of the entity is entitled to the benefit, in respect of the due performance of the body corporate's duties as custodian of the entity, of an approved guarantee;
- (b) the sum of the amount of the approved guarantee and the value of the net tangible assets of the body corporate is not less than the amount prescribed by the regulations.

- (2) Subsection (1) does not prohibit a person from being a custodian of a superannuation entity if:

- (a) the person immediately tells a trustee of the entity and APRA in writing that paragraph (1)(b) does not, or has ceased to, apply; and
- (b) the person is the custodian of the entity during:
 - (i) the 28-day period beginning at whichever is the later of the following times:
 - (A) the time when paragraph (1)(b) ceased to apply to the custodian;
 - (B) the beginning of the entity's 1994-95 year of income; or
 - (ii) such longer period as APRA allows; and
- (c) the trustee, or the trustees, of the entity have made or propose to make, arrangements for the orderly dismissal of the person as the custodian; and
- (d) the person is taking, or is willing to take, all reasonable steps to assist the trustee in carrying out those arrangements.

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- (3) If paragraph (1)(b) does not, or ceases to, apply to the custodian of a superannuation entity:
- (a) the custodian must immediately tell a trustee of the entity and APRA in writing; and
 - (b) the trustee, or the trustees, must make arrangements for the orderly dismissal of the custodian; and
 - (c) the trustee, or the trustees, must make those arrangements before the end of:
 - (i) the 28-day period beginning at whichever is the later of the following times:
 - (A) the time when paragraph (1)(b) ceased to apply to the custodian;
 - (B) the beginning of the entity's 1994-95 year of income; or
 - (ii) such longer period as APRA allows.
- (4) A person who contravenes subsection (3) because of paragraph (a) of that subsection commits an offence punishable on conviction by a fine not exceeding 50 penalty units.
- (5) A person who contravenes subsection (3) because of paragraph (b) or (c) of that subsection commits an offence punishable on conviction by a fine not exceeding 100 penalty units.
- (6) Subsections (4) and (5) are offences of strict liability.

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

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

124 Investment managers must be appointed in writing

- (1) A trustee of a superannuation entity must not make a non-written appointment of an investment manager of the entity.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (2) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

125 Individuals not to be investment managers of superannuation entities

A person must not intentionally be, or act as, an investment manager of a superannuation entity (other than a self managed superannuation fund) if the person is not a body corporate.

Penalty: Imprisonment for 2 years.

Division 3—Disqualified persons

Subdivision A—Disqualification by the Commissioner of Taxation

126 Application of this Subdivision

This Subdivision applies to the extent that the Regulator is the Commissioner of Taxation.

126A The Regulator may disqualify individuals

- (1) The Regulator may disqualify an individual if satisfied that:
 - (a) the person has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
 - (b) the nature or seriousness of the contravention or contraventions, or the number of contraventions, provides grounds for disqualifying the individual.

Note: For offences relating to disqualified persons, see Subdivision C.

- (2) The Regulator may disqualify an individual who is, or was, a responsible officer of a trustee, investment manager or custodian (the **body corporate**) if satisfied that:
 - (a) the body corporate has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
 - (b) at the time of one or more of the contraventions, the individual was a responsible officer of the body corporate; and
 - (c) in respect of the contravention or contraventions that occurred while the individual was a responsible officer of the body corporate—the nature or seriousness of it or them, or the number of them, provides grounds for the disqualification of the individual.

Section 126B

- (3) The Regulator may disqualify an individual if satisfied that the individual is otherwise not a fit and proper person to be a trustee, investment manager or custodian, or a responsible officer of a body corporate that is a trustee, investment manager or custodian.
- (4) A disqualification takes effect on the day on which it is made.
- (5) The Regulator may revoke a disqualification on application by the disqualified individual or on its own initiative. A revocation takes effect on the day on which it is made.
- (6) The Regulator must give the individual written notice of a disqualification, revocation of a disqualification or a refusal to revoke a disqualification.
- (7) The Regulator must cause particulars of a notice given under subsection (6) or 344(6) (result of internal review) to be published in the *Gazette* as soon as practicable.

126B Application for waiver of disqualified status

- (1) An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:
 - (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
 - (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).
- (2) For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:
 - (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
 - (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.
- (3) An application must:

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- (a) be in writing; and
 - (b) be made within 14 days after the commencement of this subsection or the person's conviction, whichever is the later; and
 - (c) identify the offence to which the application relates; and
 - (d) to the extent that the court documents relating to the offence exist—be accompanied by a copy, certified to be a true copy by the Clerk or Registrar of the court, of those documents; and
 - (e) give consent to the Regulator making inquiries in relation to the applicant of any law enforcement agency, regulatory agency or court that the Regulator believes on reasonable grounds has in its possession or control information directly relevant to the Regulator's consideration of the application; and
 - (f) be signed by the applicant.
- (4) The Regulator may accept an application meeting conditions referred to in subsection (3) other than paragraph (3)(b) after the end of the period referred to in that paragraph only if the Regulator is satisfied that there are exceptional circumstances that prevented the application from being made within that period.
- (5) The court documents are:
 - (a) the information or indictment against the applicant; and
 - (b) the transcript of the proceedings; and
 - (c) witness statements and affidavits; and
 - (d) the court's judgment and orders; and
 - (e) the court's reasons for judgment.
- (6) If an individual is not reasonably able to obtain some or all of the court documents referred to in subsection (5), he or she:
 - (a) may make an application that is not accompanied by those documents; and
 - (b) must give the Regulator those documents as soon as practicable after making the application.

Section 126C

- (7) The Regulator must notify the applicant of any police force, agency or court of which the Regulator intends to make inquiries.
- (8) Such notification should if possible be given to the applicant as soon as practicable after a decision has been made to approach that police force, agency or court.

126C Application must be decided within a period of time

- (1) Subject to this section, the Regulator must decide an application made under section 126B within 60 days after receiving it.
- (2) If the Regulator thinks that it will take longer than 60 days to decide the application, the Regulator may extend the period for deciding it by no more than 60 days.
- (3) The extension must be notified in writing to the applicant within 60 days after the Regulator receives the application.
- (4) If the Regulator makes an extension, the Regulator must decide the application within the extended period.
- (5) If the Regulator has not decided the application by the end of the day by which the Regulator is required to decide it, the Regulator is taken to have decided, at the end of that day, to refuse the application under subsection 126D(3).

126D Notifying of the outcome of an application

- (1A) If, having regard to any of the following:
 - (a) the offence to which the application relates;
 - (b) the time that has passed since the applicant committed the offence;
 - (c) the applicant's age when the applicant committed the offence;
 - (d) the orders made by the court in relation to the offence;
 - (e) any other relevant matter;the Regulator is satisfied that the applicant is highly unlikely to:

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- (f) contravene this Act; and
 - (g) do anything that would result in a self managed superannuation fund not complying with this Act;
- the Regulator must, by notice in writing given to the applicant, make a declaration waiving the applicant's status as a disqualified person for the purposes of this Part.
- (2) Despite any declaration waiving an applicant's status as a disqualified person for the purposes of this Part, the applicant will still be a disqualified person if:
 - (a) the applicant had been convicted of an offence involving dishonest conduct that the applicant did not include in the application; or
 - (b) a civil penalty order has been made against the applicant; or
 - (c) the applicant is insolvent under administration.
- (3) If the Regulator decides not to make a declaration waiving the applicant's status as a disqualified person for the purposes of this Part, the Regulator must:
 - (a) by notice in writing, record that it has so decided; and
 - (b) give the applicant a statement, to which a copy of the notice referred to in paragraph (a) is attached, telling the applicant:
 - (i) that the Regulator has so decided and of the reasons for that decision; and
 - (ii) that the applicant must resign immediately and confirm that resignation, in writing, to the Regulator; and
 - (iii) that if the applicant fails so to resign and is the responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity the Regulator will tell the body corporate of the applicant's status as a disqualified person.
- (4) If the Regulator becomes aware that the responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity has failed to resign in accordance with the requirements of a statement under paragraph (3)(b) the

Section 126E

Regulator must tell the body corporate that the applicant is a disqualified person.

126E The effect of seeking a waiver of disqualified person status

- (1) If:
- (a) a person is a disqualified person; and
 - (b) the person is eligible to make application for a declaration waiving his or her status as a disqualified person; and
 - (c) the person makes application for such a declaration under subsection 126B(3) within the application period specified in that subsection;
- the person is treated, for the purposes of this Act, (other than the purpose of the application for the declaration) as not being, and as never having been, a disqualified person until that application is decided.
- (2) On deciding an application for a declaration waiving the disqualified person status of a person to whom paragraphs 1(a), (b) and (c) apply:
- (a) if the Regulator decides to make the declaration, the Act applies as if the person had never been disqualified; and
 - (b) if the Regulator decides not to make the declaration, the person again becomes a disqualified person from the date of the decision.
- (3) If:
- (a) a person is a disqualified person; and
 - (b) the person is eligible to make application for a declaration waiving his or her status as a disqualified person; and
 - (c) the person makes application for such a declaration under subsection 126B(4);
- then:
- (d) pending the decision of the application the person continues to be a disqualified person for the purposes of this Act; but

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- (e) if the Regulator decides to make a declaration waiving the person's status as a disqualified person, the person is treated, for the purposes of this Act, as if the person had never been a disqualified person.

126F The Regulator's powers to seek further material

- (1) If, to decide an application under subsection 126B(1), the Regulator needs:
 - (a) further information; or
 - (b) the applicant's consent to the Regulator making inquiries about the applicant from another person;the Regulator may ask an applicant to provide information or consent.
- (2) The Regulator may, by notice in writing, require a person who has made an application under subsection 126B(1) to pay to the Regulator an amount equal to the amount of any fees charged to the Regulator by any law enforcement agency, regulatory agency or court for answering any inquiry by the Regulator about the applicant if the fees:
 - (a) are of a kind prescribed for the purposes of this subsection; and
 - (b) exceed an amount prescribed for the purposes of this subsection, or exceed, in total, such an amount.
- (3) The Regulator may, on the application of a person who has made an application under subsection 126B(1), waive in whole or in part, the requirement to pay an amount under subsection (2) if the Regulator is satisfied that there are special circumstances making it unfair to require the applicant to pay that amount or that part of that amount.
- (4) If the applicant fails to comply with the request, the Regulator must treat the application as having been withdrawn.

- (5) Nothing in this section or in section 126B prevents the Regulator from deciding an application before some or all of the requirements in subsection 126B(3) have been complied with.

Subdivision B—Disqualification by the Federal Court of Australia

126G Application of this Subdivision

This Subdivision applies to the extent that the Regulator is APRA.

126H Court power of disqualification

- (1) On application by the Regulator, the Federal Court of Australia may, by order, disqualify an individual from being or acting as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied:
- (a) as mentioned in subsection (3), (4) or (5); and
 - (b) that the disqualification is justified.
- Note: For offences relating to disqualified persons, see Subdivision C.
- (2) For the purposes of subsection (1), the Court may disqualify an individual from being or acting as:
- (a) a trustee of:
 - (i) a particular superannuation entity; or
 - (ii) a class of superannuation entities; or
 - (iii) any superannuation entity; or
 - (b) a responsible officer of:
 - (i) a particular body corporate that is a trustee, an investment manager or a custodian of a superannuation entity; or
 - (ii) a class of bodies corporate that are trustees, investment managers or custodians of superannuation entities; or
 - (iii) any body corporate that is a trustee, investment manager or custodian of a superannuation entity.

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- (3) The Court may disqualify an individual, in accordance with subsection (1), if satisfied:
- (a) that the individual has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
 - (b) that the nature or seriousness of the contravention or contraventions, or the number of contraventions, provides grounds for disqualifying the individual.
- (4) The Court may disqualify an individual, in accordance with subsection (1), who is, or was, a responsible officer of a trustee, investment manager or custodian (the **body corporate**) if satisfied that:
- (a) the body corporate has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
 - (b) at the time of one or more of the contraventions, the individual was a responsible officer of the body corporate; and
 - (c) in respect of the contravention or contraventions that occurred while the individual was a responsible officer of the body corporate—the nature or seriousness of it or them, or the number of them, provides grounds for the disqualification of the individual.
- (5) The Court may disqualify an individual, in accordance with subsection (1), if satisfied that the individual is otherwise not a fit and proper person to be a person referred to in subsection (2).
- (6) In deciding whether it is satisfied as mentioned in subsection (3), (4) or (5), the Court may take into account:
- (a) any matters specified in the regulations for the purposes of this paragraph; and
 - (b) any other matters the Court considers relevant.
- (6A) In deciding whether it is satisfied as mentioned in subsection (5), the Court may also take into account any criteria for fitness and

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propriety that are relevant to the trustee or responsible officer set out in the prudential standards.

- (7) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:
 - (a) the individual's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters the Court considers relevant.
- (8) As soon as practicable after the Court disqualifies an individual under this section, the Regulator must cause particulars of the disqualification to which the notice relates:
 - (a) to be given:
 - (i) if the individual is, or is acting as, a trustee of a superannuation entity—to the entity concerned; or
 - (ii) if the individual is, or is acting as, a responsible officer of a body corporate that is a trustee, an investment manager or a custodian of a superannuation entity—to the body corporate concerned; and
 - (b) to be published in the *Gazette*.

126J Court power to revoke or vary a disqualification etc.

- (1) A disqualified person, or the Regulator, may apply to the Federal Court of Australia for:
 - (a) if an individual is a disqualified person only because he or she was disqualified under section 126H—a variation or a revocation of the order made under that section; or
 - (b) otherwise—an order that the person is not a disqualified person.
- (2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 120, the person is not a *disqualified person*.
- (3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

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- (a) if the disqualified person makes the application—by the person with the Regulator; or
 - (b) if the Regulator makes the application—by the Regulator with the disqualified person.
- (4) An order under paragraph (1)(b) may be expressed to be subject to exceptions and conditions determined by the Court.

Subdivision C—Other matters relating to disqualification

126K Disqualified persons not to be trustees, investment managers or custodians of superannuation entities

- (1) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person knows he or she is a disqualified person; and
 - (c) the person is or acts as a trustee, investment manager or custodian of a superannuation entity; and
 - (d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as a trustee of that superannuation entity.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person knows he or she is a disqualified person; and
 - (c) the person is or acts as a trustee, investment manager or custodian of a superannuation entity; and
 - (d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as a trustee of that superannuation entity.

Penalty: 60 penalty units.

- (3) Subsection (2) is an offence of strict liability.
-

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

- (4) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person knows he or she is a disqualified person; and
 - (c) the person is or acts as a responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity; and
 - (d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as that responsible officer.

Penalty: Imprisonment for 2 years.

- (5) A person commits an offence if:
- (a) the person is a disqualified person; and
 - (b) the person knows he or she is a disqualified person; and
 - (c) the person is or acts as a responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity; and
 - (d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as that responsible officer.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

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

- (7) A person commits an offence if:
- (a) the person is a trustee of a superannuation entity; and
 - (b) the person is or becomes a disqualified person; and
 - (c) the person does not tell the Regulator in writing immediately.

Penalty: 50 penalty units.

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- (8) Subsection (7) is an offence of strict liability.

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

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

126L Privilege against exposure to penalty—disqualification under section 126A, 126H or 130D

Proceedings

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
- (a) to answer a question or give information; or
 - (b) to produce books; or
 - (c) to do any other act;
- on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 126A, 126H or 130D.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

Statutory requirements

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
- (a) to answer a question or give information; or
 - (b) to produce books; or
 - (c) to do any other act;
- on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 126A, 126H or 130D.

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Admissibility

- (4) Subsections 130B(2), 287(3), 290(2) and 336F(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 126A, 126H or 130D.

Other provisions

- (5) Subsections (1) and (3) of this section have effect despite anything in:
- (a) section 199; or
 - (b) any other provision of this Act; or
 - (c) the *Administrative Appeals Tribunal Act 1975*.

Definition

- (6) In this section:

penalty includes forfeiture.

Part 15 Standards for trustees, custodians and investment managers of superannuation entities

Division 4 Non-compliance not to invalidate appointment or transaction

Section 127

Division 4—Non-compliance not to invalidate appointment or transaction

127 Non-compliance not to invalidate appointment or transaction

A failure to comply with a provision of this Part does not affect the validity of an appointment or transaction.

Part 16—Actuaries and auditors of superannuation entities

Division 1—Object of Part

128 Object of Part

The object of this Part is to set out special rules about actuaries and auditors of superannuation entities.

Division 1A—Approved SMSF auditors

Subdivision A—Registration of approved SMSF auditors

128A Application for registration as an approved SMSF auditor

- (1) A natural person who is an Australian resident may apply to the Regulator for registration as an approved SMSF auditor.

- (2) The application must be in the approved form.

Note: The approved form may require electronic lodgement of the application: see sections 11A and 11B.

- (3) The Regulator may request the applicant to give to the Regulator further information relating to the application within a specified time.

- (4) The applicant is taken to have withdrawn the application if he or she does not give the further information within that time.

128B Registration as an approved SMSF auditor

Obligation to register

- (1) The Regulator must grant an application under section 128A and register the applicant as an approved SMSF auditor if:
 - (a) the applicant:
 - (i) has the qualifications prescribed by the regulations; and
 - (ii) has the practical experience prescribed by the regulations; and
 - (iii) has passed a competency examination in accordance with section 128C; and
 - (b) the Regulator is satisfied that the applicant:
 - (i) is capable of performing the duties of an approved SMSF auditor; and
 - (ii) is unlikely to contravene the obligations of an approved SMSF auditor under Subdivision B; and

- (iii) is otherwise a fit and proper person to be an approved SMSF auditor.

Discretion to register

- (2) If the applicant does not meet one or more of the requirements of paragraph (1)(a), the Regulator may grant the application if the applicant meets the requirements of paragraph (1)(b).

Refusal of applications

- (3) If the applicant does not meet the requirements of paragraph (1)(b), the Regulator must refuse the application.
- (4) Despite subsections (1) and (2), the Regulator must refuse the application if the applicant is:
- (a) a person for whom a disqualification order or a suspension order is in force under section 130F; or
 - (b) a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D.
- (5) If the Regulator refuses the application, the Regulator must, not later than 14 days after the decision, give to the applicant a notice in writing setting out the decision and the reasons for it.

Certificate of registration

- (6) If the Regulator grants the application, the Regulator must, not later than 14 days after granting the application, issue to the applicant a certificate:
- (a) stating that the applicant has been registered as an approved SMSF auditor; and
 - (b) stating the applicant's SMSF auditor number; and
 - (c) specifying the day the application was granted.
- (7) A failure to comply with subsection (6) does not affect the validity of the decision.

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Duration of registration

- (8) A registration under this section takes effect at the beginning of the day specified in the certificate as the day the application is granted and remains in force (except while the registration is suspended) until:
- (a) the Regulator cancels the registration under section 128E; or
 - (b) an order disqualifying the person who is registered from being an approved SMSF auditor comes into force under section 130F; or
 - (c) an order disqualifying the person who is registered from being or acting as an auditor of all superannuation entities comes into force under section 130D; or
 - (d) the person who is registered dies.

128C Competency examinations

The applicant is taken to pass a competency examination in accordance with this section if:

- (a) in the 12 month period prior to his or her application under section 128A, the applicant passes an examination conducted by or on behalf of the Regulator for the purposes of this section; and
- (b) the applicant has not, during that period, undertaken and failed to pass such an examination on 2 previous occasions.

128D Conditions on registration

- (1) The Regulator may, at any time, by giving written notice to a person:
- (a) impose conditions, or additional conditions, on the person's registration as an approved SMSF auditor; or
 - (b) vary or revoke conditions imposed on the registration.
- (2) The Regulator may do so:
- (a) on its own initiative; or
 - (b) on application by the person if:

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- (i) the person is an approved SMSF auditor; and
 - (ii) the application is accompanied by any documents prescribed by the regulations.
- (3) Without limiting the conditions that the Regulator may impose under this section, those conditions, or those conditions as varied, may require one or more of the following:
 - (a) that the person complete a course of education or training specified in the notice;
 - (b) that the person undertake and pass a competency examination within a period specified by the Regulator.

128E Cancelling registration

- (1) The Regulator may cancel a person's registration as an approved SMSF auditor if the person requests the Regulator to do so. The request must be in writing.
- (2) The Regulator may cancel a person's registration as an approved SMSF auditor if the Regulator is satisfied that the person:
 - (a) has failed to comply with a condition imposed under section 128D on the person's registration; or
 - (b) has not performed any significant audit work during a continuous period of 5 years, and, as a result, has ceased to have the practical experience necessary for carrying out audits of self managed superannuation funds under this Act; or
 - (c) has failed to comply with the person's obligation to give the Regulator a statement under section 128G; or
 - (d) has ceased to be an Australian resident.
- (3) The Regulator must, not later than 14 days after deciding to cancel the registration, give the person a written notice setting out the decision and the reasons for it.
- (4) The decision takes effect at the end of the day the notice is given to the person.

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- (5) A failure to comply with subsection (3) does not affect the validity of the decision.

Subdivision B—Obligations of approved SMSF auditors

128F Professional obligations of approved SMSF auditors

An approved SMSF auditor must:

- (a) complete the continuing professional development requirements prescribed by the regulations; and
- (b) hold a current policy of professional indemnity insurance, of a level prescribed by the regulations, for claims that may be made against the auditor in connection with audits of self managed superannuation funds; and
- (c) comply with:
 - (i) any competency standards that the Regulator determines under section 128Q; and
 - (ii) any auditing standards, made by the Auditing and Assurance Standards Board under section 336 of the *Corporations Act 2001*, that are applicable to the duties of an approved SMSF auditor under this Act; and
 - (iii) any auditing and assurance standards, formulated by the Auditing and Assurance Standards Board under section 227B of the *Australian Securities and Investments Commission Act 2001*, that are applicable to those duties; and
- (d) comply with the auditor independence requirements prescribed by the regulations.

128G Annual statements

- (1) An approved SMSF auditor or suspended SMSF auditor must, within 30 days after the end of:
- (a) the 12 month period beginning on the day the auditor's registration as an approved SMSF auditor took effect; and
 - (b) each subsequent 12 month period;
- give to the Regulator a statement relating to that period.

- (2) The statement must be in the approved form.
- (3) The Regulator may, at any time before the statement is due, extend (or further extend) the period for giving the statement.

Note: The approved form may require electronic lodgement of the statement: see sections 11A and 11B.

128H Notification of certain matters

If:

- (a) an approved SMSF auditor ceases:
 - (i) to practise as an auditor of self managed superannuation funds; or
 - (ii) to be an Australian resident; or
- (b) a suspended SMSF auditor ceases to be an Australian resident; or
- (c) a change occurs in any matter particulars of which are required by paragraph 128J(2)(a), (c) or (d) to be entered in the Register of Approved SMSF Auditors in relation to an approved SMSF auditor or suspended SMSF auditor; or
- (d) a change occurs in any contact details that were included:
 - (i) in the application of an approved SMSF auditor or suspended SMSF auditor, under section 128A, for registration as an approved SMSF auditor; or
 - (ii) in particulars previously given under this paragraph in relation to an approved SMSF auditor or suspended SMSF auditor;

the approved SMSF auditor or suspended SMSF auditor must, not later than 21 days after the occurrence of the event concerned, give to the Regulator, in the approved form, particulars of that event.

Note: The approved form may require electronic lodgement of the particulars: see sections 11A and 11B.

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Subdivision C—Registers

128J Register of Approved SMSF Auditors

- (1) The Regulator must cause a Register of Approved SMSF Auditors to be kept for the purposes of this Act.
- (2) The Regulator must cause the entry in the Register of the following particulars relating to each person who is an approved SMSF auditor or suspended SMSF auditor:
 - (a) the person's name;
 - (b) the day the person's registration took effect;
 - (c) the address of the principal place where the person practises as an auditor of self managed superannuation funds;
 - (d) if the person practises as an auditor or a member of a firm, or under a name or style other than the person's own name—the name of the firm, or the name or style under which he or she so practises;
 - (e) particulars of any suspension of the person's registration.The Regulator may cause the entry in the Register of such other particulars relating to the person as the Regulator considers appropriate.
- (3) If the person ceases to be an approved SMSF auditor (for a reason other than the person becoming a suspended SMSF auditor), the Regulator must cause to be removed from the Register the person's name and any other particulars relating to the person that are entered in the Register.
- (4) A person may inspect and make copies of, or take extracts from, the Register.

128K Register of Disqualified SMSF Auditors

- (1) The Regulator must cause a Register of Disqualified SMSF Auditors to be kept for the purposes of this Act.

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- (2) The Regulator must cause the entry in the Register of the name, and the contact details last known to the Regulator, of each person for whom an order disqualifying the person from being an approved SMSF auditor is in force under section 130F.
- (3) If the order is revoked, the Regulator must cause to be removed from the Register the person's name and any other particulars relating to the person that are entered in the Register.
- (4) A person may inspect and make copies of, or take extracts from, the Register.

Subdivision D—Fees**128L Fees imposed under the *Superannuation Auditor Registration Imposition Act 2012***

- (1) A fee imposed under the *Superannuation Auditor Registration Imposition Act 2012* is payable for the matters mentioned in an item in column 1 of the table. The fee is payable by the person referred to in the corresponding item in column 2 of the table.

Fees imposed under the <i>Superannuation Auditor Registration Imposition Act 2012</i>		
Item	Column 1 A fee payable for ...	Column 2 Is payable by ...
1	Applying for registration as an approved SMSF auditor	The applicant
2	Undertaking a competency examination in accordance with section 128C	The person undertaking the examination
3	Giving to the Regulator a statement under section 128G	The person giving the statement
4	Giving to the Regulator a statement under section 128G within 1 month after it fell due (in addition to the fee payable because of item 3)	The person giving the statement
5	Giving to the Regulator a statement	The person giving the

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Fees imposed under the *Superannuation Auditor Registration Imposition Act 2012*

Item	Column 1 A fee payable for ...	Column 2 Is payable by ...
	under section 128G more than 1 month after it fell due (in addition to the fee payable because of item 3)	statement
6	Giving to the Regulator particulars under section 128H within 1 month after they fell due	The person giving the particulars
7	Giving to the Regulator particulars under section 128H more than 1 month after they fell due	The person giving the particulars
8	Inspecting or searching a register that the Regulator keeps under this Division	The person who makes a request to inspect or search the register

- (2) The fee is payable to the Regulator on behalf of the Commonwealth.
- (3) The fee is due and payable on the day prescribed by the regulations for the purposes of this subsection.
- (4) The Regulator may, on behalf of the Commonwealth, waive the payment of the whole or a part of the fee, on the Regulator's own initiative or on written application by a person.
- (5) If a fee is payable under this section for a matter (other than a matter referred to in item 8 of the table in subsection (1)), the matter is taken, for the purposes of this Act (other than section 128J), not to have occurred until the fee is paid.
- (6) The Regulator may, on behalf of the Commonwealth, recover a debt due under this section.
- (7) Nothing in a law passed before the commencement of this section exempts a person from liability to pay a fee under this section.

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- (8) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability:
- (a) to pay taxes under laws of the Commonwealth; or
 - (b) to pay certain taxes under those laws that include fees payable under this section;
- is not to be construed as exempting the person from liability to pay fees payable under this section, unless the law or provision expressly exempts a person from liability to pay such fees.

128M Fees for inspection or search

- (1) If a fee is payable under section 128L for a matter referred to in item 8 of the table in subsection 128L(1) that involves the Regulator doing an act, the Regulator may refuse to do the act until the fee is paid.
- (2) To avoid doubt, nothing in this Division, and nothing done under this Division:
- (a) imposes on the Regulator a duty to allow the inspection or search of a register, or to make available information; or
 - (b) confers a right to inspect or search a register or to have information made available;
- except so far as such a duty or right would, but for the effect of this section, exist under a provision of this Act (other than a provision of this Division) or under some other law.

Subdivision E—Miscellaneous**128N ASIC may disclose information to the Commissioner of Taxation**

ASIC may disclose information, given to it in or in connection with the performance of its functions or the exercise of its powers under this Part or Part 25, to the Commissioner of Taxation for the purpose of administering the provisions of this Act.

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Note: A disclosure of information permitted by this section is an authorised disclosure for the purposes of subsection 127(2) of the *Australian Securities and Investments Commission Act 2001*.

128P Commissioner of Taxation may refer matters to ASIC

- (1) If the Commissioner of Taxation is of the opinion that:
 - (a) an approved SMSF auditor is not a fit and proper person to be an approved SMSF auditor; or
 - (b) in relation to the conduct of an audit of a self managed superannuation fund—a person has contravened this Act or the regulations, or a person who conducted, or is conducting, the audit has failed to carry out or perform adequately and properly:
 - (i) the duties of an auditor under this Act or the regulations; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
 - (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*;the Commissioner of Taxation may refer the details of the matter to ASIC.
- (2) The Commissioner of Taxation may exercise the power under subsection (1) in relation to an approved SMSF auditor whether or not an order disqualifying or suspending the approved SMSF auditor has been made under section 130F.
- (3) If, under subsection (1), the Commissioner of Taxation refers details of a matter to ASIC, the Commissioner of Taxation must, as soon as practicable but, in any event, not later than 14 days after the referral, by notice in writing given to the auditor or person concerned, inform the auditor or person:
 - (a) of the fact that a matter has been referred under subsection (1); and
 - (b) of the nature of the matter so referred.

128Q Competency standards

- (1) The Regulator may, by legislative instrument, determine competency standards to be complied with by all approved SMSF auditors.
- (2) A competency standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (3) Without limiting the matters in relation to which the Regulator may determine a competency standard, a competency standard may provide for matters relating to any of the following:
 - (a) the conduct of audits;
 - (b) the professional obligations of approved SMSF auditors;
 - (c) knowledge of laws applying to approved SMSF auditors;
 - (d) compliance with laws applying to approved SMSF auditors.
- (4) A competency standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

Division 2—Obligations of actuaries and auditors

129 Obligations of actuaries and auditors—compliance

When section applies

- (1) This section applies to a person in relation to a superannuation entity if:
 - (a) the person forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:
 - (i) this Act, the regulations or the prudential standards;
 - (ii) if the entity is a registrable superannuation entity—the *Financial Sector (Collection of Data) Act 2001*;
 - (iii) if the entity is a registrable superannuation entity—a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of **regulatory provision** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity.

Section does not apply if the person believes that his or her opinion is not relevant to the performance of actuarial or audit functions

- (2) This section does not apply to the person if the person has an honest belief that the opinion is not relevant to the performance of those functions.

Trustee and Regulator to be told about the matter

- (3) Subject to subsection (3A), the person must, immediately after forming the opinion mentioned in paragraph (1)(a):
- (a) tell a trustee of the entity about the matter in writing; and
 - (b) if the superannuation entity is not a self managed superannuation fund and the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing; and
 - (c) if the superannuation entity is a self managed superannuation fund and the matter is specified in the approved form—tell the Regulator about the matter in the approved form.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

The person may not have to tell a trustee or the Regulator about the matter

- (3A) The person does not have to:
- (a) tell a trustee of the entity about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the entity about the matter; and
 - (ii) the first-mentioned person has no reason to disbelieve that other person; or
 - (b) tell the Regulator about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and
 - (ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

- (3B) A person (the **first person**) commits an offence if:

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- (a) this section applies to the first person; and
- (b) the first person is aware of a matter that must, under this section, be told to a trustee; and
- (c) the first person tells another person to whom this section applies that the first person has told a trustee about the matter; and
- (d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

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

(3C) A person (the **first person**) commits an offence if:

- (a) this section applies to the first person; and
- (b) the first person is aware of a matter that must, under this section, be told to the Regulator; and
- (c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and
- (d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

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

No civil liability for telling about a matter

- (4) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

- (5) A person commits an offence if the person contravenes subsection (3).

Penalty: 50 penalty units.

- (6) A person commits an offence if the person contravenes subsection (3). This is an offence of strict liability.

Penalty: 25 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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

130 Obligations of actuaries and auditors—solvency

When section applies

- (1) This section applies to a person in relation to a superannuation entity if:
- (a) the person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity.

Regulator and trustee to be told about the financial position

- (2) Subject to subsection (2A), the person must, immediately after forming the opinion mentioned in paragraph (1)(a), tell the Regulator, and a trustee of the entity, about the matter in writing.

The person may not have to tell the Regulator or a trustee about the matter

- (2A) The person does not have to:
- (a) tell the Regulator about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

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- (ii) the first-mentioned person has no reason to disbelieve that other person; or
- (b) tell a trustee of the entity about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the entity about the matter; and
 - (ii) the first-mentioned person has no reason to disbelieve that other person.

Penalty for misinformation

- (2B) A person (the **first person**) commits an offence if:
- (a) this section applies to the first person; and
 - (b) the first person is aware of a matter that must, under this section, be told to the Regulator and a trustee; and
 - (c) the first person tells another person to whom this section applies that the first person has told either or both the Regulator and a trustee about the matter; and
 - (d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

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

No civil liability for telling about a matter

- (3) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

- (5) A person commits an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 25 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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

When financial position is unsatisfactory

- (7) For the purposes of this section, the financial position of an entity is taken to be unsatisfactory if, and only if, under the regulations, the financial position of the entity is treated as unsatisfactory.

130A Auditor or actuary may give information to the Regulator

A person who is or was an auditor or actuary of a superannuation entity may give to the Regulator information about the entity or a trustee of the entity obtained in the course of, or in connection with, the performance by the person of audit or actuarial functions under:

- (a) this Act; or
- (b) the regulations; or
- (ba) the prudential standards; or
- (c) the *Financial Sector (Collection of Data) Act 2001*; or
- (d) the *Corporations Act 2001*;

if the person considers that giving the information will assist the Regulator in performing its functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*.

130B Self incrimination

- (1) An individual is not excused from complying with a requirement under section 129 or 130 to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

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- (2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:
- (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
 - (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

130BA Auditor must notify the Regulator of attempts to unduly influence etc. the auditor etc.

- (1) If an auditor of a superannuation entity is aware of circumstances that amount to:
- (a) an attempt, in relation to an audit of the superannuation entity, by any person to unduly influence, coerce, manipulate or mislead the auditor or a member of the audit team conducting the audit; or
 - (b) an attempt by any person to otherwise interfere with the proper conduct of the audit;
- the auditor must notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.
- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

130BB Giving false or misleading information to auditor

Offence—person knows the information is false or misleading etc.

- (1) A person commits an offence if:
- (a) the person is:
 - (i) the trustee of a superannuation entity; or

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- (ii) a responsible officer of the trustee of a superannuation entity; or
- (iii) an employee of the trustee of a superannuation entity; and
- (b) the person gives information, or allows information to be given, to an auditor of the superannuation entity; and
- (c) the information relates to the affairs of the superannuation entity; and
- (d) the person knows that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

Offence—person fails to ensure the information is not false or misleading etc.

- (2) A person commits an offence if:
- (a) the person is:
 - (i) the trustee of a superannuation entity; or
 - (ii) a responsible officer of the trustee of a superannuation entity; or
 - (iii) an employee of the trustee of a superannuation entity; and
 - (b) the person gives information, or allows information to be given, to an auditor of the superannuation entity; and
 - (c) the information relates to the affairs of the superannuation entity; and
 - (d) the information:
 - (i) is false or misleading in a material particular; or
 - (ii) is missing something that makes the information misleading in a material respect; and
 - (e) the person did not take reasonable steps to ensure that the information:
 - (i) was not false or misleading in a material particular; or

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- (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

Determining whether information is false or misleading

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

130C Actuaries and auditors—failure to implement actuarial recommendations

When section applies

- (1) This section applies to a person in relation to a defined benefit fund that is a registrable superannuation entity if:
 - (a) the person forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer-sponsor that a trustee of the fund, or an employer-sponsor of the fund, was required to implement and that was contained in:
 - (i) a report of an actuary obtained under the regulations or the prudential standards; or
 - (ii) a report of an actuary obtained in accordance with a requirement under the regulations or the prudential standards; or
 - (iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions in relation to the entity under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*.

Trustee and Regulator to be told about the matter

- (2) Subject to subsection (3), the person must, as soon as practicable after forming the opinion mentioned in paragraph (1)(a):
- (a) tell a trustee of the fund about the matter in writing; and
 - (b) if the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) is of such a nature that it may affect the interests of members or beneficiaries of the fund—tell the Regulator about the matter in writing.

The person may not have to tell a trustee or the Regulator about the matter

- (3) The person does not have to:
- (a) tell a trustee of the fund about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the fund about the matter; and
 - (ii) the first-mentioned person has no reason to disbelieve that other person; or
 - (b) tell the Regulator about the matter if:
 - (i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and
 - (ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

- (4) A person (the **first person**) commits an offence if:
- (a) this section applies to the first person; and
 - (b) the first person is aware of a matter that must, under this section, be told to a trustee; and
 - (c) the first person tells another person to whom this section applies that the first person has told a trustee about the matter; and

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- (d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

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

- (4A) A person (the ***first person***) commits an offence if:
- (a) this section applies to the first person; and
 - (b) the first person is aware of a matter that must, under this section, be told to the Regulator; and
 - (c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and
 - (d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

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

No civil liability for telling about a matter

- (5) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the fund, about a matter as required by this section.

Offences

- (6) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

- (7) A person commits an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 25 penalty units.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

Section 130D

Division 3—Disqualifying and removing actuaries and auditors

130D Court power of disqualification

- (1) This section applies to the extent that the Regulator is APRA.
- (2) On application by the Regulator, the Federal Court of Australia may, by order, disqualify a person from being or acting as a person referred to in subsection (3), for a period that the Court considers appropriate, if the Court is satisfied:
 - (a) as mentioned in subsection (4); and
 - (b) that the disqualification is justified.

Note: For offences relating to persons disqualified under this section, see section 131C.

- (3) For the purposes of subsection (2), the Court may disqualify a person from being or acting as an auditor or actuary, for the purposes of this Act, of:
 - (a) a particular superannuation entity; or
 - (b) a class of superannuation entities; or
 - (c) any superannuation entity.
- (4) The Court may disqualify a person, in accordance with subsection (2), if the Court is satisfied that:
 - (a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor or actuary under this Act, the regulations or the prudential standards; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor or actuary; or
 - (iii) any functions that an auditor or actuary is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or

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- (aa) the person has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or
 - (b) the person is otherwise not a fit and proper person to be a person referred to in subsection (3).
- (5) In deciding whether it is satisfied as mentioned in subsection (4), the Court may take into account:
 - (a) any matters specified in the regulations or the prudential standards for the purposes of this paragraph; and
 - (b) any other matters the Court considers relevant.
- (5A) In deciding whether it is satisfied as mentioned in paragraph (4)(b), the Court may also take into account any criteria for fitness and propriety that are relevant to the person as auditor or actuary set out in the prudential standards.
- (6) In deciding whether the disqualification is justified as mentioned in paragraph (2)(b), the Court may have regard to:
 - (a) the person's conduct in relation to his or her duties under this Act, the regulations and the prudential standards; and
 - (b) any other matters the Court considers relevant.
- (7) As soon as practicable after the Court disqualifies a person under this section, the Regulator must cause particulars of the disqualification to which the notice relates to be published in the *Gazette*.

130E Court power to revoke or vary a disqualification etc.

- (1) A person who is disqualified under section 130D, or the Regulator (to the extent that the Regulator is APRA), may apply to the Federal Court of Australia for a variation or a revocation of an order made under section 130D.
- (2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

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- (a) if the person who is disqualified makes the application—by the person with the Regulator; or
- (b) if the Regulator makes the application—by the Regulator with the person who is disqualified.

130F Approved SMSF auditors—disqualification and suspension orders

Application of section

- (1) This section applies to the extent that the Regulator is ASIC.

Disqualification orders and suspension orders

- (2) The Regulator may make a written order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, if:
 - (a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor under this Act or the regulations; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
 - (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) the person has failed to comply with a condition, or additional condition, imposed under section 128D on the person's registration as an approved SMSF auditor; or
 - (c) the person has made a false declaration in:
 - (i) an application for registration as an approved SMSF auditor; or
 - (ii) a statement given to the Regulator under section 128G; or
 - (d) the person is otherwise not a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

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Note: For offences relating to persons disqualified or suspended under this section, see section 131C.

- (3) The Regulator must give a copy of the order to the person.

Date of effect

- (4) The order takes effect on the day specified in the order. The specified day must be within the 28 day period beginning on the day on which the order was made.

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- (5) If the Regulator's decision is to make an order under this section disqualifying a person from being an approved SMSF auditor, the Regulator must cause a copy of the order to be published in the *Gazette* as soon as practicable after it is made.
- (6) If the Regulator's decision to make the disqualification order is varied or revoked by the Regulator as a result of a reconsideration under subsection 344(4), the Regulator must cause a notice of the variation or revocation to be published in the *Gazette* as soon as practicable after the decision to vary or revoke the order is made.
- (7) If:
- (a) the Regulator's decision to make the disqualification order is confirmed or varied by the Regulator as a result of a reconsideration under subsection 344(4); and
 - (b) the decision as so confirmed or varied is varied or set aside by the Administrative Appeals Tribunal;
- the Regulator must cause a notice of the Tribunal's decision to be published in the *Gazette* as soon as practicable after it is made.

Revocation

- (8) The Regulator may revoke an order under this section. The Regulator's power to revoke may be exercised:
- (a) on the Regulator's own initiative; or

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- (b) on written application made by the person disqualified or suspended.

Revocation—decision on application

- (9) If an application is made for the revocation of the order, the Regulator must decide to:
 - (a) revoke the order; or
 - (b) refuse to revoke the order.

Revocation—grounds

- (10) The Regulator must not revoke the order unless the Regulator is satisfied that the person concerned:
 - (a) is likely to carry out and perform adequately and properly the duties of an approved SMSF auditor under this Act or the regulations; and
 - (b) is otherwise a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

Revocation—date of effect

- (11) A revocation of the order takes effect on the day the revocation is made.

Revocation—reasons for refusing to revoke

- (12) If the Regulator decides to refuse an application for revocation of the order, the Regulator must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

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- (13) If the order that the Regulator revokes under subsection (8) is an order disqualifying a person from being an approved SMSF auditor, the Regulator must cause particulars of the revocation to be published in the *Gazette* as soon as practicable after it occurs.

131 Actuaries—disqualification orders

Application of section

- (1A) This section applies to the extent that the Regulator is the Commissioner of Taxation.

Disqualification order

- (1) The Regulator may make a written order (a **disqualification order**) disqualifying a person from being an actuary for the purposes of this Act if:
- (a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an actuary under this Act or the regulations; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an actuary; or
 - (iii) any functions that an actuary is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
 - (b) the person is otherwise not a fit and proper person to be an actuary for the purposes of this Act.

Note: For offences relating to persons disqualified under this section, see section 131C.

Date of effect

- (2) A disqualification order takes effect on the day specified in the order. The specified day must be within the 28-day period beginning on the day on which the order was made.

Notification

- (3) The Regulator must give a copy of the order to the person.

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- (4) The Regulator must cause particulars of the disqualification order to be published in the *Gazette* as soon as practicable after it is made.
- (4A) If the Regulator's decision to make the disqualification order is varied or revoked by the Regulator as a result of a reconsideration under subsection 344(4), the Regulator must cause particulars of the variation or revocation to be published in the *Gazette* as soon as practicable after the decision is made.
- (4B) If:
 - (a) the Regulator's decision to make the disqualification order is confirmed or varied by the Regulator as a result of a reconsideration under subsection 344(4); and
 - (b) the decision as so confirmed or varied is varied or set aside by the Administrative Appeals Tribunal;the Regulator must cause particulars of the Tribunal's decision to be published in the *Gazette* as soon as practicable after it is given.

Revocation

- (5) The Regulator may revoke a disqualification order. The Regulator's power to revoke may be exercised:
 - (a) on the Regulator's own initiative; or
 - (b) on written application made by the disqualified person.

Revocation—decision on application

- (6) If an application is made for the revocation of a disqualification order, the Regulator must decide to:
 - (a) revoke the order; or
 - (b) refuse to revoke the order.

Revocation—grounds

- (7) The Regulator must not revoke a disqualification order unless the Regulator is satisfied that the person concerned:

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- (a) is likely to carry out and perform adequately and properly the duties of an actuary under this Act or the regulations; and
- (b) is otherwise a fit and proper person to be an actuary for the purposes of this Act.

Revocation—date of effect

- (8) A revocation of a disqualification order takes effect on the day the revocation is made.

Reasons for revocation

- (9) If the Regulator decides to refuse an application for revocation of a disqualification order, the Regulator must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

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- (10) If the Regulator revokes a disqualification order under subsection (5), the Regulator must cause particulars of the revocation to be published in the *Gazette* as soon as practicable after it occurs.

131AA APRA may direct removal of auditor or actuary

- (1) APRA may, if satisfied there is a ground under subsection (2), give a written direction to the trustee or trustees of a superannuation entity that is not a self managed superannuation fund to end the appointment of a person as:
 - (a) the auditor of the superannuation entity; or
 - (b) the actuary of the superannuation entity.
- (2) The grounds for giving a direction to end a person's appointment are:
 - (a) the person is disqualified under section 130D or 131 from being, or acting as, an auditor or actuary of the superannuation entity; or

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- (b) the person is not a fit and proper person to hold the appointment; or
 - (ba) the person has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or
 - (c) the person has failed to perform adequately and properly the duties or functions of the appointment under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*.
- (2A) In deciding, for the purposes of paragraph (2)(b), whether a person is a fit and proper person to hold an appointment, APRA may take into account any criteria for fitness and propriety that are relevant to the appointment set out in the prudential standards.
- (3) Before directing a trustee or trustees to end a person's appointment, APRA must:
 - (a) give written notice to:
 - (i) the trustee or trustees; and
 - (ii) the person; and
 - (b) give the trustee or trustees and the person a reasonable opportunity to make submissions on the matter.
- (4) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (5)(b).
- (5) If a submission is made in response to the notice, APRA:
 - (a) must have regard to the submission; and
 - (b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.
- (6) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.

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- (7) If APRA directs a trustee or trustees to end a person's appointment, APRA must give the trustee or trustees and the person a copy of the direction.
- (8) A direction to end a person's appointment is not a legislative instrument.
- (9) A trustee commits an offence if:
 - (a) the trustee does or fails to do an act; and
 - (b) by doing or failing to do the act, the trustee fails to comply with a direction under this section.

Penalty: 60 penalty units.

- (10) Strict liability applies to subsection (9).

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

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Division 4—Offences and failure to carry out duties etc.

131A The Regulator may refer matters to a professional association

- (1) If the Regulator is of the opinion that an RSE auditor or a superannuation actuary:
- (a) has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor or an actuary under this Act, the regulations or the prudential standards; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor or an actuary; or
 - (iii) any functions that an auditor or actuary is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or
 - (aa) has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or
 - (b) is otherwise not a fit and proper person to be an RSE auditor or a superannuation actuary for the purposes of this Act;
- the Regulator may refer the details of the matter to the persons specified in subsection (2).

Note: Persons to whom the Regulator refers the details of the matter are subject to secrecy obligations under section 56 of the *Australian Prudential Regulation Authority Act 1998* (if APRA is the Regulator) or Division 355 in Schedule 1 to the *Taxation Administration Act 1953* (if the Commissioner of Taxation is the Regulator). In particular, see paragraph (c) of the definition of **officer** in subsection (1), and subsections (2), (9) and (10), of section 56 of the *Australian Prudential Regulation Authority Act 1998* and sections 355-15 and 355-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (1A) In deciding whether it is satisfied as mentioned in paragraph (1)(b) in relation to a person who is or has been an RSE auditor or an

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RSE actuary, the Regulator may also take into account any criteria for fitness and propriety that are relevant to the auditor or actuary set out in the prudential standards.

- (2) The persons specified in relation to an RSE auditor or a superannuation actuary for the purposes of subsection (1) are those members of the auditor's or actuary's professional association whom the Regulator believes will be involved:
 - (a) in deciding whether the professional association should take any disciplinary or other action against the auditor or actuary in respect of the matter referred; or
 - (b) in taking that action.
- (3) In relation to an RSE auditor or a superannuation actuary, the power of the Regulator under subsection (1) may be exercised whether or not an order disqualifying the auditor or actuary has been made under section 130D or 131.
- (4) If, under this section, the Regulator refers details of a matter involving an RSE auditor or a superannuation actuary, the Regulator must, as soon as practicable but, in any event, not later than 7 days after the referral, by notice in writing given to the auditor or actuary, inform the auditor or actuary:
 - (a) of the fact that a matter has been referred under subsection (1); and
 - (b) of the nature of the matter so referred.

131B Offence of holding oneself out as an actuary or auditor

- (1) A person commits an offence if:
 - (a) the person holds themselves out as a superannuation actuary; and
 - (b) the person is not a superannuation actuary.

Penalty: 50 penalty units.

- (2) A person commits an offence if:

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- (a) the person holds themselves out as an approved SMSF auditor;
and
- (b) the person is not an approved SMSF auditor.

Penalty: 50 penalty units.

(2A) A person commits an offence if:

- (a) the person holds themselves out as an RSE auditor; and
- (b) the person is not an RSE auditor.

Penalty: 50 penalty units.

(3) Subsections (1), (2) and (2A) are offences of strict liability.

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

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

131C Disqualified persons not to be auditor or actuary of superannuation entities

(1) A person commits an offence if:

- (a) the person is, or acts as, an auditor or actuary of a superannuation entity for the purposes of this Act; and
- (b) either:
 - (i) for a person who is disqualified under section 130D—the person is disqualified from being or acting as an auditor or actuary (as the case requires) of that superannuation entity; or
 - (ii) the person is disqualified or suspended under section 130F from being an approved SMSF auditor; or
 - (iii) the person is disqualified under section 131 from being an actuary; and
- (c) the person knows that he or she is so disqualified or suspended.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

Section 131C

- (a) the person is, or acts as, an auditor or actuary of a superannuation entity for the purposes of this Act; and
- (b) either:
 - (i) for a person who is disqualified under section 130D—the person is disqualified from being or acting as an auditor or actuary (as the case requires) of that superannuation entity; or
 - (ii) the person is disqualified or suspended under section 130F from being an approved SMSF auditor; or
 - (iii) the person is disqualified under section 131 from being an actuary; and
- (c) the person knows that he or she is so disqualified or suspended.

Penalty: 60 penalty units.

- (3) Subsection (2) is an offence of strict liability.

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

Section 132

Part 17—Suspension or removal of trustee of superannuation entity

132 Object of Part

The object of this Part is to provide for the suspension or removal of a trustee of a superannuation entity, and for the appointment of an acting trustee.

133 Suspension or removal of trustee of superannuation entity

Suspension or removal

- (1) The Regulator may suspend or remove a trustee of a superannuation entity if:
 - (a) either:
 - (i) for a trustee who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the individual is disqualified from being or acting as a trustee of that superannuation entity; and
 - (ii) otherwise—the trustee is a disqualified person within the meaning of Part 15; or
 - (b) it appears to the Regulator that conduct that has been, is being, or is proposed to be, engaged in by the trustee or any other trustees of the entity may result in the financial position of the entity or of any other superannuation entity becoming unsatisfactory; or
 - (c) if the trustee is a trustee of a registrable superannuation entity—the trustee is not an RSE licensee or a member of a group of individuals that is an RSE licensee; or
 - (e) if the trustee is an RSE licensee—the RSE licensee breaches any of the conditions of its RSE licence.

Period of suspension

- (2) A suspension of a trustee is to be for such period as the Regulator determines.

Extension of period of suspension

- (3) A suspension of a trustee may be extended for such further period or such further periods as the Regulator determines.

Reasons

- (4) If the Regulator makes a decision:
 - (a) suspending or removing a trustee; or
 - (b) extending the suspension of a trustee;
 the Regulator must cause to be given to the trustee a written notice:
 - (c) setting out that decision; and
 - (d) giving the reasons for that decision.

134 APRA to appoint acting trustee in cases of suspension or removal

Suspension

- (1) If the Regulator suspends all of the trustees of a superannuation entity, the Regulator must appoint a constitutional corporation or an individual to act as the trustee during the period of the suspension. The appointee is called the ***acting trustee***.

Removal

- (2) If the Regulator removes all of the trustees of a superannuation entity, the Regulator must appoint a constitutional corporation or an individual to act as the trustee until the vacancy in the position of trustee is filled. The appointee is called the ***acting trustee***.

Section 135

Pension funds

- (3) The Regulator must not appoint an individual as the acting trustee of a superannuation entity unless the governing rules of the entity provide that the sole or primary purpose of the entity is the provision of old-age pensions.

Groups

- (4) If:
- (a) there is a group of individual trustees of a superannuation entity; and
 - (b) the Regulator suspends or removes all of the trustees; and
 - (c) the Regulator is satisfied that any one or more of the persons who were suspended or removed is a fit and proper person to be appointed as the acting trustee;
- this Act does not prevent the Regulator from so appointing that person.
- (5) In deciding whether it is satisfied as mentioned in paragraph (4)(c) in relation to a person who is or has been a trustee of a registrable superannuation entity, the Regulator may also take into account any criteria for fitness and propriety that are relevant to the trustee set out in the prudential standards.

135 Terms and conditions of appointment of acting trustee

- (1) The Regulator may determine the terms and conditions of the appointment of the acting trustee, including fees. The determination has effect despite anything in:
- (a) any other provision of this Act; and
 - (b) the regulations; and
 - (ba) the prudential standards; and
 - (c) any other law; and
 - (d) the entity's governing rules.
- (2) Without limiting subsection (1), the Regulator may make a determination under that subsection to the effect that the acting

trustee's fees are to be paid out of the corpus of the entity concerned.

(3) If:

- (a) a person (the *former trustee*) is suspended or removed as a trustee of a superannuation entity; and
- (b) a person is appointed under this Part to act as trustee of the superannuation entity; and
- (c) the acting trustee is required under the terms and conditions of his or her appointment to give information to APRA; and
- (d) the acting trustee gives the former trustee notice in writing of the requirement;

the former trustee must do all things reasonably practicable to assist the acting trustee to comply with the requirement.

(4) The former trustee commits an offence of strict liability if the former trustee fails to comply with subsection (3).

Penalty for contravention of this subsection: 50 penalty units.

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

136 Termination of appointment of acting trustee

The Regulator may terminate the appointment of the acting trustee at any time.

137 Resignation of acting trustee

The acting trustee may resign by writing delivered to the Regulator. The resignation does not take effect until the end of the 7th day after the day on which it was delivered to the Regulator. (The delay gives the Regulator time to appoint a fresh acting trustee.)

Section 138

138 Property vesting orders

- (1) If a person is appointed as acting trustee, the Regulator must make a written order vesting the property of the entity concerned in the acting trustee.
- (2) If the appointment of the acting trustee comes to an end, the Regulator must make a written order vesting the property of the entity concerned in:
 - (a) if there is to be a fresh acting trustee—the fresh acting trustee; or
 - (b) if the acting trustee acted during a period of suspension of the actual trustee and the suspension has come to an end—the actual trustee; or
 - (c) if the acting trustee acted because of a vacancy in the position of actual trustee and the acting trustee's appointment has come to an end because the vacancy in the position of actual trustee has been filled by a new actual trustee—the actual trustee.
- (3) If an order is made by the Regulator under this section vesting property of a superannuation entity in a person:
 - (a) if the property was vested in law in the trustee—subject to subsections (4) and (5), the property immediately vests in law in the person named in the order by force of this Act; and
 - (b) if the property was vested in equity in the trustee—the property immediately vests in equity in the person named in the order by force of this Act.
- (4) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the registration of such an order;the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

- (5) If:
- (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the person named in the order to be registered as the owner of that property;
- the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

139 Powers of acting trustee

Subject to section 138, while a person is acting as trustee under this Part:

- (a) the person has and may exercise all the rights, title and powers, and must perform all the functions and duties, of the trustee; and
- (b) the entity's governing rules, this Act, the regulations, the prudential standards and any other law apply in relation to the person as if the person were the trustee.

139A Acting trustee authorised to offer a MySuper product

- (1) This section applies if:
 - (a) the trustee, or the trustees, of a regulated superannuation fund is or are suspended or removed; and
 - (b) before the suspension or removal, the RSE licensee of the fund was authorised to offer a class of beneficial interest in the fund as a MySuper product.
- (2) The Regulator must not appoint a person to act as trustee of the fund unless the person has made elections of the kind referred to in sections 29SAA, 29SAB and 29SAC.
- (3) The person appointed to act as trustee of the fund is taken to have been authorised to offer that class of beneficial interest in the fund as a MySuper product.

Section 139B

139B Acting trustee authorised to operate an eligible rollover fund

- (1) This section applies if the trustee, or the trustees, of an eligible rollover fund is or are suspended or removed.
- (2) The Regulator must not appoint a person to act as trustee of the fund unless the person has made elections of the kind referred to in sections 242B and 242C.
- (3) The person appointed to act as trustee of the fund is taken to have been authorised to operate the eligible rollover fund.

140 Acting trustee to notify appointment to beneficiaries

- (1) If a person is appointed under this Part to act as trustee of a superannuation entity, the person must, as soon as practicable, give each beneficiary a notice about the appointment.
- (2) The notice is to be in the approved form.
- (3) A person who, without reasonable excuse, contravenes this section commits an offence punishable on conviction by a fine not exceeding 50 penalty units.
- (3A) Subsection (3) is an offence of strict liability.
 - Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
 - Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (4) A contravention of subsection (1) does not affect the validity of the appointment.

141 The Regulator may give directions to acting trustee

- (1) If a person is appointed under this Part to act as trustee of a superannuation entity, the Regulator may give a written notice to the person directing the person to do, or not to do, one or more specified acts or things in relation to the superannuation entity.

Section 141A

- (2) A person must not intentionally or recklessly contravene a direction under subsection (1).

Penalty: 100 penalty units.

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

- (3) This section does not affect the validity of a transaction entered into by a person in contravention of the notice.

141A Property vested in acting trustee—former trustee’s obligations relating to books, identification of property and transfer of property

- (1) This section applies if:
- (a) after the commencement of this section, the Regulator makes an order under subsection 138(1) or (2) vesting the property of a superannuation entity in an acting trustee; or
 - (b) the Regulator made such an order before the commencement of this section and that order is still in force when this section commences.
- (2) In this section, the person in whom the property was vested immediately before the order was made is referred to as the ***former trustee***.
- (3) The former trustee commits an offence:
- (a) if paragraph (1)(a) applies—if the former trustee does not, within 14 days of the order being made, give the acting trustee all books relating to the entity’s affairs that are in the former trustee’s possession, custody or control; or
 - (b) if paragraph (1)(b) applies—if the former trustee does not, within 14 days of the commencement of this section, give the acting trustee all books relating to the entity’s affairs that are in the former trustee’s possession, custody or control.

Penalty: 50 penalty units.

Section 142

- (4) The acting trustee may, by notice in writing to the former trustee, require the former trustee, so far as the former trustee can do so:
 - (a) to identify property of the entity; and
 - (b) to explain how the former trustee has kept account of that property.
- (5) The acting trustee may, by notice in writing to the former trustee, require the former trustee to take specified action that is necessary to bring about a transfer of specified property of the entity to the acting trustee.
- (6) The former trustee commits an offence if:
 - (a) the acting trustee gives the former trustee a notice under subsection (4) or (5); and
 - (b) the former trustee does not, within 28 days of the notice being given, comply with the requirement in the notice.

Penalty: 50 penalty units.

- (7) Subsections (3) and (6) are offences of strict liability.

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

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

142 The Regulator may formulate a scheme for the winding-up or dissolution, or both, of a superannuation entity

Schemes

- (1) If a person is appointed under this Part to act as trustee of a superannuation entity, the Regulator may, by legislative instrument, formulate a scheme for the winding-up or dissolution, or both, of the entity.

Vacancies

- (2) Without limiting subsection (1), a scheme may make provision for and in relation to prohibiting the appointment of a person to fill a vacancy in the position of trustee.

Contravention of scheme

- (3) A person must not intentionally or recklessly contravene the provisions of a scheme formulated under this section.

Penalty: 100 penalty units.

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

Notification

- (4) The Regulator must give a copy of an instrument under subsection (1) to the acting trustee.

Beneficiaries to be told

- (5) Without limiting section 141, the Regulator may give a direction under that section to the acting trustee requiring the acting trustee to tell beneficiaries in the entity about an instrument under subsection (1).

Copies to be supplied

- (6) A person whose interests are affected by an instrument under subsection (1) may request the Regulator to give the person a copy of the instrument. The Regulator must comply with the request.

Advertising

- (7) The Regulator must advertise the making of each instrument under subsection (1) in such newspaper or newspapers as the Regulator considers reasonable having regard to the likely places of residence of the majority of beneficiaries in the entity. The advertisement is to be in the prescribed form.
- (9) Section 42 of the *Legislation Act 2003* does not apply to an instrument relating to an appointment under this Part of a person as a trustee of a superannuation entity if the appointment arose because of the removal, under paragraph 133(1)(c), of another trustee that:

Section 142

- (a) was an approved trustee at any time during the licensing transition period; and
- (b) was not an RSE licensee at the end of that period.

Part 18—Amalgamation of funds

143 Object of Part

The object of this Part is to empower APRA to approve, in certain circumstances, the transfer of all benefits of members and beneficiaries in a regulated superannuation fund or approved deposit fund to another regulated superannuation fund or approved deposit fund.

144 Benefits may be transferred to a new fund with APRA's approval etc.

- (1) All benefits of members and beneficiaries in a regulated superannuation fund or approved deposit fund (the ***transferor fund***) may be transferred to another regulated superannuation fund or approved deposit fund (the ***transferee fund***) if:
 - (a) APRA approves the transfer under this Part; and
 - (b) the transfer takes place under an arrangement between all the trustees of the transferor fund and:
 - (i) if the trustee of the transferee fund is a body corporate—the RSE licensee of the transferee fund; or
 - (ii) if there is a group of individual trustees of the transferee fund that is an RSE licensee—all of the individual trustees of the transferee fund.
- (2) This section does not affect the transfer of any benefits in a superannuation fund or approved deposit fund under any other provision of this Act or under the regulations.

145 Application for approval of transfer

- (1) An application to APRA for approval of the transfer of all benefits of members and beneficiaries in the transferor fund to the transferee fund may be made by all the trustees of the transferor fund and:

Section 146

- (a) if the trustee of the transferee fund is a body corporate—the RSE licensee of the transferee fund; or
 - (b) if there is a group of individual trustees of the transferee fund that is an RSE licensee—all of the individual trustees of the transferee fund.
- (2) The application must be in the approved form.

146 Approval of transfer

APRA may approve the transfer of all benefits of members and beneficiaries in the transferor fund to the transferee fund in accordance with an application under section 145 if, and only if, APRA is satisfied that:

- (a) either:
 - (i) reasonable attempts to bring about the transfer under another provision of this Act or under the regulations have failed; or
 - (ii) the transfer would take place under a scheme formulated under section 142; and
- (b) the transfer is reasonable in all the circumstances, having regard to:
 - (i) the benefit entitlements of members and beneficiaries under the governing rules of the transferor fund; and
 - (ii) the likely effect on the amount of those entitlements if those members and beneficiaries were to remain members and beneficiaries of the transferor fund; and
 - (iii) the benefit entitlements of members and beneficiaries under the governing rules of the transferee fund; and
 - (iv) the value of the assets transferred from the transferor fund to the transferee fund under the arrangement referred to in paragraph 144(1)(b); and
- (c) the transfer would not adversely affect the interests of the members and beneficiaries of the transferee fund; and
- (d) the transferee fund has an RSE licensee.

147 Cessation of rights against transferor fund

If the benefits of members and beneficiaries in a transferor fund are transferred to a transferee fund under this Part:

- (a) the members and beneficiaries cease to have rights against the transferor fund; and
- (b) if:
 - (i) immediately before the transfer occurred, another person had a contingent right against the transferor fund to a death or disability benefit; and
 - (ii) the contingent right was derived from a member's or beneficiary's capacity as a member or beneficiary of the transferor fund;the other person ceases to have the contingent right against the transferor fund.

To avoid doubt, a reference in paragraph (a) to a right against the transferor fund includes a reference to a contingent right to a death or disability benefit.

Part 19—Public offer entities: provisions relating to superannuation interests

Division 1—Preliminary

151 Contravention of Part does not affect validity of issue of superannuation interest etc.

A contravention of this Part does not affect the validity of the issue of a superannuation interest or of any other act.

Division 2—Issuing, offering etc. superannuation interests in public offer entities

152 Limitation on issuing, offering etc. superannuation interests in public offer entities

- (1) This section applies to the following conduct:
- (a) issuing superannuation interests in a public offer entity;
 - (b) offering to issue superannuation interests in a public offer entity;
 - (c) inviting the making of applications for the issue of superannuation interests in a public offer entity.
- (2) The trustee of a public offer entity must not engage in conduct to which this section applies.

Penalty: Imprisonment for 5 years.

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

- (2A) Subsection (2) does not apply if:
- (a) the trustee is a constitutional corporation and is an RSE licensee; and
 - (b) the entity is constituted by a deed as a trust.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person, other than the trustee of a public offer entity, must not engage in conduct to which this section applies.

Penalty: Imprisonment for 5 years.

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

- (4) This section does not prevent the trustee of a public offer entity from engaging or authorising persons to act on behalf of the trustee.

Section 154

154 Commission and brokerage

- (1) The trustee of a public offer entity must comply with the requirements of the regulations in relation to the payment of commission or brokerage in respect of:
- (a) an application for the issue of a superannuation interest in the entity; or
 - (b) an application to become a standard employer-sponsor of the entity.

- (2) The trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 100 penalty units.

- (2A) The trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

- (3) Requirements specified in regulations for the purposes of subsection (1) must relate to all or any of the following:
- (a) the classes of persons to whom payments of commission or brokerage may be made;
 - (b) the situations in which payments of commission or brokerage may be made;
 - (c) the disclosure of information about payments of commission or brokerage;
 - (d) the keeping of records about payments of commission or brokerage.

155 Fair dealing on issue or redemption of a superannuation interest

- (1) This section applies if:
- (a) the trustee of a public offer entity is considering:

- (i) issuing a superannuation interest in the entity to a person; or
 - (ii) redeeming a superannuation interest in the entity held by a person; and
- (b) either:
 - (i) the trustee believes on reasonable grounds that the price at which, under the governing rules of the entity, the interest would be issued or redeemed would not, in the circumstances, be fair and reasonable as between the person and the beneficiaries of the entity; or
 - (ii) the trustee cannot, for whatever reason, work out the price at which, under the governing rules of the entity, the interest should be issued or redeemed.
- (2) The trustee must not issue or redeem the interest while subsection (1) applies except at a price that is fair and reasonable as between the person and the beneficiaries of the entity.
- (3) If, while this section applies, the trustee issues or redeems the interest at such a price, the trustee is taken to have acted in accordance with the governing rules of the entity.
- (4) A contravention of subsection (2) is not an offence, but it may give rise to civil liability under section 156.

156 Civil liability where subsection 155(2) contravened

- (1) If:
 - (a) the trustee of a public offer entity contravenes subsection 155(2); and
 - (b) a person suffers loss or damage because of the contravention; the person may recover the amount of the loss or damage by action against the trustee.
- (2) The action must be begun within 6 years after the day on which the cause of action arose.

Part 20 Administrative directions and penalties for contraventions relating to self managed superannuation funds

Division 1 Object and scope of this Part

Section 157

Part 20—Administrative directions and penalties for contraventions relating to self managed superannuation funds

Division 1—Object and scope of this Part

157 Object of this Part

The object of this Part is to provide administrative consequences for contraventions of this Act or the regulations that relate to self managed superannuation funds. This Part:

- (a) allows the Regulator to give rectification directions and education directions; and
- (b) imposes administrative penalties for certain contraventions.

158 Scope of this Part

This Part applies in relation to self managed superannuation funds that are regulated superannuation funds.

Division 2—Directions

159 Rectification direction

- (1) This section applies if the Regulator reasonably believes that a person who is:
 - (a) a trustee of a self managed superannuation fund; or
 - (b) a director of a body corporate that is a trustee of a self managed superannuation fund;has contravened a provision of this Act (other than Part 3B) or the regulations in relation to the fund.
 - (2) The Regulator may give the person a written direction (a **rectification direction**) requiring the person:
 - (a) to take specified action to rectify the contravention; and
 - (b) to provide the Regulator with evidence of the person's compliance with the direction.
 - (3) In deciding whether to give a person a rectification direction, the Regulator is to have regard to:
 - (a) any financial detriment that might reasonably be expected to be suffered by the fund as a result of the person's compliance with the direction; and
 - (b) the nature and seriousness of the person's contravention; and
 - (c) any other relevant circumstances.
 - (4) A rectification direction must specify the period within which the person must comply with the direction (which must be a period that is reasonable in the circumstances).
- Note: The period may be affected by the operation of subsection 164(7).
- (5) The Regulator must not give a rectification direction in relation to a contravention if:
 - (a) the Regulator has, under section 262A, accepted an undertaking given by a person; and
 - (b) the contravention is covered by the undertaking; and

Section 160

- (c) the undertaking has neither been withdrawn nor varied in a way that means the contravention is no longer covered by it.
- (6) A person to whom a rectification direction is given must comply with the direction before the end of the period specified in the direction for the purposes of subsection (4).
- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 10 penalty units.

160 Education direction

- (1) This section applies to the following persons:
 - (a) a trustee of a self managed superannuation fund, if the Regulator reasonably believes that the trustee has contravened a provision of this Act (other than Part 3B) or the regulations in relation to the fund;
 - (b) a director of a body corporate that is a trustee of a self managed superannuation fund, if the Regulator reasonably believes that:
 - (i) the director has contravened a provision of this Act (other than Part 3B) or the regulations in relation to the fund; or
 - (ii) the trustee has contravened a provision of this Act (other than Part 3B) or the regulations in relation to the fund.
- (2) The Regulator may give the person a written direction (an **education direction**) requiring the person:
 - (a) to undertake a specified approved course of education (see section 161); and
 - (b) to provide the Regulator with evidence of completion of the course.

Note: See also section 104A (recognition of obligations and responsibilities).

Section 161

- (3) An education direction must specify the period within which the person must comply with the direction (which must be a period that is reasonable in the circumstances).

Note: The period may be affected by the operation of subsection 164(7).

- (4) A person to whom an education direction is given must comply with the direction before the end of the specified period.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (4).

- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 10 penalty units.

161 Approval of courses of education

- (1) The Regulator may, in writing, approve one or more courses of education for the purposes of giving education directions.
- (2) A course approved under subsection (1):
- (a) may be provided by the Regulator or by another entity; and
 - (b) must be a course for which no fees are charged in respect of persons who undertake the course in compliance with education directions.
- (3) An approval under subsection (1) is not a legislative instrument.

162 Costs of course of education

If a person undertakes a course of education in compliance with an education direction, the person must ensure that none of the costs associated with undertaking the course are paid or reimbursed from the assets of the fund in relation to which the education direction was given.

Section 163

163 Variation or revocation on Regulator's own initiative

The Regulator may, at any time, vary or revoke a rectification direction or an education direction by written notice given to the person to whom the direction was given.

164 Variation on request

- (1) A person to whom a rectification direction or an education direction is given may request the Regulator to vary the direction.
- (2) The request must be made by written notice given to the Regulator before the end of the period specified in the direction for the purposes of subsection 159(4) or 160(3).
- (3) The request must set out the reasons for making the request.
- (4) The Regulator must decide:
 - (a) to vary the direction in accordance with the request; or
 - (b) to vary the direction otherwise than in accordance with the request; or
 - (c) to refuse to vary the direction.
- (5) If the Regulator does not make a decision on the request before the end of 28 days after the day the request was made, the Regulator is taken, at the end of that period, to have decided to refuse the request.
- (6) If the Regulator makes a decision on the request before the end of the period referred to in subsection (5), the Regulator must:
 - (a) notify the person of the Regulator's decision; and
 - (b) if the decision is to vary the direction (whether or not in accordance with the request)—give the person a copy of the varied direction; and
 - (c) if the decision is to refuse to vary the direction, or to vary the direction otherwise than in accordance with the request—give the person written reasons for the decision.

Section 165

- (7) If a person makes a request under this section, then, for the purposes of subsection 159(6) or 160(4), the period specified in the direction for the purposes of subsection 159(4) or 160(3) is taken to be extended by 1 day for each day in the period:
- (a) beginning at the start of the day the request was made; and
 - (b) ending at the end of the day that the Regulator notifies the person that a decision has been made on the request.

165 Taxation objection

A person who is dissatisfied with:

- (a) a decision of the Regulator to give a rectification direction or an education direction, or to vary one otherwise than in accordance with a request under section 164; or
- (b) a decision of the Regulator under section 164 to refuse to vary a rectification direction or an education direction;

may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Division 3—Administrative penalties

166 Administrative penalties in relation to self managed superannuation funds

- (1) If a person referred to in subsection (2) contravenes a provision of this Act specified in the table, the person is liable to an administrative penalty. The amount of the penalty is the amount specified in the table for the provision.

Administrative penalties in relation to self managed superannuation funds		
Item	Provision of this Act	Administrative penalty
1	Subsection 34(1)	20 penalty units
2	Section 35B	10 penalty units
3	Subsection 65(1)	60 penalty units
4	Subsection 67(1)	60 penalty units
5	Subsection 84(1)	60 penalty units
6	Subsection 103(1)	10 penalty units
7	Subsection 103(2)	10 penalty units
8	Subsection 103(2A)	10 penalty units
9	Subsection 104(1)	10 penalty units
10	Subsection 104A(2)	10 penalty units
11	Subsection 105(1)	10 penalty units
12	Subsection 106(1)	60 penalty units
13	Subsection 106A(1)	20 penalty units
14	Subsection 124(1)	5 penalty units
15	Subsection 160(4)	5 penalty units
16	Subsection 254(1)	5 penalty units
17	Subsection 347A(5)	5 penalty units

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Section 167

- (2) For the purposes of subsection (1), the persons are:
- (a) a trustee of a self managed superannuation fund; or
 - (b) a director of a body corporate that is a trustee of a self managed superannuation fund.

Note: Collection and recovery of administrative penalties imposed by this section is dealt with in Part 4-15 of Schedule 1 to the *Taxation Administration Act 1953*.

- (3) If a trustee of a self managed superannuation fund on whom a penalty is imposed by this section is an individual, a reference in Part 4-15 or Division 298 in Schedule 1 to the *Taxation Administration Act 1953* to an entity is taken to be a reference to that individual in his or her personal capacity.

167 Administrative penalty and civil penalty

If:

- (a) a person is liable to pay an amount by way of administrative penalty imposed by section 166 because of an act or omission of the person; and
- (b) proceedings against the person are commenced for a contravention of a civil penalty provision constituted by the act or omission;

then (whether or not the proceedings are withdrawn):

- (c) the person is not liable to pay the amount; and
- (d) any amount paid, or applied by the Regulator, in total or partial discharge of that liability is to be refunded to the person, or applied by the Regulator in total or partial discharge of another tax-related liability of the person.

Note: Section 8ZE of the *Taxation Administration Act 1953* deals with the situation of a person against whom a criminal prosecution is instituted.

168 Penalty must not be reimbursed from fund

An administrative penalty imposed by section 166 must not be paid or reimbursed from the assets of the fund in relation to which the administrative penalty was imposed.

Section 169

169 Joint and several liability of directors of corporate trustee liable to administrative penalty under section 166

- (1) This section applies if a trustee of a self managed superannuation fund:
 - (a) is liable to an administrative penalty imposed by section 166;
and
 - (b) is a body corporate.
- (2) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the penalty.

Part 21—Civil and criminal consequences of contravening civil penalty provisions

Division 1—Preliminary

192 Object of Part

The object of this Part is to specify the consequences of contravening a civil penalty provision.

193 Civil penalty provisions

Each of the following provisions of this Act is a civil penalty provision:

- (a) subsection 62(1);
- (b) subsection 65(1);
- (c) subsection 67(1);
- (ca) subsection 68B(1);
- (d) subsection 84(1);
- (e) subsection 85(1);
- (f) subsection 95(1);
- (g) subsection 97(1);
- (h) section 98;
- (i) subsection 106(1);
- (j) subsection 109(1);
- (ja) subsection 109(1A);
- (k) subsection 117(3);
- (l) subsection 242M(1);
- (m) section 388;
- (n) section 394.

Section 194

194 Person involved in contravening a provision taken to have contravened the provision

For the purposes of this Part, a person who is involved in a contravention of a particular provision of this Act is taken to have contravened that provision.

195 When a court is taken to find a person guilty of an offence

For the purposes of this Part, an Australian court is taken to find a person guilty of an offence if, and only if:

- (a) the court convicts the person of the offence; or
- (b) the person is charged before the court with the offence and is found by the court to have committed the offence, but the court does not proceed to convict the person of the offence.

Division 2—Civil penalty orders

196 Court may make civil penalty orders

- (1) This section applies if the Court is satisfied that a person has contravened a civil penalty provision, whether or not the contravention also constitutes an offence because of section 202.

Note: Section 220 provides that a certificate by a court that the court has declared a person to have contravened a civil penalty provision is conclusive evidence of the contravention.

- (2) The Court is to declare that the person has, by a specified act or omission, contravened that provision in relation to a specified superannuation entity, but need not so declare if such a declaration is already in force under Division 4.
- (3) The Court may also make against the person an order that the person pay to the Commonwealth a monetary penalty of an amount specified in the order that does not exceed 2,000 penalty units.
- (4) The Court is not to make an order under subsection (3) unless it is satisfied that the contravention is a serious one.
- (5) The Court is not to make an order under subsection (3) if it is satisfied that an Australian court has ordered the person to pay damages in the nature of punitive damages because of the act or omission constituting the contravention.

197 Who may apply for civil penalty order

- (1) An application for a civil penalty order may only be made by the Regulator or a person to whom the Regulator has delegated the power to make applications for civil penalty orders.
- (2) A delegation for the purposes of subsection (1) may relate to applications in relation to specified contraventions, or all contraventions, of civil penalty provisions.

Section 198

- (3) This section does not affect the operation of the *Director of Public Prosecutions Act 1983*.

198 Time limit for application

An application for a civil penalty order may be made within 6 years after the contravention.

199 Application for civil penalty order is a civil proceeding

- (1) In hearing and determining an application for a civil penalty order, the Court is to apply the rules of evidence and procedure that it applies in hearing and determining civil matters.
- (2) Subsection (1) has effect subject to the rules of the Court.

200 Enforcement of order to pay monetary penalty

If the Court makes under subsection 196(3) an order that a person pay a monetary penalty:

- (a) the penalty is payable to the Regulator on the Commonwealth's behalf; and
- (b) the Regulator or the Commonwealth may enforce the order as if it were a judgment of the Court.

201 The Regulator may require a person to give assistance in connection with application for civil penalty order

- (1) This section applies if it appears to the Regulator that a person may have contravened a civil penalty provision.
- (2) If the Regulator, on reasonable grounds, suspects or believes that a person can give information relevant to an application for a civil penalty order in relation to the contravention (whether or not such an application has been made), the Regulator may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.
- (3) Subsection (2) does not apply in relation to:

- (a) the person referred to in subsection (1); or
 - (b) a person who is or has been that person's lawyer.
- (4) If a person fails to give assistance as required under subsection (2):
 - (a) the person commits an offence punishable on conviction by a fine not exceeding 5 penalty units; and
 - (b) the Court may, on the application of the Regulator, order the person to comply with the requirement as specified in the order.
- (4A) Paragraph (4)(a) is an offence of strict liability.
 - Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
 - Note 2: For **strict liability**, see section 6.1 of the *Criminal Code*.
- (5) Paragraph (4)(b) does not affect any penalty for an offence referred to in paragraph (4)(a).

Division 3—Criminal proceedings

202 When contravention of civil penalty provisions is an offence

- (1) If a person contravenes a civil penalty provision, either:
- (a) dishonestly, and intending to gain, whether directly or indirectly, an advantage for that, or any other person; or
 - (b) intending to deceive or defraud someone;
- the person commits an offence punishable on conviction by imprisonment for not longer than 5 years.

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

- (2) A person who contravenes a civil penalty provision does not commit an offence except as provided by subsection (1).
- (3) The Federal Court of Australia does not have jurisdiction with respect to criminal proceedings for an offence constituted by a contravention of a civil penalty provision.

203 Application for civil penalty order precludes later criminal proceedings

Criminal proceedings for an offence constituted by a contravention of a civil penalty provision cannot be begun if a person has already applied for a civil penalty order in relation to the same contravention, even if the application has been finally determined or otherwise disposed of.

Division 4—Effect of criminal proceedings on application for civil penalty order

204 When Division applies

This Division applies if criminal proceedings are begun against a person for an offence constituted by a contravention of a civil penalty provision.

205 Effect during criminal proceedings

- (1) An application may be made for a civil penalty order against the person in relation to the same contravention.
- (2) However, such an application is stayed, because of this subsection, until:
 - (a) the criminal proceedings; and
 - (b) all appeals and applications for review (including appeals and applications for review under this Division) arising out of the criminal proceedings;have been finally determined or otherwise disposed of.

206 Final outcome precluding applications for civil penalty order

When the criminal proceedings, appeals and applications for review are finally determined or otherwise disposed of:

- (a) an application for a civil penalty order in relation to the same contravention cannot be made (except under this Division); and
 - (b) such an application that was stayed because of subsection 205(2) is, because of this section, dismissed;
- if the result of the criminal proceedings, appeals and applications for review is:
- (c) a court finding the person guilty of the offence; or

Note: Section 195 defines when a court is taken to find a person guilty of an offence.

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- (d) the person being acquitted of the offence, unless there is in force a declaration that the person committed the contravention; or

Note: This kind of declaration is made under section 209, 210 or 211.

- (e) a declaration by a court that the evidence in a committal proceeding for the offence could not satisfy the Court, on an application for a civil penalty order, that the person committed the contravention; or

Note: This kind of declaration is made under section 208.

- (f) a declaration by a court that the person committed the contravention; or

Note: This kind of declaration is made under section 209 or 211.

- (g) an order by a court prohibiting an application for a civil penalty order in relation to the contravention from being made or from proceeding; or

Note: This kind of declaration is made under section 212.

- (h) the Court, on an appeal or review, affirming, varying or substituting a declaration that the person committed the contravention.

Note: Section 213 applies in this case.

207 Final outcome not precluding application for civil penalty order

If the result of the criminal proceedings, appeals and applications for review being finally determined or otherwise disposed of is:

- (a) a declaration by a court (other than the Court) that the person committed the contravention; or

Note: This kind of declaration is made under section 209, 210 or 211.

- (b) none of the results referred to in section 206;

then:

- (c) if an application for a civil penalty order in relation to the contravention was stayed because of subsection 205(2)—the application may proceed; or

- (d) otherwise—such an application may be made and may proceed;

as if the criminal proceedings had never begun.

208 After unsuccessful committal proceeding, court may preclude application for civil penalty order

- (1) If:
 - (a) a proceeding in a court for the commitment of the person for trial for the offence is finally determined or otherwise disposed of without the person being committed for trial for the offence; and
 - (b) that court is satisfied that the evidence in the proceeding could not satisfy the Court, on an application for a civil penalty order in relation to the contravention, that the person committed the contravention;the court may declare that it is so satisfied.
- (2) A declaration under subsection (1) is subject to appeal or review in the same way as any other order or decision made in the proceeding.

209 Application for civil penalty order based on alternative verdict at jury trial

- (1) This section applies if the person is tried on indictment for the offence and the jury is satisfied beyond reasonable doubt that the person committed the contravention, but is not satisfied beyond reasonable doubt that the person did so as mentioned in subsection 202(1).
- (2) The jury may find the person not guilty of the offence, but guilty of the contravention.
- (3) If the jury does so, the court is to declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified superannuation entity.
- (4) If the court is the Court, it may then proceed to make an order under subsection 196(3) on the application of the prosecutor or

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someone else who has power under section 197 to apply for a civil penalty order in relation to the contravention.

- (5) Subsection (4) has effect despite section 198.
- (6) A declaration under subsection (3) is subject to appeal or review as if it were a conviction by the court for an offence constituted by the contravention.

210 Application for civil penalty order based on alternative finding by court of summary jurisdiction

- (1) This section applies if, on the hearing of a proceeding for the summary conviction of the person for the offence, the court is satisfied beyond reasonable doubt that the person committed the contravention but is not satisfied beyond reasonable doubt that the person did so as mentioned in subsection 202(1).
- (2) The court may find the person not guilty of the offence, but guilty of the contravention.
- (3) If the court does so, it is to declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified superannuation entity.
- (4) A declaration under subsection (3) is subject to appeal or review as if it were a conviction by the court for an offence constituted by the contravention.

211 Application for civil penalty order based on alternative finding by appeal court

- (1) This section applies if:
 - (a) a court finds the person guilty of the offence; and
 - (b) on appeal or review, a court makes an order determining the criminal proceedings for the offence in a way that does not involve convicting the person of that or any other offence; and

- (c) the court is satisfied beyond reasonable doubt that the person committed the contravention.
- (2) The court may declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified superannuation entity.
- (3) If the court is the Court, it may then proceed to make an order under subsection 196(3) on the application of the prosecutor or someone else who has power under section 197 to apply for a civil penalty order in relation to the contravention.
- (4) Subsection (3) has effect despite section 198.
- (5) A declaration under subsection (2) is subject to appeal or review in the same way as any other order or decision that was made on the appeal or review or might have been made.

212 After setting aside declaration, court may preclude application for civil penalty order

If a court sets aside a declaration made under section 209, 210 or 211, the court may, by order, prohibit an application for a civil penalty order in relation to the contravention from being made or from proceeding.

213 On unsuccessful appeal against declaration, Court may make civil penalty orders

- (1) This section applies if, on an appeal from, or review of, a declaration made under section 209, 210 or 211 by a court other than the Court, the Court determines the appeal or review by:
 - (a) affirming or varying the declaration; or
 - (b) substituting another declaration for the first-mentioned declaration.
- (2) The Court may then proceed to make orders under subsection 196(3) on the application of the prosecutor or someone

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else who has power under section 197 to apply for a civil penalty order in relation to the contravention.

(3) Subsection (2) has effect despite section 198.

214 Appeals under this Division

For the purposes of an appeal or review under subsection 208(2), 209(6), 210(4) or 211(5), a law about appeals or reviews has effect with such modifications as the circumstances require.

Division 5—Compensation for loss suffered by superannuation entity

215 On application for civil penalty order, Court may order compensation

- (1) If, on an application for a civil penalty order against a person in relation to a contravention, the Court is satisfied that:
 - (a) the person committed the contravention; and
 - (b) the superannuation entity in relation to which the contravention was committed has suffered loss or damage as a result of the act or omission constituting the contravention;the Court may (whether or not it makes an order under subsection 196(3)) order the person to pay to a trustee of the entity or, if the person is a trustee of the entity, to pay to the entity compensation of such amount as the order specifies.
- (2) A trustee of a superannuation entity may intervene in an application for a civil penalty order against a person in relation to a contravention, unless the application was made under Division 4.
- (3) A trustee of a superannuation entity that so intervenes is entitled to be heard:
 - (a) only if the Court is satisfied that the person committed the contravention in relation to that entity; and
 - (b) only on the question whether the Court should order the person to pay compensation to the trustee because of the contravention.

216 Criminal court may order compensation

- (1) If:
 - (a) a court finds a person guilty of an offence constituted by a contravention of a civil penalty provision in relation to a superannuation entity; and

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- (b) the court is satisfied that the superannuation entity has suffered loss or damage as a result of the act or omission constituting the contravention;

the court may (whether or not it imposes a penalty) order the person to pay to a trustee of the entity or, if the person is a trustee of the entity, to pay to the entity compensation of such amount as the order specifies.

Note: Section 195 defines when a court is taken to find a person guilty of an offence.

(2) If:

- (a) a court declares under Division 4 that a person has, by an act or omission, contravened a civil penalty provision in relation to a superannuation entity; and

- (b) the court is satisfied that the superannuation entity has suffered loss or damage as a result of that act or omission;

the court may (whether or not it makes an order under subsection 196(3)) order the person to pay to a trustee of the entity or, if the person is a trustee of the entity, to pay to the entity compensation of such amount as the order specifies.

217 Enforcement of order under section 215 or 216

An order to pay compensation that a court makes under section 215 or 216 may be enforced as if it were a judgment of the court.

218 Recovery of profits, and compensation for loss, resulting from contravention

- (1) If a civil penalty provision in relation to a superannuation entity is contravened by a person other than a trustee of the entity, a trustee of the entity may, by proceedings in a court of competent jurisdiction, recover from the person, as a debt due to the trustee:
 - (a) if that or another person has made a profit because of the act or omission constituting the contravention—an amount equal to the amount of that profit; and

- (b) if the entity has suffered loss or damage as a result of that act or omission—an amount equal to the amount of that loss or damage;
- whether or not:
- (c) the first-mentioned person has been convicted of an offence in relation to the contravention; or
 - (d) a civil penalty order has been made against the first-mentioned person in relation to the contravention.
- (2) Proceedings under this section may only be begun within 6 years after the contravention.

219 Effect of sections 215, 216 and 218

Sections 215, 216 and 218:

- (a) have effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to a superannuation entity; and
- (b) do not prevent proceedings from being instituted in respect of a breach of such a duty or in respect of such a liability.

220 Certificates evidencing contravention

For the purposes of this Part, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states:
 - (i) that the court has declared that a specified person has, by a specified act or omission, contravened a specified civil penalty provision in relation to a specified superannuation entity; or
 - (ii) that a specified person was convicted by that court of an offence constituted by a specified contravention of a civil penalty provision in relation to a specified superannuation entity; or

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- (iii) that a specified person charged before that court with such an offence was found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the declaration, conviction or finding was set aside, quashed or reversed, conclusive evidence:

- (c) that the declaration was made, that the person was convicted of the offence, or that the person was so found, as the case may be; and
- (d) that the person committed the contravention.

Division 6—Miscellaneous

221 Relief from liability for contravention of civil penalty provision

- (1) In this section:

eligible proceedings means proceedings for a contravention of a civil penalty provision (including proceedings under section 218) but does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 216).

- (2) If, in eligible proceedings against a person, it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
- (a) the person has acted honestly; and
 - (b) having regard to all the circumstances of the case, the person ought fairly to be excused for the contravention;
- the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (3) If a person thinks that eligible proceedings will or may be begun against him or her, he or she may apply to the Court for relief.
- (4) On the application under subsection (3), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.
- (5) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
- (a) a reference in that subsection to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

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(6) Section 323 provides for additional relief from liability.

222 Part does not limit power to award punitive damages

Nothing in this Part limits a court's power to order someone to pay damages in the nature of punitive damages because of an act or omission constituting a contravention of a civil penalty provision.

Part 22—Infringement notices

Division 1—Overview

223 Simplified outline

The following is a simplified outline of this Part:

This Part deals with the use of infringement notices if an infringement officer reasonably believes that a provision has been contravened.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice under this Part. The provision may be an offence provision or a civil penalty provision, or both.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

223A Provisions *subject to an infringement notice*

- (1) An offence against one of the following provisions is ***subject to an infringement notice*** under this Part:
- (a) subsection 18(7B);
 - (b) subsection 29W(1);
 - (c) subsection 29WA(3);
 - (d) subsection 29WB(3);
 - (e) subsection 35A(7);
 - (f) subsection 107(4);
 - (g) subsection 108(4);

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- (h) subsection 140(3);
 - (i) subsection 242P(1);
 - (j) subsection 260(3);
 - (k) subsection 262(2).
- (2) An offence against one of the following provisions is ***subject to an infringement notice*** under this Part, unless the superannuation entity to which the offence relates is a self managed superannuation fund:
 - (a) subsection 11C(2), (3) or (4);
 - (b) subsection 63(7) or (10);
 - (c) subsection 64(3A);
 - (d) subsection 71EA(5);
 - (e) subsection 103(3);
 - (f) subsection 104(2);
 - (g) subsection 105(2);
 - (h) subsection 122(2);
 - (i) subsection 124(2);
 - (j) subsection 141A(3) or (6);
 - (k) subsection 252A(3).
- (3) The regulations may provide that:
 - (a) an offence against a provision of this Act not already specified in this section, or a civil penalty provision in this Act, is ***subject to an infringement notice*** under this Part; and
 - (b) an offence against the regulations, or a civil penalty provision in the regulations, is ***subject to an infringement notice*** under this Part.

223B *Infringement officer*

- (1) A person is an ***infringement officer*** for the purposes of exercising powers under this Part in relation to a contravention of a provision subject to an infringement notice under this Part, if the person is one of a class of persons determined by the Chair of APRA under

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section 223C to be infringement officers in relation to a contravention of the provision.

- (2) A person who is an ***infringement officer*** for the purposes of exercising powers mentioned in subsection (1) is also an ***infringement officer*** for the purposes of:
- (a) exercising other powers under this Part; or
 - (b) performing functions or duties under this Part;
- that are incidental to the powers mentioned in subsection (1).

223C Chair of APRA may determine *infringement officers*

- (1) The Chair of APRA may by legislative instrument determine that APRA staff members of a class specified in the determination are to be infringement officers for the purposes of exercising powers under this Part in relation to a contravention of a provision that is subject to an infringement notice under this Part.
- (2) The Chair of APRA must not specify a class of APRA staff members in the determination unless the Chair is satisfied that persons of that class have suitable training or experience to properly exercise the powers of an infringement officer.
- (3) An infringement officer must, in exercising powers as such, comply with any directions of the Chair of APRA in relation to the relevant provision.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

223D *Relevant chief executive*

- (1) The Chair of APRA is the ***relevant chief executive*** for the purposes of exercising powers under this Part in relation to the contravention of a provision subject to an infringement notice under this Part.
- (2) The Chair of APRA is also the ***relevant chief executive*** for the purposes of:

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- (a) exercising other powers under this Part; or
 - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) The Chair of APRA may, in writing, delegate the powers and functions of the relevant chief executive under this Part to:
 - (a) an APRA member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or
 - (b) an APRA staff member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*) who is an executive general manager or equivalent.
- (4) A person exercising powers or functions under a delegation under subsection (3) must comply with any directions of the relevant chief executive.

Division 2—Infringement notices

224 When an infringement notice may be given

- (1) If an infringement officer has reasonable grounds to believe that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single offence provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than one day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

224A Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and

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- (e) give details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
- (f) state the amount that is payable under the notice; and
- (g) give an explanation of how payment of the amount is to be made; and
- (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
 - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; or
 - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order will not be brought, and the person is not liable to be prosecuted in a court, in relation to the alleged contravention; or
 - (iii) if the provision is an offence provision—the person will not be liable to be prosecuted in a court for the alleged contravention; and
- (i) state that payment of the amount is not an admission of guilt or liability; and
- (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
- (k) state that the person may choose not to pay the amount and, if the person does so:
 - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; or
 - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a

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- civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
- (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention; and
- (l) set out how the notice can be withdrawn; and
- (m) state that if the notice is withdrawn:
- (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; or
 - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
 - (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention; and
- (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice; and
- (o) include any other information prescribed by the regulations.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must be equal to:
- (a) if the provision is an offence provision—one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
 - (b) if the provision is a civil penalty provision—one-fortieth of the maximum penalty that a court could impose on the person for that contravention.

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224B Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 224A(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 224A(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 224A(1)(h) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 224A(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

224C Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Part;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the relevant chief executive considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that:
 - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings

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- seeking a civil penalty order may be brought in relation to the alleged contravention; or
- (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
 - (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the relevant chief executive withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

224D Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 224A(1)(h):
- (a) any liability of the person for the alleged contravention is discharged; and
 - (b) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
 - (c) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may not be brought, and the person may not be prosecuted in a court, in relation to the alleged contravention; and

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- (d) if the provision is an offence provision—the person may not be prosecuted in a court for the alleged contravention; and
 - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

224E Effect of this Part

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

Part 23—Financial assistance to certain funds

Division 1—Preliminary

227 Object of Part

The object of this Part is to make provision for the grant of financial assistance for certain superannuation entities that have suffered loss as a result of fraudulent conduct or theft.

228 Interpretation

In this Part:

eligible loss means a loss suffered by a fund as a result of fraudulent conduct, or theft, but does not include an amount that the fund did not receive because of the failure of a person to pay contributions to the fund.

levy means the levy imposed by the *Superannuation (Financial Assistance Funding) Levy Act 1993*.

229 Application for assistance

(1) If:

- (a) a fund suffers an eligible loss after the commencement of this Part; and
- (aa) at the time it suffers the loss, the fund is:
 - (i) a regulated superannuation fund (other than a self managed superannuation fund); or
 - (ii) an approved deposit fund; and
- (b) the loss has caused substantial diminution of the fund leading to difficulties in the payment of benefits;

a trustee of the fund may apply to the Minister for a grant of financial assistance for the fund.

- (2) The application must be in writing and be accompanied by such information as the Minister determines.
- (3) To avoid doubt, an application may be made under this section by a trustee of a self managed superannuation fund as long as the fund met the requirements in subsection (1) at the time the fund suffered the loss to which the application relates.

230 Minister may request additional information

- (1) The Minister may request a trustee of the fund to give such additional information as the Minister considers necessary to enable the application to be determined.
- (2) The Minister may, by signed instrument, delegate the Minister's power under subsection (1) to an SES employee, or acting SES employee, in the Department.
- (3) In exercising a power delegated under subsection (2), a delegate must comply with any directions of the Minister.

230A APRA to advise Minister in relation to application for assistance

- (1) The Minister must make a written request to APRA for advice in relation to the application. The request may specify:
 - (a) particular matters that APRA is to provide advice about; and
 - (b) a time by which the advice must be provided.
- (2) APRA must comply with the request and may, in its advice, also address any other issues that APRA considers relevant to the determination of the application.
- (3) The Minister's written request to APRA made under subsection (1) for advice in relation to the application for assistance must be laid before each House of the Parliament as soon as practicable after the Minister has made a written determination under subsection 231(1).

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- (4) The Minister may, by signed instrument, delegate the Minister's function under subsection (1) to an SES employee, or acting SES employee, in the Department.
- (5) In exercising a function delegated under subsection (4), a delegate must comply with any directions of the Minister.

Division 2—Determination of applications for financial assistance

231 Minister may grant financial assistance

- (1) If, after considering the application, any additional information given by a trustee of the fund, and APRA's advice under section 230A, the Minister is satisfied that the fund has suffered an eligible loss as mentioned in subsection 229(1), the Minister is to determine in writing:
 - (a) whether the public interest requires that a grant of financial assistance should be made to a trustee of the fund for the purposes of restoring the loss; and
 - (b) if so, the amount of the assistance.
- (2) Financial assistance payable to a trustee of a fund is to be paid in such amounts, at such times, and in such manner, as the Minister determines.
- (3) To avoid doubt, the Minister may grant financial assistance to a self managed superannuation fund under this section as long as the fund met the requirements in subsection 229(1) at the time the fund suffered the loss to which the assistance relates.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of making payments of financial assistance granted under this section.
- (5) Amounts appropriated under this section are not to be credited to the Australian Prudential Regulation Authority Special Account.

232 Maximum amount of financial assistance

The amount of financial assistance to be granted to a trustee of a fund in respect of the fund must not be greater than the amount that the Minister determines to be the eligible loss suffered by the fund.

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233 Financial assistance to be subject to conditions

- (1) The payment to a trustee of a fund of a grant of financial assistance is subject to the following conditions:
 - (a) a condition that the amount of financial assistance granted will be deposited in the corpus of the fund;
 - (b) a condition that the amount will be applied, within a period determined by the Minister:
 - (i) in making payments to persons who were beneficiaries in the fund at the time the fund suffered the eligible loss; or
 - (ii) for the benefit of those persons in such other manner as the Minister approves in writing;
 - (c) a condition that a trustee of the fund will prepare and give to the Minister such reports on the application of the amount as are required by the Minister;
 - (d) such other conditions (if any) as the Minister determines and notifies in writing to a trustee of the fund.
- (2) Despite any law of the Commonwealth, a State or a Territory, whether written or unwritten, or any provision of a trust deed or other rules according to which a fund is administered:
 - (a) a trustee of a fund must comply with a condition mentioned in paragraph (1)(b); and
 - (b) the trustee does not contravene the law, trust deed or rules by complying with such a condition.

Division 3—Repayment of financial assistance

238 Financial assistance to be repaid in certain circumstances

- (1) The trustee, or the trustees, of a fund for which a grant of financial assistance has been made are liable to repay to the Commonwealth the amount of the financial assistance or such part of that amount as the Minister determines if:
 - (a) a condition to which the grant of the financial assistance was subject has been contravened; or
 - (b) the grant of the financial assistance is subject to a condition that a particular event does not occur and that event has occurred.
- (2) The Minister is to determine the manner in which repayments of financial assistance are to be made.
- (3) If the trustee, or the trustees, of a fund are liable to pay an amount to the Commonwealth under subsection (1), the Commonwealth may recover the amount as a debt.

239 Minister may remit liability

The Minister may remit the whole or a part of the liability of a trustee of a fund under section 238.

240 Repayable grant to have priority over other debts

Despite any other law of the Commonwealth or any law of a State or Territory, an amount payable to the Commonwealth by a trustee of a fund under section 238 has priority over all other debts (whether preferential, secured or unsecured).

Part 24—Eligible rollover funds

Division 1—Preliminary

241 Object of this Part

The object of this Part is:

- (a) to provide for the authorisation of RSE licensees to operate eligible rollover funds; and
- (b) to impose additional obligations on trustees, and directors of corporate trustees, in relation to eligible rollover funds; and
- (c) to provide a facility for the payment of benefits to eligible rollover funds.

242 Interpretation

In this Part:

fund means a regulated superannuation fund.

Division 2—Authority to operate an eligible rollover fund

Subdivision A—Applying for authority

242A Application for authority to operate an eligible rollover fund

Who may apply?

- (1) An RSE licensee of a prescribed class may apply to APRA for authority to operate a regulated superannuation fund as an eligible rollover fund.

Requirements for applications

- (2) An application for authority to operate a regulated superannuation fund as an eligible rollover fund must:
 - (a) be in the approved form; and
 - (b) contain the information required by the approved form; and
 - (c) state the RSE licensee's and the fund's ABNs; and
 - (d) be accompanied by an election made in accordance with each of the following sections:
 - (i) section 242B;
 - (ii) section 242C.
- (3) If:
 - (a) an RSE licensee applies for authority to operate a regulated superannuation fund as an eligible rollover fund; and
 - (b) after the application is made, but before APRA decides the application, information contained in the application ceases to be correct;the RSE licensee must give APRA the correct information, in writing, as soon as practicable after the information in the application ceases to be correct.
- (4) An application is taken not to comply with this section if subsection (3) is contravened.

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Division 2 Authority to operate an eligible rollover fund

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Note: APRA cannot give authority to operate a regulated superannuation fund as an eligible rollover fund while the application does not comply with this section: see paragraph 242F(1)(a).

Lapsed applications

- (5) An application for authority lapses if:
- (a) it was made by an RSE licensee; and
 - (b) the RSE licensee ceases to be an RSE licensee, or an RSE licensee of a class prescribed for the purposes of subsection (1), before:
 - (i) APRA makes a decision on the application for authority; or
 - (ii) if APRA's decision with respect to the application is subject to review under this Act—the review is finally determined or otherwise disposed of.

242B Election to transfer amounts held in eligible rollover fund if authorisation cancelled

An RSE licensee that applies for authority to operate a regulated superannuation fund as an eligible rollover fund makes an election in accordance with this section if:

- (a) the RSE licensee elects:
 - (i) to take the action required under the prudential standards in relation to amounts held in the eligible rollover fund, if the authority to operate the fund as an eligible rollover fund is cancelled under subsection 242J(1); and
 - (ii) to do so before the end of a period of 90 days beginning on the day on which notice of the cancellation is given to the RSE licensee under subsection 242J(3); and
- (b) the election is in writing; and
- (c) the election is in the approved form.

242C Election not to charge members of eligible rollover fund for payment of conflicted remuneration

- (1) An RSE licensee that applies for authority to operate a regulated superannuation fund as an eligible rollover fund makes an election in accordance with this section if:
- (a) the RSE licensee elects that, if the authority is given, the RSE licensee will not charge any member of the fund a fee all or part of which relates directly or indirectly to costs incurred by a trustee or the trustees of the fund:
 - (i) in paying conflicted remuneration to a financial services licensee, or a representative of a financial services licensee; or
 - (ii) in paying an amount to another person that a trustee of the fund knows, or reasonably ought to know, relates to conflicted remuneration paid by that other person to a financial services licensee, or a representative of a financial services licensee; and
 - (b) the election is in writing; and
 - (c) the election is in the approved form.

- (2) In this section:

conflicted remuneration has the same meaning as in Part 7.7A of the *Corporations Act 2001*, subject to the extension of that meaning in subsection (3).

representative, of a financial services licensee, has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

- (3) In this section, ***conflicted remuneration*** also has the meaning it would have if:
- (a) financial product advice provided to the RSE licensee mentioned in subsection (1) by a financial services licensee, or a representative of a financial services licensee, mentioned in subparagraph (1)(a)(i) or (ii) were provided to the RSE licensee as a retail client; and

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- (b) financial product advice provided to the other person mentioned in subparagraph (1)(a)(ii) by a financial services licensee, or a representative of a financial services licensee, mentioned in that subparagraph were provided to the other person as a retail client.

242D APRA may request further information

APRA may give an RSE licensee that has applied for authority to operate a regulated superannuation fund as an eligible rollover fund a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application.

Note: A failure to give the requested information delays the time within which APRA must decide the application: see paragraph 242E(1)(b).

242E Period for deciding applications for authority

- (1) APRA must decide an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund:
 - (a) within 60 days after receiving the application; or
 - (b) if the applicant was requested to provide information under section 242D—within 60 days after:
 - (i) receiving from the RSE licensee all of the information the RSE licensee was requested to provide under that section; or
 - (ii) all notices relating to that information being disposed of;unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund by up to 60 days if APRA informs the RSE licensee of the extension:
 - (a) in writing; and

- (b) within the period in which it would otherwise be required to decide the application under subsection (1).
- (3) If APRA extends the period for deciding an application for authority to operate a regulated superannuation fund as an eligible rollover fund, it must decide the application within the extended period.
- (4) If APRA has not decided an application for authority to operate a regulated superannuation fund as an eligible rollover fund by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Subdivision B—Authority

242F Authority to operate an eligible rollover fund

- (1) APRA must authorise an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund if, and only if:
 - (a) the application for authority complies with section 242A; and
 - (b) the applicant has provided to APRA all information that the applicant was requested, under section 242D, to provide, or the request has been disposed of; and
 - (c) the fund is registered under Part 2B; and
 - (d) the RSE licensee is of a class prescribed for the purposes of subsection 242A(1); and
 - (e) APRA is satisfied that, under the governing rules of the fund:
 - (i) the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; and
 - (ii) a single diversified investment strategy is to be adopted in relation to all assets of the fund; and
 - (f) APRA is satisfied that the RSE licensee is likely to comply with the enhanced trustee obligations for eligible rollover funds; and

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- (g) APRA is satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for eligible rollover funds; and
- (h) APRA is satisfied that the RSE licensee is likely to comply with the general fees rules; and
- (i) APRA is satisfied that the RSE licensee is not likely to contravene section 242P.

- (2) Otherwise APRA must refuse to give the authority.

242G Notice of authority

If APRA authorises an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund, APRA must notify the RSE licensee in writing of the authority.

242H APRA to give notice of refusal of authority

If APRA refuses an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice:

- (a) informing it of APRA's refusal of the application; and
 - (b) setting out the reasons for the refusal;
- as soon as practicable after refusing the application.

Subdivision C—Cancelling authority

242J Cancelling authority to operate eligible rollover fund

- (1) APRA may, in writing, cancel an authority to operate a regulated superannuation fund as an eligible rollover fund.
- (2) Without limiting subsection (1), APRA may cancel an authority to operate a regulated superannuation fund as an eligible rollover fund if:
 - (a) APRA is no longer satisfied that, under the governing rules of the fund:

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- (i) the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; and
 - (ii) a single diversified investment strategy is to be adopted in relation to all assets of the fund; or
 - (b) APRA is no longer satisfied that the RSE licensee is likely to comply with the enhanced trustee obligations for eligible rollover funds (whether because of a previous failure to do so, or for any other reason); or
 - (c) APRA is no longer satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for eligible rollover funds (whether because of a previous failure to do so, or for any other reason); or
 - (d) APRA is no longer satisfied that the RSE licensee is likely to comply with the general fees rules (whether because of a previous failure to do so, or for any other reason); or
 - (e) APRA is no longer satisfied that the RSE licensee is not likely to contravene section 242P (whether because of a previous contravention of that section, or for any other reason); or
 - (f) the fund ceases to be registered under Part 2B; or
 - (g) the RSE licensee ceases to be of a class prescribed for the purposes of subsection 242A(1); or
 - (h) APRA is satisfied that the RSE licensee has contravened a provision of the governing rules of the eligible rollover fund; or
 - (i) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 242C (election not to pass costs of conflicted remuneration to members of eligible rollover fund).
- (3) If APRA cancels an authority to operate a regulated superannuation fund as an eligible rollover fund it must take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee:
- (a) that APRA has cancelled the authority; and

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(b) of the reasons for the cancellation.

Subdivision D—Trustee obligations relating to eligible rollover funds

242K Additional obligations of a trustee in relation to an eligible rollover fund

Each trustee of an eligible rollover fund must promote the financial interests of the beneficiaries of the fund, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).

242L Additional obligations of a director of a corporate trustee in relation to an eligible rollover fund

- (1) Each director of a corporate trustee of an eligible rollover fund must exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the obligations referred to in section 242K.
- (2) The reference in subsection (1) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.

242M Contravention of section 242K or 242L

- (1) A person must not contravene section 242K or 242L.
- (2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.
- (3) A contravention of subsection (1) does not result in the invalidity of a transaction.

242N Governing rules void to the extent that they are inconsistent with obligations under section 242K or 242L

A provision of the governing rules of an eligible rollover fund is void to the extent that it is inconsistent with:

- (a) the obligations that apply to a trustee of the fund under section 242K; or
- (b) the obligations that apply to the directors of a corporate trustee of the fund under section 242L.

Subdivision E—Miscellaneous

242P Operating a fund as an eligible rollover fund when not authorised to do so

- (1) A person commits an offence if:
 - (a) the person makes a representation; and
 - (b) the representation is that a regulated superannuation fund is an eligible rollover fund; and
 - (c) the RSE licensee for the fund does not have authority to operate the fund as an eligible rollover fund.

Penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part 1A of the *Crimes Act 1914* contains provisions dealing with penalties.

- (2) Subsection (1) is an offence of strict liability.

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

242Q Prudential standards dealing with amounts held in eligible rollover funds

A prudential standard determined under section 34C may include provisions:

- (a) requiring an RSE licensee whose authority to operate a regulated superannuation fund as an eligible rollover fund is

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cancelled under subsection 242J(1) to transfer any amounts held in the eligible rollover fund to a regulated superannuation fund that:

- (i) is an eligible rollover fund; or
- (ii) offers a MySuper product; and
- (b) setting out the requirements that must be met in relation to the transfer of such amounts; and
- (c) dealing with other matters relating to such amounts.

242R No liability for giving effect to a section 242B election

A trustee of a regulated superannuation fund is not subject to any liability to a member of the fund for an action taken to give effect to an election made in accordance with section 242B.

Division 3—Facility to pay benefits to eligible rollover funds

243 Payment of benefits to eligible rollover fund

When section applies

- (1) This section applies at a particular time if:
- (a) a person (the **first person**) is a beneficiary of a fund (the **transferor fund**); and
 - (b) the time is after the date specified in the regulations; and
 - (c) the conditions specified in the regulations are satisfied.

Application to eligible rollover fund

- (2) A trustee of the transferor fund may apply to a trustee of an eligible rollover fund, on behalf of the first person, for the issue to the first person of a superannuation interest in the eligible rollover fund.

Consideration for issue

- (3) The application is to be made on the basis that:
- (a) the consideration for the issue is to be paid, on behalf of the first person, by a trustee of the transferor fund; and
 - (b) the amount of the consideration is equal to the amount ascertained in accordance with the regulations; and
 - (c) a trustee of the transferor fund is not entitled to recover the consideration from the first person (except as a result of the operation of subsection (5)).

Authorisation by beneficiary

- (4) The first person is taken to have authorised:
- (a) the trustee of the transferor fund who made the application to make the application; and

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- (b) the trustee of the transferor fund who paid the consideration to pay the consideration.

This rule has effect despite any direction to the contrary by the first person.

Beneficiary ceases to have rights against transferor fund etc.

- (5) If the superannuation interest is issued in accordance with the application:
 - (a) the first person ceases to have rights against the transferor fund; and
 - (b) if:
 - (i) immediately before the interest was issued in accordance with the application, another person (the **second person**) had a contingent right against the transferor fund to a death or disability benefit; and
 - (ii) the contingent right was derived from the first person's capacity as a beneficiary of the transferor fund;
- the second person ceases to have the contingent right against the transferor fund.

To avoid doubt, a reference in paragraph (a) to a right against the transferor fund includes a reference to a contingent right to a death or disability benefit.

Governing rules overridden

- (6) This section has effect despite anything in the governing rules of the transferor fund.

244 Operating standards for transferor funds—information and records

When section applies

- (1) This section applies if an application is made under section 243 by a trustee of a fund (the **transferor fund**) to a trustee of an eligible rollover fund, on behalf of a person, for the issue to the person of a superannuation interest in the eligible rollover fund.

Operating standards

- (2) Without limiting, by implication, the generality of the standards that may be prescribed under section 31 or 32, those standards may include standards relating to the following matters:
 - (a) requiring a trustee of the transferor fund to give to a trustee of the eligible rollover fund such information about the person as is specified in the standards;
 - (b) requiring each trustee of the transferor fund to ensure that a record of the application is kept and retained.

248 Claims for benefits

- (1) This section applies to a benefit held by an eligible rollover fund, where the superannuation interest to which the benefit relates was issued pursuant to an application under section 243 of this Act or section 89 of the *Retirement Savings Accounts Act 1997*.
- (2) A person who considers that he or she is entitled to the benefit may apply in the approved form to a trustee of the fund for payment of the benefit.

Note: The approved form of application may require the person to set out his or her tax file number. See subsection 299U(6).

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**Part 24A—Transitional provisions relating to
pre-1 July 1995 automatic rollovers of
benefits between funds**

249 Object of Part

The object of this Part is to provide for certain transitional measures relating to pre-1 July 1995 automatic rollovers of benefits between funds.

250 Definitions

In this Part:

eligible transitional fund means a fund that was, at any time before 1 July 1995, an eligible rollover fund within the meaning of old Part 24.

fund means a regulated superannuation fund or an approved deposit fund.

old Part 24 means Part 24 as in force at any time before 1 July 1995.

251 Rights of beneficiary to rolled-over benefits

- (1) If a fund has paid in accordance with old Part 24 to an eligible transitional fund an amount equal to the benefits of a beneficiary in the first-mentioned fund:
 - (a) the beneficiary ceases to have any rights against the first-mentioned fund in respect of those benefits; but
 - (b) has the corresponding rights against the eligible transitional fund in respect of those benefits.

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- (2) For the purposes of this section, a mere contingent right to a death or disability benefit is taken not to be a right in respect of the first-mentioned benefits.
- (3) Subsection (2) is enacted for the avoidance of doubt.

252 Claims to rolled-over benefits

A person who considers that, as a result of paragraph 251(1)(b), he or she is entitled to benefits held by an eligible transitional fund may apply in the approved form to a trustee of that fund for payment of the benefits.

Note: The approved form of application may require the person to set out his or her tax file number. See subsection 299U(7).

Part 24B Provisions relating to the administration by APRA and the Commissioner of Taxation of superannuation funds with fewer than 5 members

Division 1 Monitoring of superannuation funds with fewer than 5 members

Section 252A

**Part 24B—Provisions relating to the administration
by APRA and the Commissioner of
Taxation of superannuation funds with
fewer than 5 members**

**Division 1—Monitoring of superannuation funds with
fewer than 5 members**

**252A APRA or Commissioner of Taxation may request certain
information**

Notice may be given

- (1) APRA or the Commissioner of Taxation may give a written notice under this section to a trustee of a regulated superannuation fund if APRA or the Commissioner of Taxation, as the case requires, considers that the fund has fewer than 5 members.

Information that may be requested

- (2) The notice may require each trustee of the fund, within a specified period (which must not be shorter than 21 days), to ensure that APRA or the Commissioner of Taxation is informed:
 - (a) whether or not the fund was a self managed superannuation fund as at the date (the **response date**) on which APRA or the Commissioner of Taxation was so informed; or
 - (b) if the fund was not a self managed superannuation fund as at the response date—whether the trustee, or the trustees, of the fund consider that the fund is likely to become a self managed superannuation fund within the period specified in the notice; and
 - (c) if the fund was a self managed superannuation fund as at the response date—whether the trustee, or the trustees, of the fund consider that the fund is likely to cease to be a self

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managed superannuation fund within the period specified in the notice.

Offence

- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

Strict liability

- (4) An offence under subsection (3) is an offence of strict liability.

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Division 3 Transitional and savings provisions relating to the regulation of self managed superannuation funds by the Commissioner of Taxation

Section 252D

Division 3—Transitional and savings provisions relating to the regulation of self managed superannuation funds by the Commissioner of Taxation

252D Definition

In this Division:

commencement day means the day on which section 1 of the *Superannuation Legislation Amendment Act (No. 3) 1999* commenced.

252E Instruments made or issued by APRA or by the Commissioner of Taxation

Instruments made by APRA

- (1) An instrument that:
- (a) relates to a superannuation fund; and
 - (b) was in force immediately before a particular time (the ***switching time***); and
 - (c) was made or issued (whether before, on or after the commencement day) by APRA under a provision of this Act that:
 - (i) immediately before the switching time, was administered by APRA in relation to the fund; and
 - (ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;
- has effect, at and after the switching time (subject to any later application of this section), as if it had been made or issued by the Commissioner of Taxation.

Instruments made by Commissioner of Taxation

- (2) An instrument that:

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- (a) relates to a superannuation fund; and
- (b) was in force immediately before a particular time (the *switching time*); and
- (c) was made or issued by the Commissioner of Taxation under a provision of this Act that:
 - (i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and
 - (ii) as at the switching time, is administered by APRA in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been made or issued by APRA.

Instruments for a limited period

- (3) If an instrument referred to in this section was, when made, to have effect only for a limited period, it has effect only for so much of the period as has not already expired before the switching time.

Instruments not in operation

- (4) A reference in this item to an instrument in force includes a reference to an instrument that has been made but is not yet in operation.

252F Obligations owed by or to APRA or the Commissioner of Taxation

- (1) Subject to section 252G, an obligation that:
 - (a) relates to a superannuation fund; and
 - (b) was owed by APRA, or to APRA, immediately before a particular time (the *switching time*); and
 - (c) was owed (whether before, on or after the commencement day) under a provision of this Act that:

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- (i) immediately before the switching time, was administered by APRA in relation to the fund; and
 - (ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;
- has effect, at and after the switching time (subject to any later application of this section), as if it had been owed by, or to, the Commissioner of Taxation.

Rights and powers of APRA

- (2) Subject to section 252G, a right or power that:
- (a) relates to a superannuation fund; and
 - (b) was possessed by, or conferred on, APRA immediately before a particular time (the ***switching time***); and
 - (c) was possessed or conferred (whether before, on or after the commencement day) under a provision of this Act that:
 - (i) immediately before the switching time, was administered by APRA in relation to the fund; and
 - (ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;
- has effect, at and after the switching time (subject to any later application of this section), as if it had been possessed by, or conferred on, the Commissioner of Taxation.

Obligations owed by, or to, the Commissioner of Taxation

- (3) An obligation that:
- (a) relates to a superannuation fund; and
 - (b) was owed by the Commissioner of Taxation, or to the Commissioner of Taxation, immediately before a particular time (the ***switching time***); and
 - (c) was owed under a provision of this Act that:
 - (i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and

- (ii) as at the switching time, is administered by APRA in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been owed by, or to, APRA.

Rights and powers of the Commissioner of Taxation

- (4) A right or power that:
 - (a) relates to a superannuation fund; and
 - (b) was possessed by, or conferred on, the Commissioner of Taxation immediately before a particular time (the ***switching time***); and
 - (c) was possessed or conferred under a provision of this Act that:
 - (i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and
 - (ii) as at the switching time, is administered by APRA in relation to the fund;
- has effect, at and after the switching time (subject to any later application of this section), as if it had been possessed by, or conferred on, APRA.

252G Outstanding annual returns and amounts

Outstanding annual returns etc.—self managed funds

- (1) If:
 - (a) a superannuation fund was a self managed superannuation fund at either of the following times:
 - (i) the end of the last day of a designated year of income; or
 - (ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and
 - (b) at that time, a trustee of the fund was under an obligation to ensure that APRA is given an annual return in respect of a

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previous year of income, or any other report or information under this Act or the *Financial Sector (Collection of Data) Act 2001*;

each trustee of the fund is taken (subject to any later application of this section) to be under an obligation, beginning immediately after that time, to ensure that the annual return, report or information is given to the Commissioner of Taxation. The annual return, report or information is to be given in the approved form.

Note: This provision only affects annual returns outstanding from years *before* the designated year of income. A trustee will still be required to submit a return under section 36A for the designated year of income (and also under the *Financial Sector (Collection of Data) Act 2001* if the fund changed status during the designated year of income). Levy will be payable on lodgment of any such return.

Outstanding annual returns etc.—other funds

(2) If:

- (a) a superannuation fund was a fund other than a self managed superannuation fund at either of the following times:
 - (i) the end of the last day of a designated year of income; or
 - (ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and
- (b) at that time, a trustee of the fund was under an obligation to ensure that the Commissioner of Taxation is given an annual return in respect of a previous year of income, or any other report or information under this Act;

each trustee of the fund is taken (subject to any later application of this section) to be under an obligation, beginning immediately after that time, to ensure that the annual return, report or information is given to APRA. The annual return, report or information is to be given in the approved form.

Note: This provision only affects annual returns outstanding from years *before* the designated year of income. A trustee will still be required to submit a return under the *Financial Sector (Collection of Data) Act 2001* for the designated year of income (and also under section 36A if

the fund changed status during the designated year of income). Levy
will be payable on lodgment of any such return.

Outstanding levy—self managed funds

- (3) If:
- (a) a superannuation fund was a self managed superannuation fund at either of the following times:
 - (i) the end of the last day of a designated year of income;
or
 - (ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and
 - (b) at that time, an amount was payable by the trustee, or the trustees, of the superannuation fund to APRA on behalf of the Commonwealth under a prescribed Act in respect of a previous year of income;
- then:
- (c) the amount is taken (subject to any later application of this section) to be payable by the trustee, or the trustees, of the superannuation fund, immediately after the that time, to the Commissioner of Taxation on behalf of the Commonwealth; and
 - (d) the Commissioner of Taxation has the same power to waive or remit the amount as APRA would have had if this subsection had not been enacted.

Outstanding levy—other funds

- (4) If:
- (a) a superannuation fund was a fund other than a self managed superannuation fund at either of the following times:
 - (i) the end of the last day of a designated year of income;
or
 - (ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and

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- (b) at that time, an amount was payable by the trustee, or the trustees, of the superannuation fund to the Commissioner of Taxation under a prescribed Act in respect of a previous year of income;

then:

- (c) the amount is taken (subject to any later application of this section) to be payable by the trustee, or the trustees, of the superannuation fund, immediately after that time, to APRA on behalf of the Commonwealth; and
- (d) APRA has the same power to waive or remit the amount as the Commissioner of Taxation would have had if this subsection had not been enacted.

Regulations

- (5) The regulations may prescribe exceptions to the rules set out in subsections (1) to (4), including, but not limited to the following:
 - (a) prescribing that, in specified circumstances, a trustee of a superannuation fund is taken to be under an obligation to give a return, report or information to APRA rather than to the Commissioner of Taxation, or to the Commissioner of Taxation rather than to APRA;
 - (b) prescribing that, in specified circumstances, an amount is taken to be payable by a trustee of a superannuation fund to APRA rather than to the Commissioner of Taxation, or to the Commissioner of Taxation rather than to APRA.

Definitions

- (6) In this section:

amount means an amount of levy or an amount of late payment penalty.

designated year of income means the 1999-2000 year of income or a later year of income.

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prescribed Act means the following:

- (a) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;
- (b) the *Financial Institutions Supervisory Levies Collection Act 1998*;
- (c) any other Act prescribed by the regulations for the purposes of this paragraph.

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252H Regulations

The regulations may deal with other transitional matters arising from the enactment of the *Superannuation Legislation Amendment Act (No. 3) 1999*.

Part 25—Monitoring and investigation

Division 1—Preliminary

253 Objects of Part

The objects of this Part are:

- (a) to ensure that the Regulator has sufficient power to monitor superannuation entities, approved SMSF auditors and audits of self managed superannuation funds (Division 2); and
- (aa) to ensure that the Regulator has sufficient power to monitor employers' compliance with Part 3B (superannuation data and payment regulations and standards) (Division 2); and
- (b) to empower the Regulator to require the trustee, or the trustees, of a superannuation entity to appoint an individual, or a committee, to investigate the financial position of the entity (Division 3); and
- (c) to authorise the Regulator to conduct an investigation of the whole or a part of the affairs of a superannuation entity or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund, (Divisions 4, 5, 6, 7, 8 and 9); and
- (d) to authorise the Regulator to accept written undertakings and to apply to the Court for an order remedying breaches of such undertakings.

Note 1: Sections 254 and 264, and Division 3, apply only to monitoring or investigating superannuation entities. They do not apply to monitoring or investigating approved SMSF auditors or to the conduct of audits of self managed superannuation funds.

Note 2: ASIC's powers and duties as the Regulator under sections 255 and 256 apply only to monitoring superannuation entities: see subsection 6(2AA). They do not apply to monitoring approved SMSF auditors or to the conduct of audits of self managed superannuation funds.

Note 3: The Commissioner of Taxation's powers and duties as the Regulator under Divisions 4 to 8 (other than section 285) apply only to

Part 25 Monitoring and investigation

Division 1 Preliminary

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investigating superannuation entities: see subsection 6(2AB).
However, this does not affect any powers and duties the
Commissioner of Taxation has under this Part in relation to
contributing employers: see subsection 6(2AC).

253A Notices may be given to former relevant persons

Any provision of this Part that empowers a notice to be given to a relevant person in relation to a fund, trust or approved SMSF auditor, or in relation to an audit of a self managed superannuation fund, also empowers such a notice to be given to a person who has at any time been a relevant person in relation to the fund, trust, auditor or audit.

Division 2—Monitoring**254 Information to be given to Regulator**

- (1) Each trustee of a superannuation entity established after the commencement of this section must ensure that, within the prescribed period after the establishment of the entity, APRA, or such other body or person as is specified in the regulations, is given such information as is required by the approved form.

Note 1: The approved form for information required to be given under this subsection may require the trustee to set out the tax file number of the entity. See subsection 299U(8).

Note 2: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

- (1A) Without limiting subsection (1), regulations for the purposes of that subsection may specify that information is to be given to different persons or bodies in respect of different classes of superannuation funds.

- (2) For the purposes of this Act, the Regulator or an authorised person may, by written notice to a trustee of a superannuation entity, require each trustee of the entity to ensure that, within a specified period, the Regulator or an authorised person is given, in relation to a specified year of income of the entity, such information, or a report on such matters, as is set out in the notice.

Note: The information may include the tax file number of the entity. See subsection 299U(9).

- (3) If a trustee of a superannuation entity gives information to APRA or to another person or body as required by subsection (1), APRA or the other person or body must give to the trustee a written statement that the information has been received.

- (4) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 50 penalty units.

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- (5) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 25 penalty units.

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

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

255 Regulator may require production of books

- (1) For the purposes of this Act, the Regulator or an authorised person may, by written notice to:
- (a) a relevant person in relation to a superannuation entity or approved SMSF auditor; or
 - (b) a relevant person in relation to an audit of a self managed superannuation fund; or
 - (c) a contributing employer;
- require the relevant person, or the contributing employer, to produce to the Regulator or an authorised person, at such reasonable time and reasonable place as are specified in a notice, any books relating to the affairs of the entity, auditor or audit, or to the obligations of the contributing employer under Part 3B.
- (2) If any book produced to the Regulator or an authorised person under subsection (1) is not in writing in the English language, the Regulator or an authorised person may require the relevant person to produce to the Regulator or an authorised person a version of the book that is in writing in the English language.
- (3) The Regulator or an authorised person may inspect, take extracts from and make copies of any book, or of any version of any book, produced to the Regulator or an authorised person under this section.
- (4) The powers of the Regulator or an authorised person under this section may be exercised in relation to a superannuation entity or an approved SMSF auditor, or in relation to an audit of a self

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managed superannuation fund, even though an investigation is being conducted, under section 263, of:

- (a) the whole or a part of the affairs of the entity or auditor; or
- (b) the whole or a part of the conduct of the audit.

256 Access to premises

- (1) For the purposes of this Act, an authorised person may enter, at any reasonable time, any premises at which the person has reason to believe books are kept relating to:
 - (a) the affairs of a superannuation entity or approved SMSF auditor; or
 - (b) the conduct of an audit of a self managed superannuation fund; or
 - (c) the obligations of a contributing employer under Part 3B.
- (1A) The authorised person may:
 - (a) inspect any book found on the premises:
 - (i) that relates to those affairs, the conduct of that audit or those obligations; or
 - (ii) that the authorised person believes on reasonable grounds to relate to those affairs, the conduct of that audit or those obligations; and
 - (b) make copies of, or take extracts from, any such book.
- (2) An authorised person may not, under subsection (1), enter premises unless the occupier of the premises has consented to the entry.

256A Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to a contributing employer were, by express provision, confined to a contributing employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

Division 3—APRA may require trustee of superannuation entity to appoint an individual, or a committee, to investigate the financial position of the entity

257 Investigation of financial position of superannuation entity

- (1) APRA may, by written notice given to a trustee of a superannuation entity, require the trustee, or the trustees, of the entity to appoint an individual, or a committee of individuals, to:
 - (a) carry out an investigation of the whole or a specified part of the financial position of the entity as at a specified time or in relation to a specified period; and
 - (b) make a report on that investigation.
- (2) Each trustee of the entity must ensure that a copy of the notice is given to the individual or to each member of the committee (whichever is relevant) within 3 days of the appointment of the individual or member.

258 Qualifications of investigator or investigators

- (1) If APRA's notice requires the appointment of a single person, the notice may specify qualifications (whether academic, professional or by way of experience) that must be held by the person.
- (2) If APRA's notice requires the appointment of a committee of persons, the notice may require that the committee consist of persons holding such respective qualifications (whether academic, professional or by way of experience) as are specified in the notice.
- (3) If APRA's notice includes a requirement of a kind mentioned in subsection (1) or (2), the person or persons appointed must hold the qualifications required by the notice.

259 APRA may veto appointment of investigator or investigators

- (1) Each trustee of the entity must ensure that, within 7 days after the date on which the notice was given, APRA is advised, in writing, of the name of the person or persons appointed.
- (2) If APRA notifies a trustee of the entity that the person is, or any or all of the persons are, not acceptable to APRA, the trustee, or trustees, of the entity must, within 7 days after the date on which the notice was given:
 - (a) appoint a different individual or individuals; and
 - (b) advise APRA, in writing, of the name of the individual or individuals so appointed.
- (3) APRA may, within 7 days after the advice was given under subsection (1) or (2), notify a trustee of the entity, in writing, that the person is, or that any or all of the persons are, not acceptable to APRA.

260 Deadline for receipt of report

- (1) APRA's notice under section 257 must specify a date as the deadline for the receipt of the report.
- (2) A person appointed to investigate and make a report under subsection 257(1) (whether as an individual or as a member of a committee) commits an offence if the report is not given to APRA:
 - (a) before the expiry of the deadline; or
 - (b) within such further time as APRA, by written notice, allows.

Penalty: 100 penalty units.

- (3) A person appointed to investigate and make a report under subsection 257(1) (whether as an individual or as a member of a committee) commits an offence if the report is not given to APRA:
 - (a) before the expiry of the deadline; or
 - (b) within such further time as APRA, by written notice, allows.This is an offence of strict liability.

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Division 3 APRA may require trustee of superannuation entity to appoint an individual, or a committee, to investigate the financial position of the entity

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Penalty: 50 penalty units.

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

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

261 Contents of report etc.

- (1) APRA's notice under section 257 may require the report to contain a statement of the person's opinion or the committee's opinion, as the case may be, about such matters as are specified in the notice.
- (2) Subject to subsection (3), if APRA's notice under section 257 includes a requirement of a kind mentioned in subsection (1) of this section, the person's report or the committee's report must contain a statement of the person's opinion or the committee's opinion, as the case may be, about the matters specified in the notice.
- (3) If the members of a committee are divided:
 - (a) if the division relates to the content of a statement of the committee's opinion about a particular matter—the committee's report must contain statements of the respective members' opinions about that matter; or
 - (b) in any other case—the committee's report is to be divided accordingly.
- (4) The report must be signed by the person or persons appointed.

262 Trustee must comply with requirements

- (1) A trustee commits an offence if the trustee contravenes a requirement imposed on the trustee by or under section 257, 258 or 259.

Penalty: 100 penalty units.

- (2) A trustee commits an offence if the trustee contravenes a requirement imposed on the trustee by or under section 257, 258 or 259. This is an offence of strict liability.

Section 262

Penalty: 50 penalty units.

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

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

Division 3A—Regulator may accept and enforce undertakings

262A Acceptance and enforcement of undertakings

- (1) The Regulator may accept a written undertaking given by a person in connection with a matter in relation to which the Regulator has a function or power under this Act, the regulations or the prudential standards.
- (2) The person may withdraw or vary the undertaking at any time, but only with the Regulator's consent.
- (3) If the Regulator considers that the person who gave the undertaking has breached any of its terms, the Regulator may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

Division 4—Investigations by Regulator

263 Investigations of superannuation entities, approved SMSF auditors and the conduct of certain audits

- (1) If it appears to the Regulator that:
- (a) a contravention of this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* may have occurred or be occurring in relation to a superannuation entity; or
 - (b) the financial position of a superannuation entity may be unsatisfactory; or
 - (c) the trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund have refused or failed to give effect to a determination of the Superannuation Complaints Tribunal under section 37 of the *Superannuation (Resolution of Complaints) Act 1993*;
- the Regulator may, by written notice to a trustee of the entity, tell the trustee that the Regulator proposes to conduct an investigation of the whole or a part of the affairs of the entity.
- (1A) If it appears to the Regulator that a contravention of this Act or the regulations may have occurred or be occurring in relation to an approved SMSF auditor, the Regulator may, by written notice to the auditor, tell the auditor that the Regulator proposes to conduct an investigation of the whole or a part of the affairs of the auditor.
- (1B) If it appears to the Regulator that a contravention of this Act or the regulations may have occurred or be occurring in relation to the conduct of an audit of a self managed superannuation fund, the Regulator may, by written notice to a person who conducted, or who is conducting, the audit, tell the person that the Regulator proposes to conduct an investigation of the whole or a part of the conduct of the audit.
- (2) The following provisions of this Division apply:

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- (a) in relation to a superannuation entity if a notice is given under subsection (1) to a trustee of the entity;
 - (b) in relation to an approved SMSF auditor if a notice is given under subsection (1A) to the auditor;
 - (c) in relation to a person who conducted, or who is conducting, an audit of a self managed superannuation fund, if a notice is given under subsection (1B) to the person.
- (3) To avoid doubt, this section applies to a superannuation entity, in the same way as this section applies to any other superannuation entity, if either of the following apply:
 - (a) the superannuation entity is wound up, dissolved or terminated;
 - (b) the trustee of the superannuation entity is or becomes:
 - (i) if the trustee is a body corporate—an externally-administered body corporate (within the meaning of the *Corporations Act 2001*); or
 - (ii) if the trustee is an individual—insolvent under administration.

264 Power of Regulator to obtain information or freeze assets

Regulator may act to preserve values of interests

- (1) The Regulator may do any one or more of the things set out in subsections (2) to (4) if it appears to the Regulator that conduct that has been, is being, or is proposed to be, engaged in by a trustee or an investment manager of a superannuation entity is likely to:
 - (a) if the Regulator intends to do a thing set out in subsection (2)—adversely affect the values of the interests of beneficiaries; or
 - (b) otherwise—significantly adversely affect the values of the interests of the beneficiaries.
- (2) The Regulator may, by written notice given to a person who is a relevant person in relation to the entity, require the person, within a stated period, to give to the Regulator or to an authorised person

such information, or a report on such matters, relating to the affairs of the entity as are set out in the notice.

- (3) The Regulator may, by written notice given to a trustee, direct the trustee, or the trustees, of the entity, subject to such conditions (if any) as are stated in the notice:
- (a) not to acquire assets on behalf of the entity; or
 - (b) not to dispose of, or otherwise deal, or deal in a particular way, in:
 - (i) any of the assets of the entity; or
 - (ii) any of the assets of the entity included in a specified class of assets; or
 - (iii) a specified asset or assets of the entity;
- until the notice is revoked or for a period, or until the occurrence of an event, referred to in the notice.

Note: For example, the Regulator may direct a trustee not to make any withdrawals from a bank account without prohibiting the making of deposits to the credit of the account.

- (3A) The Regulator may, by written notice given to an investment manager of the entity, direct that person, subject to such conditions (if any) as are stated in the notice:
- (a) not to acquire assets on behalf of the entity; or
 - (b) not to dispose of, or otherwise deal, or deal in a particular way, in:
 - (i) any of the assets of the entity; or
 - (ii) any of the assets of the entity included in a specified class of assets; or
 - (iii) a specified asset or assets of the entity;
- until the notice is revoked or for a period, or until the occurrence of an event, referred to in the notice.

Note: For example, the Regulator may direct an investment manager not to make any withdrawals from a bank account without prohibiting the making of deposits to the credit of the account.

- (4) The Regulator may, by written notice given to a person (other than a trustee or an investment manager) who has possession, custody

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or control of an asset or assets of the entity, direct the person, subject to such conditions (if any) as are stated in the notice, not to dispose of, or otherwise deal, or deal in a particular way, in:

- (a) if the person has possession, custody or control of a single asset—that asset; or
- (b) if the person has possession, custody or control of 2 or more assets:
 - (i) any of those assets; or
 - (ii) any of those assets that are included in a specified class of assets; or
 - (iii) such of those assets as are identified in the notice;

until the notice is revoked or for a period, or until the occurrence of an event, referred to in the notice.

Note: For example, the Regulator may direct a person not to make any withdrawals from a bank account without prohibiting the making of deposits to the credit of the account.

- (4A) To avoid any doubt, the power of the Regulator under subsection (3), (3A) or (4) to direct a person not to deal in a particular way in assets of an entity includes power to direct a person not to remove from Australia assets of the entity that are in Australia.

Effect of direction on validity of transactions

- (5) Subsection (3), (3A) or (4) does not affect the validity of a transaction entered into by a person in contravention of a notice given under that subsection.

265 Inspectors

- (1) The Regulator may, in writing, appoint a member of the staff of the Regulator, or a member of the staff of the other Regulator, to be an inspector for the purposes of the conduct of investigations under this Division in relation to:
 - (a) the affairs of superannuation entities and approved SMSF auditors; and
 - (b) the conduct of audits of self managed superannuation funds.

- (2) The Regulator must cause to be issued to each person appointed under subsection (1) an identity card that sets out the name and appointment of the person and to which is attached a recent photograph of the person.
- (3) A person who was appointed under subsection (1) must not, upon ceasing to be an inspector, fail, without reasonable excuse, to return to the Regulator the identity card issued to him or her under this section.

Penalty for a contravention of this subsection: One penalty unit.

- (4) Subsection (3) is an offence of strict liability.

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

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

266 Delegation by inspector

- (1) An inspector may, by signed writing, delegate to a member of the staff of the Regulator any of the inspector's powers under this Part.
- (2) A delegate must, on the request of a person in relation to whom the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.
- (3) A reference in this Part to an inspector includes a reference to a delegate of an inspector.

267 Regulator may exercise powers of inspector

The Regulator may exercise any of the powers of an inspector under this Part and, if he or she does so, then, for the purposes of the exercise of those powers by the Regulator, a reference in this Part to an inspector is taken to be a reference to the Regulator.

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268 Inspector may enter premises for purposes of an investigation

If an inspector believes on reasonable grounds that it is necessary to enter premises for the purposes of an investigation of the whole or a part of the affairs of a superannuation entity or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund, the inspector may, at any reasonable time, enter the premises and:

- (a) inspect any book found on the premises that relates to the affairs of the entity or auditor, or to the audit, or that he or she believes on reasonable grounds to relate to those affairs or that audit; and
- (b) make copies of, or take extracts from, any such book.

269 Inspector may require production of books

For the purposes of an investigation of the whole or a part of the affairs of a superannuation entity or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund, an inspector may, by written notice given to a person who:

- (a) is a relevant person in relation to the entity, auditor or audit; or
 - (b) the inspector believes on reasonable grounds has the custody or control of any books relating to those affairs or that audit;
- require the person to produce all or any of those books to the inspector.

270 Powers of inspector to require assistance from, and examine, current and former relevant persons and other persons

An inspector may, by written notice given to a person:

- (a) who is, or has been, a relevant person in relation to:
 - (i) a superannuation entity or approved SMSF auditor whose affairs or a part of whose affairs the Regulator is investigating; or

- (ii) an audit of a self managed superannuation fund the conduct of which, or a part of the conduct of which, the Regulator is investigating; or
 - (b) who the inspector, on reasonable grounds, suspects or believes can give information relevant to the investigation of that entity, auditor or audit;
- require the person to do either or both of the following:
- (c) to give the inspector all reasonable assistance in connection with the investigation;
 - (d) to appear before the inspector for examination concerning matters relevant to the investigation.

271 Application for warrant to seize books not produced

- (1) If an inspector has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, books:
 - (a) whose production has been required under this Part; and
 - (b) that have not been produced in compliance with that requirement;he or she may:
 - (c) lay before a magistrate an information or complaint on oath setting out those grounds; and
 - (d) apply for the issue of a warrant to search the premises for those books.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

272 Grant of warrant

Section applies if magistrate satisfied of certain things

- (1) This section applies if, on an application under section 271, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books:

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- (a) whose production has been required under this Part; and
- (b) that have not been produced in compliance with that requirement.

Issue of warrant

- (2) The magistrate may issue a warrant authorising:
 - (a) a member of the Australian Federal Police named in the warrant; or
 - (b) that member together with the inspector who applied for the issue of the warrant;with such assistance, and by such force, as is necessary and reasonable, to do the acts set out in subsection (3).

Acts authorised by warrant

- (3) The acts are:
 - (a) entering on or into the premises; and
 - (b) searching the premises; and
 - (c) breaking open and searching anything, whether a fixture or not, in or on the premises; and
 - (d) taking possession of, or securing against interference, books that appear to be any or all of those books.

Grounds for issuing warrant to be set out

- (4) If the magistrate issues such a warrant, he or she must set out on the information or complaint laid before him or her under subsection 271(1) for the purposes of the application:
 - (a) which of the grounds set out in the information; and
 - (b) particulars of any other grounds;he or she has relied on to justify the issue of the warrant.

Contents of warrant

- (5) A warrant under this section must:
- (a) specify the premises and books referred to in subsection (1); and
 - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
 - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

273 Powers if books produced or seized

Section applies if books produced, seized etc.

- (1) This section applies if:
- (a) books are produced to a person under a requirement made under this Part; or
 - (b) under a warrant issued under section 272, a person:
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
 - (c) because of a previous application of subsection (8) of this section, books are delivered into a person's possession.

Possession in (1)(a) case

- (2) If paragraph (1)(a) applies, the person may take possession of any of the books.

Power to inspect etc.

- (3) The person may inspect, and may make copies of, or take extracts from, any of the books.

Power to use for proceedings

- (4) The person may use, or permit the use of, any of the books for the purposes of a proceeding.

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Retaining possession

- (5) The person may retain possession of any of the books for so long as is necessary:
- (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
 - (b) for the purposes of the investigation; or
 - (c) for a decision to be made about whether or not a proceeding to which the books concerned would be relevant should be begun; or
 - (d) for such a proceeding to be begun and carried on.

Claims or liens

- (6) No-one is entitled, as against the person, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

Right of inspection

- (7) While the books are in the person's possession, the person must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the first-mentioned person's possession.

Delivery into possession of Regulator etc.

- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of the Regulator or of a person authorised by the Regulator to receive them.

Explanation of matters relating to books

- (9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the books under subsection (8), may require:
- (a) if paragraph (1)(a) applies—a person who so produced any of the books; or
 - (b) in any case—a person who was a party to the compilation of any of the books;

to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

274 Powers if books not produced

If a person fails to produce particular books in compliance with a requirement made by another person under this Part, the other person may require the first-mentioned person to state, to the best of his or her knowledge and belief:

- (a) where the books may be found; or
- (b) who last had possession, custody or control of the books and where that person may be found.

275 Power to require person to identify property of superannuation entity

A person who has power under this Part to require another person to produce books relating to affairs of a superannuation entity may, whether or not that power is exercised, require the other person, so far as the other person can do so:

- (a) to identify property of the entity; and
- (b) to explain how a trustee or an investment manager of the entity has kept account of that property.

Division 5—Examinations

276 Application of Division

This Division applies if, pursuant to a requirement made under paragraph 270(d), a person (the *examinee*) appears before an inspector.

277 Requirements made of an examinee

- (1) The inspector may examine the examinee on oath or affirmation and may, for that purpose:
 - (a) require the examinee either to take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the examinee.
- (2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.
- (3) The inspector may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Regulator is investigating, or is to investigate.

278 Examination to be in private

- (1) The examination is to take place in private and the inspector may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present at the examination unless he or she:
 - (a) is the inspector or the examinee; or
 - (b) is a member of the staff of the Regulator authorised by the Regulator to attend the examination; or
 - (c) is entitled to be present under:
 - (i) a direction under subsection (1); or
 - (ii) subsection 279(1).

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- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding 10 penalty units.

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

Note 2: A defendant bears an evidential burden in relation to the matter in paragraphs (2)(a), (b) and (c) (see subsection 13.3(3) of the *Criminal Code*).

279 Examinee's lawyer may attend

- (1) The examinee's lawyer may be present at the examination and may, at such times during it as the inspector determines:
- (a) address the inspector; and
 - (b) examine the examinee;
- about matters about which the inspector has examined the examinee.
- (2) If, in the inspector's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.

280 Record of examination

- (1) The inspector must cause a written record to be made of statements made at the examination.
- (2) The inspector may require the examinee to read the written record, or to have it read to him or her, and may require him or her to sign it.
- (3) The inspector must give to the examinee a copy of the written record, without charge, but subject to such conditions (if any) as the inspector imposes.

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281 Giving copies of record to other persons

Copies for proceedings

- (1) If a person's lawyer satisfies the Regulator that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related, the Regulator may give the lawyer:
 - (a) a copy of a written record of the examination; or
 - (b) a copy of that record together with a copy of any related book.

Copies to be used only for proceedings

- (2) If the Regulator gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, a proceeding, intentionally:
 - (a) use the copy or a copy of it; or
 - (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

Penalty: Imprisonment for 6 months.

282 Copies given subject to conditions

- (1) If a copy is given to a person under subsection 280(3) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.
- (2) A person who intentionally or recklessly contravenes this section commits an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

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

283 Record to accompany report

- (1) When a report about the investigation is prepared under section 284, each record (if any) of the examination is to accompany the report.
- (2) If:
 - (a) in the Regulator's opinion, a statement made at an examination is relevant to any other investigation under Division 4; and
 - (b) a record of the statement was made under section 280; and
 - (c) a report about the other investigation is prepared under section 284;a copy of the record must accompany the report.

Division 6—Reports

284 Report of inspector

- (1) An inspector must, on completion or termination of an investigation, prepare a report about the investigation.
- (2) The report must set out:
 - (a) the inspector's findings about the matters investigated; and
 - (b) the evidence and other material on which these findings were based; and
 - (c) such other matters relating to or arising out of, the investigation as the inspector thinks fit.
- (3) The Regulator:
 - (a) must give a copy of the report to:
 - (i) each trustee of the superannuation entity to which the investigation related; or
 - (ii) the approved SMSF auditor to whom the investigation related; or
 - (iii) the person who conducted, or is conducting, the audit to which the investigation related; and
 - (b) if the report, or a part of the report, relates to the affairs of another person to a material extent—may, on the Regulator's own initiative or at the request of that person, give a copy of the report or part of that report, to that person; and
 - (c) if the report, or a part of the report, relates to a contravention of a law of the Commonwealth, of a State or of a Territory—may give a copy of the whole or a part of the report to:
 - (i) the Australian Federal Police; or
 - (ii) the Chief Executive Officer of the Australian Crime Commission; or
 - (iii) the Director of Public Prosecutions; or
 - (iv) a prescribed agency.

- (4) APRA and ASIC must give each other a copy of any reports they prepare under this section.
- (5) ASIC and the Commissioner of Taxation must give each other a copy of any report they prepare under this section in relation to:
 - (a) a self managed superannuation fund; or
 - (b) an approved SMSF auditor; or
 - (c) a person who conducted, or is conducting, an audit of a self managed superannuation fund.

Division 7—Offences

285 Compliance with requirements made under this Act

A person must not intentionally or recklessly refuse or fail to comply with a requirement of the Regulator, an authorised person or an inspector under this Act.

Penalty:

- (a) in respect of a requirement under subsection 264(3), (3A) or (4)—imprisonment for 2 years; or
- (b) otherwise—30 penalty units.

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

286 Concealing books relevant to investigation

A person who knows that the Regulator is investigating, or is about to investigate, a matter must not, with intent to delay or obstruct the investigation or proposed investigation:

- (a) in any case—conceal, destroy, mutilate or alter a book relating to that matter; or
- (b) if a book relating to that matter is in a particular State or Territory—take or send the book out of that State or Territory or out of Australia.

Penalty: Imprisonment for 2 years.

287 Self-incrimination

Self-incrimination not a reasonable excuse

- (1) For the purposes of this Part, it is not a reasonable excuse for a person to refuse or fail:
 - (a) to give information; or
 - (b) to sign a record; or

(c) to produce a book;
in accordance with a requirement made of the person, that the information, signing the record or production of the book, as the case may be, might tend to incriminate the person or make the person liable to a penalty.

Self-incrimination as grounds for inadmissibility

- (2) Subsection (3) applies if:
- (a) before:
 - (i) making an oral statement giving information; or
 - (ii) signing a record;as required under this Part, a person claims that the statement or signing the record, as the case may be, might tend to incriminate the person or make the person liable to a penalty; and
 - (b) the statement or signing the record, as the case may be, might in fact tend to incriminate the person or make the person liable to a penalty.
- (2A) Subsection (2) does not apply to a person that is a body corporate if the claim relates to a requirement made after the commencement of this subsection.

Inadmissibility of statements etc.

- (3) Subject to subsection (4), none of the following:
- (a) the statement;
 - (b) the fact that the person has signed the record;
- is admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty.

Exceptions

- (4) Subsection (3) does not apply to admissibility in proceedings in respect of:
- (a) in the case of the making of a statement—the falsity of the statement; or

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- (b) in the case of the signing of a record—the falsity of any statement contained in the record.
- (5) This section does not apply to a person who is a contributing employer if the requirement mentioned in subsection (1) relates to the obligations of the contributing employer under Part 3B.

288 Legal professional privilege

- (1) This section applies if:
 - (a) under this Act, a person requires a lawyer:
 - (i) to give information; or
 - (ii) to produce a book; and
 - (b) giving the information would involve disclosing, or the book contains, as the case may be, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is entitled to refuse to comply with the requirement unless:
 - (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under administration or is being wound up—the administrator or the liquidator of the body; or
 - (b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;consents to the lawyer complying with the requirement.
- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:
 - (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
 - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and

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- (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the book, or the part of the book, containing the communication.
- (4) A person who intentionally or recklessly contravenes this section commits an offence punishable on conviction by a fine not exceeding 30 penalty units.

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

289 Powers of Court where non-compliance with this Act

- (1) This section applies if the Regulator is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Act.
- (2) The Regulator may by writing certify the failure to the Court.
- (3) If the Regulator does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Division 8—Evidentiary use of certain material

290 Statements made at an examination: proceedings against examinee

Admissibility of statements made at examination

- (1) Subject to this section, a statement that a person makes at an examination of the person is admissible in evidence against the person in a proceeding.

Self-incrimination exception

- (2) The statement is not admissible if:
- (a) the proceeding is:
 - (i) a criminal proceeding; or
 - (ii) a proceeding for the imposition of a penalty; other than a proceeding in respect of the falsity of the statement; and
 - (b) the person is an individual who, before making the statement, claimed that it might tend to incriminate him or her or make him or her liable to a penalty.

Irrelevant statement exception

- (3) The statement is not admissible if it is not relevant to the proceeding and the person objects to the admission of evidence of the statement.

Related statement exception

- (4) The statement (the **subject statement**) is not admissible if:
- (a) it is qualified or explained by some other statement made at the examination; and
 - (b) evidence of the other statement is not tendered in the proceeding; and

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- (c) the person objects to the admission of evidence of the subject statement.

Legal professional privilege exception

- (5) The statement is not admissible if:
 - (a) it discloses matter in respect of which the person could claim legal professional privilege in the proceeding if subsection (1) did not apply in relation to the statement; and
 - (b) the person objects to the admission of evidence of the statement.

Joint proceedings

- (6) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.

Record is prima facie evidence

- (7) If a written record of an examination of a person is signed by the person under subsection 280(2) or authenticated in any other prescribed manner, the record is, in a proceeding, *prima facie* evidence of the statements it records.

Admissibility of other evidence

- (8) This Part does not limit or affect the admissibility in the proceeding of other evidence to statements made at the examination.

291 Statements made at an examination: other proceedings

Admissibility of absent witness evidence

- (1) If direct evidence by a person (the ***absent witness***) of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination of the absent witness and that

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tends to establish that matter is admissible in the proceeding as evidence of that matter in accordance with subsection (2).

Requirement for admissibility

- (2) The statement is admissible:
- (a) if it appears to the court or tribunal that:
 - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
 - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or
 - (iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or
 - (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

292 Weight of evidence admitted under section 291

- (1) This section applies if evidence of a statement made by a person at an examination of the person is admitted under section 291 in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
 - (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:

- (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
 - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.
- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

293 Objection to admission of statements made at examination

Notice of intention to apply to admit evidence and statements

- (1) A party (the **adducing party**) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
- (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
 - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.

Notice to set out etc. statements

- (2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.

Notice of objection

- (3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
- (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and

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- (b) specifying, in relation to each of those statements, the grounds of objection.

Extension of objection period

- (4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.

Notice etc. to be given to court or tribunal

- (5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:
 - (a) the notice under subsection (1) and any writing that subsection (2) requires to accompany that notice; and
 - (b) the notice under subsection (3).

Action by court or tribunal

- (6) If subsection (5) is complied with, the court or tribunal may either:
 - (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
 - (b) defer determination of the objections until the hearing.

Right to object to admission of statement

- (7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding unless:
 - (a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
 - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

294 Copies of, or extracts from, certain books

- (1) A copy of, or an extract from, a book relating to:

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- (a) affairs of a superannuation entity or approved SMSF auditor;
or
 - (b) conduct of an audit of a self managed superannuation fund;
is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the original book, as the case may be, whether or not the copy or extract was made under section 273.
- (2) A copy of, or an extract from, a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book, or of the relevant part of the book, as the case may be.
- (3) For the purposes of subsection (2), a person who has compared:
- (a) a copy of a book with the book; or
 - (b) an extract from a book with the relevant part of the book;
- may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the book or relevant part, as the case may be.

295 Report under Division 6

Subject to section 296, if a copy of a report under Division 6 purports to be certified by the Regulator as a true copy of such a report, the copy is admissible in a proceeding (other than a criminal proceeding) as *prima facie* evidence of any facts or matters that the report states an inspector to have found to exist.

296 Exceptions to admissibility of report

- (1) This section applies if a party to a proceeding tenders a copy of a report as evidence against another party.
- (2) The copy is not admissible under section 295 in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:
 - (a) a copy of the report has been given to the other party; and

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- (b) the other party, and the other party's lawyer, have had a reasonable opportunity to examine that copy and to take its contents into account in preparing the other party's case.
- (3) Before or after the copy referred to in subsection (1) is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or 2 or more specified persons each of whom:
 - (a) was concerned in preparing the report or making a finding about a fact or matter that the report states the inspector to have found to exist; or
 - (b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, on the basis of which, or on the basis of matters including which, such a finding was made.
- (4) The court or tribunal must grant an application made under subsection (3) unless it considers that, in all the circumstances, it is not appropriate to do so.
- (5) If:
 - (a) the court or tribunal grants an application or applications made under subsection (3); and
 - (b) a person to whom the application or any of the applications relates, or 2 or more such persons, is or are unavailable, or does not or do not attend, to be cross-examined in relation to the report; and
 - (c) the court or tribunal is of the opinion that to admit the copy under section 295 in the proceeding as evidence against the other party without the other party having the opportunity so to cross-examine the person or persons would unfairly prejudice the other party;the court or tribunal must refuse so to admit the copy, or must treat the copy as not having been so admitted, as the case requires.

297 Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

Division 9—Miscellaneous

298 Regulator may cause civil proceeding to be begun

If, as a result of an investigation or from a record of an examination (being an investigation or examination conducted under this Part), it appears to the Regulator to be in the public interest for a person to begin and carry on a proceeding for:

- (a) the recovery of damages for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the investigation or examination related; or
 - (b) recovery of property of the person;
- the Regulator:
- (c) if the person is a body corporate—may cause; or
 - (d) otherwise—may, with the person’s written consent, cause:
- such a proceeding to be begun and carried on in the person’s name.

298A Authorisation of members of staff

- (1) The Regulator may authorise in writing a member of staff of the Regulator, or a member of staff of the other Regulator, for the purposes of a specified provision of this Act.
- (2) The authorisation may be restricted to a particular function or power under the provision.

299 Person complying with requirement not to incur liability to another person

A person who complies with a requirement made of the person under this Part does not incur any liability to any other person merely because of that compliance.

Part 25A—Tax file numbers

Division 1—Quotation of employee's tax file number

299A Employee may quote to employer

An employee may quote his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Note: Section 299P sets out the method of quoting.

299B Employer may inform trustee of tax file number

If:

(a) either:

- (i) before the commencement of this section, an employer made a contribution to an eligible superannuation entity or a regulated exempt public sector superannuation scheme for the benefit of an employee; or
- (ii) after the commencement of this section, an employer makes such a contribution; and

(b) after the commencement of this section, the employee quotes or first quotes his or her tax file number to the employer in connection with the operation or the possible future operation of this Act and the other Superannuation Acts;

the employer may inform a trustee of the entity or scheme, as the case may be, of the employee's tax file number.

299C Employer must inform trustee of tax file number

(1) If:

(a) an employee:

- (i) quotes or first quotes his or her tax file number after the commencement of this section to his or her employer in connection with the operation or the possible future

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Division 1 Quotation of employee's tax file number

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operation of this Act and the other Superannuation Acts;
or

- (ii) quotes or first quotes his or her tax file number on or after 1 July 2007 to his or her employer in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936*; and

- (b) after the employee quotes or first quotes the tax file number, the employer makes a contribution to an eligible superannuation entity for the benefit of the employee; and

- (c) the employer has not previously informed a trustee of the entity of the employee's tax file number;

the employer must inform a trustee of the entity of the employee's tax file number before the required time (see subsection (2)).

Note: Division 3 of Part VA of the *Income Tax Assessment Act 1936* deals with quotation of tax file numbers by recipients of eligible PAYG payments.

- (2) The **required time** is:

- (a) if the quotation or first quotation of the tax file number takes place more than 14 days before the employer makes the contribution—the end of the day on which the employer makes the contribution; or
- (b) in any other case—the end of the 14th day after the day on which the quotation or first quotation of the tax file number takes place.

- (3) The employer commits an offence if the employer contravenes subsection (1). This is an offence of strict liability.

Penalty: 10 penalty units.

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

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

- (4) A disclosure of the employee's tax file number to the employer under section 202CG of the *Income Tax Assessment Act 1936* is taken, for the purposes of this section, to be a quotation of the

number by the employee to his or her employer in connection with the operation of Division 3 of Part VA of that Act.

299CA Use of tax file number to validate information

- (1) This section applies if, after the commencement of this section, an employee:
- (a) quotes his or her tax file number to his or her employer in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts; or
 - (b) quotes his or her tax file number to his or her employer in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936*.

Note: Division 3 of Part VA of the *Income Tax Assessment Act 1936* deals with quotation of tax file numbers by recipients of eligible PAYG payments.

- (2) The employer may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner of Taxation to validate information about the person under section 299TE.

Division 2—Quotation, use and transfer of beneficiary's tax file number

299D Eligible superannuation entity or regulated exempt public sector superannuation scheme beneficiary, or applicant, may quote tax file number

A beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme may quote his or her tax file number to a trustee of the entity or scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Note: Section 299P sets out the method of quoting.

299E Trustee may request beneficiary's or applicant's tax file number

- (1) A trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme may, at any time, request, in a manner approved by the Regulator, a beneficiary, or an applicant to become a beneficiary, of the entity or scheme to quote his or her tax file number to a trustee of the entity or scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

No obligation to quote tax file number

- (2) If a trustee requests a beneficiary or applicant to quote his or her tax file number to a trustee, the beneficiary or applicant is not obliged to comply with the request.

299F Trustee must request person who is beneficiary at commencement to quote tax file number

- (1) Subject to subsection (3), if:

Section 299F

- (a) a person is a beneficiary of an eligible superannuation entity at the commencement of this section; and
- (b) the person is not taken by section 299S or 299T to have quoted his or her tax file number to a trustee of the entity at or before that commencement;

each trustee must ensure that, before the required time (see subsection (2)) in relation to the beneficiary, a request is made, in a manner approved by the Regulator, to the person to quote his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act or, if the request was not made before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or the possible future operation of this Act and the Surcharge Acts.

Required time

- (2) The **required time** in relation to a beneficiary is the end of the 7th day after the day that is the starting day in relation to the beneficiary.

Exception

- (3) A trustee of the entity is not required to ensure that a request is made if the person has already quoted his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of:
 - (a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or
 - (b) otherwise—this Act and the Surcharge Acts.
- (4) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 100 penalty units.

- (4A) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Section 299F

Penalty: 50 penalty units.

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

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

No obligation to quote tax file number

- (5) If a person requests another person to quote his or her tax file number under this section, the other person is not obliged to comply with the request.

Starting day—trustee required to give information to beneficiary

- (6) The starting day, in relation to a beneficiary of an eligible superannuation entity a trustee of which is required under Subdivision 2.4.2 or 2.4.3 of Division 2.4 of Part 2 of the Superannuation Industry (Supervision) Regulations to give information to the beneficiary, is the earlier of:
- (a) the day referred to in whichever of the following subparagraphs is applicable:
 - (i) if the trustee chooses to act under this subparagraph in relation to the beneficiary—the day on which the information referred to in Subdivision 2.4.2 of Division 2.4 of Part 2 of those Regulations is first given to the beneficiary on or after the day on which this section commences;
 - (ii) if the trustee chooses to act under this subparagraph in relation to the beneficiary—the day on which the information referred to in Subdivision 2.4.3 of Division 2.4 of Part 2 of those Regulations is first given to the beneficiary on or after the day on which this section commences;
 - (iii) if the trustee does not choose to act under subparagraph (i) or (ii) in relation to the beneficiary—the day on which information referred to in either of those Subdivisions is first given to the beneficiary on or after the day on which this section commences; or

- (b) the last day of the period of one year beginning on the day on which this section commences.

Starting day—trustee not required to give information to beneficiary

- (7) The starting day, in relation to a beneficiary of an eligible superannuation entity a trustee of which is not required, under Subdivision 2.4.2 or 2.4.3 of Division 2.4 of Part 2 of the Superannuation Industry (Supervision) Regulations to give information to the beneficiary, is the day on which this section commences.

299G Trustee must request person becoming beneficiary after commencement to quote tax file number

- (1) Subject to subsection (3), if:
- (a) a person becomes a beneficiary of an eligible superannuation entity after the commencement of this section; and
 - (b) the person has not quoted his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act, or of this Act and the other Superannuation Acts, by the time he or she becomes a beneficiary;

each trustee must ensure that, before the required time (see subsection (2)), a request is made, in a manner approved by the Regulator, to the person to quote his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act or, if the request was not made before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or possible future operation of this Act and the other Superannuation Acts.

Required time

- (2) The **required time** is the end of the 30th day after the day on which the person becomes a beneficiary.

Section 299H

Exception

- (3) A trustee of the entity is not required to ensure that a request is made if the person has already quoted his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of:
- (a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or
 - (b) otherwise—this Act and the other Superannuation Acts.
- (4) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 100 penalty units.

- (4A) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

No obligation to quote tax file number

- (5) If a person requests another person to quote his or her tax file number under this section, the other person is not obliged to comply with the request.

299H Use of tax file number for certain purposes—beneficiaries of eligible superannuation entities

- (1) This section applies if a person who is a beneficiary of an eligible superannuation entity quotes his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Obligation to record tax file number

- (2) If the trustee, or the trustees, of the entity do not already have a record of the tax file number, as soon as is reasonably practicable after the quotation, the trustee to whom the quotation is made must make a record of the number.

Obligation to retain and later destroy tax file number

- (3) Each trustee of the entity must ensure that:
- (a) the record is retained until the person ceases to be a beneficiary of the entity; and
 - (b) the record is destroyed as soon as is reasonably practicable after the person ceases to be a beneficiary of the entity.

Offences

- (6) A trustee of the entity commits an offence if a requirement of subsection (2) or (3) is contravened by the trustee of the entity.

Penalty: 100 penalty units.

- (7) A trustee of the entity commits an offence if a requirement of subsection (2) or (3) is contravened by the trustee of the entity. This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

299J Use of tax file number for certain purposes—beneficiaries of regulated exempt public sector superannuation scheme

- (1) This section applies if a person who is a beneficiary of a regulated exempt public sector superannuation scheme quotes his or her tax file number to a trustee of the scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Section 299K

Trustee may record tax file number

- (2) If the trustee, or the trustees, do not already have a record of the tax file number, a trustee of the scheme may make a record of it.

Obligation to retain and later destroy tax file number

- (3) Each trustee of the scheme must ensure that:
- (a) the record is retained until the person ceases to be a beneficiary of the scheme; and
 - (b) the record is destroyed as soon as is reasonably practicable after the person ceases to be a beneficiary of the scheme.

Offences

- (6) A trustee of the scheme commits an offence if a requirement of subsection (3) is contravened by the trustee.

Penalty: 100 penalty units.

- (7) A trustee of the scheme commits an offence if a requirement of subsection (3) is contravened by the trustee. This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

299K Use of tax file number for certain purposes—applicants to become beneficiaries of eligible superannuation entities

- (1) This section applies if a person who is an applicant to become a beneficiary of an eligible superannuation entity quotes his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Obligation to record tax file number

- (2) If the trustee, or the trustees, of the entity do not already have a record of the tax file number, as soon as is reasonably practicable after the quotation, the trustee to whom the quotation is made must make a record of the number.

Obligation to retain and later destroy tax file number

- (3) Each trustee of the entity must ensure that:
- (a) the record is retained until the time (the ***last retention time***) at which:
 - (i) if the person becomes a beneficiary of the entity—the person ceases to be a beneficiary of the entity; or
 - (ii) if not—the person ceases to be an applicant; and
 - (b) the record is destroyed as soon as is reasonably practicable after the last retention time.

Offences

- (6) A trustee of the entity commits an offence if a requirement of subsection (2) or (3) is contravened by the trustee.

Penalty: 100 penalty units.

- (7) A trustee of the entity commits an offence if a requirement of subsection (2) or (3) is contravened by the trustee. This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

Section 299L

299L Use of tax file number for certain purposes—applicants to become beneficiaries of regulated exempt public sector superannuation schemes

- (1) This section applies if a person who is an applicant to become a beneficiary of a regulated exempt public sector superannuation scheme quotes his or her tax file number to a trustee of the scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Trustee may record tax file number

- (2) If the trustee, or the trustees, do not already have a record of the tax file number, a trustee of the scheme may make a record of it.

Obligation to retain and later destroy tax file number

- (3) Each trustee of the scheme must ensure that:
- (a) the record is retained until the time (the ***last retention time***) at which:
 - (i) if the person becomes a beneficiary of the scheme—the person ceases to be a beneficiary of the scheme; or
 - (ii) if not—the person ceases to be an applicant; and
 - (b) the record is destroyed as soon as is reasonably practicable after the last retention time.

Offences

- (6) A trustee of the scheme commits an offence if a requirement of subsection (3) is contravened by the trustee.

Penalty: 100 penalty units.

- (7) A trustee of the scheme commits an offence if a requirement of subsection (3) is contravened by the trustee. This is an offence of strict liability.

Penalty: 50 penalty units.

Section 299LA

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

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

299LA Use of tax file number to locate amounts or for consolidation

- (1) This section applies if:
- (a) a beneficiary of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme; or
 - (b) an applicant to become such a beneficiary;
- quotes his or her tax file number to a trustee of the entity or scheme in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.
- (2) A trustee of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme, may, subject to any conditions contained in the regulations, use tax file numbers quoted as mentioned in subsection (1):
- (a) in order to locate, in the records or accounts of the entity or scheme, amounts held for the benefit of persons; or
 - (b) in order to facilitate the consolidation of any of the following in relation to a particular person:
 - (i) RSAs provided by one or more RSA providers and held by the person;
 - (ii) interests of the person in eligible superannuation entities or regulated exempt public sector superannuation schemes.
- Note: Sections 8WA and 8WB of the *Taxation Administration Act 1953* contain offences for unauthorised use etc. of tax file numbers.
- (2A) Without limiting subsection (2), regulations made for the purposes of that subsection may contain conditions relating to:
- (a) a person consenting to use of a tax file number; or
 - (b) procedures that must be followed in a consolidation mentioned in paragraph (2)(b), including procedures to safeguard the integrity of the consolidation; or

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Section 299LB

- (c) a trustee disclosing tax file numbers to another trustee, or to an RSA provider, in order to facilitate such a consolidation.
- (3) This section does not affect the operation of Australian Privacy Principle 9.

Note 1: Australian Privacy Principle 9 prohibits a trustee adopting a tax file number of an individual as the trustee's own identifier of the individual, such as by using the tax file number as an account or membership number.

Note 2: See also Division 4 of Part III of the *Privacy Act 1988* and the rules issued under that Division concerning the collection, storage, use and security of tax file number information.

299LB Use of tax file number to validate information

- (1) This section applies if a person who is a beneficiary of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme, or an applicant to become such a beneficiary, quotes his or her tax file number to a trustee of the entity or scheme in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.
- (2) The trustee may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner of Taxation to validate information about the person under section 299TD.

299M Trustee of eligible superannuation entity must inform RSA provider or other trustee of tax file number for certain purposes

- (1) This section applies if:
- (a) there is an amount in an eligible superannuation entity for the benefit of a beneficiary; and
 - (b) the beneficiary has quoted (whether as a beneficiary or applicant) his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Transfer of benefits to an RSA, another eligible superannuation entity or to a regulated exempt public sector superannuation scheme

- (2) Subject to subsection (3), if a trustee of the entity transfers any of the amount to an RSA, to another eligible superannuation entity or to a regulated exempt public sector superannuation scheme for the benefit of the beneficiary, the trustee must, at the time of the transfer and in the manner approved by the Regulator, inform the RSA provider or a trustee of the other eligible superannuation entity or of the regulated exempt public sector superannuation scheme of the beneficiary's tax file number.

Exception

- (3) Subsection (2) does not apply where an amount is transferred to an RSA, to another eligible superannuation entity or to a regulated exempt public superannuation scheme if, before the transfer, the beneficiary gives the trustee a written statement requesting the trustee not to inform any RSA provider or any other trustee of the beneficiary's tax file number.
- (4) A trustee commits an offence if the trustee contravenes subsection (2).

Penalty: 100 penalty units.

- (5) A trustee commits an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

Section 299N

299N Trustee of regulated exempt public sector superannuation scheme may inform RSA provider or other trustee of tax file number for certain purposes

- (1) This section applies if:
- (a) there is an amount in a regulated exempt public sector superannuation scheme for the benefit of a beneficiary; and
 - (b) the beneficiary has quoted (whether as a beneficiary or applicant) his or her tax file number to a trustee of the scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Transfer of benefits to an RSA another regulated exempt public sector superannuation scheme or to an eligible superannuation entity

- (2) Subject to subsection (3), if a trustee of the scheme transfers any of the amount to an RSA, to another regulated exempt public sector superannuation scheme or to an eligible superannuation entity for the benefit of the beneficiary, the trustee may inform the RSA provider or a trustee of the other regulated exempt public sector superannuation scheme or of the eligible superannuation entity in the manner approved by the Regulator of the beneficiary's tax file number.

Exception

- (3) Subsection (2) does not apply where an amount is transferred to an RSA to another regulated exempt public sector superannuation scheme or to an eligible superannuation entity if, before the transfer, the beneficiary gives the trustee a written statement requesting the trustee not to inform any RSA provider or any other trustee of the beneficiary's tax file number.

Offence

- (4) If:

Section 299NA

- (a) a trustee (the **first trustee**) of a regulated exempt public sector superannuation scheme (the **first scheme**) intentionally informs an RSA provider or a trustee (the **second trustee**) of another regulated exempt public sector superannuation scheme or of an eligible superannuation entity of the tax file number of a beneficiary of the first scheme; and
 - (b) the first trustee knows that, because of subsection (3), the trustee is not empowered by subsection (2) to inform the second trustee or the RSA provider of that number;
- the first trustee commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

299NA Portability forms

Requesting tax file numbers

- (1) The Commissioner of Taxation may request a beneficiary of:
 - (a) a regulated superannuation fund; or
 - (b) an approved deposit fund;to quote the beneficiary's tax file number to the Commissioner in connection with the operation, or the possible future operation, of a scheme prescribed for the purposes of section 34A (Portability forms).
- (2) The beneficiary is not obliged to comply with the request, but the regulations made for the purposes of that section may provide that failure to comply with the request affects whether the Commissioner may pass a request on to the trustee of the fund under the prescribed scheme.

Passing on tax file numbers

- (3) The Commissioner of Taxation may inform the trustee of:
 - (a) a regulated superannuation fund; or
 - (b) an approved deposit fund;of the tax file number of a beneficiary of the fund as part of the Commissioner passing on to the trustee a request made by the

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Section 299NA

beneficiary under a scheme prescribed for the purposes of section 34A (Portability forms).

- (4) If the Commissioner does so, the beneficiary is:
- (a) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; and
 - (b) taken to have quoted that tax file number at the time when the Commissioner informs the trustee of the tax file number.

Division 3—Method of quotation of tax file numbers, including deemed quotation

299P Method of quoting tax file number

A person quotes his or her tax file number to another person in connection with the operation or the possible future operation of this Act and the other Superannuation Acts if:

- (a) the person informs the other person of the number in a manner approved by the Regulator or in the approved form (as defined by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*); or
- (b) the person is taken to have quoted the number to the other person in connection with the operation or the possible future operation of this Act and the other Superannuation Acts under any of the following provisions of this Division.

299Q Employee taken to have quoted to trustee where trustee informed by employer

If:

- (a) an employee is a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; and
- (b) the employer informs a trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the employee's tax file number in accordance with section 299B or 299C;

the employee is:

- (c) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; and
- (d) taken to have quoted the tax file number at the time when the employer informs the trustee.

Section 299R

299R Beneficiary or applicant taken to have quoted to RSA provider or trustee

- (1) If a trustee (the **first trustee**) of an eligible superannuation entity (the **first entity**) informs an RSA provider or a trustee (the **second trustee**) of another eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the tax file number of a beneficiary of the first entity in accordance with subsection 299M(2), the beneficiary is:
 - (a) taken to have quoted the tax file number to the RSA provider or the second trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts or the *Retirement Savings Accounts Act 1997*; and
 - (b) taken to have quoted that tax file number at the time when the first trustee informs the RSA provider or the second trustee.
- (2) If a trustee (the **first trustee**) of a regulated exempt public sector superannuation scheme (the **first scheme**) informs an RSA provider or a trustee (the **second trustee**) of another regulated exempt public sector superannuation scheme or of an eligible superannuation entity of the tax file number of a beneficiary of the first scheme in accordance with subsection 299N(2), the beneficiary is:
 - (a) taken to have quoted the tax file number to the RSA provider or the second trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts or the *Retirement Savings Accounts Act 1997*; and
 - (b) taken to have quoted that tax file number at the time when the first trustee informs the RSA provider or the second trustee.

299S Person claiming benefit taken to have quoted to trustee where he or she provided tax file number in connection with claim

- (1) This section applies if:
 - (a) before the commencement of this section, a person who considered that he or she was entitled to a benefit applied to a trustee of an eligible superannuation entity for payment of the benefit under section 248 or 252 and set out his or her tax file number in the application; or
 - (b) after the commencement of this section, a person who considers that he or she is entitled to a benefit applies to a trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme for payment of the benefit and sets out in a manner approved by APRA his or her tax file number in the application.
- (2) The beneficiary is:
 - (a) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; and
 - (b) taken to have quoted that tax file number at the time when the trustee received or receives the application.

299SA Beneficiary taken to have quoted where Commissioner gives notice

- (1) A beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme is taken to have quoted his or her tax file number to a trustee of the entity or scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts if the Commissioner of Taxation gives to the trustee notice of the person's tax file number.
- (2) The beneficiary or applicant is taken to have quoted that tax file number at the time when the Commissioner of Taxation gave the notice.

Section 299T

299T Beneficiary taken to have quoted if he or she quoted for other purposes

If a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to a trustee of the entity or scheme under:

- (a) subsection 225(4) or 245(2) of this Act, as in force immediately before its amendment by the *Taxation Laws Amendment Act (No. 2) 1996*; or
- (b) a provision of the *Income Tax Assessment Act 1936*; or
- (c) a provision of the repealed Part IIIA of the *Occupational Superannuation Standards Act 1987* (including a provision as it continues to apply because of the *Taxation Laws Amendment (Superannuation) Act 1992*);

then, for the purposes of this Act, as in force after the commencement of this section, the beneficiary is:

- (d) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; and
- (e) taken to have quoted that tax file number to the trustee at the later of the time at which the quotation took place and the commencement of this section.

Division 3A—Commissioner of Taxation may issue notices about tax file numbers

299TA Effect of mistaken quotation of tax file number

- (1) The Commissioner of Taxation (the *Commissioner*) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme notice of the tax file number of a beneficiary of the entity or scheme if:
 - (a) the trustee has made a record of a number (the *recorded TFN*) the trustee believes to be the tax file number of the beneficiary; and
 - (b) the Commissioner is satisfied that the recorded TFN:
 - (i) has been cancelled or withdrawn since it was quoted; or
 - (ii) is otherwise wrong; and
 - (c) the Commissioner is satisfied that the beneficiary has a tax file number.
- (2) The beneficiary is taken to have quoted his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts at a time if:
 - (a) the Commissioner gives the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (1); and
 - (b) had the recorded TFN been the tax file number of the beneficiary, the beneficiary would have quoted his or her tax file number to the trustee in that way at the time.

299TB Effect of invalid quotation of tax file number

- (1) The Commissioner of Taxation (the *Commissioner*) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (2) if:

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- (a) the trustee has made a record of a number (the ***recorded TFN***) the trustee believes to be the tax file number of the beneficiary; and
 - (b) the Commissioner is satisfied that the recorded TFN:
 - (i) has been cancelled or withdrawn since it was quoted; or
 - (ii) is otherwise wrong; and
 - (c) the Commissioner is not satisfied that the beneficiary has a tax file number.
- (2) The notice must identify the beneficiary and state that the Commissioner is not satisfied that the beneficiary has a tax file number.
- (3) If the Commissioner gives a notice under subsection (2), the Commissioner must give a copy of the notice to the beneficiary.

299TC Commissioner of Taxation may inform trustee of tax file number

- (1) The Commissioner of Taxation (the ***Commissioner***) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme notice of the tax file number of a person if the Commissioner is satisfied that:
- (a) the person is a beneficiary of the eligible superannuation entity or the regulated exempt public sector superannuation scheme, or an applicant to become such a beneficiary; and
 - (b) the person has quoted (for superannuation purposes) (within the meaning of the *Income Tax Assessment Act 1997*) his or her tax file number to another person.
- (2) However if, before the time the Commissioner gives the notice, the person specifically requests the trustee not to record the person's tax file number:
- (a) the notice is to be disregarded; and
 - (b) section 299SA does not apply to deem the person to have quoted the tax file number to the trustee when the notice was given.

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Note: A consequence is that provisions that require or permit a trustee to record or use a validly quoted tax file number do not apply.

299TD Validation notice—beneficiaries of eligible superannuation entities

- (1) The Commissioner of Taxation (the *Commissioner*) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (2) if:
 - (a) the trustee gives the Commissioner information that the trustee believes to be:
 - (i) the full name, tax file number and date of birth of a person; or
 - (ii) the full name, tax file number, date of birth and address of a person; and
 - (b) the Commissioner is satisfied that:
 - (i) the person is a beneficiary of the entity or scheme, or an applicant to become such a beneficiary; and
 - (ii) the trustee is giving the information to the Commissioner in connection with the operation of the entity or scheme; and
 - (c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.
- (2) The notice must state whether or not the Commissioner is able to validate the information given.
- (3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under section 299TB.

299TE Validation notice—employees

- (1) The Commissioner of Taxation (the *Commissioner*) may give an employer a notice under subsection (2) if:

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Division 3A Commissioner of Taxation may issue notices about tax file numbers

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- (a) the employer gives the Commissioner information that the employer believes to be:
 - (i) the full name, tax file number and date of birth of a person; or
 - (ii) the full name, tax file number, date of birth and address of a person; and
 - (b) the Commissioner is satisfied that:
 - (i) the person is an employee of the employer for whose benefit a contribution to an eligible superannuation entity or a regulated exempt public sector superannuation scheme is to be made; and
 - (ii) the employer is giving the information to the Commissioner in connection with the operation of the entity or scheme; and
 - (iii) that use by the employer of the tax file number complies with section 299CA; and
 - (c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.
- (2) The notice must state whether or not the Commissioner is able to validate the information given.
 - (3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under subsection 202CE(3) of the *Income Tax Assessment Act 1936*.

299TF Commissioner of Taxation may provide electronic interface

The Commissioner of Taxation may use an electronic interface to receive information and give notices under this Division.

Division 4—Provision of tax file numbers in forms etc.

299U Forms etc. may require tax file number

Election notice

- (1) The approved form of written notice by the trustee, or the trustees, of a fund for the purposes of subsection 19(4) may require the notice to contain the tax file number of the fund.

Financial return

- (2) The form of a financial return a copy of which is required to be given by a superannuation entity to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* may require the return to contain the entity's tax file number.

Portability forms

- (2A) An approved form mentioned in subsection 34A(2) may require the tax file number of the beneficiary making the relevant request to be set out in the request.

Particulars of notice

- (3) Particulars of a notice to a trustee of an entity that are required by subsection 40(3) to be given to the Commissioner of Taxation may be accompanied by a statement of the tax file number of the entity.

Claims for benefits from eligible rollover fund

- (6) The approved form of application for the purposes of subsection 248(2) may require the tax file number of the applicant to be set out in the application.

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Claims for benefits from eligible transitional fund

- (7) The approved form of application for the purposes of section 252 may require the tax file number of the applicant to be set out in the application.

Information to be given after establishment of entity

- (8) The approved form for information required to be given under subsection 254(1) may require the tax file number of the entity to be given.

Notice to give information

- (9) Information that may be required to be given in relation to a superannuation entity under subsection 254(2) may include the tax file number of the entity.

299V Failure to quote tax file number

For the purposes of section 137.1 of the *Criminal Code*, a person does not omit a matter or thing from a statement made to a SIS officer (within the meaning of section 301) merely because the person has, in making the statement, failed to quote his or her tax file number.

Division 5—General

299W Definitions

In this Part, unless the contrary intention appears:

regulated exempt public sector superannuation scheme means an exempt public sector superannuation scheme in respect of which either of the following applies:

- (a) the trustee of the scheme is a constitutional corporation;
- (b) the sole or primary purpose of the scheme is the provision of old-age pensions.

Superannuation Acts means the following:

- (a) this Act;
- (b) the *Superannuation Contributions Tax (Assessment And Collection) Act 1997*;
- (c) the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;
- (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*;
- (e) the *Termination Payments Tax (Assessment and Collection) Act 1997*.

Surcharge Acts means:

- (a) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and
- (b) the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; and
- (c) the *Termination Payments Tax (Assessment and Collection) Act 1997*.

tax file number has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

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299X State insurance

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

299Y Trustee of former regulated exempt public sector superannuation scheme to destroy records of tax file numbers

- (1) If an exempt public sector superannuation scheme ceases to be a regulated exempt public sector superannuation scheme and does not become an eligible superannuation entity, each trustee of the scheme must ensure that, as soon as is reasonably practicable, all records of tax file numbers of beneficiaries, or of applicants to become beneficiaries, of the scheme that are kept by the trustee are destroyed.

- (2) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 100 penalty units.

- (3) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

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

299Z Transitional provisions

- (1) Despite the amendments made to this Part by Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, this Part as it applied immediately before the commencement of that Schedule continues to apply to:
- (a) an employee who, before that commencement, quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; or

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(b) a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme who, before that commencement, quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or the possible future operation of this Act; as if those amendments had not been made.

(2) If:

- (a) before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, or after that commencement but before 5 June 1998, an employee quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; and
- (b) the employer notifies the employee in writing that the employer intends to inform the trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the employee's tax file number unless the employee tells the employer, within 30 days after the day on which the notification is received, that the employee objects to the employer informing the trustee of the tax file number; and
- (c) the employee does not tell the employer within that period that the employee objects to the employer informing the trustee of the tax file number;

subsection (1) does not apply to the employee, and the employee is taken to have quoted the tax file number to the employer in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

(3) If:

- (a) before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, or after that commencement but before 5 June 1998, a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has

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quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or the possible future operation of this Act; and

- (b) the trustee notifies the beneficiary or applicant in writing that the trustee intends to inform the Commissioner of Taxation, the trustee of another such entity or scheme or an RSA provider of the tax file number unless the beneficiary or applicant tells the trustee, within 30 days after the day on which the notification is received, that the beneficiary or applicant objects to the trustee informing the Commissioner of Taxation, the trustee of the other entity or scheme or the RSA provider, as the case may be, of the tax file number; and
- (c) the beneficiary or applicant does not tell the trustee within that period that the beneficiary or applicant objects to the trustee informing the Commissioner of Taxation, the trustee of the other entity or scheme or the RSA provider, as the case may be, of the tax file number;

subsection (1) does not apply to the beneficiary or applicant, and the beneficiary or applicant is taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Part 26—Offences relating to statements, records etc.

300 Object of Part

The object of this Part is to protect the integrity of the system of supervision provided for by this Act by penalising the making of false or misleading statements, the keeping of incorrect records and the falsification or concealment of identity.

301 Interpretation

In this Part:

SIS officer means a person exercising powers or performing functions under or in relation to this Act, the regulations or the prudential standards.

statement made to an SIS officer means a statement made to an SIS officer orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes a statement:

- (a) made in an application, notification, return or other document made, prepared, given or purporting to be made, prepared or given, under this Act, the regulations or the prudential standards; or
- (b) made in answer to a question asked of a person under this Act, the regulations or the prudential standards; or
- (c) made in any information given, or purporting to be given, under this Act, the regulations or the prudential standards; or
- (d) made in a document given to an SIS officer otherwise than under this Act, the regulations or the prudential standards;

but does not include a statement made in a document produced under subsection 255(1) or 260(2) or section 269.

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303 Incorrectly keeping records etc.

(1) Where:

- (a) a person who is required under this Act, the regulations or the prudential standards to keep any accounts, accounting records or other records keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (b) a person who is required under this Act, the regulations or the prudential standards to make a record of any matter, transaction, act or operation makes it in such a way that it does not correctly record the matter, transaction, act or operation;

the person commits an offence punishable on conviction by a fine not exceeding 40 penalty units.

(1A) Subsection (1) is an offence of strict liability.

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

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

(2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that the person:

- (a) did not know; and
- (b) could not reasonably be expected to have known;

that:

- (c) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (a)—the accounts, accounting records or other records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (d) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (b)—the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

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Note: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4 of the *Criminal Code*).

306 Incorrectly keeping or making records etc.

(1) If:

- (a) a person is required under this Act, the regulations or the prudential standards to keep any accounts, accounting records or other records; and
 - (b) the person keeps those accounts or records in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate;
- the person commits an offence punishable on conviction by imprisonment for not longer than 12 months.

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

(2) If:

- (a) a person is required under this Act, the regulations or the prudential standards to make a record of any matter, transaction, act or operation; and
 - (b) the person makes such a record in such a way that it does not correctly record the matter, transaction, act or operation;
- the person commits an offence punishable on conviction by imprisonment for not longer than 12 months.

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

307 Incorrectly keeping records with intention of deceiving or misleading etc.

(1) A person commits an offence if the person:

- (a) keeps any accounts, accounting records or other records in such a way that they:
 - (i) do not correctly record and explain the matters, transactions, acts or operations to which they relate; or

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- (ii) are (whether in whole or in part) illegible, indecipherable, incapable of identification or, if they are kept in the form of a data processing device, incapable of being used to reproduce information; or
 - (b) makes a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation; or
 - (c) alters, defaces, mutilates, falsifies, damages, removes, conceals or destroys any accounts, accounting records or other records (whether in whole or in part); or
 - (d) does or omits to do any other act or thing to any accounts, accounting records or other records;
- with any of the following intentions (whether or not the person had any other intention):
- (e) deceiving or misleading the Regulator or a particular SIS officer;
 - (f) hindering or obstructing the Regulator or a particular SIS officer (otherwise than in the investigation of an offence against, or arising out of, this Act or the regulations);
 - (g) hindering or obstructing the investigation of an offence against, or arising out of, this Act or the regulations;
 - (h) hindering, obstructing or defeating the administration, execution or enforcement of this Act, the regulations or the prudential standards;
 - (i) defeating the purposes of this Act, the regulations or the prudential standards.
- (2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

308 Falsifying or concealing identity with intention of deceiving or misleading etc.

- (1) A person commits an offence if the person:
 - (a) falsifies or conceals the identity of, or the address or location of a place of residence or business of, the person or another person; or

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- (b) does or omits to do any act or thing the doing or omission of which facilitates the falsification or concealment of the identity of, or the address or location of a place of residence or business of, the person or another person;
with any of the following intentions (whether or not the person had any other intention):
 - (c) deceiving or misleading the Regulator or a particular SIS officer;
 - (d) hindering or obstructing the Regulator or a particular SIS officer (otherwise than in the investigation of an offence against, or arising out of, this Act or the regulations);
 - (e) hindering or obstructing the investigation of an offence against, or arising out of, this Act or the regulations;
 - (f) hindering, obstructing or defeating the administration, execution or enforcement of this Act, the regulations or the prudential standards;
 - (g) defeating the purposes of this Act, the regulations or the prudential standards.
- (2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

Part 27—Powers of Court

309 Object of Part

The object of this Part is to set out rules about the power of the courts to deal with matters arising under this Act.

310 Power to grant relief

Court may relieve liability for misconduct

- (1) If, in a civil proceeding against a superannuation official for official misconduct in a capacity as such a person, it appears to the court that the official is or may be liable in respect of the official misconduct, the court may, if subsection (2) is satisfied, relieve the official either wholly or partly from the liability, on such terms as the court thinks fit.

Basis for granting relief

- (2) The court may only relieve the official from the liability if it appears to the court that:
 - (a) the official has acted honestly; and
 - (b) having regard to all the circumstances of the case, including those connected with the official's appointment, he or she ought fairly to be excused for the official misconduct.

Withdrawal of case from jury

- (3) If:
 - (a) the case is being tried by a judge with a jury; and
 - (b) after hearing the evidence, the judge is satisfied that relief ought to be given under subsection (1);the judge may withdraw the case in whole or in part from the jury and immediately direct judgement to be entered for the

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superannuation official on such terms as to costs or otherwise as the judge thinks proper.

Where claim yet to be made

- (4) If a superannuation official has reason to believe that a claim will or might be made against the official in respect of any official misconduct in a capacity as such a person:
- (a) the official may apply to the Court for relief; and
 - (b) the Court has the same power to grant relief as it would have under subsection (1) if it had been a court before which proceedings against the official for official misconduct had been brought.

Definitions

- (5) In this section:

officer, in relation to a corporate trustee, means:

- (a) a responsible officer or employee of the corporate trustee; or
- (b) a receiver, or receiver and manager, of property of the body, where the property is beneficially owned by the corporate trustee; or
- (c) an administrator of the corporate trustee; or
- (d) a liquidator or provisional liquidator of the corporate trustee; or
- (e) a trustee or other person administering a compromise or arrangement made between the corporate trustee and another person or other persons.

official misconduct means negligence, default, breach of trust or breach of duty.

superannuation official means:

- (a) a trustee of a superannuation entity; or
- (b) an officer of a corporate trustee of a superannuation entity; or
- (c) an auditor of a superannuation entity; or
- (d) an actuary of a superannuation entity.

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*Special meaning of **employee***

- (6) The meaning of the expression **employee**, when used in this section, is to be determined as if subsections 12(3) and (8) of the *Superannuation Guarantee (Administration) Act 1992* had not been enacted. (Those subsections deem certain contractors to be employees.)

311 Power of Court to give directions with respect to meetings ordered by the Court

If, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

312 Irregularities

Definitions

- (1) In this section:

procedural irregularity includes:

- (a) the absence of a quorum at a meeting of:
 - (i) trustees of a superannuation entity; or
 - (ii) directors of a corporate trustee of a superannuation entity; or
 - (iii) beneficiaries in a superannuation entity; or
 - (iv) members of a policy committee of an employer-sponsored fund; or
- (b) a defect, irregularity or deficiency of notice or time.

proceeding under this Act means any proceeding, whether a legal proceeding or not, under this Act.

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Effect of irregularities on proceedings

- (2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court:
- (a) is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court; and
 - (b) by order declares the proceeding to be invalid.

Effect of failure to give notice etc. on meetings

- (3) Subject to subsection (4), none of the following:
- (a) a meeting held for the purposes of this Act;
 - (b) a meeting of which notice is required to be given in accordance with this Act;
 - (c) any proceeding at such a meeting;
- is invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting.

Court may declare proceedings at meeting void

- (4) In spite of subsection (3), the Court may declare proceedings at the meeting to be void on application of:
- (a) the person concerned; or
 - (b) a person entitled to attend the meeting; or
 - (c) the Regulator.

Court may make certain orders

- (5) Subject to the remainder of this section, but without limiting any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders (either unconditionally or subject to any conditions imposed by the Court):
- (a) an order declaring that:
 - (i) any act, matter or thing purporting to have been done; or

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- (ii) any proceeding purporting to have been instituted or taken;
under this Act or in relation to a superannuation entity is not invalid because of any contravention of a provision of:
 - (iii) this Act; or
 - (iv) the governing rules of a superannuation entity;
- (b) an order relieving a person in whole or in part from any civil liability in respect of a contravention mentioned in paragraph (a);
- (c) an order:
 - (i) extending the period for doing any act, matter or thing or for instituting or taking any proceeding under this Act or in relation to a superannuation entity (including extending a period if it ended before the application for the order was made); or
 - (ii) shortening the period for doing such an act, matter or thing or for instituting or taking such a proceeding.

Consequential and ancillary orders

- (6) The Court may also make any consequential or ancillary order that it thinks fit.

Orders where offence

- (7) An order may be made under paragraph (5)(a) or (b) even though the contravention referred to in the paragraph concerned resulted in the commission of an offence.

Restrictions on making orders

- (8) The Court must not make an order under this section unless it is satisfied:
 - (a) in the case of an order referred to in paragraph (5)(a):
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or

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- (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
- (iii) that it is in the public interest that the order be made; and
- (b) in the case of an order referred to in paragraph (5)(b)—that the person subject to the civil liability concerned acted honestly; and
- (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

313 Power of Court to prohibit payment or transfer of money or property

Court's power to protect interests of certain creditors etc.

- (1) If:
 - (a) any of the following applies:
 - (i) an investigation is being carried out under this Act in relation to an act or omission by a person (the **contravening person**), being an act or omission that constitutes or may constitute a contravention of this Act; or
 - (ii) a prosecution has begun against a person (also the **contravening person**) for a contravention of this Act or under the *Financial Sector (Collection of Data) Act 2001* in connection with a superannuation entity; or
 - (iii) a civil proceeding has begun against a person (also the **contravening person**) under this Act; and
 - (b) the Regulator or a person (an **aggrieved person**) to whom the contravening person is liable, or may become liable:
 - (i) to pay money (whether in respect of a debt, by way of damages or compensation or otherwise); or
 - (ii) to account for property;
 applies to the Court; and
 - (c) the Court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person;

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the Court may make one or more of the orders specified in subsection (2).

Court's power to protect the interests of beneficiaries

(1A) If:

- (a) the Regulator is of the opinion that it is necessary for the Court to make one or more of the orders specified in subsection (2) to protect the interests of any or all of the beneficiaries of a superannuation entity; and
- (b) the Regulator applies to the Court for such an order in relation to a trustee of the entity; and
- (c) the Court considers it necessary or desirable to protect the interests of any or all of the beneficiaries;

the Court may make one or more of the orders specified in subsection (2).

Any reference to the contravening person is a reference to the trustee

- (1B) For the purposes of subsection (1A), subsection (2) has effect as if any reference to the contravening person were a reference to the trustee.

Orders that Court may make

(2) The orders that the Court may make are:

- (a) an order prohibiting a person who is indebted to the contravening person or to an associate of the contravening person from making a payment in total or partial discharge of the debt to:
 - (i) the contravening person or associate; or
 - (ii) another person at the direction or request of the contravening person or associate;
- (b) an order prohibiting a person holding money or property on behalf of the contravening person or of an associate of the contravening person from:
 - (i) paying all or any of the money; or

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- (ii) transferring or otherwise parting with possession of the property;
- to:
 - (iii) the contravening person or associate; or
 - (iv) another person at the direction or request of the contravening person or associate;
- (c) an order prohibiting the taking or sending out of Australia by a person of money of the contravening person or of an associate of the contravening person;
- (d) an order prohibiting the taking, sending or transfer by a person of property of the contravening person, or of an associate of the contravening person from a place in Australia to a place outside Australia (including the transfer of interests from a register in Australia to a register outside Australia);
- (e) an order appointing:
 - (i) if the contravening person is an individual—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
 - (ii) if the contravening person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;
- (f) if the contravening person is an individual—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
- (g) if the contravening person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.

Property in (2)(d) or (e)

- (3) A reference in paragraph (2)(d) or (e) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
 - (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

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(b) in a fiduciary capacity.

Purpose of subsection (3)

- (4) Subsection (3) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.

Absolute or conditional orders

- (5) An order made under subsection (1) or (1A) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

Interim orders

- (6) If an application is made to the Court for an order under subsection (1) or (1A), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order (being an order of the kind applied for that is expressed to have effect pending the determination of the application).

Damages undertakings

- (7) On an application under subsection (1) or (1A), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (6), to give an undertaking as to damages.

Further orders

- (8) If the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

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Period of order

- (9) An order made under subsection (1), (1A) or (6) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Court's other powers not affected

- (10) This section does not affect the powers that the Court has apart from this section.

Section subject to Bankruptcy Act

- (11) This section has effect subject to the *Bankruptcy Act 1966*.

Offence to contravene orders

- (12) A person who intentionally or recklessly contravenes an order by the Court under this section that is applicable to the person commits an offence punishable on conviction by imprisonment for a term of not more than 6 months.

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

314 Court may order the disclosure of information or the publication of advertisements—contravention of provisions relating to issue of superannuation interests etc.

- (1) If a person (the *alleged offender*) has engaged, is engaging or is proposing to engage in conduct in contravention of Part 19, the Court may, on the Regulator's application, make an order or orders under either or both of subsections (2) and (3).
- (2) The Court may make an order:
- (a) requiring the alleged offender, or a person involved in the contravention, to disclose information to:
 - (i) the public; or
 - (ii) a specified person; or

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- (iii) persons included in a specified class of persons; and
 - (b) specifying the information, or the kind of information, that is to be disclosed, being information:
 - (i) in the possession of the person to whom the order is directed; or
 - (ii) to which that person has access; and
 - (c) specifying the way in which it is to be disclosed.
- (3) The Court may make an order:
- (a) requiring the alleged offender, or a person involved in the contravention, to publish advertisements and pay the expenses; and
 - (b) specifying the terms of the advertisements, or the way in which the terms of the advertisements are to be determined; and
 - (c) specifying the way in which, and times at which, the advertisements are to be published.
- (4) A person who intentionally or recklessly contravenes an order under subsection (2) or (3) commits an offence punishable on conviction by imprisonment for a term of not more than 6 months.

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

315 Injunctions

Restraining injunctions

- (1) If a person (the **perpetrator**) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
- (a) a contravention of this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator; or
 - (b) attempting to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator; or

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- (c) aiding, abetting, counselling or procuring a person to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator; or
- (f) conspiring with others to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator;

the Court may grant an injunction in accordance with subsection (2).

Nature of injunction

- (2) If granted, the injunction:
 - (a) is to restrain the perpetrator from engaging in the conduct; and
 - (b) if in the opinion of the Court it is desirable to do so, may also require that person to do any act or thing.

The Court may only grant the injunction on the application of the Regulator, or of a person whose interests have been, are, or would be, affected by the conduct and may grant it on such terms as the Court thinks appropriate.

Performance injunctions

- (3) If a person (the **unwilling person**) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator to do, the Court may, on the application of:

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- (a) the Regulator; or
 - (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;
- grant an injunction, on such terms as the Court thinks appropriate, requiring the unwilling person to do that act or thing.

Consent injunctions

- (4) If an application for an injunction under subsection (1) or (3) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

Interim injunctions

- (5) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

Variation or discharge of injunctions

- (6) The Court may discharge or vary an injunction granted under this section.

Restraining injunctions

- (7) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

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Performance injunctions

- (8) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

Damages undertakings

- (9) If the Regulator applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

Section 313 orders

- (10) In proceedings under this section against a person the Court may make an order under section 313 in respect of the person.

Damages orders

- (11) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

This section extends Federal Court's powers

- (11A) The powers this section gives the Court are additional to (and do not limit) its other powers.

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Definition

(12) In this section:

do an act or thing includes:

- (a) give effect to a determination made by the Superannuation Complaints Tribunal; or
- (b) reconsider a matter in accordance with the directions of the Superannuation Complaints Tribunal.

316 Effect of sections 313, 314 and 315

Nothing in any one of section 313, 314 or 315 limits the generality of anything else in any other of those sections.

317 Power of Court to punish for contempt of court

Nothing in a provision of this Act that provides:

- (a) that a person must not contravene an order of the Court; or
 - (b) that a person who contravenes an order of the Court contravenes a provision of this Act or commits an offence;
- affects the powers of the Court in relation to the punishment of contempts of the Court.

318 Court may resolve transitional difficulties

(1) If any difficulty:

- (a) arises in applying a provision of this Act in relation to a particular case in relation to which, if this Act had not been enacted, a provision of another law corresponding to the first-mentioned provision would have applied; or
- (b) arises, because of a provision of this Act, in applying, in relation to a particular case, another provision of this Act or a provision of another law corresponding to another provision of this Act;

the Court may, on the application of an interested person, make such order as it thinks proper to remove the difficulty.

Section 318

- (2) An order under this section has effect despite anything in a provision of this Act.
- (3) This section has effect subject to the Constitution.

Part 28—Proceedings

319 Object of Part

The object of this Part is to set out various rules about court proceedings.

320 Power of Regulator to intervene in proceedings

- (1) The Regulator may intervene in any proceeding relating to a matter arising under this Act.
- (2) If the Regulator intervenes in a proceeding referred to in subsection (1), the Regulator is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.
- (3) Without limiting the generality of subsection (2), the Regulator may appear and be represented in any proceeding in which he or she wishes to intervene under subsection (1):
 - (a) by a member of the staff of the Regulator; or
 - (b) by an individual to whom, or by an officer or employee of a person or body to whom or to which, the Regulator has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or
 - (c) by solicitor or counsel.
- (4) A reference in this section to the Regulator does not include the Chief Executive Medicare.

Note: For the definition of **Regulator**, see subsection 10(1).

321 Civil proceedings not to be stayed

No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

322 Standard of proof

Where subsection (2) applies

- (1) Subsection (2) applies if, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:
 - (a) a person has contravened a provision of this Act; or
 - (b) default has been made in complying with a provision of this Act; or
 - (c) an act or omission was unlawful under a provision of this Act; or
 - (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention of, or a default in complying with, a provision of this Act.

Matters to be established etc. on balance of probabilities

- (2) It is sufficient if the matter referred to in paragraph (1)(a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

323 Relief from civil liability for contravention of certain provisions

Proceedings to which this section applies

- (1) This section applies to:
 - (a) eligible proceedings (within the meaning of section 221); and
 - (b) proceedings under subsections 29VP(3), 29VPA(3) and 55(3).

Section 323

Defences

- (2) Subject to subsection (4), in proceedings against a person (the **defendant**) in respect of a contravention, it is a defence if the defendant establishes:
- (a) that the contravention was due to reasonable mistake; or
 - (b) that the contravention was due to reasonable reliance on information supplied by another person; or
 - (c) that:
 - (i) the contravention was due to:
 - (A) the act or default of another person; or
 - (B) an accident; or
 - (C) some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

*Meaning of **another person***

- (3) For the purposes of the application of subsection (2) to the defendant, a reference to another person does not include a person who was, at the time when the contravention occurred:
- (a) in any case—a servant or agent of the defendant; or
 - (b) if the defendant is a body corporate—a director, servant or agent of the defendant.

Notice to be given about reliance on defence

- (4) If a defence provided by subsection (2) involves an allegation that a contravention was due to:
- (a) reliance on information supplied by another person; or
 - (b) the act or default of another person;
- the defendant is not entitled to rely on that defence unless:
- (c) the court grants leave; or
 - (d) both:

Section 324

- (i) the defendant has served on the person by whom the proceedings were instituted a written notice giving such information:
 - (A) that would identify, or assist in the identification of, the other person; and
 - (B) as was then in the defendant's possession; and
- (ii) that notice is served not later than 7 days before the day on which the hearing of the proceedings begins.

324 Evidence of contravention

For the purposes of this Act, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states that:
 - (i) a person was convicted by that court on a specified day of a specified offence; or
 - (ii) a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

- (c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and
- (d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

324A Time for instituting criminal proceedings

Despite anything in any other law, proceedings for an offence against a provision of this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister's consent, at any later time.

Section 325

325 Vesting of property

- (1) If an order is made by a court under this Act vesting property in a person:
 - (a) subject to subsections (2) and (3), the property immediately vests in law and in equity in the person named in the order by force of this Act; and
 - (b) if the order is made by a court—the person who applied for the order must, within 7 days after the entering of the order, lodge an office copy of the order with such person (if any) as is specified in the order.
- (2) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the registration of such an order;the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.
- (3) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the person named in the order to be registered as the owner of that property;the property does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

Part 29—Exemptions and modifications

326 Object of Part

The object of this Part is to empower the Regulator to grant exemptions from, and make modifications of, certain provisions of this Act and the regulations.

327 Interpretation

- (1) In this Part:

modifiable provision means any of the following:

- (a) a provision of Part 2A, 2B or 3;
 - (c) section 54;
 - (d) subsection 63(7B), (7C) or (7D);
 - (e) a provision of Part 9;
 - (g) a provision of Part 19 or 24;
 - (h) a provision of any regulations made for the purposes of a provision referred to in paragraphs (a) to (g).
- (2) A reference in this Part to the Regulator does not include the Chief Executive Medicare.

Note: For the definition of ***Regulator***, see subsection 10(1).

328 Regulator's powers of exemption—modifiable provisions

- (1) The Regulator may, in writing, exempt from compliance with any or all of the modifiable provisions:
- (a) a particular person or a class of persons; or
 - (b) a particular group of individual trustees or a class of groups of individual trustees.
- (2) An exemption that applies to a particular person or group is not a legislative instrument.

Section 330

- (3) Otherwise, an exemption is a legislative instrument.

330 Regulator's powers of exemption—general issues

- (1) An exemption under this Part may be made either generally or as otherwise provided in the exemption.
- (2) An exemption under this Part may be unconditional or subject to conditions specified in the exemption.
- (3) Without limiting this section, an exemption under this Part may relate to a particular superannuation entity or class of superannuation entities.

331 Enforcement of conditions to which exemption is subject

- (1) A person must not, without reasonable excuse, contravene a condition of an exemption under this Part.

Penalty: 5 penalty units.

- (1A) Subsection (1) is an offence of strict liability.

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

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

- (2) If a person has contravened a condition of an exemption under this Part, the Court may, on the application of the Regulator, order the person to comply with the condition.

332 Regulator's powers of modification—modifiable provisions

- (1) The Regulator may, in writing, declare that a modifiable provision is to have effect, as if it were modified as specified in the declaration, in relation to:
 - (a) a particular person or class of persons; or
 - (b) a particular group of individual trustees or a class of groups of individual trustees.

Section 334

- (2) A declaration that applies to a particular person or group is not a legislative instrument.
- (3) Otherwise, a declaration is a legislative instrument.

334 Regulator's powers of modification—general issues

- (1) A declaration under this Part may have effect either generally or as otherwise provided in the declaration.
- (2) Without limiting this section, a declaration under this Part may relate to a particular superannuation entity or class of superannuation entities.

335 Variation and revocation of exemptions and modifications

The Regulator may, in writing, vary or revoke an exemption or declaration under this Part.

336 Notice of exemptions and modifications

If the Regulator:

- (a) makes an exemption or modification under this Part that applies to a particular person or a particular group of individual trustees; or
 - (b) varies or revokes such an exemption or modification;
- the Regulator must also notify the person or group in writing of the making, variation or revocation.

Part 29A—Protections in relation to information

Division 1—Protection for whistleblowers

336A Disclosures qualifying for whistleblower protection

- (1) This section applies to a disclosure of information by a person (the ***discloser***) who is, in relation to a superannuation entity, any of the following:
 - (a) a trustee of the superannuation entity;
 - (b) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity;
 - (c) an employee of an individual referred to in paragraph (a) or a body corporate referred to in paragraph (b);
 - (d) a person who has a contract for the supply of services or goods to an individual referred to in paragraph (a) or a body corporate referred to in paragraph (b);
 - (e) an employee of a person referred to in paragraph (d).
- (2) The disclosure of the information by the discloser qualifies for protection under this Division if:
 - (a) the disclosure is made to any of the following:
 - (i) the Regulator;
 - (ii) the actuary or auditor of the superannuation entity;
 - (iii) an individual who is a trustee of the superannuation entity;
 - (iv) a director of a body corporate that is the trustee of the superannuation entity;
 - (v) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; and
 - (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
 - (c) both:

Section 336B

- (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the superannuation entity or a trustee of the entity; and
 - (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions in relation to the superannuation entity or trustee; and
 - (d) the discloser makes the disclosure in good faith.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

336B Whistleblower protection for disclosures that qualify

- (1) If a person makes a disclosure that qualifies for protection under this Division:
 - (a) the person is not subject to any civil or criminal liability for making the disclosure; and
 - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection (1):
 - (a) the person has qualified privilege in respect of the disclosure; and
 - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
 - (a) a person (the **employee**) is employed in a particular position under a contract of employment with another person (the **employer**); and
 - (b) the employee makes a disclosure that qualifies for protection under this Division; and
 - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;

Section 336C

the court may order that the employee be reinstated in that position or a position at a comparable level.

- (4) If an individual makes a disclosure of information that qualifies for protection under this Division, the information is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

336C Victimisation of whistleblowers prohibited

Actually causing detriment to another person

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct causes any detriment to another person; and
 - (c) the person intends that his or her conduct cause detriment to the other person; and
 - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Threatening to cause detriment to another person

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because a person:

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- (i) made a disclosure that qualifies for protection under this Division; or
- (ii) may make a disclosure that would qualify for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Threats

- (3) For the purposes of subsection (2), a threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Definition

- (5) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to do an act.

336D Right to compensation

If:

- (a) a person:
 - (i) commits an offence under subsection 336C(1) or (2); or
 - (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 336C(1) or (2); and
 - (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;
- the person is liable to compensate the other person for the damage.

Section 336E

336E Confidentiality requirement for company, company officers and employees and auditors

- (1) A person (the *offender*) commits an offence under this subsection if:
- (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Division; and
 - (b) the disclosure is made to:
 - (i) the auditor of, or a member of an audit team conducting an audit of, the superannuation entity; or
 - (ii) an individual who is a trustee of the superannuation entity; or
 - (iii) a director of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; or
 - (iv) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; and
 - (c) the offender is:
 - (i) the auditor of, or a member of an audit team conducting an audit of, the superannuation entity; or
 - (ii) an individual who is the trustee of the superannuation entity; or
 - (iii) a director of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; or
 - (iv) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; or
 - (v) an officer or employee of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; and
 - (d) the offender discloses any of the following information (the *confidential information*):
 - (i) the information referred to in paragraph (a);
 - (ii) the identity of the discloser;

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- (iii) information that is likely to lead to the identification of the discloser; and
- (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
- (f) either:
 - (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
 - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
 - (a) it is made to APRA; or
 - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
 - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

Division 2—Self-incrimination

336F Self-incrimination

- (1) A person is not excused from complying with a requirement under this Act or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:
 - (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
 - (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.
- (3) This section does not apply in relation to a requirement under section 129 or 130 or under Part 25.

Note 1: See section 130B in relation to requirements under section 129 or 130.

Note 2: See section 287 in relation to requirements under Part 25.

Part 30—Miscellaneous

337 Object of Part

The object of this Part is to set out miscellaneous rules about various matters relating to the operation of this Act.

337A Trustee may give effect to award made under arbitration agreement

If:

- (a) the Superannuation Complaints Tribunal made an award in an arbitration conducted under an arbitration agreement entered into under the former Part 7A of the *Superannuation (Resolution of Complaints) Act 1993*; and
- (b) the award is still in force;

nothing in this Act or any other law of the Commonwealth, in any law of a State or Territory (whether written or unwritten) or in the governing rules of a fund, scheme or trust prevents a trustee of a fund, scheme or trust from giving effect to the award.

338 Conduct by directors, servants and agents

State of mind of body corporate

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.

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Conduct of director, servant or agent

- (2) Subject to subsection (3), any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate.

Exception to (2)

- (3) Subsection (2) does not apply if the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

State of mind of individual

- (4) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of actual or apparent authority;
and
 - (b) that the servant or agent had the state of mind.

Conduct of servant or agent

- (5) Subject to subsection (6), any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual.

Exception to (5)

- (6) Subsection (5) does not apply if the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

No imprisonment in (4) or (5) cases

- (7) If:
- (a) an individual is convicted of an offence; and
 - (b) the individual would not have been convicted of the offence if subsections (4) and (5) had not been enacted;
- the individual is not liable to imprisonment for that offence.

*Reference to **state of mind***

- (8) A reference in subsection (1) or (4) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

*Reference to **director***

- (9) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Reference to **engaging in conduct***

- (10) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

*Reference to **offence against this Act***

- (11) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations; and
 - (b) an offence created by section 6 of the *Crimes Act 1914*, being an offence that relates to this Act or the regulations.

Section 338A

Part 2.5 of the Criminal Code not to apply

- (12) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

338A Liability of trustees required to ensure thing occurs

A person who is a member of a group of individual trustees is not liable under any offence of strict liability or civil penalty provision of this Act or the regulations in respect of any contravention resulting from a failure by the person to ensure that a particular thing occurs if the person proves that he or she:

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that his or her obligations were being complied with.

Note: In a prosecution for an offence of strict liability against a provision of this Act or the regulations, a defendant bears a legal burden in relation to the matters in this section (see section 13.4 of the *Criminal Code*).

339 Conviction does not relieve defendant from civil liability

- (1) A person is not relieved from any liability to any other person merely because the person has been convicted of an offence against this Act.
- (2) This section does not apply in relation to a contravention of a civil penalty provision.
- (3) In this section:

offence against this Act has the same meaning as in section 338.

341 Civil immunity where defendant was complying with this Act

A person is not liable in a civil action or civil proceeding in relation to an act done in fulfilment of an obligation imposed by this Act, the regulations or the prudential standards.

342 Pre-1 July 88 funding credits and debits

- (1) A trustee of a fund may apply to APRA for a pre-1 July 88 funding credit.
- (2) If an application is made for a pre-1 July 88 funding credit, APRA must give a written notice to the applicant granting a pre-1 July 88 funding credit of a specified amount if APRA is satisfied that:
 - (a) the amount consists of, or is the total of, amounts that, under the regulations, are treated as pre-1 July 88 funding amounts; and
 - (b) paragraph 23(jaa) or section 23FC of the Income Tax Assessment Act, as in force immediately before the commencement of the *Taxation Laws Amendment Act (No. 2) 1989*, would have applied to the fund in relation to the 1987-88 year of income, if the amendments made by that last-mentioned Act had not been made.
- (3) An application:
 - (a) must be in the approved form; and
 - (b) must be made on or before the day ascertained in accordance with the regulations; and
 - (c) must contain such information relating to the fund as is required by the form to be provided; and
 - (d) must be accompanied by:
 - (i) such certificates and other documents as the form requires; and
 - (ii) the prescribed application fee.
- (4) If:
 - (a) a prescribed event has occurred (whether before or after the commencement of this section) in relation to a fund, being an event that relates to:
 - (i) the membership of the fund; or
 - (ii) benefits provided by the fund; and
 - (b) a trustee of the fund fails to notify APRA of the event within the time and in the manner prescribed;

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APRA must give written notice to a trustee of the fund accordingly.

- (5) Regulations made for the purposes of paragraph (4)(b) may:
 - (a) require a notification to be accompanied by such information as is prescribed; and
 - (b) enable APRA to grant an extension of time for lodging a notification.
- (6) If:
 - (a) an event prescribed for the purposes of paragraph (4)(a) has occurred (whether before or after the commencement of this section) in relation to a fund; and
 - (b) a trustee of the fund notifies APRA of the event as and when required by regulations made for the purposes of paragraph (4)(b); and
 - (c) APRA is satisfied that, in accordance with the regulations, a pre-1 July 88 funding debit of a particular amount should arise in relation to the fund;APRA may give to a trustee of the fund a written notice granting the trustee of the fund a pre-1 July 88 funding debit of that amount.
- (7) The regulations may make provision for and in relation to the transfer of pre-1 July 88 funding credits between funds.
- (8) Without limiting the generality of subsection (7), the regulations made for the purposes of that subsection must make provision for:
 - (a) the giving by APRA of a notice approving the transfer of a pre-1 July 88 funding credit of a fund to another fund; and
 - (b) the revocation of such a notice; and
 - (c) requiring notification of such a revocation and of the reasons for the revocation.
- (9) If:
 - (a) APRA has, under subsection (2) or (6), given a notice to a trustee of a fund; and

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- (b) APRA, after considering information that was not previously considered by APRA, ceases to be satisfied as mentioned in the subsection concerned;
APRA must give written notice to a trustee of the fund revoking the notice.
- (10) If APRA refuses an application under subsection (1), APRA must give written notice to the applicant of the refusal.
- (11) A notice under subsection (9) or (10) must set out the reasons for the revocation or refusal, as the case requires.
- (12) APRA must give to the Commissioner of Taxation particulars of all notices given under this section or under regulations made for the purposes of subsection (7).
- (13) In this section:

fund means a superannuation fund.

343 Rules against perpetuities not to apply to superannuation entity

The rules of law relating to perpetuities do not apply, and are taken never to have applied, to the trusts of any superannuation entity, whether the entity was established before, or is established after, the commencement of this section.

344 Review of certain decisions*Request for review*

- (1) A person who is affected by a reviewable decision of the Regulator may, if dissatisfied with the decision, request the Regulator to reconsider the decision.

How request must be made

- (2) The request must be made by written notice given to the Regulator within the period of 21 days after the day on which the person first

Section 344

receives notice of the decision, or within such further period as the Regulator allows.

Request must set out reasons

- (3) The request must set out the reasons for making the request.

Regulator to reconsider decision

- (4) Upon receipt of the request, the Regulator must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the Regulator thinks fit.

Deemed confirmation of decision if delay

- (5) If the Regulator does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the Regulator received the request under subsection (1) to reconsider the decision, the Regulator is taken, at the end of that period, to have confirmed the decision under subsection (4).

Notice of Regulator's action

- (6) If the Regulator confirms, revokes or varies a decision before the end of the period referred to in subsection (5), the Regulator must give written notice to the person telling the person:
- (a) the result of the reconsideration of the decision; and
 - (b) the reasons for confirming, varying or revoking the decision, as the case may be.

Notice to Commissioner of Taxation

- (7) If the Regulator gives a notice to a person under subsection (6) telling the person that a decision under section 40 has been revoked or varied, the Regulator must give to the Commissioner of Taxation particulars of the notice.

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AAT review of Regulator's decisions

- (8) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Regulator that have been confirmed or varied under subsection (4).

Period for making certain AAT applications

- (9) If a decision is taken to be confirmed because of subsection (5), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

Section 41 of AAT Act

- (10) If a request is made under subsection (1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

Only trustees affected by certain reviewable decisions

- (12) For the purposes of this section and section 345, a person is taken not to be affected by a reviewable decision (other than a reviewable decision covered by paragraph (dd), (de), (df), (dg), (dl), (dm), (dn), (doa), (dob), (dod), (q), (qa), (qb), (r), (ra), (rb), (rc), (rd), (re), (rf), (rg), (rh), (ri), (s), (t), (ua) or (ub) of the definition of **reviewable decision** in section 10) unless the person is a trustee of a superannuation entity that is affected by the decision.

345 Statements to accompany notification of decisions

- (1) If a written notice is given to a person affected by a reviewable decision telling the person that the reviewable decision has been made, that notice is to include a statement to the effect that:

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- (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Regulator in accordance with subsection 344(1); and
 - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Regulator upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (2) If the Regulator confirms or varies a reviewable decision under subsection 344(4) and gives to the person written notice of the confirmation or variation of the decision, that notice is to include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to comply with the requirements of subsections (1) and (2) in relation to a reviewable decision or a decision under subsection 344(4) does not affect the validity of that decision.

347 How information may be given to the Commissioner of Taxation

If a provision of this Act requires or authorises the Regulator to give information to the Commissioner of Taxation, the information may be given by means of a data processing device.

347A The Regulator may collect statistical information

Collection

- (1) The Regulator may collect such statistical information about superannuation entities as the Regulator considers appropriate.

Survey forms

- (2) For the purposes of subsection (1), the Regulator may, by writing, approve one or more forms (the *survey forms*).

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Instructions in survey forms

- (3) A survey form must contain instructions about the following matters:
- (a) filling up and supply of the particulars specified in the form;
 - (b) giving the filled-up form to a person (the ***authorised recipient***) specified in the instructions.

The authorised recipient must be the Regulator or a delegate of the Regulator.

Notice to trustee about participation in the Regulator's statistics program

- (4) The Regulator may, by written notice given to a trustee of a superannuation entity, determine that the trustee is a participant, or trustees of the entity are participants in the Regulator's statistics program. The notice must set out the effect of subsections (5) and (6).

Obligations of participants in the Regulator's statistics program

- (5) At any time when a determination under subsection (4) is in force in relation to a trustee of a superannuation entity, the Regulator may give the trustee a survey form. In that event, the trustee must:
- (a) fill up and supply, in accordance with the instructions contained in the form, the particulars specified in the form; and
 - (b) give the filled-up form to the authorised recipient in accordance with those instructions.

Note: Section 166 imposes an administrative penalty for a contravention of subsection (5) in relation to a self managed superannuation fund.

- (6) A trustee commits an offence if the trustee contravenes subsection (5).

Penalty: 50 penalty units.

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

Section 347A

Survey form and determination may be given at the same time

- (7) For the purposes of subsection (5), if a determination under subsection (4) is given to a trustee of a superannuation entity at the same time as a survey form, the determination is taken to have been in force at the time when the survey form was given to the trustee.

Survey period

- (8) The particulars specified in a survey form must relate to one or more specified periods (the **survey periods**). The instructions contained in a survey form must not require a trustee to give the filled-up form to the authorised recipient before the 28th day after:
- (a) the end of the survey period; or
 - (b) if there is more than one survey period—the end of the most recent survey period.

Extension of lodgment period—particular survey forms

- (9) The Regulator may extend the period within which a particular filled-up form is to be given to the authorised recipient.

Extension of lodgment period—general

- (10) The Regulator may, by notice published in the *Gazette*, extend the period within which a specified class of filled-up survey forms is to be given to the authorised recipient.

Delegation

- (11) The Regulator may, by writing, delegate to a person any or all of the Commissioner's powers under this section.

Section does not limit other powers

- (12) This section does not, by implication, limit:
- (a) any other provision of this Act; or
 - (b) anything in the *Census and Statistics Act 1905*.

- (13) In this section:

Regulator means the Commissioner of Taxation.

348 The Regulator may publish statistical information

- (1) Subject to subsection (2), the Regulator may arrange for the publication of statistical information relating to superannuation entities or relating to payments made to persons.
- (2) The Regulator must not arrange for the publication of statistical information in a manner that enables the identification of:
 - (a) a superannuation entity; or
 - (b) a person.
- (3) The Regulator may determine that fees are to be paid in respect of the supply of publications in accordance with this section.
- (4) In this section:

Regulator means the Commissioner of Taxation.

348A Quarterly reports about superannuation

- (1) As soon as practicable after the end of each quarter, the Regulator must publish the following information on its website in respect of the quarter:
 - (a) the fees charged in relation to MySuper products, on a product by product basis;
 - (b) the costs incurred in relation to MySuper products, on a product by product basis;
 - (c) the net returns to beneficiaries of regulated superannuation funds who hold MySuper products, on a product by product basis;
 - (d) any other information prescribed by the regulations.
- (2) The Regulator must not publish the information in a manner that enables the identification of a beneficiary of a regulated superannuation fund.

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- (4) In this section:

Regulator means APRA.

349 This Act and the regulations to be subject to certain superannuation orders

This Act, the regulations and the prudential standards apply in relation to a regulated superannuation fund subject to the effect of any superannuation order within the meaning of the *Australian Federal Police Act 1979* or the *Crimes (Superannuation Benefits) Act 1989* that is made in respect of any member of the fund.

349A Payment out of a fund in accordance with the *Bankruptcy Act 1966*

If a member of an approved deposit fund or of a regulated superannuation fund becomes a bankrupt, within the meaning of subsection 5(1) of the *Bankruptcy Act 1966*, nothing in this Act, the regulations or the prudential standards prevents a trustee of the fund from paying to the trustee in bankruptcy an amount out of the fund that is property divisible amongst the member's creditors, within the meaning of section 116 of the *Bankruptcy Act 1966*.

349B Acquisition of property

- (1) This Act does not apply to the extent (if any) that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).
- (2) The following subsections do not limit subsection (1).
- (3) If, apart from this section, this Act would result in such an acquisition of property because:
 - (a) it would require a person to take action in relation to an accrued default amount; or
 - (b) it would require a person to take action in relation to an asset of the kind mentioned in subparagraph 29SAB(a)(i); or

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- (c) it would require a person to take action in relation to an amount held in an entity that is or was an eligible rollover fund;
- then despite any other provision of this Act, the person is not required to take that action.
- (4) If, apart from this section, this Act would result in such an acquisition of property because it would prevent the charging of a fee of a kind mentioned in paragraph 29SAC(1)(a) or 242C(1)(a), then despite any other provision of this Act, the person is not prevented from charging that fee.
- (5) If, apart from this section, this Act would result in such an acquisition of property because it would require or permit a person to use, disclose or publish information, then despite any other provision of this Act, the person is not required or permitted to use, disclose or publish the information in the circumstances that would result in such an acquisition.
- (6) If, apart from this section, this Act would result in such an acquisition of property because it excuses a person from liability, then despite any other provision of this Act, the person is not excused from the liability.
- (7) To avoid doubt, any provision that does not result in an acquisition of property continues to apply in relation to:
- (a) action in relation to accrued default amounts; and
 - (b) action in relation to an asset of the kind mentioned in subparagraph 29SAB(a)(i); and
 - (ba) action in relation to an amount held in an entity that is or was an eligible rollover fund; and
 - (c) the charging of a fee of a kind mentioned in paragraph 29SAC(1)(a) or 242C(1)(a); and
 - (d) the use, disclosure and publication of information; and
 - (e) a liability.

Section 350

350 Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

351 Additional functions of the Chief Executive Medicare

In addition to the functions of the Chief Executive Medicare under the *Human Services (Medicare) Act 1973*, the Chief Executive Medicare has such additional functions as are conferred on the Chief Executive Medicare under this Act.

Note: Paragraph 6(1)(ba) of this Act confers functions on the Chief Executive Medicare.

353 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and without limiting the generality of the above, may make regulations:
 - (c) prescribing fees in respect of any matter under this Act; and
 - (d) prescribing penalties not exceeding 10 penalty units in respect of offences against the regulations.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for and in relation to the keeping of one or more registers by the Regulator, where the registers relate to matters arising under this Act or the regulations. In particular, the regulations may make provision for the following:
 - (a) a register to be kept in such form and manner as the Regulator directs;
 - (b) persons to inspect a register;
 - (c) persons to obtain information contained in a register;

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- (d) fees to be charged for such an inspection or for providing such information.

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Part 32—Additional transitional provisions—tax file numbers

381 Object of Part

The object of this Part is to allow a member of a fund, scheme or trust to quote his or her tax file number to the trustee before the commencement of Parts 22 and 24. Those Parts commence on 1 July 1994.

Note: Part 22 was repealed by the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999*.

382 Quotation of tax file number

- (1) A member or beneficiary of a fund, scheme or trust may quote his or her tax file number to the trustee of the fund, scheme or trust in connection with the possibility of the future operation of section 225 or Part 24, or both.
- (2) Subsection (1) ceases to have effect on 1 July 1994.

383 Pre-1 July 1994 quotation of tax file number to be treated as if made under provisions commencing on 1 July 1994

- (1) This section applies if a beneficiary or member of a fund, scheme or trust quotes his or her tax file number to the trustee under section 382.
- (2) This Act has effect, after 30 June 1994, as if the beneficiary or member had quoted that tax file number to the trustee under subsections 225(4) and 245(2), as in force immediately before their repeal by the *Taxation Laws Amendment Act (No. 2) 1996*, immediately after the beginning of 1 July 1994.

384 Pre-1 July 1994 quotation of tax file number—request for quotation, or recording, of number not prohibited by the *Taxation Administration Act 1953*

- (1) Section 8WA of the *Taxation Administration Act 1953* does not prohibit a person from requesting another person to quote the other person's tax file number if provision is made by section 382 of this Act for the quotation of the number.
- (2) If a beneficiary or member of a fund, scheme or trust quotes his or her tax file number to the trustee under section 382 of this Act, section 8WB of the *Taxation Administration Act 1953* does not prohibit the trustee from:
 - (a) recording that tax file number or maintaining such a record; or
 - (b) using that tax file number in a manner connecting it with the identity of the beneficiary or member;in connection with the possibility that the trustee may be required to exercise powers or perform functions under or in relation to Part 22 or 24, or both, of this Act on or after 1 July 1994.
- (3) Subsections (1) and (2) cease to have effect on 1 July 1994.

385 Pre-1 July 1994 quotation of tax file number—objects of tax file number system

- (1) Section 202 of the *Income Tax Assessment Act 1936* has effect as if the facilitation of the future administration of Parts 22 and 24 of this Act were an object of Part VA of that Act.
- (2) Subsection (1) ceases to have effect on 1 July 1994.

Part 33—Additional transitional provisions relating to MySuper

Division 1—Moving accrued default amounts to MySuper products

386 Object

The object of this Division is to ensure that each accrued default amount held by an RSE licensee before 1 July 2017 is moved into a MySuper product.

387 Election to transfer accrued default amounts

- (1) An RSE licensee of a regulated superannuation fund that makes an application before 1 July 2017 for authority to offer a class of beneficial interest in the fund as a MySuper product is taken to make an election in accordance with section 29SAA if:
 - (a) the RSE licensee elects that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, the RSE licensee will:
 - (i) attribute to the MySuper product each amount that is an accrued default amount for a member of the fund who is eligible to hold the MySuper product, unless the member directs the RSE licensee in writing to attribute the amount to another MySuper product or an investment option within a choice product in the fund; and
 - (ii) do so before 1 July 2017, or the end of a period of 30 days beginning on the day on which notice of authority to offer the relevant class of beneficial interest in the fund as a MySuper product is given to the RSE licensee under section 29TD (whichever is later); and
 - (b) the RSE licensee elects to take the action required under the prudential standards in relation to the following, and to do so before the transitional action period ends:

- (i) each amount that is an accrued default amount for a member of the fund who is not eligible to hold a MySuper product offered by the fund;
 - (ii) each amount that is an accrued default amount for a member of another regulated superannuation fund of the RSE licensee that does not offer a MySuper product; and
 - (c) the election is otherwise made in accordance with paragraphs 29SAA(1)(c) and (d).
- (2) The ***transitional action period***, for the purposes of paragraph (1)(b), in relation to an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, ends on the later of:
- (a) 1 July 2017; and
 - (b) the end of a period of 90 days beginning on:
 - (i) if APRA authorises the RSE licensee to offer the class of beneficial interest in the fund as a MySuper product—the day on which notice of that authority is given to the RSE licensee under section 29TD; or
 - (ii) if APRA refuses the application—the day on which notice of the refusal is given to the RSE licensee under section 29TE.

388 Transfer to MySuper products

- (1) If:
- (a) an RSE licensee of a regulated superannuation fund holds an accrued default amount for a member of the fund immediately before 1 July 2017; and
 - (b) no application is made before 1 July 2017 by the RSE licensee, in relation to any of the RSE licensee's regulated superannuation funds, for authority to offer a class of beneficial interest in the fund as a MySuper product;
- the RSE licensee must take the action required under the prudential standards in relation to the amount before 1 July 2017.

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- (2) A trustee of a regulated superannuation fund is not subject to any liability to a member of the fund for an action taken in accordance with subsection (1).

Division 2—Miscellaneous

389 Prudential standards dealing with transitional matters

A prudential standard determined under section 34C may include provisions dealing with matters of a transitional nature relating to:

- (a) the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*; and
- (b) the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*; and
- (c) the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*; and
- (d) the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

390 Regulations dealing with transitional, savings and application matters

The Governor-General may make regulations dealing with matters of a transitional, saving, or application nature relating to the amendments made by:

- (a) the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*; and
- (b) the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*; and
- (c) the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*; and
- (d) the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

Section 391

Part 34—Additional transitional provisions relating to eligible rollover funds

391 Definitions

In this Part:

existing ERF means a regulated superannuation fund that is an eligible rollover fund within the meaning of the old law immediately before the commencement of this section.

old law means this Act as in force immediately before the commencement of this section.

392 Authority to operate an eligible rollover fund given before 1 January 2014

If, before 1 January 2014, APRA authorises an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund, that authority takes effect on 1 January 2014.

393 Operation of existing ERFs after commencement

Despite the amendments made by Schedule 7 to the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*, an existing ERF is taken to be an eligible rollover fund for the purposes of Division 3 of Part 24 during the period:

- (a) beginning on the day this section commences; and
- (b) ending on 31 December 2013.

394 Moving amounts held in existing ERFs

(1) If:

- (a) immediately before 1 January 2014, an amount is held in an existing ERF; and

- (b) on that day, the RSE licensee of the existing ERF is not authorised to operate the existing ERF as an eligible rollover fund;

the RSE licensee of the existing ERF must take the action required under the prudential standards in relation to the amount before the end of a period of 90 days beginning on 1 January 2014.
- (2) A prudential standard determined under section 34C may include provisions:
 - (a) requiring an RSE licensee of an existing ERF to, in the circumstances mentioned in subsection (1), transfer the amount held in the existing ERF to a regulated superannuation fund that:
 - (i) is an eligible rollover fund; or
 - (ii) offers a MySuper product; and
 - (b) setting out the requirements that must be met in relation to the transfer of such an amount; and
 - (c) dealing with other matters relating to such an amount.
- (3) A trustee of a regulated superannuation fund is not subject to any liability to any member of the fund for an action taken in accordance with this section.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Industry (Supervision) Act 1993	78, 1993	30 Nov 1993	ss. 30–116, 118–142 and 253–308: 1 Dec 1993 (see s. 2(4)) s. 117: 21 Oct 1992 Parts 18–20 (ss. 143–191), Parts 22–24 (ss. 223–252) and s. 342: 1 July 1994 Remainder: Royal Assent	
Taxation Laws Amendment Act (No. 3) 1993	118, 1993	24 Dec 1993	Part 11 (ss. 156–159): 25 Dec 1993 (a)	ss. 157 and 159
Superannuation Industry (Supervision) Legislation Amendment Act 1994	140, 1994	28 Nov 1994	ss. 3–11, 14–16, 21–25, 32–35, 40, 41 and 44–48: Royal Assent (b) ss. 12, 13, 28–31 and 36–39: 1 Dec 1993 (b) ss. 17–20, 26, 27, 42 and 43: 26 Dec 1994 (b)	ss. 4, 6, 7, 10, 12, 14, 16, 17, 19, 21, 23, 26, 28, 32, 34, 36, 40, 42, 44, 46 and 48
Taxation Laws Amendment Act (No. 4) 1994	181, 1994	19 Dec 1994	Schedule 1 (items 22–85): 13 Oct 1994 Remainder: Royal Assent	Sch. 3 (items 103, 108, 109, 112, 113, 117)
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 (see s. 2 and Gazette 1995, No. GN24)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995	53, 1995	23 June 1995	1 July 1995	Sch. 5 (item 36)
Superannuation Industry (Supervision) Legislation Amendment Act 1995	144, 1995	12 Dec 1995	ss. 3, 4(1) and Schedule 4 (items 1, 6, 10, 22–27, 30–33, 71–75, 86): Royal Assent (<i>c</i>) s. 4(2) and Schedule 4 (items 2, 5, 7, 11–13, 28, 29, 34–70, 77–81, 83, 84): 9 Jan 1996 (<i>c</i>) s. 4(3) and Schedule 4 (items 3, 4, 8, 9, 14–21, 76, 82, 85): (<i>c</i>)	ss. 3, 4 and Sch. 4 (items 19, 33, 43, 53)
Commonwealth Bank Sale Act 1995	161, 1995	16 Dec 1995	ss. 3 and 20: Royal Assent (<i>d</i>) Schedule (item 59): (<i>d</i>)	ss. 3 and 20
Taxation Laws Amendment Act (No. 2) 1995	169, 1995	16 Dec 1995	Schedule 4 (items 11–13) and Schedule 6: Royal Assent (<i>e</i>)	Sch. 6 (item 17)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (item 110): (<i>f</i>)	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Schedule 19 (item 51): Royal Assent (<i>g</i>)	s. 2(2), (6) (am. by 77, 1996, Sch. 3 [items 1, 2])

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (h)	—
Taxation Laws Amendment Act (No. 2) 1996	76, 1996	18 Dec 1996	Schedule 4 (items 1–18): 16 Feb 1997 (i)	—
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	1 July 1997	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	2 June 1997 (see s. 2 and Gazette 1997, No. S202)	—
Superannuation Contributions Tax (Consequential Amendments) Act 1997	71, 1997	5 June 1997	5 June 1997	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Schedule 14: Royal Assent (j)	—
Taxation Laws Amendment Act (No. 1) 1997	122, 1997	8 July 1997	Schedule 7: (k)	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2: (items 1242–1245): 1 Jan 1998 (see Gazette 1997, No. GN49) (l)	—
Superannuation Industry (Supervision) Amendment Act 1997	172, 1997	17 Nov 1997	Schedule 1: 1 July 1996 Remainder: Royal Assent	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997	191, 1997	7 Dec 1997	Schedule 6: Royal Assent (<i>m</i>)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (items 184–191): 1 July 1998 (<i>see Gazette</i> 1998, No. S316) (<i>n</i>)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Schedule 16 (Parts 1–6): 1 July 1998 (<i>see Gazette</i> 1998, No. S316) (<i>o</i>) Schedule 16 (Part 7): (<i>o</i>) Schedule 16 (items 232–234): (<i>o</i>) Schedule 16 (items 235, 236): (<i>o</i>) Schedule 16 (item 237): Royal Assent	s. 2(14) (am. by 44, 1999, Sch. 6 (item 8)) s. 2(15) (am. by 44, 1999, Sch. 6 (item 9)) s. 2(16) (am. by 24, 2000, Sch. 11 [item 1])

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 6 (items 8, 9, 11, 12): <i>(oa)</i> Schedule 6 (item 13): Royal Assent <i>(oa)</i>	s. 3(7A) (ad. by 24, 2000, Sch. 11 [item 4])
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Schedule 11 (item 1): <i>(ob)</i> Schedule 11 (item 4): <i>(oaa)</i>	—
Superannuation Legislation Amendment (Resolution of Complaints) Act 1998	118, 1998	11 Dec 1998	11 Dec 1998	—
Superannuation Legislation Amendment Act 1999	38, 1999	31 May 1999	Schedule 2 (Part 2): 28 June 1999 Schedule 2 (Part 3): 5 June 1997 <i>(p)</i> Schedule 2 (Part 4): 1 July 1999 Schedule 2 (Part 5): 1 Dec 1999 Remainder: Royal Assent	—
Superannuation Legislation Amendment Act (No. 3) 1999	121, 1999	8 Oct 1999	Schedule 1 (items 29, 54): 1 Apr 2000 Schedule 1 (items 44, 50): 1 July 2000 Remainder: Royal Assent	Sch. 1 (items 133–136)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999	128, 1999	13 Oct 1999	ss. 4–8 and Schedule 1 (items 44–74): 13 Oct 1999 (<i>q</i>)	ss. 4–8
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999	131, 1999	13 Oct 1999	Schedule 5: Royal Assent (<i>r</i>)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (item 901): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>s</i>)	—
Superannuation Legislation Amendment Act (No. 4) 1999	199, 1999	23 Dec 1999	23 Dec 1999	Sch. 1 (items 47, 48)
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Schedule 9 (items 5–14), Schedule 10 (items 1, 2, 4, 6, 7, 9, 10) and Schedule 12 (item 10): Royal Assent (<i>t</i>) Schedule 10 (items 3, 5, 8, 11–13): 12 May 2000 (<i>see Gazette</i> 2000, No. S239) (<i>t</i>) Schedule 12 (items 1–3): 3 Apr 2000 (<i>t</i>)	Sch. 12 (items 1–3, 10)
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	108, 2000	3 Aug 2000	Schedule 3 (items 5, 6): 1 Jan 2001 (<i>see Gazette</i> 2000, No. GN50) (<i>u</i>)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 387–390, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	Sch. 3 (item 42)
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	ss. 1–3, Schedule 1 (items 1–4) and Schedule 2: Royal Assent Schedule 1 (items 171, 172): 18 Jan 2001 (<i>see s. 2(2)</i>) Remainder: 15 Dec 2001 (<i>see s. 2(4)</i>)	—
as amended by				
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	Schedule 2 (items 35–54): (v)	s. 4
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 498–506): 15 July 2001 (<i>see Gazette</i> 2001, No. S285 (w))	ss. 4–14
Family Law Legislation Amendment (Superannuation) Act 2001	61, 2001	28 June 2001	28 Dec 2002	s. 5 (am. by 86, 2002, Sch. 5 [item 10])

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002, No. GN24)	Sch. 2 (item 147)
as amended by				
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Schedule 2 (item 2): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (x)	—
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Schedule 1 (items 282–285, 287–289, 326–341) and Schedule 2 (items 8, 11–48): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (y) Schedule 2 (items 9, 10): 1 July 2002 (see <i>Gazette</i> 2002, No. GN24) (y)	Sch. 2 (item 10)
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 8: 27 June 2002 (s 2(1) item 5)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Schedule 3 (item 63): 12 May 2003 (<i>see</i> s. 2 and <i>Gazette</i> 2002, No. GN49)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (item 124): 1 Jan 2003	Sch. 2 (item 226)
Superannuation Industry (Supervision) Amendment Act 2003	52, 2003	26 June 2003	Schedule 1: 26 June 2003 (<i>see</i> s. 2(1)) Remainder: Royal Assent	—
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Schedule 6: 28 Nov 2003	—
Superannuation Safety Amendment Act 2004	53, 2004	27 Apr 2004	Sch 1 (items 1–61), Sch 2 and Sch 3 (items 6–14): 1 July 2004 (s 2(1) items 2, 4, 5) Sch 1 (items 62–86): 1 July 2006 (s 2(1) item 3)	Sch 2 (item 373) and Sch 3 (item 11(2))
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Schedule 1 (items 209, 212, 213, 215): 1 Dec 2004 (<i>see Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215)
Superannuation Laws Amendment (2004 Measures No. 2) Act 2004	93, 2004	29 June 2004	Schedule 1 (item 8): 1 July 2004 (s 2(1) item 4)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004	102, 2004	30 June 2004	Schedule 1: 1 July 2005 Remainder: Royal Assent	Sch. 2 (item 10(2))
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4 and Schedule 1 (items 419–423, 496): Royal Assent	s. 4 and Sch. 1 (item 496)
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005	82, 2005	29 June 2005	Schedule 1 (items 12–14): 1 July 2005 (s 2(1) item 5)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 4 (items 28–30): Royal Assent	—
Tax Laws Amendment (Simplified Superannuation) Act 2007	9, 2007	15 Mar 2007	Schedule 1 (items 28–35, 37) and Schedule 5 (items 9–23, 36(1)): Royal Assent	Sch. 1 (item 37) and Sch. 5 (item 36(1))
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 351–364, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2) Sch 3 (item 54): 1 July 2007 (s 2(1) item 7)	Sch. 1 (item 406(1)–(3))
Tax Laws Amendment (2007 Measures No. 4) Act 2007	143, 2007	24 Sept 2007	Schedule 3 and Schedule 5 (items 27, 48(1), (3)): Royal Assent	Sch. 5 (item 48(1), (3))

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Schedule 1 (items 136– 155, 294–296), Schedule 2 (items 3–21), Schedule 3 (items 4–12, 14) and Schedule 4 (items 57–73): Royal Assent Schedule 1 (items 239– 244): 1 Jan 2008 Schedule 1 (items 246– 255): 24 Sept 2008	Sch. 1 (items 294– 296), Sch. 2 (item 21) and Sch. 3 (item 14)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Schedule 1 (items 41– 70), Schedule 2 (items 26, 27), Schedule 3 (items 32– 38) and Schedule 4 (items 38–43): Royal Assent	Sch. 1 (items 42, 45, 70), Sch. 2 (item 27) and Sch. 4 (item 43)
as amended by				
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 2 (item 11): Royal Assent	—
First Home Saver Accounts (Consequential Amendments) Act 2008	45, 2008	25 June 2008	Schedule 3 (item 38): 26 June 2008	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws— Superannuation) Act 2008	134, 2008	4 Dec 2008	Schedule 4 (items 8–17): 1 July 2008 Schedule 4 (item 20): Royal Assent	Sch. 4 (items 16, 17, 20)
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 18 (item 23): 1 July 2009 (s 2(1) item 41)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Schedule 1 (item 221): 27 Feb 2010 Schedule 2 (items 9–12, 14): 28 Aug 2009	Sch. 2 (item 14)
Tax Laws Amendment (2010 Measures No. 1) Act 2010	56, 2010	3 June 2010	Schedule 1 (items 6, 9): 1 July 2010 Schedule 6 (items 99–101): 4 June 2010	Sch. 1 (item 9) and Sch. 6 (item 101)
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Schedule 4 (items 30–36) and Schedule 6 (items 1, 51–78): 27 July 2010	—
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 15): 27 July 2010 (s 2(1) item 15)	—
Superannuation Industry (Supervision) Amendment Act 2010	100, 2010	6 July 2010	7 July 2010	Sch. 1 (item 14)
Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010	114, 2010	14 July 2010	Schedule 1 (items 87, 93(1)): Royal Assent	Sch. 1 (item 93(1))
Superannuation Legislation Amendment Act 2010	117, 2010	16 Nov 2010	s. 4: Royal Assent Schedule 2 (item 1): 1 Dec 2010 (<i>see</i> F2010L03106) Schedule 3: 17 Nov 2010	s. 4, Sch. 2 (item 1) and Sch. 3 (item 4)
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (items 83–85, 127): 17 Dec 2010	Sch. 2 (item 127)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (2011 Measures No. 2) Act 2011	41, 2011	27 June 2011	Schedule 2 and Schedule 3 (items 3–13): 1 July 2011 Schedule 3 (items 17, 18, 19(2)): 1 Jan 2012	Sch. 2 (item 3) and Sch. 3 (items 13, 18, 19(2))
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 1091–1095) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011	108, 2011	14 Oct 2011	Schedule 1 (items 8–16, 20, 21): 1 Nov 2011 (<i>see</i> F2011L02110)	Sch. 1 (items 20, 21)
Tax Laws Amendment (2011 Measures No. 9) Act 2012	12, 2012	21 Mar 2012	Schedule 1 (items 11–19): 22 Mar 2012 Schedule 6 (item 23, 193–199, 204–211): Royal Assent	Sch. 6 (item 199)
as amended by				
Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013	88, 2013	28 June 2013	Sch 7 (item 229): 22 Mar 2012 (s 2(1) item 24)	—
Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012	75, 2012	27 June 2012	Schedule 6 (items 1–9): 27 June 2013 Schedule 6 (items 10, 11): Royal Assent	Sch. 6 (item 9)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Stronger Super) Act 2012	91, 2012	28 June 2012	Sch 1 (items 2, 9–17, 20): 29 June 2012 (s 2(1) items 2, 4) Sch 1 (items 18, 19): 9 Sept 2012 (s 2(1) item 3)	Sch. 1 (item 20) (am. by 158, 2012, Sch. 4 [item 73])
as amended by				
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012	158, 2012	28 Nov 2012	Schedule 4 (item 73): 29 Nov 2012	—
Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012	117, 2012	8 Sept 2012	Sch 1: 1 July 2013 (s 2(1) item 2) Sch 2 (items 1–7, 9–33, 35–49): 9 Sept 2012 (s 2(1) items 3, 5, 7) Sch 2 (items 8, 34): 1 Jan 2013 (s 2(1) items 4, 6) Remainder: 8 Sept 2012 (s 2(1) item 1)	—
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012	158, 2012	28 Nov 2012	Sch 2 (items 1–68, 70–75) and Sch 4 (items 8–18): 31 Jan 2013 (s 2(1) items 5, 8) Sch 4 (items 1–7, 19–24, 54–72): 29 Nov 2012 (s 2(1) items 7, 9, 10)	Sch 2 (items 70–75) and Sch 4 (item 7)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013	88, 2013	28 June 2013	Sch 7 (item 224): 31 Jan 2013 (s 2(1) item 22)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 45, 46): 29 Nov 2012 (s 2(1) item 17)	—
Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012	162, 2012	28 Nov 2012	Sch 1 (items 2–9): 1 Jan 2013 (F2012L02367)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 1 (items 1–6, 8–36, 39–41), Sch 3 (item 40), Sch 4 (items 11–13), Sch 5 (items 4–10), Sch 6 and Sch 8 (items 2, 3): 1 Jan 2013 (s 2(1) items 2, 4–8, 10, 11, 17, 21, 23, 24, 27, 28) Sch 1 (item 7): never commenced (s 2(1) item 3) Sch 1 (items 37, 38): 4 Dec 2012 (s 2(1) item 9) Sch 2 (items 2–4, 6, 7), Sch 3 (items 38, 39, 41– 44, 47) and Sch 7 (items 1–17): 1 July 2013 (s 2(1) items 13, 15, 16, 18, 25) Sch 2 (item 5): 3 Dec 2012 (s 2(1) item 14)	Sch 1 (item 41), Sch 2 (item 7), Sch 3 (item 47), Sch 4 (item 13) and Sch 5 (item 5)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013	61, 2013	26 June 2013	Sch 1 (items 119A–119C): (<i>see</i> 61, 2013 below)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 49, 50): 1 July 2013 (s 2(1) item 19) Sch 7 (item 51): 20 Mar 2015 (s 2(1) item 20)	Sch 7 (item 51)
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 81, 82, 180) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 13, 19)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (item 509): 12 Apr 2013 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013	61, 2013	26 June 2013	Sch 1 (items 27–37, 43, 48–70, 72–115, 117, 126, 127): 1 July 2013 (s 2(1) items 16, 18, 20–22, 24–26, 28, 32) Sch 1 (items 38–42B, 44–47, 116, 118, 119): 27 June 2013 (s 2(1) items 17, 19, 27, 29) Sch 1 (items 47A, 119A–119C): 1 Jan 2013 (s 2(1) items 19A, 29A) Sch 1 (item 71): never commenced (s 2(1) item 23) Sch 1 (items 129, 130): 26 June 2013 (s 2(1) item 33)	Sch 1 (items 126, 127, 129, 130)
Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013	85, 2013	28 June 2013	Sch 5: 28 June 2013 (s 2(1) item 10)	Sch 5 (item 5)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (items 63, 64): 29 June 2013 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 1) Act 2014	11, 2014	18 Mar 2014	Sch 1: 18 Mar 2014 (s 2(1) item 2) Sch 2 (items 1–25, 27): 1 July 2014 (s 2(1) item 3)	Sch 2 (item 27)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 168, 169) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Treasury Legislation Amendment (Repeal Day) Act 2015	2, 2015	25 Feb 2015	Sch 1: 25 Feb 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (items 39–41): 25 Mar 2015 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 29–31): 20 Mar 2015 (s 2(1) item 15)	Sch 7 (item 30)
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 1 (items 147–150) and Sch 1 (items 195– 205): 1 July 2015 (s 2(1) items 3, 6)	Sch 1 (items 195– 205)
Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015	120, 2015	10 Sept 2015	Sch 1 (item 62): 11 Sept 2015 (s 2(1) item 1)	
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 585–588): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 296–300, 432): 10 Mar 2016 (s 2(1) item 6)	—
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (item 315): <u>awaiting commencement</u> (s 2(1) item 7)	—
Budget Savings (Omnibus) Act 2016	55, 2016	16 Sept 2016	Sch 23 (items 40, 41): 1 Oct 2016 (s 2(1) item 25)	Sch 23 (item 41)
Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016	81, 2016	29 Nov 2016	Sch 1 (items 7, 36): 1 Jan 2017 (s 2(1) item 2)	Sch 1 (item 36)

Endnote 3—Legislation history

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- (a) The *Superannuation Industry (Supervision) Act 1993* was amended by Part 11 (sections 156–159) only of the *Taxation Laws Amendment Act (No. 3) 1993*, subsection 2(4) of which provides as follows:
- (4) Division 3 of Part 10 and Part 11 commence on whichever is the later of the following days:
- (a) the date of commencement of Part 3 of the *Superannuation Industry (Supervision) Act 1993*;
 - (b) the day after the date of commencement of this section.
- (b) The *Superannuation Industry (Supervision) Act 1993* was amended by Part 2 (sections 3–48) only of the *Superannuation Industry (Supervision) Legislation Amendment Act 1994*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Divisions 5, 12 and 15 of Part 2 are taken to have commenced on 1 December 1993.
 - (3) Divisions 7, 8, 11 and 17 of Part 2 commence on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (c) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 4 only of the *Superannuation Industry (Supervision) Legislation Amendment Act 1995*, subsections 2(1)–(3) of which provide as follows:
- (1) Sections 1, 2 and 3, subsection 4(1), section 5, Schedules 1 and 2, items 1, 6, 10, 22 to 27, 30 to 33, 71 to 75 and 86 of Schedule 4 and items 1 to 7, 10 to 12, 25 to 71, 73 to 78, paragraphs (a), (b) and (c) of item 95, paragraphs (a) and (b) of item 96 and items 97 to 102 of Schedule 5 commence on the day on which this Act receives the Royal Assent.
 - (2) Subsection 4(3), Schedule 3 and items 3, 4, 8, 9, 14 to 21, 76, 82 and 85 of Schedule 4 commence:
 - (a) on the day on which this Act receives the Royal Assent; or
 - (b) immediately after the beginning of the day on which the *Taxation Laws Amendment Act (No. 2) 1995* receives the Royal Assent;
 whichever is the later to occur of those times.
 - (3) Subsection 4(2) and the remaining items of Schedule 4 commence 28 days after the day on which this Act receives the Royal Assent.
- The *Taxation Laws Amendment Act (No. 2) 1995* came into operation on 16 December 1995.
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- (d) The *Superannuation Industry (Supervision) Act 1993* was amended by the Schedule (item 59) only of the *Commonwealth Bank Sale Act 1995* subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Part 3, and all the items of the Schedule (except items 1, 12, 16, 17, 21, 22, 23, 26, 27, 31, 37 and 48), commence at the transfer time.
The transfer time occurred on 19 July 1996.
- (e) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 4 (items 11–13) and Schedule 6 only of the *Taxation Laws Amendment Act (No. 2) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 2 (item 110) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
Item 110 is taken to have commenced immediately after the commencement of Part 7 of the *Superannuation Industry (Supervision) Act 1993*.
Part 7 commenced on 1 December 1993.
- (g) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 19 (item 51) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
The Workplace Relations and Other Legislation Amendment Act 1996 received the Royal Assent on 25 November 1996.
- (i) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 4 (items 1–18) only of the *Taxation Laws Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:

Endnote 3—Legislation history

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- (4) Schedule 4 commences on the 60th day after the day on which this Act receives the Royal Assent.
- (j) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 14 only of the *Financial Laws Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (k) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 7 only of the *Taxation Laws Amendment Act (No. 1) 1997*, subsection 2(10) of which provides as follows:
- (10) Schedule 7 is taken to have commenced immediately after the commencement of section 299G of the *Superannuation Industry (Supervision) Act 1993*.
- Section 299G commenced on 16 February 1997.
- (l) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 2 (items 1242–1245) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection (2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (m) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 6 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (n) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 1 (items 184–191) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (o) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 16 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsections 2(1), (2)(n), (14)(b), (15)(b) and 16(b) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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Endnote 3—Legislation history

- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (n) Parts 1 to 6 of Schedule 16;
- (14) Part 7 of Schedule 16 commences:
- (b) immediately after the commencement of Part 1 of Schedule 2 to the *Superannuation Legislation Amendment Act 1999* if that Part does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (15) Items 232 to 234 of Part 8 of Schedule 16 commence:
- (b) immediately after the commencement of item 42 of Schedule 1 to the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1999* if that item does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (16) Items 235 and 236 of Part 8 of Schedule 16 commence:
- (b) immediately after the commencement of item 50 of Schedule 1 to the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2000* if that item does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.

Part 1 of Schedule 2 to the *Superannuation Legislation Amendment Act 1999* commenced on 31 May 1999.

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill* has not been enacted. Therefore these amendments do not commence.

- (oa) The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* was amended by Schedule 6 (items 8, 9 and 11–13) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(1) and (7A) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

- (7A) Items 8, 9, 11 and 12 of Schedule 6 are taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent.

The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent on 29 June 1998.

- (ob) The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* was amended by Schedule 11 (item 1) of the *Financial Sector Reform*

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(Amendments and Transitional Provisions) Act (No. 1) 2000, subsection 2(9) of which provides as follows:

- (9) Items 1, 2 and 3 of Schedule 11 are taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent.

The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent on 29 June 1998.

- (oaa) The *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* was amended by Schedule 11 (item 4) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsection 2(10) of which provides as follows:

- (10) Item 4 of Schedule 11 is taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* received the Royal Assent.

The *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* received the Royal Assent on 17 June 1999.

- (p) Subsection 2(3) of the *Superannuation Legislation Amendment Act 1999* provides as follows:

- (3) Part 3 of Schedule 2 is taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*.

- (q) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 1 (items 44–74) only of the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999*, subsections 2(1) and (2) of which provide as follows:

- (1) In this section, **commencing time** means the time when the *Superannuation (Unclaimed Money and Lost Members) Act 1999* commences.

- (2) Subject to this section, this Act commences at the commencing time.

- (r) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 5 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

- (s) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 1 (item 901) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

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- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (t) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 9 (items 5–14) and Schedule 10 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsections 2(1), (7), (12) and (13) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (7) Subject to subsection (8), the items of Schedule 10, other than items 1, 2, 4, 6, 7, 9 and 10, commence on a day to be fixed by Proclamation.
- (12) Part 1 of Schedule 12 commences:
- (a) after all of the Acts listed in subsection (13) have received the Royal Assent; and
- (b) on the day that is the last day on which any of those Acts received the Royal Assent.
- (13) These are the relevant Acts for the purposes of paragraph (12)(a):
- (a) this Act;
- (b) each of the Acts referred to in the definition of **Validation Act** in item 1 of Schedule 12 to this Act.
- (u) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 3 (items 5 and 6) only of the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (v) The *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001* was amended by Schedule 2 (items 35–54) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001*, subsection 2(4) of which provide as follows:
- (4) Schedule 2 and Part 4 of Schedule 3 are taken to have commenced immediately after the commencement of item 14 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.
- Item 14 of Schedule 1 commenced on 15 December 2001.
- (w) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 3 (items 498–506) only of the *Corporations (Repeals,*

Endnote 3—Legislation history

Consequential and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(x) The *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* was amended by Schedule 2 (item 2) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsection 2(19)(a)(i) of which provides as follows:

- (19) The commencement of items 1 and 2 of Schedule 2 is as follows:

(a) if Parts 5 and 6 of Schedule 2 to the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* do not commence before the FSR commencement, the items commence on the later of:

- (i) the FSR commencement; and

(y) The *Superannuation Industry (Supervision) Act 1993* was amended by Schedule 1 (items 282–285, 287–289, 326–341) and Schedule 2 (items 8, 9 and 11–48) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1), (6), (9A), (18)(a) and (21)(a) of which provide as follows:

- (1) In this section:

FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.

(9A) If Parts 5 and 6 of Schedule 2 to the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* do not commence before the FSR commencement, items 276 to 278, and 290 to 325C, of Schedule 1 to this Act do not ever commence.

- (18) The commencement of the items of Schedule 2, other than items 1, 2, 4, 5, 9 and 10, is as follows:

(a) if Parts 5 and 6 of Schedule 2 to the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* do not commence before the FSR commencement, the items commence on the FSR commencement;

- (21) The commencement of items 9 and 10 of Schedule 2 is as follows:

(a) if item 8 of Schedule 2 to this Act commences under subsection (18), the items commence on the commencement of Parts 5 and 6 of

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Endnote 3—Legislation history

Schedule 2 to the *Financial Sector (Collection of Data—
Consequential and Transitional Provisions) Act 2001*;

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 1	
s. 2	am. No. 128, 1999
s. 3	am. No. 54, 1998; No. 121, 1999; No. 75, 2012
s. 4	am. No. 53, 1995; No. 76, 1996; No. 54, 1998; No. 128, 1999; No. 123, 2001; No. 53, 2004; No. 154, 2007; Nos. 75, 91, 117, 162 and 171, 2012; No. 61, 2013; No. 11, 2014; No. 2, 2015; No. 5, 2015
s. 5	rep. No. 53, 2004
s. 6	rs. No. 54, 1998; No. 121, 1999 am. No. 128, 1999; Nos. 24 and 160, 2000; No. 123, 2001; No. 53, 2004; No. 82, 2005; Nos. 9 and 154, 2007; No. 108, 2011; Nos. 12, 75, 91 and 117, 2012; No. 158, 2012 (as am. by No. 88, 2013); Nos. 162 and 171, 2012; No. 61, 2013; No. 11, 2014; No. 2, 2015
Note to s. 6(1)	ad. No. 145, 2010 am. No. 12, 2012 (as am. by No. 88, 2013)
Note to s. 6(2)	am. No. 121, 1999
s. 9A	ad. No. 160, 2000 rs. No. 31, 2001
Division 2	
s. 10	am. No. 118, 1993; Nos. 140 and 181, 1994; Nos. 5, 53, 144, 161 and 169, 1995; No. 60, 1996; Nos. 39, 62, 107 and 172, 1997; Nos. 48 and 54, 1998; Nos. 38, 121, 128, 146 and 199, 1999; Nos. 24 and 160, 2000; Nos. 55, 61 and 123, 2001; No. 105, 2002; Nos. 53, 80 and 102, 2004; Nos. 9, 15 and 154, 2007; Nos. 25 and 134, 2008; Nos. 54 and 75, 2009; Nos. 82, 100 and 117, 2010; Nos. 46 and 108, 2011; Nos. 12, 75, 91, 117, 158, 162 and 171, 2012; Nos. 61 and 85, 2013; No. 11, 2014; No. 2, 2015
s. 10A	ad. No. 102, 2004
Heading to s. 11	am. No. 54, 1998
s. 11	am. No. 54, 1998
s. 11A	ad. No. 24, 2000

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Endnote 4—Amendment history

Provision affected	How affected
s 11B.....	ad No 24, 2000 am No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 11C.....	ad No 24, 2000 am No 82, 2010 (as am by No 136, 2012); No 4, 2016
s. 11D	ad. No. 24, 2000
s. 11E.....	ad. No. 53, 2004 am. No. 154, 2007
s. 12	am. No. 55, 2001
Heading to s. 13	am. No. 53, 2004
s. 13	am. No. 53, 2004
s. 13A	ad. No. 53, 2004 am. No. 117, 2012
s. 15	am. No. 140, 1994; No. 62, 1997
s. 15A	ad. No. 169, 1995
s. 15B.....	ad. No. 61, 2001 am. No. 46, 2011
s. 16	am. No. 53, 2004
s. 17	rep. No. 31, 2001
Heading to s. 17A	rs. No. 12, 2012
s. 17A	ad. No. 121, 1999 am. No. 53, 2004; No. 9, 2007; No. 134, 2008; No. 12, 2012
Notes to s. 17A(1), (2)	ad. No. 12, 2012
Notes 1, 2 to s. 17A(6)	am. No. 12, 2012
s. 17B.....	ad. No. 12, 2012
Subhead. to s. 18(11)	am. No. 54, 1998
s. 18	am. No. 144, 1995; No. 54, 1998; No. 121, 1999; Nos. 24 and 160, 2000
s. 18A	ad. No. 144, 1995 rep. No. 121, 1999
s. 19	am. No. 54, 1998; No. 121, 1999; No. 24, 2000
Note to s. 19(4)	ad. No. 76, 1996 am. No. 53, 2004

Endnote 4—Amendment history

Provision affected	How affected
s. 20	am. No. 55, 2001
s. 20A	ad. No. 181, 1994
s. 20B.....	ad. No. 171, 2012
Part 2	rep. No. 53, 2004
s. 21	am. No. 121, 1999; No. 37, 2002; No. 53, 2004
	rep. No. 53, 2004
s. 22	am. No. 144, 1995
	rep. No. 53, 2004
s. 23	am. No. 54, 1998; No. 53, 2004
	rep. No. 53, 2004
s. 24	rs. No. 144, 1995
	am. No. 54, 1998
	rep. No. 53, 2004
s. 25	am. No. 54, 1998
	rep. No. 53, 2004
s. 26	am. Nos. 144 and 169, 1995; No. 54, 1998; No. 53, 2004
	rep. No. 53, 2004
s. 27	am. No. 144, 1995; No. 53, 2004
	rep. No. 53, 2004
ss. 27A, 27B	ad. No. 144, 1995
	am. No. 54, 1998
	rep. No. 53, 2004
Heading to s. 27C	am. No. 54, 1998; No. 53, 2004
	rep. No. 53, 2004
s. 27C.....	ad. No. 144, 1995
	am. No. 54, 1998
	rep. No. 53, 2004
s. 27D	ad. No. 144, 1995
	am. No. 54, 1998
	rep. No. 53, 2004
s. 27E.....	ad. No. 144, 1995

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 54, 1998; No. 53, 2004
	rep. No. 53, 2004
s. 28	am. Nos. 144 and 169, 1995; No. 54, 1998; No. 38, 1999
	rep. No. 53, 2004
s. 29	am. Nos. 144 and 169, 1995; No. 54, 1998; No. 160, 2000
	rep. No. 53, 2004
Part 2A	
Part 2A.....	ad. No. 53, 2004
Division 1	
s. 29A	ad. No. 53, 2004
	am. No. 117, 2012; No. 103, 2013
Division 2	
s. 29B.....	ad. No. 53, 2004
Division 3	
s. 29C.....	ad. No. 53, 2004
	am. No. 117, 2012
ss. 29CA–29CC	ad. No. 53, 2004
Division 4	
s. 29D	ad. No. 53, 2004
	am. No. 117, 2012
s. 29DA.....	ad. No. 53, 2004
	rep. No. 117, 2012
s. 29DB.....	ad. No. 53, 2004
	rs. No. 154, 2007
Heading to s. 29DC.....	am. No. 154, 2007
s. 29DC.....	ad. No. 53, 2004
	am. No. 154, 2007
ss. 29DD, 29DE.....	ad. No. 53, 2004
Division 5	
s. 29E.....	ad. No. 53, 2004
	am. No. 154, 2007; Nos. 117, 162 and 171, 2012; No. 85, 2013

Endnote 4—Amendment history

Provision affected	How affected
s. 29EA	ad. No. 53, 2004 am. No. 117, 2012
s. 29EB	ad. No. 53, 2004
Division 6	
s. 29F	ad. No. 53, 2004
ss. 29FA–29FF	ad. No. 53, 2004
Division 7	
s. 29G	ad. No. 53, 2004 am. No. 93, 2004; Nos. 25 and 45, 2008; No 70, 2015
Note to s. 29G(1)	am. No. 25, 2008
s. 29GA	ad. No. 53, 2004
s. 29GB	ad. No. 53, 2004 am. No. 117, 2012
Div. 8 of Part 2A	rep. No. 117, 2012
s. 29H	ad. No. 53, 2004 rep. No. 117, 2012
ss. 29HA–29HD	ad. No. 53, 2004 rep. No. 117, 2012
Division 9	
s. 29J	ad. No. 53, 2004 am. No. 53, 2004
s. 29JA	ad. No. 53, 2004 am. No. 154, 2007
s. 29JB	ad. No. 53, 2004
s. 29JC	ad. No. 53, 2004 rep. No. 117, 2012
s. 29JCA	ad. No. 154, 2007
s. 29JD	ad. No. 53, 2004 am. No. 117, 2012
s. 29JE	ad. No. 53, 2004 rep. No. 154, 2007

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Registered: 6/1/17

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Endnote 4—Amendment history

Provision affected	How affected
Part 2B	
Part 2B.....	ad. No. 53, 2004
Division 1	
s. 29K	ad. No. 53, 2004
Division 2	
s. 29L.....	ad. No. 53, 2004
	am. No. 154, 2007; No. 117, 2012
ss. 29LA, 29LB.....	ad. No. 53, 2004
Division 3	
s. 29M.....	ad. No. 53, 2004
	am. No. 117, 2012
s. 29MA.....	ad. No. 53, 2004
	rs. No. 154, 2007
Heading to s. 29MB.....	am. No. 154, 2007
s. 29MB	ad. No. 53, 2004
	am. No. 154, 2007
s. 29MC	ad. No. 53, 2004
Division 4	
s. 29N	ad. No. 53, 2004
	am. No. 154, 2007; No. 12, 2012
Div. 5 of Part 2B.....	rep. No. 117, 2012
s. 29P	ad. No. 53, 2004
	rep. No. 117, 2012
ss. 29PA–29PE	ad. No. 53, 2004
	rep. No. 117, 2012
Div. 6 of Part 2B.....	rep. No. 117, 2012
s. 29Q	ad. No. 53, 2004
	rep. No. 117, 2012
s. 29QA.....	ad. No. 53, 2004
	rep. No. 117, 2012
Division 5	

Endnote 4—Amendment history

Provision affected	How affected
Division 5	ad No 171, 2012 (as am by No 21, 2015)
s. 29QB.....	ad. No. 53, 2004
	rep. No. 154, 2007
	ad No 171, 2012
s 29QC.....	ad No 171, 2012
Part 2C	
Part 2C.....	ad. No. 162, 2012
Division 1	
s. 29R.....	ad. No. 162, 2012
Division 2	
s. 29S.....	ad. No. 162, 2012
	am. No. 171, 2012
s. 29SAA	ad. No. 171, 2012
s. 29SAB.....	ad. No. 171, 2012
s. 29SAC.....	ad. No. 171, 2012
s. 29SA	ad. No. 162, 2012
s. 29SB	ad. No. 162, 2012
Division 3	
s. 29T.....	ad. No. 162, 2012
	am. Nos. 117 and 171, 2012; No. 61, 2013
s. 29TA.....	ad. No. 162, 2012
s. 29TB	ad. No. 162, 2012
	am. No. 171, 2012
s. 29TC	ad. No. 162, 2012
	am. No. 171, 2012; No. 61, 2013
s. 29TD.....	ad. No. 162, 2012
s. 29TE.....	ad. No. 162, 2012
Division 4	
s. 29U	ad. No. 162, 2012
	am. Nos. 117 and 171, 2012; No. 61, 2013
s. 29UA.....	ad. No. 162, 2012

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Endnote 4—Amendment history

Provision affected	How affected
s. 29UB.....	ad. No. 162, 2012 am. No. 117, 2012
Division 5	
s. 29V	ad. No. 162, 2012 am. No. 171, 2012
s. 29VA.....	ad. No. 162, 2012 am. No. 171, 2012; Nos. 61 and 103, 2013
s. 29VB.....	ad. No. 162, 2012 am. No. 171, 2012; No. 61, 2013
s. 29VC.....	ad. No. 171, 2012
s. 29VD.....	ad. No. 171, 2012
s. 29VE.....	ad. No. 61, 2013
Division 6	
Div. 6 of Part 2C.....	ad. No. 117, 2012
s. 29VN.....	ad. No. 117, 2012
s. 29VO.....	ad. No. 117, 2012
s. 29VP	ad. No. 117, 2012 rs. No. 61, 2013
s. 29VPA	ad. No. 61, 2013
s. 29VQ.....	ad. No. 117, 2012
Division 7	
Heading to Div. 6 of Part 2C.....	rep. No. 117, 2012
Heading to Div. 7 of Part 2C.....	ad. No. 117, 2012
s. 29W.....	ad. No. 162, 2012
s. 29WA.....	ad. No. 162, 2012 am. No. 171, 2012; No. 61, 2013
s. 29WB.....	ad. No. 61, 2013
Division 8	
Div. 8 of Part 2C.....	ad. No. 171, 2012
s. 29X	ad. No. 171, 2012
s. 29XA.....	ad. No. 171, 2012

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Provision affected	How affected
s. 29XB.....	ad. No. 171, 2012
s. 29XC.....	ad. No. 171, 2012
	am. No. 61, 2013
Part 3	
Heading to Part 3	rs. No. 53, 2004
Division 1	
Heading to Div. 1 of Part 3	ad. No. 12, 2012
s. 30	rs. No. 53, 2004
Division 2	
Heading to Div. 2 of Part 3	ad. No. 12, 2012
s. 31	am. No. 54, 1998; No. 53, 2004; No. 171, 2012
s. 32	am. No. 54, 1998; No. 53, 2004
s. 33	am. No. 54, 1998; No. 53, 2004
s. 33A	ad. No. 171, 2012
s. 34	am No 31, 2001 (as rep by No 117, 2001); No 53, 2004; No 11, 2014; No 4, 2016
Note to s 34(1)	ad No 11, 2014
Division 3	
Div. 3 of Part 3	ad. No. 12, 2012
s. 34A	ad. No. 12, 2012
Part 3A	
Part 3A.....	ad. No. 117, 2012
s. 34B.....	ad. No. 117, 2012
s. 34C.....	ad. No. 117, 2012
s. 34D	ad. No. 117, 2012
s. 34E.....	ad. No. 117, 2012
s. 34F	ad. No. 117, 2012
Part 3B	
Part 3B.....	ad. No. 91, 2012
Division 1	
s. 34H	ad. No. 91, 2012

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 158, 2012
s. 34J.....	ad. No. 91, 2012
s. 34K	ad. No. 91, 2012
	am. No. 158, 2012; No 126, 2015
s. 34L.....	ad. No. 91, 2012
Division 2	
Heading to s. 34M.....	rs. No. 158, 2012
s. 34M.....	ad. No. 91, 2012
	am. No. 158, 2012
s. 34N	ad. No. 91, 2012
	am. No. 158, 2012
Heading to s. 34P.....	rs. No. 158, 2012
s. 34P	ad. No. 91, 2012
	am. No. 158, 2012
s. 34Q	ad. No. 91, 2012
Division 3	
s. 34R.....	ad. No. 91, 2012
s. 34S.....	ad. No. 91, 2012
s. 34T.....	ad. No. 91, 2012
s. 34U	ad. No. 91, 2012
s. 34V	ad. No. 91, 2012
s. 34W.....	ad. No. 91, 2012
Division 4	
Heading to Div. 4 of Part 3B	rs. No. 158, 2012
Subdivision A	
Heading to Subdiv. A..... of Div. 4 of Part 3B	ad. No. 158, 2012
s. 34X	ad. No. 91, 2012
Subdivision B	

Endnote 4—Amendment history

Provision affected	How affected
Subdiv. B of Div. 4 of Part 3B	ad. No. 158, 2012
s. 34Y	ad. No. 158, 2012
s. 34Z.....	ad. No. 158, 2012
Part 4	
Heading to Part 4	rs. No. 54, 1998; No. 121, 1999; No. 154, 2007
Part 4	rs. No. 154, 2007
Division 1	
Heading to Div. 1 of Part 4	ad. No. 61, 2013
s. 35	am. No. 54, 1998; No. 121, 1999 rs. No. 53, 2004; No. 154, 2007
Division 2	
Div. 2 of Part 4	ad. No. 61, 2013
Subhead. to s. 35A(1)	ad. No. 82, 2010 rs. No. 61, 2013
Subhead. to s. 35A(3)	ad. No. 82, 2010 rep. No. 61, 2013
s. 35A	ad. No. 154, 2007 am. No. 82, 2010 rs. No. 61, 2013
s. 35AB.....	ad. No. 61, 2013
s. 35AC.....	ad. No. 61, 2013
s. 35AD.....	ad. No. 61, 2013
Division 3	
Heading to Div. 3 of Part 4	ad. No. 61, 2013
s. 35AE.....	ad. No. 61, 2013
Heading to s. 35B	rs. No. 12, 2012; No. 61, 2013
s. 35B.....	ad. No. 154, 2007
Note to s 35B(6)	
renum Note 1	No 11, 2014
Note 2 to s 35B(6).....	ad No 11, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Heading to s. 35C	rs. No. 61, 2013
s. 35C.....	ad. No. 154, 2007
	am. No. 25, 2008; Nos. 117 and 158, 2012; No. 61, 2013
Note to s. 35C(1)	ad. No. 158, 2012
	rep. No. 61, 2013
Heading to s. 35D	rs. No. 12, 2012; No. 61, 2013
s. 35D	ad. No. 154, 2007
Heading to s. 36.....	rs. No. 121, 2001; No. 154, 2007
	rep. No. 61, 2013
s. 36	am. No. 144, 1995; No. 54, 1998; No. 121, 1999; No. 160, 2000; No. 121, 2001; No. 53, 2004
	rs. No. 154, 2007
	rep. No. 61, 2013
Note to s. 36(1)(a).....	ad. No. 76, 1996
	rep. No. 121, 2001
Note to s. 36(1).....	ad. No. 121, 2001
	rs. No. 154, 2007
	rep. No. 61, 2013
s. 36A	ad. No. 121, 1999
	am. Nos. 24 and 160, 2000; No. 53, 2004
	rep. No. 154, 2007
Note to s. 36A(3)	am. No. 53, 2004
	rep. No. 154, 2007
Part 5	
Division 2	
Heading to Div. 2 of Part 5	rs. No. 54, 1998; No. 121, 1999
s. 38A	ad. No. 123, 2001
	am. No. 123, 2001; No. 9, 2007; No. 56, 2010; No. 171, 2012; No. 81, 2016
s. 39	am. No. 181, 1994; No. 123, 2001; No. 9, 2007; No. 56, 2010
Heading to s. 40	am. No. 54, 1998; No. 121, 1999

Endnote 4—Amendment history

Provision affected	How affected
s. 40	am. No. 54, 1998; No. 121, 1999; No. 53, 2004
Note to s. 40(3)	ad. No. 76, 1996
Note to s. 40	ad. No. 121, 1999
Heading to s. 41	am. No. 54, 1998; No. 121, 1999
s. 41	am. No. 54, 1998; No. 121, 1999; No. 53, 2004
s. 42	am. No. 181, 1994; No. 144, 1995; No. 172, 1997; No. 54, 1998; No. 121, 1999; No. 123, 2001; No. 53, 2004; No. 15, 2007
Note to s. 42(1A)	ad. No. 121, 1999
s. 42A	ad. No. 121, 1999 am. No. 123, 2001; No. 53, 2004; No. 15, 2007
s. 43	am. No. 181, 1994; No. 54, 1998; No. 123, 2001
s. 44	am. No. 54, 1998; No. 123, 2001
Division 3	
s. 45	am. No. 54, 1998; No. 121, 1999; No. 53, 2004; No. 15, 2007
ss. 47, 48	am. No. 54, 1998; No. 15, 2007
Subhead. to s. 50(6)	rs. No. 154, 2007
s. 50	am. No. 172, 1997; No. 54, 1998; No. 121, 1999; No. 53, 2004; No. 154, 2007; No 126, 2015
Part 6	
s. 51A	ad. No. 117, 2012
s. 52	am. No. 53, 2004 rs. No. 117, 2012 am No 62, 2014
s. 52A	ad. No. 117, 2012 am No 62, 2014
s. 52B	ad. No. 117, 2012
s. 52C	ad. No. 117, 2012
s. 53	am. No. 140, 1994; No. 54, 1998
s. 54A	ad. No. 117, 2012 am. No. 171, 2012
Subhead. to s. 55(1)	ad. No. 61, 2013

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 55(2)	ad. No. 61, 2013
Subhead. to s. 55(3)	ad. No. 61, 2013
Subhead. to s. 55(5)	ad. No. 61, 2013
s. 55	am. No. 53, 2004; No. 117, 2012; No. 61, 2013
s. 55A	ad. No. 15, 2007
s. 55B.....	ad. No. 171, 2012
	am. No. 171, 2012
s. 55C.....	ad. No. 171, 2012
s. 56	am. No. 53, 2004; No. 117, 2012; No. 61, 2013; No 11, 2014
s. 57	am. No. 55, 2001; No. 61, 2013; No 11, 2014
s. 58	am. No. 140, 1994; No. 54, 1998; Nos. 121 and 131, 1999; No. 53, 2004; Nos. 117 and 171, 2012
s. 58A	ad. No. 61, 2013
s. 58B.....	ad. No. 61, 2013
s. 59	am. No. 140, 1994; Nos. 38 and 121, 1999; No. 53, 2004
s. 60	am. Nos. 38 and 121, 1999; No. 53, 2004
s. 60A	ad. No. 140, 1994
	am. No. 54, 1998
Note to s. 60A.....	am. No. 54, 1998
Part 7	
s. 62	am. No. 144, 1995; No. 54, 1998; No. 121, 1999; No. 53, 2004
s. 62A	ad. No. 41, 2011
s 63	am No 54, 1998; No 121, 1999; No 160, 2000; No 123, 2001; No 53, 2004; No 4, 2016
s 64	am No 160, 2000; No 53, 2004; No 56, 2010; No 82, 2010 (as am by No 136, 2012); No 75, 2012; No 4, 2016
s. 64A	ad. No. 144, 1995
	am. No. 53, 2004
s. 65	am. No. 199, 1999; No. 53, 2004; No. 134, 2008
Note to s 65(1).....	ad No 11, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 66	am No 140, 1994; No 169, 1995; No 43, 1996; No 121, 1999; No 199, 1999; No 55, 2001; No 123, 2001; No 53, 2004; No 154, 2007; No 114, 2010; No 117, 2010; No 4, 2016
s 67	am No 71, 1997; No 54, 1998; No 121, 1999; No 53, 2004; No 143, 2007; No 154, 2007; No 100, 2010; No 11, 2014
s 67A	ad No 100, 2010
s 67B.....	ad No 100, 2010
s 68	am No 31, 2001; No 53, 2004; No 117, 2012
s 68AA.....	ad No 171, 2012
	am No 120, 2015
s 68A	ad No 102, 2004
s 68B.....	ad No 11, 2014
s 68C.....	ad No 61, 2013
s 68D	ad No 61, 2013
Part 8	
Division 1	
Subdivision A	
Heading to Subdiv. A.....	ad. No. 199, 1999
of Div. 1 of Part 8	
s. 69A	ad. No. 38, 1999
s. 70	rep. No. 199, 1999
Heading to s. 70A	am. No. 54, 1998; No. 121, 1999
s. 70A	ad. No. 144, 1995
	am. No. 54, 1998; No. 121, 1999; No. 53, 2004
Subdivision B	
Subdiv. B of Div. 1 of.....	ad. No. 199, 1999
Part 8	
ss. 70B–70D	ad. No. 199, 1999
s. 70E.....	ad. No. 199, 1999
	am. No. 134, 2008
Subdivision C	
Subdivision C heading.....	ad No 199, 1999

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 71	am No 140, 1994; No 144, 1995; No 48, 1998; No 54, 1998; No 121, 1999; No 199, 1999; No 160, 2000; No 53, 2004; No 143, 2007; No 154, 2007; No 100, 2010; No 21, 2015
Subdivision D	
Subdivision D	ad No 199, 1999
s 71A	ad No 199, 1999
s 71B.....	ad No 199, 1999
	am No 53, 2004
s 71C.....	ad No 199, 1999
	am No 53, 2004
s 71D	ad No 199, 1999
s 71E.....	ad No 199, 1999
	am No 53, 2004
s 71EA	ad No 117, 2010
s 71F	ad No 199, 1999
Subdivision E	
Subdivision E heading	ad No 199, 1999
s. 72	rs. No. 38, 1999
	am. No. 199, 1999
s. 75	am. No. 199, 1999
Division 3	
s. 80A	ad. No. 38, 1999
s. 82	am. No. 53, 2004
s. 83	am. No. 199, 1999; No. 53, 2004
Division 3A	
Div. 3A of Part 8.....	ad. No. 38, 1999
s. 83A	ad. No. 38, 1999
	am. No. 55, 2001
s. 83B.....	ad. No. 38, 1999
	am. No. 53, 2004
ss. 83C, 83D	ad. No. 38, 1999

Endnote 4—Amendment history

Provision affected	How affected
s. 83E.....	ad. No. 38, 1999 am. No. 53, 2004
Division 4	
s. 84	am. No. 38, 1999; No. 53, 2004
Note to s 84(1)	ad No 11, 2014
Part 9	
s. 87	am. No. 181, 1994
s. 89	am. No. 53, 2004
s. 91	am. No. 140, 1994
s. 92	am. No. 140, 1994; No. 144, 1995; No. 54, 1998; No. 160, 2000; No. 53, 2004
s. 93	am. No. 140, 1994; No. 144, 1995
s. 93A	ad. No. 144, 1995 am. No. 54, 1998
Part 10	
s. 95	am. No. 54, 1998; No. 154, 2007
Part 11	
s. 97	am. No. 54, 1998; No. 154, 2007
Part 11A	
Part 11A.....	ad. No. 171, 2012
s. 99A	ad. No. 171, 2012
s. 99B.....	ad. No. 171, 2012
s. 99C.....	ad. No. 171, 2012
s. 99D	ad. No. 171, 2012
s. 99E.....	ad. No. 171, 2012
s. 99F.....	ad. No. 171, 2012
Part 12	
s 101	am No 140, 1994; No 144, 1995; No 121, 1999; No 31, 2001 (as rep by No 117, 2001); No 53, 2004; No 61, 2013; No 4, 2016
s 102	am No 31, 2001 (as rep by No 117, 2001); No 53, 2004; No 4, 2016

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 103	am No 199, 1999; No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
Note 3 to s 103	ad No 11, 2014
s 104	am No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
s 104A	ad No 15, 2007
	am No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
s 105	am Nos 48 and 54, 1998; No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
Heading to s. 106	am. No. 54, 1998; No. 121, 1999
s. 106	am. No. 54, 1998; No. 121, 1999; No. 53, 2004; No. 154, 2007
Note to s 106(1)	ad No 11, 2014
s 106A	ad No 121, 1999
	am No 53, 2004; No 11, 2014; No 4, 2016
s. 107	am. No. 121, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 61, 2013
s. 108	am. No. 121, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 61, 2013
s. 108A	ad. No. 85, 2013
	am No 5, 2015; No 70, 2015
Heading to s. 109	am. No. 144, 1995
s. 109	am. No. 140, 1994; No. 144, 1995; No. 38, 1999; No. 53, 2004
Heading to Part 13	am. No. 144, 1995
	rep. No. 154, 2007
Part 13	rep. No. 154, 2007
s. 110	am. No. 144, 1995
	rep. No. 154, 2007
s. 111	am. No. 160, 2000; No. 121, 2001; No. 53, 2004
	rep. No. 154, 2007
Heading to s. 112	am. No. 144, 1995
	rep. No. 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
s. 112	am. No. 144, 1995; No. 38, 1999; No. 160, 2000; No. 121, 2001; No. 53, 2004 rep. No. 154, 2007
s. 113	rs. No. 144, 1995 am. No. 160, 2000; No. 121, 2001; No. 53, 2004 rep. No. 154, 2007
Part 14	
s. 115	am. No. 53, 2004 rs. No. 117, 2012
s. 116	am. No. 53, 2004
Subhead. to s. 117(6)	am. No. 54, 1998
s. 117	am. No. 144, 1995; No. 54, 1998; Nos. 38 and 121, 1999; No. 53, 2004; No. 15, 2007
Part 15	
Division 1	
Heading to Div. 1 of Part 15	ad. No. 25, 2008
s. 120	am. No. 144, 1995; No. 54, 1998; No. 160, 2000; No. 8, 2007; No. 25, 2008
s. 120A.....	ad. No. 160, 2000 am. No. 121, 2001 rep. No. 25, 2008
s. 121	am. No. 144, 1995; No. 54, 1998; No. 121, 1999; No. 160, 2000 rep. No. 25, 2008
Heading to s. 121A	rs. No. 53, 2004 rep. No. 53, 2004
s. 121A.....	ad. No. 121, 1999 am. No. 121, 1999; No. 37, 2002; No. 53, 2004 rep. No. 53, 2004
Division 2	
Heading to Div. 2 of Part 15	ad. No. 25, 2008
s. 122	am. No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am by No. 136, 2012); No. 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 123	am No 169, 1995; No 54, 1998; No 121, 1999; No 160, 2000; No 53, 2004; No 4, 2016
s 124	am No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
Note to s 124(1)	ad No 11, 2014
s. 125	am. No. 121, 1999
Division 3	
Heading to Div. 3 of Part 15	ad. No. 25, 2008
Subdivision A	
Heading to Subdiv. A..... of Div. 3 of Part 15	ad. No. 25, 2008
s. 126	am. No. 144, 1995; No. 121, 1999; No. 160, 2000 rs. No. 25, 2008
s. 126A.....	ad. No. 140, 1994 am. No. 144, 1995; No. 121, 1999; No. 160, 2000 rs. No. 25, 2008
s. 126B.....	ad. No. 144, 1995 am. No. 54, 1998; No. 160, 2000
s. 126C.....	ad. No. 144, 1995 am. No. 54, 1998; No. 38, 1999; No. 160, 2000
s. 126D.....	ad. No. 144, 1995 am. No. 54, 1998; No. 160, 2000; No. 25, 2008
Note to s. 126D(1)	ad. No. 160, 2000
s. 126E.....	ad. No. 144, 1995 am. No. 54, 1998; No. 160, 2000
Heading to s. 126F.....	am. No. 54, 1998; No. 160, 2000
s. 126F	ad. No. 144, 1995 am. No. 54, 1998; No. 160, 2000
Subdivision B	
Subdiv. B of Div. 3 of..... Part 15	ad. No. 25, 2008
s. 126G.....	ad. No. 25, 2008

Endnote 4—Amendment history

Provision affected	How affected
s. 126H.....	ad. No. 25, 2008
	am. No. 61, 2013
s. 126J.....	ad. No. 25, 2008
Subdivision C	
Heading to Subdiv. C of	rs. No. 82, 2010
Div. 3 of Part 15	
Subdiv. C of Div. 3 of.....	ad. No. 25, 2008
Part 15	
s. 126K.....	ad. No. 25, 2008
s. 126L.....	ad. No. 82, 2010
Division 4	
Heading to Div. 4 of Part 15	ad. No. 25, 2008
Part 16	
Division 1	
Heading to Div. 1 of Part 16	ad. No. 25, 2008
Division 1A	
Div. 1A of Part 16.....	ad. No. 158, 2012
Subdivision A	
s. 128A.....	ad. No. 158, 2012
s. 128B.....	ad. No. 158, 2012
s. 128C.....	ad. No. 158, 2012
s. 128D.....	ad. No. 158, 2012
s. 128E.....	ad. No. 158, 2012
Subdivision B	
s. 128F	ad. No. 158, 2012
s. 128G.....	ad. No. 158, 2012
s. 128H.....	ad. No. 158, 2012
Subdivision C	
s. 128J.....	ad. No. 158, 2012
s. 128K.....	ad. No. 158, 2012
Subdivision D	

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 128L.....	ad. No. 158, 2012
s. 128M.....	ad. No. 158, 2012
Subdivision E	
s. 128N.....	ad. No. 158, 2012
s. 128P	ad. No. 158, 2012
s. 128Q.....	ad. No. 158, 2012
	am No 126, 2015
Division 2	
Division 2 heading.....	ad No 25, 2008
s 129	am No 144, 1995; No 54, 1998; No 121, 1999; No 31, 2001 (as am by No 117, 2001); No 121, 2001; No 53, 2004; Nos 9 and 154, 2007; No 46, 2011; No 61, 2013; No 4, 2016
s 130	am No 144, 1995; No 54, 1998; No 121, 1999; No 31, 2001 (as am by No 117, 2001); No 121, 2001; No 53, 2004; No 154, 2007; No 61, 2013; No 4, 2016
s. 130A.....	ad. No. 53, 2004
	am. No. 154, 2007; No. 61, 2013
s. 130B.....	ad. No. 53, 2004
ss. 130BA, 130BB	ad. No. 82, 2010
s 130C.....	ad No 53, 2004
	am No 61, 2013; No 4, 2016
Division 3	
Heading to Div. 3 of Part 16	ad. No. 25, 2008
s. 130D.....	ad. No. 25, 2008
	am. No. 61, 2013
s. 130E.....	ad. No. 25, 2008
s. 130F	ad. No. 158, 2012
Heading to s. 131	am. No. 25, 2008
	rs. No. 158, 2012
s. 131	am. No. 144, 1995; No. 54, 1998; Nos. 38 and 121, 1999; No. 121, 2001; No. 25, 2008; No. 158, 2012
s. 131AA.....	ad. No. 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 25, 2008; No. 158, 2012; No. 61, 2013
Division 4	
Heading to Div. 4 of Part 16	ad. No. 25, 2008
Heading to s. 131A	am. No. 54, 1998; No. 121, 1999
s. 131A.....	ad. No. 144, 1995
	am. No. 54, 1998; No. 121, 1999; No. 24, 2000; No. 121, 2001; No. 25, 2008; No. 158, 2012; No. 61, 2013
Note to s. 131A(1)	am. No. 145, 2010
s. 131B.....	ad. No. 160, 2000
	am. No. 82, 2010 (as am. by No. 136, 2012); No. 158, 2012; No. 61, 2013
s. 131C.....	ad. No. 25, 2008
	am. No. 158, 2012
Part 17	
s. 132	am. No. 53, 2004
s. 133	am. No. 54, 1998; No. 121, 1999; No. 37, 2002; No. 53, 2004; No. 25, 2008
Heading to s. 134	am. No. 54, 1998
s. 134	am. No. 54, 1998; No. 121, 1999; No. 53, 2004; No. 61, 2013
s. 135	am. No. 54, 1998; No. 121, 1999; No. 117, 2012; No. 61, 2013
s. 136	am. No. 54, 1998; No. 121, 1999
s. 137	am. No. 54, 1998; No. 121, 1999
s. 138	am. No. 54, 1998; No. 121, 1999
s. 139	am. No. 117, 2012
s. 139A.....	ad. No. 61, 2013
s. 139B.....	ad. No. 61, 2013
s. 140	am. No. 54, 1998; No. 24, 2000; No. 160, 2000; No. 4, 2016
Heading to s. 141	am. No. 54, 1998; No. 121, 1999
s. 141	am. No. 54, 1998; No. 121, 1999; No. 31, 2001 (as rep. by No. 117, 2001)
Note to s. 141(2)	ad. No. 31, 2001
s. 141A	ad. No. 160, 2000

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 82, 2010 (as am by No 136, 2012); No 4, 2016
Heading to s. 142	am. No. 54, 1998; No. 121, 1999
s. 142	am. No. 54, 1998; No. 121, 1999; No. 31, 2001 (as rep. by No. 117, 2001); No. 53, 2004; No. 154, 2007; No 126, 2015
Note to s. 142(3)	ad. No. 31, 2001
Part 18	
Part 18	rep. No. 123, 2001
	ad. No. 53, 2004
s. 143	rep. No. 123, 2001
	ad. No. 53, 2004
ss. 144, 145	am. No. 108, 2000
	rep. No. 123, 2001
	ad. No. 53, 2004
	am. No. 53, 2004
s. 146	rep. No. 123, 2001
	ad. No. 53, 2004
	am. No. 53, 2004; No. 25, 2008
s. 147	rep. No. 123, 2001
	ad. No. 53, 2004
ss. 148, 149	rep. No. 123, 2001
Part 19	
Heading to Part 19	rs. No. 123, 2001
s. 150	rep. No. 123, 2001
Division 2	
s. 152	am. No. 31, 2001; No. 53, 2004
Note to s. 152(3)	ad. No. 31, 2001
s. 153	am. No. 140, 1994; No. 53, 1995; No. 62, 1997; No. 54, 1998; No. 31, 2001 (as am. by No. 117, 2001)
	rep. No. 123, 2001
Notes 1, 2 to s. 153(1)	ad. No. 31, 2001
	rep. No. 123, 2001

Endnote 4—Amendment history

Provision affected	How affected
Notes 1, 2 to s. 153(2).....	ad. No. 31, 2001 rep. No. 123, 2001
s 154	am No 160, 2000; No 82, 2010 (as am by No. 136, 2012); No 4, 2016
Div. 3 of Part 19	rep. No. 123, 2001
Div. 4 of Part 19	rep. No. 123, 2001
Div. 5 of Part 19	rep. No. 123, 2001
Div. 6 of Part 19	rep. No. 123, 2001
Pt 20	
Part 20	rep. No. 123, 2001 ad No 11, 2014
Div 1	
s. 157	am. No. 53, 1995; No. 62, 1997; No. 31, 2001 rep. No. 123, 2001 ad No 11, 2014
Note to s. 157(1)	ad. No. 31, 2001 rep. No. 123, 2001
Note to s. 157(5)	ad. No. 31, 2001 rep. No. 123, 2001
Heading to s. 157A	am. No. 62, 1997 rep. No. 123, 2001
s. 157A.....	ad. No. 53, 1995 am. No. 62, 1997; No. 31, 2001 rep. No. 123, 2001
Note to s. 157A(2)	ad. No. 31, 2001 rep. No. 123, 2001
s. 158	am. No. 53, 1995; No. 31, 2001 (as rep. by No. 117, 2001) rep. No. 123, 2001 ad No 11, 2014
Note to s. 158(1)	ad. No. 31, 2001 rep. No. 123, 2001
Note to s. 158(3)	ad. No. 31, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 123, 2001
Div 2	
s. 159	am. No. 53, 1995; No. 54, 1998
	rep. No. 123, 2001
	ad No 11, 2014
s. 160	am. No. 53, 1995
	rep. No. 123, 2001
	ad No 11, 2014
s. 161	am. No. 31, 2001
	rep. No. 123, 2001
	ad No 11, 2014
Note to s. 161	ad. No. 31, 2001
	rep. No. 123, 2001
s. 162	rep. No. 123, 2001
	ad No 11, 2014
s. 163	am. No. 160, 2000; No. 31, 2001
	rep. No. 123, 2001
	ad No 11, 2014
Note to s. 163(1)	ad. No. 160, 2000
	rep. No. 123, 2001
Notes 1, 2 to s. 163(1)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 164	am. No. 54, 1998
	rep. No. 123, 2001
	ad No 11, 2014
s. 165	rep. No. 123, 2001
	ad No 11, 2014
Div 3	
s. 166	am. No. 54, 1998
	rep. No. 123, 2001
	ad No 11, 2014

Endnote 4—Amendment history

Provision affected	How affected
s. 167	rs. No. 31, 2001 rep. No. 123, 2001 ad No 11, 2014
s. 168	am. No. 38, 1999 rep. No. 123, 2001 ad No 11, 2014
s. 169	am. No. 38, 1999; No. 160, 2000 rep. No. 123, 2001 ad No 11, 2014
s. 170	am. No. 53, 1995 rep. No. 123, 2001
s. 171	am. No. 38, 1999 rep. No. 123, 2001
s. 172	rep. No. 123, 2001
ss. 173–183	rep. No. 123, 2001
s. 184	am. No. 160, 2000; No. 31, 2001 rep. No. 123, 2001
Note to s. 184(1)	ad. No. 31, 2001 rep. No. 123, 2001
ss. 185, 186	rep. No. 123, 2001
Heading to s. 187	am. No. 54, 1998 rep. No. 123, 2001
s. 187	am. No. 54, 1998 rep. No. 123, 2001
ss. 188, 189	rep. No. 123, 2001
s. 190	am. No. 55, 2001 rep. No. 123, 2001
s. 191	rep. No. 123, 2001
Part 21	
Division 1	
s. 193	am. No. 144, 1995; No. 171, 2012; No 11, 2014

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Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s. 197	am. No. 54, 1998; No. 121, 1999
s. 200	am. No. 54, 1998; No. 121, 1999
Heading to s. 201	am. No. 54, 1998; No. 121, 1999
s. 201	am No 54, 1998; No 121, 1999; No 160, 2000; No 4, 2016
Division 3	
s. 202	am No 31, 2001; No 4, 2016
Division 5	
ss. 215, 216.....	am. No. 53, 2004
s. 218	am. No. 53, 2004
Part 22	
Heading to Part 22	am. No. 53, 1995
	rs. No. 54, 1998
	rep. No. 128, 1999
	ad. No. 61, 2013
Part 22	rep. No. 128, 1999
	ad. No. 61, 2013
Division 1	
s. 223	rep. No. 128, 1999
	ad. No. 61, 2013
s. 223A.....	ad. No. 61, 2013
s. 223B.....	ad. No. 61, 2013
s. 223C.....	ad. No. 61, 2013
s. 223D.....	ad. No. 61, 2013
Division 2	
s. 224	rep. No. 128, 1999
	ad. No. 61, 2013
s. 224A.....	ad. No. 61, 2013
s. 224B.....	ad. No. 61, 2013
s. 224C.....	ad. No. 61, 2013
s. 224D.....	ad. No. 61, 2013

Endnote 4—Amendment history

Provision affected	How affected
s. 224E.....	ad. No. 61, 2013
Heading to s. 225	am. No. 54, 1998
	rep. No. 128, 1999
Subhead. to s. 225(5)	am. No. 54, 1998
	rep. No. 128, 1999
s. 225	am. No. 53, 1995; No. 76, 1996; No. 54, 1998
	rep. No. 128, 1999
Note to s. 225(2)	ad. No. 76, 1996
	rep. No. 128, 1999
s. 226	am. No. 76, 1996; No. 54, 1998
	rep. No. 128, 1999
Note to s. 226.....	ad. No. 76, 1996
	rep. No. 128, 1999
Part 23	
Division 1	
s. 228	am. No. 121, 1999; No. 24, 2000; No. 53, 2004; No. 154, 2007
s. 229	am. No. 24, 2000; No. 53, 2004; No. 154, 2007; No. 12, 2012
s. 230	am. No. 53, 2004; No. 154, 2007
s. 230A.....	ad. No. 24, 2000
	am. No. 154, 2007
Division 2	
s. 231	am. No. 24, 2000; No. 53, 2004; No. 154, 2007; No. 12, 2012
s. 232	am. No. 24, 2000; No. 53, 2004
s. 233	am. No. 53, 2004; No. 154, 2007
Division 3	
Heading to Div. 3 of Part 23	rs. No. 154, 2007
s. 234	rs. No. 152, 1997; No. 8, 2005
	rep. No. 154, 2007
s. 235	am. No. 152, 1997; No. 53, 2004; No. 8, 2005
	rep. No. 154, 2007
Note to s. 235(1)	ad. No. 8, 2005

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Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 154, 2007
Heading to s. 236	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 154, 2007
s. 236	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 154, 2007
Heading to s. 237	am. No. 152, 1997
	rs. No. 8, 2005
	rep. No. 154, 2007
s. 237	am. No. 152, 1997; No. 52, 2003
	rs. No. 8, 2005
	rep. No. 154, 2007
ss. 238–240	am. No. 53, 2004
Part 24	
Heading to Part 24	am. No. 53, 1995
	rs. No. 171, 2012
Division 1	
Heading to Div. 1 of Part 24	ad. No. 171, 2012
s. 241	am. No. 53, 1995
	rs. No. 171, 2012
s. 242	am. No. 53, 1995; No. 171, 2012
Division 2	
Div. 2 of Part 24	ad. No. 171, 2012
Subdivision A	
s. 242A	ad. No. 171, 2012
s. 242B	ad. No. 171, 2012
s. 242C	ad. No. 171, 2012
s. 242D	ad. No. 171, 2012
s. 242E	ad. No. 171, 2012
Subdivision B	

Endnote 4—Amendment history

Provision affected	How affected
s. 242F	ad. No. 171, 2012
s. 242G.....	ad. No. 171, 2012
s. 242H.....	ad. No. 171, 2012
Subdivision C	
s. 242J.....	ad. No. 171, 2012
Subdivision D	
s. 242K.....	ad. No. 171, 2012
s. 242L.....	ad. No. 171, 2012
s. 242M.....	ad. No. 171, 2012
s. 242N.....	ad. No. 171, 2012
Subdivision E	
s. 242P	ad. No. 171, 2012
s. 242Q.....	ad. No. 171, 2012
s. 242R.....	ad. No. 171, 2012
Division 3	
Heading to Div. 3 of Part 24	ad. No. 171, 2012
ss. 243, 244.....	rs. No. 53, 1995
	am. No. 53, 2004
Heading to s. 245	am. No. 53, 1995
	rep. No. 76, 1996
s. 245	am. No. 53, 1995
	rep. No. 76, 1996
ss. 246, 247	rs. No. 53, 1995
	rep. No. 76, 1996
s. 248	am. No. 140, 1994
	rs. No. 53, 1995
	am. No. 76, 1996; No. 62, 1997; No. 53, 2004
Note to s. 248(2)	ad. No. 76, 1996
Part 24A	
Heading to Part 24A	ad. No. 53, 1995
ss. 249, 250.....	rs. No. 53, 1995

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Endnote 4—Amendment history

Provision affected	How affected
s. 251	am. No. 140, 1994; No. 53, 1995
s. 252	am. No. 53, 1995; No. 76, 1996; No. 53, 2004; No. 12, 2012
Note to s. 252.....	ad. No. 76, 1996
Part 24B	
Part 24B.....	ad. No. 121, 1999
Division 1	
s. 252A	ad. No. 121, 1999
	am. No. 53, 2004; No. 4, 2016
s. 252B.....	ad. No. 121, 1999
	rep. No. 61, 2013
Div. 2 of Part 24B.....	rep. No. 145, 2010
s. 252C.....	ad. No. 121, 1999
	am. No. 160, 2000; No. 37, 2002; No. 82, 2010 (as am. by No. 136, 2012)
	rep. No. 145, 2010
Division 3	
ss. 252D–252F	ad. No. 121, 1999
s. 252G.....	ad. No. 121, 1999
	am. No. 121, 2001; No. 53, 2004
Note to s. 252G(1)	am. No. 121, 2001; No. 53, 2004
Note to s. 252G(2)	am. No. 121, 2001; No. 53, 2004
s. 252H.....	ad. No. 121, 1999
Part 25	
Heading to Part 25	rs. No. 158, 2012
Division 1	
Division 1 heading.....	rs. No. 38, 1999
s. 253	am. No. 54, 1998; No. 160, 2000; No. 53, 2004; No. 158, 2012; No. 21, 2015
s. 253A	ad. No. 38, 1999
	am. No. 158, 2012
Division 2	
Division 2 heading of Part 25 ...	rs. No. 158, 2012

Endnote 4—Amendment history

Provision affected	How affected
s 254	am No 76, 1996; No 54, 1998; No 121, 1999; No 24, 2000; No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016
Heading to s. 255	am. No. 54, 1998
s. 255	am. No. 54, 1998; No. 38, 1999; No. 158, 2012
s. 256	am. No. 158, 2012
s. 256A.....	ad. No. 158, 2012
Division 3	
Heading to Div. 3 of Part 25	rs. No. 54, 1998
s. 257	am. No. 54, 1998; No. 160, 2000; No. 53, 2004
s. 258	am. No. 54, 1998
Heading to s. 259	am. No. 54, 1998
s. 259	am. No. 54, 1998; No. 53, 2004
s 260	am No 54, 1998; No 160, 2000; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s. 261	am. No. 54, 1998
s 262	rs No 160, 2000 am No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 4, 2016
Division 3A	
Div. 3A of Part 25.....	ad. No. 160, 2000
s. 262A.....	ad. No. 160, 2000 am. No. 117, 2012
Division 4	
Heading to Div. 4 of Part 25	rs. No. 54, 1998
s 263	am No 54, 1998; No 121, 2001; No 53, 2004; No 82, 2010; No 117, 2012; No 158, 2012; <u>No 11, 2016</u>
Heading to s. 264	am. No. 54, 1998
Subhead. to s. 264(1)	am. No. 54, 1998
s. 264	am. No. 54, 1998; No. 38, 1999; No. 53, 2004; No. 25, 2008
s. 265	am. No. 54, 1998; No. 160, 2000; No. 158, 2012
s. 266	am. No. 54, 1998
Heading to s. 267	am. No. 54, 1998

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Endnote 4—Amendment history

Provision affected	How affected
s. 267	am. No. 54, 1998
s. 268	am. No. 158, 2012
s. 269	am. No. 158, 2012
s. 270	rs. No. 144, 1995
	am. No. 54, 1998; No. 158, 2012
Subhead. to s. 273(8)	am. No. 54, 1998
s. 273	am. No. 54, 1998
s. 275	am. No. 53, 2004
Division 5	
s. 276	am. No. 38, 1999
s. 277	am. No. 54, 1998
s. 278	am. No. 54, 1998; No. 31, 2001; No. 4, 2016
s. 281	am. No. 54, 1998
s. 282	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 4, 2016
s. 283	am. No. 54, 1998
Division 6	
s. 284	am. No. 54, 1998; No. 121, 1999; No. 125, 2002; No. 53, 2004; No. 158, 2012
Division 7	
s. 285	am. No. 54, 1998; No. 38, 1999
	rs. No. 31, 2001 (as rs. by No. 117, 2001)
	am. No. 53, 2004
s. 286	am. No. 54, 1998; No. 38, 1999
s. 287	am. No. 38, 1999; No. 160, 2000; No. 158, 2012
s. 288	am. No. 144, 1995; No. 31, 2001 (as rep. by No. 117, 2001); No. 8, 2007; No. 4, 2016
s. 289	am. No. 54, 1998
Division 8	
s. 290	am. No. 38, 1999
s. 294	am. No. 158, 2012
s. 295	am. No. 54, 1998

Endnote 4—Amendment history

Provision affected	How affected
Heading to s. 298	am. No. 54, 1998
s. 298	am. No. 54, 1998
Division 9	
s. 298A.....	ad. No. 54, 1998
Part 25A	
Part 25A.....	ad. No. 76, 1996
Division 1	
s. 299A.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999
s. 299B.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 53, 2004
s. 299C.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 160, 2000; No. 53, 2004; No. 9, 2007; No. 82, 2010 (as am. by No. 136, 2012); No. 4, 2016; No. 55, 2016
s. 299CA.....	ad. No. 158, 2012
Division 2	
s. 299D.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 53, 2004
s. 299E.....	ad. No. 76, 1996 am. No. 71, 1997; No. 54, 1998; Nos. 121 and 128, 1999; No. 53, 2004
s. 299F.....	ad. No. 76, 1996 am. No. 71, 1997; No. 54, 1998; No. 121, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 4, 2016
s. 299G.....	ad. No. 76, 1996 am. Nos. 71 and 122, 1997; No. 54, 1998; No. 121, 1999; and 128, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 4, 2016
Subhead. to s. 299H(6)	ad. No. 41, 2011
s. 299H.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 41, 2011
Subhead. to s. 299J(6).....	ad. No. 41, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s. 299J.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 41, 2011
Subhead. to s. 299K(6)	ad. No. 41, 2011
s. 299K.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 41, 2011
Subhead. to s. 299L(6).....	ad. No. 41, 2011
s. 299L.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 160, 2000; No. 53, 2004; No. 82, 2010 (as am. by No. 136, 2012); No. 41, 2011
Heading to s. 299LA.....	am. No. 41, 2011
s. 299LA	ad. No. 41, 2011 am. No. 41, 2011; No 197, 2012
Note 1 to s 299LA(3).....	am No 197, 2012
Note 2 to s 299LA(3).....	am No 197, 2012
s. 299LB	ad. No. 158, 2012
s 299M.....	ad No 76, 1996 am No 62, 1997; No 71, 1997; No 54, 1998; Nos 121 and 128, 1999; No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 299N	ad No 76, 1996 am No 62 and 71, 1997; No 54, 1998; Nos 121 and 128, 1999; No 53, 2004; No 4, 2016
s. 299NA.....	ad. No. 12, 2012
Division 3	
s. 299P	ad. No. 76, 1996 am. No. 71, 1997; No. 54, 1998; Nos. 121 and 128, 1999; No. 9, 2007
s. 299Q.....	ad. No. 76, 1996 am. No. 71, 1997; No. 128, 1999; No. 53, 2004
Heading to s. 299R	am. No. 62, 1997
s. 299R.....	ad. No. 76, 1996

Endnote 4—Amendment history

Provision affected	How affected
	am. Nos. 62 and 71, 1997; No. 128, 1999; No. 53, 2004
s. 299S	ad. No. 76, 1996
	am. No. 71, 1997; No. 54, 1998; No. 128, 1999
s. 299SA	ad. No. 143, 2007
s. 299T	ad. No. 76, 1996
	am. No. 71, 1997; No. 128, 1999
Division 3A	
Heading to Div. 3A of.....	rs. No. 158, 2012
Part 25A	
Div. 3A of Part 25A.....	ad. No. 9, 2007
s. 299TA	ad. No. 9, 2007
	am No 158, 2012
s. 299TB	ad. No. 9, 2007
	am No 158, 2012
s. 299TC	ad. No. 158, 2012
s. 299TD	ad. No. 158, 2012
s. 299TE.....	ad. No. 158, 2012
s. 299TF.....	ad. No. 158, 2012
Division 4	
s. 299U.....	ad. No. 76, 1996
	am. No. 71, 1997; No. 128, 1999; No. 24, 2000; No. 121, 2001; No. 53, 2004; No. 12, 2012
s. 299V.....	ad. No. 76, 1996
	am. No. 137, 2000
Division 5	
s. 299W.....	ad. No. 76, 1996
	am. Nos. 71 and 191, 1997; No. 128, 1999; No. 158, 2012
s. 299X.....	ad. No. 76, 1996
s 299Y	ad No 76, 1996
	am No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s. 299Z.....	ad. No. 71, 1997 am. Nos. 38 and 128, 1999
Part 26	
s. 301	am. No. 117, 2012
s. 302	am. No. 76, 1996 rep. No. 137, 2000
Note to s. 302(1)(b).....	ad. No. 76, 1996 rep. No. 137, 2000
s. 303	am. No. 160, 2000; No. 117, 2012; No. 4, 2016
ss. 304, 305.....	rep. No. 137, 2000
s. 306	rs. No. 31, 2001 am. No. 117, 2012; No. 4, 2016
s. 307	am. No. 54, 1998; No. 117, 2012; No. 4, 2016
s. 308	am. No. 54, 1998; No. 117, 2012; No. 4, 2016
Part 27	
s. 310	am. No. 144, 1995; No. 8, 2007
s. 312	am. No. 54, 1998
s. 313	am. No. 144, 1995; No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No. 121, 2001; No. 53, 2004; No. 4, 2016
s. 314	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No. 123, 2001; No. 4, 2016
s. 315	am. No. 54, 1998; No. 75, 2009
s. 317	am. No. 4, 2016
Part 28	
Heading to s. 320	am. No. 54, 1998
s. 320	am. No. 54, 1998; No. 108, 2011
s. 323	am. No. 123, 2001; No. 61, 2013
s. 324A.....	ad. No. 160, 2000
Part 29	
s. 326	am. No. 54, 1998; No. 123, 2001; No. 108, 2011

Endnote 4—Amendment history

Provision affected	How affected
s. 327	am. No. 128, 1999; No. 123, 2001; No. 53, 2004; No. 154, 2007; No. 108, 2011; No. 12, 2012; No. 61, 2013
Heading to s. 328	am. No. 54, 1998 rs. No. 154, 2007
s. 328	am. No. 54, 1998 rs. No. 154, 2007
Heading to s. 329	am. No. 54, 1998 rep. No. 123, 2001
s. 329	am. No. 54, 1998 rep. No. 123, 2001
Heading to s. 330	am. No. 54, 1998
s. 331	am. No. 54, 1998; No. 160, 2000
Heading to s. 332	am. No. 54, 1998 rs. No. 154, 2007
s. 332	am. No. 54, 1998 rs. No. 154, 2007
Heading to s. 333	am. No. 54, 1998 rep. No. 123, 2001
s. 333	am. No. 54, 1998 rep. No. 123, 2001
Heading to s. 334	am. No. 54, 1998
ss. 335, 336	am. No. 54, 1998 rs. No. 154, 2007
Part 29A	
Part 29A	ad. No. 154, 2007
Division 1	
ss. 336A–336E	ad. No. 154, 2007
Division 2	
s. 336F	ad. No. 154, 2007
Part 29B	ad. No. 75, 2012 rep No 2, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s. 336J.....	ad. No. 75, 2012 rep No 2, 2015
s. 336JA.....	ad. No. 75, 2012 rep No 2, 2015
s. 336JB.....	ad. No. 75, 2012 am. No. 13, 2013 rep No 2, 2015
s. 336JC.....	ad. No. 75, 2012 rep No 2, 2015
s. 336JD.....	ad. No. 75, 2012 rep No 2, 2015
s. 336JE.....	ad. No. 75, 2012 rep No 2, 2015
s. 336JF.....	ad. No. 75, 2012 rep No 2, 2015
Part 30	
s. 337A.....	ad. No. 118, 1998 rs. No. 116, 2003
s. 338.....	am. No. 31, 2001
s. 338A.....	ad. No. 53, 2004
s. 340.....	rep. No. 54, 1998
s. 341.....	am. No. 117, 2012
s. 342.....	am. No. 169, 1995; No. 54, 1998; No. 53, 2004
Subhead. to s. 344(4).....	am. No. 54, 1998
Subhead. to s. 344(6).....	am. No. 54, 1998
Subhead. to s. 344(8).....	am. No. 54, 1998
s. 344.....	am. No. 144, 1995; No. 54, 1998; No. 160, 2000; No. 53, 2004; No. 25, 2008; Nos. 91 and 158, 2012; No. 61, 2013
s. 345.....	am. No. 54, 1998
Subhead. to s. 346(1).....	rs. No. 107, 1997 rep. No. 54, 1998

Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 346(5)	am. No. 144, 1995 rep. No. 54, 1998
s. 346	am. No. 140, 1994; Nos. 144 and 169, 1995; No. 107, 1997 rep. No. 54, 1998
Note to s. 346(2)	ad. No. 107, 1997 rep. No. 54, 1998
Note to s. 346(2A)	ad. No. 107, 1997 rep. No. 54, 1998
Note to s. 346(9)	ad. No. 107, 1997 rep. No. 54, 1998
s. 347	am. No. 54, 1998
s. 347A	ad. No. 169, 1995 am. No. 54, 1998; No. 121, 1999; No. 160, 2000; No. 121, 2001; No. 53, 2004; No. 82, 2010 (as am by No. 136, 2012); No. 11, 2014; No. 4, 2016
Heading to s. 348	am. No. 54, 1998; No. 121, 1999
s. 348	am. No. 169, 1995; No. 54, 1998; No. 121, 1999; No. 121, 2001
s. 348A	ad. No. 171, 2012
Heading to s. 349	rs. No. 38, 1999
s. 349	am. No. 38, 1999; No. 117, 2012
s. 349A	ad. No. 144, 1995 am. No. 53, 2004; No. 117, 2012
s. 349B	ad. No. 171, 2012 am. No. 171, 2012
s. 351	rep. No. 54, 1998 ad. No. 108, 2011
s. 352	rep. No. 54, 1998
s. 353	am. No. 53, 1995; No. 54, 1998; No. 41, 2011
Part 31	rep. No. 154, 2007
s. 354	rep. No. 154, 2007
s. 355	am. No. 15, 2007 rep. No. 154, 2007

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Endnote 4—Amendment history

Provision affected	How affected
s. 356	rep. No. 154, 2007
s. 357	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
Note to s. 357(5)	ad. No. 31, 2001
	rep. No. 154, 2007
s. 358	rep. No. 154, 2007
s. 359	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
Note to s. 359(5)	ad. No. 31, 2001
	rep. No. 154, 2007
Heading to s. 360	am. No. 54, 1998
	rep. No. 154, 2007
s. 360	am. No. 54, 1998
	rep. No. 154, 2007
s. 361	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
Note to s. 361(7)	ad. No. 31, 2001
	rep. No. 154, 2007
s. 362	am. No. 54, 1998
	rep. No. 154, 2007
s. 363	am. No. 140, 1994; No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
Note to s. 363(6)	ad. No. 31, 2001
	rep. No. 154, 2007
s. 364	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
Note to s. 364(4)	ad. No. 31, 2001
	rep. No. 154, 2007
Heading to s. 365	am. No. 54, 1998
	rep. No. 154, 2007

Endnote 4—Amendment history

Provision affected	How affected
s. 365	am. No. 54, 1998 rep. No. 154, 2007
s. 366	am. No. 31, 2001 (as rep. by No. 117, 2001) rep. No. 154, 2007
Note to s. 366(8)	ad. No. 31, 2001 rep. No. 154, 2007
s. 367	am. No. 54, 1998 rep. No. 154, 2007
s. 368	rep. No. 154, 2007
s. 369	am. No. 54, 1998 rep. No. 154, 2007
ss. 370–372	am. No. 54, 1998 rep. No. 154, 2007
ss. 373, 374	rep. No. 154, 2007
s. 375	rs. No. 38, 1999 rep. No. 123, 2001
s. 376	am. No. 123, 2001 rep. No. 154, 2007
s. 377	am. No. 54, 1998; No. 160, 2000 rep. No. 154, 2007
ss. 378–380	rep. No. 154, 2007
Part 32	
Note to s. 381	ad. No. 128, 1999
s. 382	(1) exp. 1 July 1994 (<i>see</i> s. 382(2))
s. 383	am. No. 76, 1996
s. 384	(1) exp. 1 July 1994 (<i>see</i> s. 384(3)) (2) exp. 1 July 1994 (<i>see</i> s. 384(3))
s. 385	(1) exp. 1 July 1994 (<i>see</i> s. 385(2))
Part 33	
Part 33	ad. No. 171, 2012
Division 1	

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Endnote 4—Amendment history

Provision affected	How affected
s. 386	ad. No. 171, 2012
s. 387	ad. No. 171, 2012
s. 388	ad. No. 171, 2012
Division 2	
s. 389	ad. No. 171, 2012
	am. No. 61, 2013
s. 390	ad. No. 171, 2012
	am. No. 61, 2013
Part 34	
Part 34	ad. No. 171, 2012
s. 391	ad. No. 171, 2012
s. 392	ad. No. 171, 2012
s. 393	ad. No. 171, 2012
s. 394	ad. No. 171, 2012