Superannuation Industry (Supervision) Act 1993

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Volume 1: Parts 1-15
sections 1-127

Volume 2: Parts 16-32
sections 128-383
Endnotes

Each volume has its own contents

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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 30 June 2026 (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. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

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.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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. Any modifications affecting the law are accessible on the Register.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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.

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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

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(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.

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(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 *Superannuation Auditor Registration Imposition Act 2012*

Item	Column 1 A fee payable for ...	Column 2 Is payable by ...
1	Applying for registration as an approved SMSF auditor	The applicant
1A	Applying for conditions imposed on registration as an approved SMSF auditor to be varied or revoked under section 128D	The applicant
1B	Applying for registration as an approved SMSF auditor to be cancelled under section 128E	The applicant
2	Undertaking a competency examination in accordance with section 128C	The person undertaking the examination

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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 ...**
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 under section 128G more than 1 month after it fell due (in addition to the fee payable because of item 3)	The person giving the 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.

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(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.

(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.

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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.

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

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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*.

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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:

(aa) the person is an individual; and

(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* or the *Financial Accountability Regime Act 2023*;

(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.

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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.

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(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.

129A Obligations of lead auditors—compliance

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit 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) the *Financial Sector (Collection of Data) Act 2001*;

(iii) 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 lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion is of such a nature that it may affect

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the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit 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) the *Financial Sector (Collection of Data) Act 2001*;

(iii) 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 lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion 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.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

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(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) 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) the *Financial Sector (Collection of Data) Act 2001*;

(iii) 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

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the person does not, immediately after the person forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the person has formed the opinion is of such a nature that it may affect the

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interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Exception—person has a belief that the opinion is not relevant to the performance of audit functions

(5) A person is not required by subsection (1), (2) or (4) to tell the Regulator, or a trustee of a registrable superannuation entity, about a matter if the person has an honest belief that the opinion mentioned in that subsection is not relevant to the performance of the audit functions mentioned in that subsection.

No civil liability for telling about a matter

(6) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(8) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(9) An offence against subsection (8) is an offence of strict liability.

Offences—lead auditor or member of RSE audit firm

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

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(11) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 25 penalty units.

(12) An offence against subsection (11) is an offence of strict liability.

130 Obligations of actuaries and auditors—solvency

When section applies

(1) This section applies to a person in relation to a superannuation entity if:

(aa) the person is an individual; and

(ab) the person is an auditor or actuary of the superannuation entity; and

(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 any of the following functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity:

(i) actuarial or audit functions;

(ii) any other functions if, in the course of, or in connection with, the performance of the functions by the person, the person obtained sufficient information to enable the person to assess the financial position of 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.

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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

(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.

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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

(6) For the purposes of this section, in forming an opinion whether the financial position of an entity may be about to become unsatisfactory, a person must consider any matters prescribed by the regulations for the purposes of this subsection.

(6A) Subsection (6) does not limit the matters that a person may consider in forming such an opinion.

(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.

130AA Obligations of lead auditors—solvency

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company

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of any of the following functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity:

(i) audit functions;

(ii) any other functions if, in the course of, or in connection with, the performance of the functions by the RSE audit company, the lead auditor obtained sufficient information to enable the lead auditor to assess the financial position of the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of any of the following functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity:

(i) audit functions;

(ii) any other functions if, in the course of, or in connection with, performance of the functions by the RSE audit firm, the lead auditor obtained sufficient information to enable the lead auditor to assess the financial position of the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

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(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) the person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of any of the following functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity:

(i) audit functions;

(ii) any other functions if, in the course of, or in connection with, the performance of the functions by the RSE audit firm or RSE audit company, the person obtained sufficient information to enable the person to assess the financial position of the entity; and

(d) the person does not, immediately after the person forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

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No civil liability for telling about a matter

(5) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(6) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

Offences—lead auditor and member of RSE audit firm

(9) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 25 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

When financial position is unsatisfactory

(11A) For the purposes of this section, in forming an opinion whether the financial position of an entity may be about to become unsatisfactory, a person must consider any matters prescribed by the regulations for the purposes of this subsection.

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(11B) Subsection (11A) does not limit the matters that a person may consider in forming such an opinion.

(12) 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

(1) 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, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023*.

(2) This section applies to a firm as if it were a person.

130B Self incrimination

(1) An individual is not excused from complying with a requirement under section 129, 129A, 130 or 130AA to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(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

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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 an individual and 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.

(3) If the Regulator receives a notification under subsection (1) that relates wholly or partly to an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:

(a) give a copy of the notification to ASIC; and

(b) do so as soon as practicable after receiving the notification.

(4) For the purposes of this section, ***audit*** means:

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(a) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or

(b) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*; or

(c) an audit of a self managed superannuation fund.

130BAA Lead auditor—obligation to notify the Regulator of attempts to unduly influence etc. the auditor etc.

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the lead auditor or a member of the audit team conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and

(b) the lead auditor does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or

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mislead the lead auditor or a member of the audit team conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and

(b) the lead auditor does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(a) the person is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the lead auditor or a member of the audit team conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and

(b) the person does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

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Offence—RSE audit company

(5) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

Offence—lead auditor and member of RSE audit firm

(6) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

Other matters

(7) If the Regulator receives a notification under subsection (1), (2) or (4) that relates wholly or partly to an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:
  (a) give a copy of the notification to ASIC; and
  (b) do so as soon as practicable after receiving the notification.

(8) For the purposes of this section, ***audit*** means:
  (a) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or
  (b) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*.

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:

(aa) the person is an individual; and

(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*.

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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*.

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

130CA Lead auditors—failure to implement actuarial recommendations

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the entity is a defined benefit fund; and

(b) the lead auditor for the audit 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

(c) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion 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.

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Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the entity is a defined benefit fund; and

(b) the lead auditor for the audit 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

(c) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion 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.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

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(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) 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

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the person does not, immediately after the person forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the person has formed the opinion 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.

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No civil liability for telling about a matter

(5) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(6) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

Offences—lead auditor and member of RSE audit firm

(9) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 25 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

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Division 3—Disqualifying and removing actuaries and auditors

130D Court power of disqualification—auditor or actuary

(1) This section applies to the extent that the Regulator is APRA or ASIC.

(2) On application by the Regulator, the Federal Court of Australia may, by order, disqualify a person (other than a company) 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, lead 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, the prudential standards or Chapter 2M of the *Corporations Act 2001*; or
    (ia) the duties of a lead auditor under this Act, the regulations, the prudential standards or Chapter 2M of the *Corporations Act 2001*; or

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(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

(iv) any duties required to be performed under the *Financial Accountability Regime Act 2023*; or

(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

(ab) the person has been or acted as the lead auditor for an audit of a registrable superannuation entity, knowing that the person 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.

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(7) As soon as practicable after the Court disqualifies a person under this section, the Regulator must, by notifiable instrument, publish particulars of the disqualification.

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 or ASIC), 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:
   (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.

130EA Court power of disqualification—audit firm or audit company

(1) On application by ASIC, the Federal Court of Australia may, by order:
   (a) disqualify a firm from being or acting as an auditor of a registrable superannuation entity; or
   (b) disqualify a company from being or acting as an auditor of a registrable superannuation entity;

for a period that the Court considers appropriate, if the Court is satisfied:
   (c) as mentioned in subsection (2); and
   (d) that the disqualification is justified.

Note: For offences relating to firms or companies disqualified under this section, see sections 131CA and 131CB.

(2) The Court may disqualify a firm or company, in accordance with subsection (1), if the Court is satisfied that:

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(a) the firm or company has failed to put in place appropriate processes and systems to enable it to carry out or perform adequately and properly:

(i) its duties as an RSE audit firm or RSE audit company under this Act, the regulations or Chapter 2M of the *Corporations Act 2001*; or

(ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an RSE audit firm or RSE audit company; or

(iii) any functions that an RSE audit firm or RSE audit company is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the firm or company has failed to take reasonable steps to ensure that the lead auditor for an audit of a registrable superannuation entity conducted by the firm or company meets the relevant eligibility criteria set out in the prudential standards; or

(c) the firm or company has failed to take reasonable steps to ensure that the lead auditor for an audit of a registrable superannuation entity conducted by the firm or company is a fit and proper person to be a lead auditor.

(3) In deciding whether it is satisfied as mentioned in subsection (2), 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.

(4) As soon as practicable after the Court:

(a) disqualifies a firm under this section; or

(b) disqualifies a company under this section;

ASIC must cause particulars of the disqualification to be published in the Gazette.

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130EB Court power to revoke or vary a disqualification etc.

(1) A firm or company that is disqualified under section 130EA, or ASIC, may apply to the Federal Court of Australia for a variation or a revocation of an order made under section 130EA.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:
  (a) if the firm or company that is disqualified makes the application—by the person with ASIC; or
  (b) if ASIC makes the application—by ASIC with the firm or company that 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

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(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.

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.

Publication

(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, by notifiable instrument, publish a copy of the order as soon as practicable after the order 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, by notifiable instrument, give notice of the variation or revocation 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 Review Tribunal;

the Regulator must, by notifiable instrument, give notice of the Tribunal's decision as soon as practicable after it is made.

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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
  (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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Publication

(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, by notifiable instrument, publish particulars of the revocation 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.

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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.

Publication

(4) The Regulator must, by notifiable instrument, publish particulars of the disqualification order 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, by notifiable instrument, publish particulars of the variation or revocation 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 Review Tribunal;

the Regulator must, by notifiable instrument, publish particulars of the Tribunal's decision 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.

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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:
  (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.

Publication

(10) If the Regulator revokes a disqualification order under subsection (5), the Regulator must, by notifiable instrument, publish particulars of the revocation 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

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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.

Note: See also subsection (11).

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

(a) the person is disqualified under section 130D, 130EA or 131 from being, or acting as, an auditor or actuary of the superannuation entity; or

(aa) if the person is a firm or company—the lead auditor for an audit of a registrable superannuation entity that is or was conducted by the person:

(i) is disqualified under section 130D; or

(ii) did not meet the relevant eligibility criteria set out in the prudential standards; or

(iii) is not a fit and proper person to be a lead auditor; or

(b) if the person is an individual—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, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023*.

(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:

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(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.

(6A) If APRA directs a trustee or trustees to end a person's appointment as an auditor of a registrable superannuation entity, APRA must:
(a) notify ASIC of the direction; and
(b) do so as soon as practicable after giving the direction.

(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.

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(10) Strict liability applies to subsection (9).

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

Firm

(11) This section applies to a firm as if it were a person.

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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 individual RSE auditor, a lead 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

(ia) the duties of a lead auditor under this Act, the regulations, the prudential standards or Chapter 2M of the *Corporations Act 2001*; 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

(iv) any duties required to be performed under the *Financial Accountability Regime Act 2023*; 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

(ab) has been or acted as the lead auditor for an audit of a registrable superannuation entity, knowing that the person 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 individual RSE auditor, a lead 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).

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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 individual RSE auditor, a lead auditor or an 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 individual RSE auditor, a lead 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 individual RSE auditor, a lead 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 individual RSE auditor, a lead 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

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(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 themself 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:

(a) the person holds themself 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 themself 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*.

Note 3: See also sections 131CC and 131CD.

131BA Misleading representations by disqualified firm or company

(1) A person commits an offence if:

(a) the person is a firm; and

(b) the firm is disqualified under section 130EA; and

(c) the firm represents that a member or employee of the firm is eligible to be an RSE auditor.

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Penalty: 50 penalty units.

(2) A person commits an offence if:
(a) the person is a company; and
(b) the company is disqualified under section 130EA; and
(c) the company represents that a director or employee of the company is eligible to be an RSE auditor.

Penalty: 250 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: See also sections 131CC and 131CD.

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:
(a) the person is, or acts as, an auditor or actuary of a superannuation entity for the purposes of this Act; and
(b) either:

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(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*.

131CA Disqualified firms and disqualified companies not to be an RSE auditor

(1) A person commits an offence if:

(a) the person is a member of a firm; and

(b) the firm is, or acts as, an RSE auditor; and

(c) the firm is disqualified under section 130EA; and

(d) the person knows that the firm is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is, or acts as, an RSE auditor; and

(b) the person is a company; and

(c) the company is disqualified under section 130EA; and

(d) the person knows that the company is so disqualified.

Penalty: 600 penalty units.

(3) A person commits an offence if:

(a) the person is a member of a firm; and

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(b) the firm is, or acts as, an RSE auditor; and
(c) the firm is disqualified under section 130EA.

Penalty: 60 penalty units.

(4) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a company; and
(c) the company is disqualified under section 130EA.

Penalty: 300 penalty units.

(5) Subsections (3) and (4) are offences of strict liability.

131CB Members or employees of disqualified firms, and directors or employees of disqualified companies, not to be RSE auditors

(1) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a member or employee of a firm; and
(c) the firm is disqualified under section 130EA; and
(d) the person knows that the firm is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a director or employee of a company; and
(c) the company is disqualified under section 130EA; and
(d) the person knows that the company is so disqualified.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a member or employee of a firm; and
(c) the firm is disqualified under section 130EA.

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Penalty: 60 penalty units.

(4) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a director or employee of a company; and
(c) the company is disqualified under section 130EA.

Penalty: 60 penalty units.

(5) Subsections (3) and (4) are offences of strict liability.

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Division 5—Special provisions relating to firms and companies

131CC Offences by members of a firm

(1) Section 131BA and subsection 131B(2A) apply to a firm as if it were a person, but with the changes set out in this section.

(2) An offence based on section 131BA or subsection 131B(2A) that would otherwise be committed by the firm is taken to have been committed by each member of the firm.

(3) A member of the firm does not commit an offence because of subsection (2) if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

131CD Criminal liability of a firm or company

(1) For the purposes of criminal proceedings under section 131BA or subsection 131B(2A) against a firm, an act or omission by an individual who is:

(a) a member of the firm; or

(b) an employee or agent of the firm;

acting within the actual or apparent scope of the individual's employment, or within the individual's actual or apparent authority, is also to be attributed to the firm.

(2) For the purposes of criminal proceedings under section 131BA or subsection 131B(2A) against a company, an act or omission by an individual who is:

(a) an officer of the company; or

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(b) an employee or agent of the company;

acting within the actual or apparent scope of the individual's employment, or within the individual's actual or apparent authority, is also to be attributed to the company.

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Part 16A—APRA's powers to issue directions

Division 1—General powers to issue directions

131D APRA may give directions to an RSE licensee in relation to licensee's own conduct

(1) APRA may give an RSE licensee a direction of a kind mentioned in subsection (2) if APRA has reason to believe that:

(a) the RSE licensee has contravened a provision of:

(i) this Act; or

(ii) the regulations; or

(iii) the prudential standards; or

(iv) the *Financial Sector (Collection of Data) Act 2001*; or

(v) Chapter 2M of the *Corporations Act 2001*; or

(b) the RSE licensee is likely to contravene a provision mentioned in paragraph (a), and the direction is reasonably necessary to deal with one or more prudential matters in relation to the RSE licensee; or

(c) the RSE licensee has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(ca) the RSE licensee, or the registrable superannuation entity of the RSE licensee, has failed to meet a benchmark that relates to the licensee or entity; or

(d) the direction is necessary in the interests of beneficiaries of a registrable superannuation entity of the RSE licensee; or

(e) the RSE licensee is, or is about to become, unable to meet its liabilities (whether as trustee of a registrable superannuation entity or otherwise); or

(f) there is, or there might be, a material risk to the security of the assets of the RSE licensee (whether held as trustee of a registrable superannuation entity or otherwise); or

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(g) there has been, or there might be, a material deterioration in the financial condition of:
  (i) the RSE licensee; or
  (ii) a registrable superannuation entity of which it is trustee; or

(h) the RSE licensee is conducting:
  (i) its affairs; or
  (ii) the affairs of a registrable superannuation entity of which it is trustee;

  in an improper or financially unsound way; or

(i) the failure to issue a direction would materially prejudice the interests or reasonable expectations of beneficiaries of a registrable superannuation entity of the RSE licensee; or

(j) the RSE licensee is conducting:
  (i) its affairs; or
  (ii) the affairs of a registrable superannuation entity of which it is trustee;

  in a way that may cause or promote instability in the Australian financial system.

(2) APRA may give a direction to do one or more of the following:

(a) to comply with the whole or a part of:
  (i) this Act; or
  (ii) the regulations; or
  (iii) the prudential standards; or
  (iv) the *Financial Sector (Collection of Data) Act 2001*;

(b) to comply with the whole or a part of a condition or direction referred to in paragraph (1)(c);

(c) if the RSE licensee is a body corporate, to do one or more of the following:
  (i) to remove a responsible officer of the RSE licensee from office;
  (ii) to ensure that a responsible officer of the RSE licensee does not take part in the management or conduct of the business of the RSE licensee, or the business of a

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registrable superannuation entity of the RSE licensee, except as permitted by APRA;

(iii) to appoint a person as a responsible officer of the RSE licensee for such term as APRA directs;

(d) to order an audit of:

(i) the affairs of the RSE licensee; or

(ii) the affairs of a registrable superannuation entity of the RSE licensee;

at the expense of the RSE licensee, by an auditor chosen by APRA;

(e) to remove an auditor of the RSE licensee, or of a registrable superannuation entity of the RSE licensee, from office and appoint another auditor to hold office for such term as APRA directs;

(f) to order an actuarial investigation of the affairs of a registrable superannuation entity of the RSE licensee, at the expense of the RSE licensee and by an actuary chosen by APRA;

(g) to remove an actuary of a registrable superannuation entity of the RSE licensee from office and appoint another actuary to hold office for such term as APRA directs;

(h) not to accept, or to cease to accept (permanently or temporarily), contributions to a registrable superannuation entity of the RSE licensee;

(i) not to borrow any amount;

(j) not to pay or transfer any amount or asset to any person, or create an obligation (contingent or otherwise) to do so;

(k) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;

(l) not to discharge any liability of:

(i) the RSE licensee; or

(ii) a registrable superannuation entity of the RSE licensee;

(m) to make changes to the RSE licensee's systems, business practices or operations (including the RSE licensee's systems business practices or operations in relation to a registrable superannuation entity of the RSE licensee);

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(n) to do, or refrain from doing, anything else in relation to the affairs of:
(i) the RSE licensee; or
(ii) a registrable superannuation entity of the RSE licensee.

(3) A direction under paragraph (2)(j) not to pay or transfer any amount or asset does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

(4) Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:
(a) deal with some only of the matters referred to in that paragraph; or
(b) deal with a particular class or particular classes of those matters; or
(c) make different provision with respect to different matters or different classes of matters.

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

(6) If APRA gives a direction under paragraph (2)(e), APRA must:
(a) notify ASIC of the direction; and
(b) do so as soon as practicable after giving the direction.

131DA APRA may give directions in relation to the conduct of a connected entity of an RSE licensee

(1) APRA may give an RSE licensee a direction of a kind mentioned in subsection (5), or a direction to cause a connected entity of the RSE licensee to do or not to do something of a kind mentioned in subsection (5), if APRA has reason to believe that:
(a) a connected entity of the RSE licensee has contravened a provision of:
(i) this Act; or
(ii) the regulations; or
(iii) the prudential standards; or

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(iv) the *Financial Sector (Collection of Data) Act 2001*; or

(b) a connected entity of the RSE licensee is likely to contravene a provision mentioned in paragraph (a); or

(c) the direction relates to a connected entity of the RSE licensee and is necessary in the interests of beneficiaries of a registrable superannuation entity of the RSE licensee; or

(d) a connected entity of the RSE licensee is, or is about to become, unable to meet the connected entity's liabilities; or

(e) there is, or there might be, a material risk to the security of the assets of a connected entity of the RSE licensee; or

(f) there has been, or there might be, a material deterioration in the financial condition of a connected entity of the RSE licensee; or

(g) a connected entity of the RSE licensee is conducting the entity's affairs in an improper or financially unsound way; or

(h) a connected entity of the RSE licensee is conducting the entity's affairs in a way that may cause or promote instability in the Australian financial system; or

(i) a connected entity of the RSE licensee is conducting the entity's affairs in a way that may cause it to be unable to continue to supply products or services to the RSE licensee, or a registrable superannuation entity of the RSE licensee; or

(j) the direction relates to a connected entity of the RSE licensee and the failure to issue a direction would materially prejudice the interests of beneficiaries of a registrable superannuation entity of the RSE licensee.

(2) However, APRA can only make a direction under subsection (1) as a result of a ground referred to in paragraph (1)(d), (e), (f), (g), (h) or (i) if APRA considers that the direction is reasonably necessary to ensure that the RSE licensee's duties as trustee of a registrable superannuation entity are properly performed.

(3) APRA may give a connected entity of an RSE licensee a direction of a kind mentioned in subsection (5) if:

(a) APRA has given the RSE licensee a direction under subsection (1) because one or more of the grounds referred to

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in that subsection have been satisfied in respect of the connected entity; or

(b) APRA may give the RSE licensee a direction under subsection (1) because one or more of the grounds referred to in that subsection have been satisfied in respect of the connected entity.

(4) APRA cannot give a direction under subsection (3) to a connected entity of a kind specified in regulations (if any) made for the purposes of this subsection.

(5) APRA may give a direction to do one or more of the following:

(a) to comply with the whole or a part of:

(i) this Act; or

(ii) the regulations; or

(iii) the prudential standards; or

(iv) the *Financial Sector (Collection of Data) Act 2001*;

(b) if the connected entity is a body corporate:

(i) to remove a responsible officer of the entity from office; or

(ii) to ensure that a responsible officer of the entity does not take part in the management or conduct of the business of the entity (including any business the entity conducts in relation to a registrable superannuation entity of the RSE licensee) except as permitted by APRA; or

(iii) to appoint a person as a responsible officer of the entity for such term as APRA directs;

(c) to order an audit of:

(i) the affairs of the connected entity; or

(ii) the affairs of a registrable superannuation entity of the RSE licensee;

at the expense of the connected entity, by an auditor chosen by APRA;

(d) to:

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(i) remove from office an auditor of the connected entity, or of a registrable superannuation entity of the RSE licensee; and

(ii) appoint another auditor to hold office for such term as APRA directs;

(e) to order an actuarial investigation of the affairs of a registrable superannuation entity of the RSE licensee, at the expense of the connected entity and by an actuary chosen by APRA;

(f) to:

(i) remove from office an actuary of a registrable superannuation entity of the RSE licensee; and

(ii) appoint another actuary to hold office for such term as APRA directs;

(g) not to borrow any amount;

(h) not to pay or transfer any amount or asset to any person, or create an obligation (contingent or otherwise) to do so;

(i) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;

(j) not to discharge any liability of one or more of the following:

(i) the connected entity;

(ii) a registrable superannuation entity of the RSE licensee;

(k) to make changes to the connected entity's systems, business practices or operations (including the connected entity's systems, business practices or operations in relation to a registrable superannuation entity of the RSE licensee);

(l) to do, or refrain from doing, anything else in relation to the affairs of:

(i) the connected entity; or

(ii) a registrable superannuation entity of the RSE licensee.

(6) A direction under paragraph (5)(h) not to pay or transfer any amount or asset does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

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(7) Without limiting the generality of subsection (5), a direction referred to in a paragraph of that subsection may:
  (a) deal with some only of the matters referred to in that paragraph; or
  (b) deal with a particular class or particular classes of those matters; or
  (c) make different provision with respect to different matters or different classes of matters.

(8) The direction may deal with the time by which, or period during which, it is to be complied with.

131DB Machinery provisions relating to directions under this Division

(1) A direction under this Division must:
  (a) be given by notice in writing:
    (i) in the case of a direction to an RSE licensee under subsection 131D(1) or 131DA(1)—to the RSE licensee; and
    (ii) in the case of a direction to a connected entity of an RSE licensee under subsection 131DA(3)—to the connected entity of the RSE licensee and the RSE licensee; and
  (b) specify:
    (i) in the case of a direction under subsection 131DA(3)—the ground referred to in subsection 131DA(1) as a result of which the direction is given; or
    (ii) otherwise—the ground referred to in subsection 131D(1) or 131DA(1) as a result of which the direction is given.

(2) A direction under this Division is not a legislative instrument.

Note: Under paragraph 11(2)(c) of the *Legislation Act 2003*, APRA may register a direction under this Division as a notifiable instrument.

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(3) In deciding whether to give a direction under subsection 131D(1) to an RSE licensee, APRA may disregard any external support for the RSE licensee.

(4) In deciding whether to give a direction under subsection 131DA(1) or (3), APRA may disregard any external support for the RSE licensee, or the connected entity of the RSE licensee, in relation to which the direction is given.

(5) The regulations may specify that a particular form of support is not external support for the purposes of subsection (3) or (4).

131DC Varying or revoking a direction under this Division

(1) APRA may:

(a) vary a direction given to an RSE licensee under this Division, by notice in writing to the RSE licensee; or

(b) vary a direction given to a connected entity of an RSE licensee under this Division, by notice in writing to the connected entity and the RSE licensee;

if, at the time of the variation, APRA considers that the variation is necessary and appropriate.

(2) A direction under this Division has effect until APRA revokes it.

(3) APRA may:

(a) revoke a direction given to an RSE licensee under this Division, by notice in writing to the RSE licensee; or

(b) revoke a direction given to a connected entity of an RSE licensee under this Division, by notice in writing to the connected entity and the RSE licensee;

if, at the time of revocation, APRA considers that the direction is no longer necessary or appropriate.

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131DD Non-compliance with a direction

Failure to comply with a direction given to an RSE licensee—failure by the RSE licensee

(1) A person commits an offence if:

(a) the person is an RSE licensee or a member of a group of individual trustees that is an RSE licensee; and

(b) a direction is given to the RSE licensee under this Division; and

(c) the RSE licensee does, or fails to do, something; and

(d) doing, or failing to do, the thing results in a contravention of the direction.

Penalty: 100 penalty units.

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

Failure to comply with a direction given to an RSE licensee—failure by an officer of the RSE licensee

(2) A person commits an offence if:

(a) the person is an officer of an RSE licensee that is a body corporate; and

(b) the officer fails to take reasonable steps to ensure that the RSE licensee complies with a direction given to it under this Division; and

(c) the officer's duties include ensuring that the RSE licensee complies with the direction or with a class of directions that includes the direction; and

(d) the RSE licensee does not comply with the direction.

Penalty: 100 penalty units.

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Failure to comply with a direction given to a connected entity of an RSE licensee—failure by the connected entity

(3) A connected entity of an RSE licensee commits an offence if:

(a) a direction is given to the connected entity under this Division; and

(b) the connected entity does, or fails to do, something; and

(c) doing, or failing to do, the thing results in a contravention of the direction.

Penalty: 100 penalty units.

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

Failure to comply with a direction given to a connected entity of an RSE licensee—failure by an officer of the connected entity

(4) A person commits an offence if:

(a) the person is an officer of a body corporate that is a connected entity of an RSE licensee; and

(b) the officer fails to take reasonable steps to ensure that the connected entity complies with a direction given to it under this Division; and

(c) the officer's duties include ensuring that the connected entity complies with the direction or with a class of directions that includes the direction; and

(d) the connected entity fails to comply with the direction.

Penalty: 100 penalty units.

Offence for each day on which a person continues to commit an offence

(5) If a person commits an offence against subsection (1), (2), (3) or (4), the person commits an offence against that subsection in respect of:

(a) the first day on which the offence is committed; and

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(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

Strict liability

(6) Subsections (1), (2), (3) and (4) are offences of strict liability.

*Meaning of **officer***

(7) In this section, ***officer*** has the meaning given by section 9 of the *Corporations Act 2001*.

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Division 2—Directions to relinquish control over an RSE licensee

131E Object of this Division

The object of this Division is to enable the Regulator to direct a person who is in control of an RSE licensee to relinquish that control if there has been, is or is likely to be interference with the ability of the RSE licensee to satisfy its obligations in relation to a superannuation entity.

131EA Application of this Division

This Division applies in relation to an RSE licensee that is a body corporate.

131EB Direction to relinquish control

(1) The Regulator may give a person a direction to relinquish control of an RSE licensee if:

(a) the Regulator has reason to believe that:

(i) the person has a controlling stake in the RSE licensee; or

(ii) the person has practical control of the RSE licensee; and

(b) the Regulator has reason to believe that because of:

(i) the person's controlling stake, or practical control, of the RSE licensee; or

(ii) the way in which control has been, is or is likely to be exercised;

the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

(2) The Regulator may give a person a direction to relinquish control of an RSE licensee if:

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(a) the Regulator has reason to believe that the person has a controlling stake in the RSE licensee; and

(b) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee.

(3) The Regulator may give a person a direction to relinquish control of an RSE licensee if:

(a) the Regulator has reason to believe that that the person has a controlling stake in the RSE licensee; and

(b) the person has approval under section 29HD to hold a controlling stake in the RSE licensee; and

(c) information given to the Regulator in relation to the application for approval was false or misleading in a material particular.

(4) To avoid doubt, a direction under subsection (1) or (3) to a person to relinquish a controlling stake in an RSE licensee may be given even if the person has approval to hold a controlling stake in the RSE licensee.

(5) The direction must be given in writing.

(6) The Regulator must give the person:

(a) a copy of the direction; and

(b) a statement of the Regulator's reasons for giving the direction.

(7) The Regulator may revoke a direction to relinquish control of an RSE licensee.

(8) The revocation must be in writing and a copy of the revocation must be given to the person.

131EC Meaning of practical control

A person has ***practical control*** over an RSE licensee that is a body corporate if:

(a) either of the following is satisfied:

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(i) the directors of the RSE licensee are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates);

(ii) the person (either alone or together with associates) is in a position to exercise control over the RSE licensee; and

(b) the person does not hold a controlling stake in the RSE licensee.

131ED Consequences of a direction to relinquish control

(1) If the Regulator gives a person a direction to relinquish control over an RSE licensee, the person must take such steps as are necessary to ensure that:

(a) the directors of the RSE licensee are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and

(b) the person (either alone or together with associates) is not in a position to exercise control over the RSE licensee; and

(c) the person does not hold a controlling stake in the RSE licensee.

(2) The person must take those steps:

(a) within 90 days after being given a copy of the direction; or

(b) if the Regulator, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.

(3) A person commits an offence if:

(a) the person is subject to a requirement under this section; and

(b) the person intentionally or recklessly contravenes the requirement.

Penalty: 400 penalty units.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence under subsection (3), so a person commits an

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offence, after the period for relinquishment expires, on each day on which the person does not relinquish control.

131EE Interim orders

Orders where the direction is stayed by the Administrative Review Tribunal

(1) The Regulator may apply to the Federal Court of Australia (the ***Federal Court***) for orders under subsection (2) if:

(a) the Regulator has given a direction to relinquish control over an RSE licensee to a person; and

(b) an application has been made to the Administrative Review Tribunal for a review of the decision to give the direction; and

(c) the Tribunal has made an order or orders staying or otherwise affecting the operation or implementation of the decision to give the direction, or a part of that decision.

(2) The Federal Court may make such orders as the court considers appropriate to ensure that the person does not, during the period to which an order of the Tribunal relates, exercise control over the RSE licensee in a manner that results in the RSE licensee being unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

Orders to deal with conduct during the compliance period

(3) The Regulator may apply to the Federal Court of Australia (the ***Federal Court***) for orders under subsection (4) if:

(a) a direction to relinquish control over an RSE licensee is in force in relation to a person; and

(b) the Regulator has reason to believe that the person may, during the period under subsection 131ED(2) during which the person is required to take steps under the direction (the ***compliance period***), exercise control over the RSE licensee in a manner that results in the RSE licensee being unable to

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satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

(4) The Federal Court may make such orders as the court considers appropriate to ensure that the person does not, during the compliance period, exercise control over the RSE licensee in a manner that results in the RSE being unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

131EF Remedial orders

(1) The Regulator may apply to the Federal Court of Australia (the ***Federal Court***) for orders under this section if a direction to relinquish control over an RSE licensee is in force in relation to a person.

(2) The Federal Court may make such orders as the court considers appropriate to ensure that:
  (a) the directors of the RSE licensee are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
  (b) the person (either alone or together with associates) is not in a position to exercise control over the RSE licensee; and
  (c) the person does not hold a controlling stake in the RSE licensee.

(3) However, the Federal Court may only make orders under this section if the court is satisfied that:
  (a) both of the following are satisfied:
    (i) the person holds a controlling stake in the RSE licensee, or has practical control of the RSE licensee;
    (ii) because of the person's control of the RSE licensee, or the way in which that control has been, is or is likely to be exercised, the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's

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obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A; or

(b) both of the following are satisfied:
  (i) the person holds a controlling stake in the RSE licensee;
  (ii) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee; or

(c) each of the following is satisfied:
  (i) the person has a controlling stake in the RSE licensee;
  (ii) the person has approval under section 29HD to hold a controlling stake in the RSE licensee;
  (iii) information given to the Regulator in relation to the application for approval was false or misleading in a material particular.

(4) The Federal Court's orders include:
  (a) an order directing the disposal of shares; or
  (b) an order restraining the exercise of any rights attached to shares; or
  (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  (d) an order that any exercise of rights attached to shares be disregarded.

(5) Subsection (4) does not, by implication, limit subsection (2).

(6) In addition to the Federal Court's powers under subsections (2) and (4), the court:
  (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

(7) The Federal Court may, before making an order under this section, direct that notice of the Regulator's application be given to such

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persons as it thinks fit or be published in such manner as it thinks fit, or both.

(8) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

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Division 3—Provisions relating to all directions under this Act

131F APRA may give more than one direction

(1) APRA is not precluded from giving a direction under a provision of this Act because APRA has given, or may give, another direction under that or any other provision of this Act.

(2) The kinds of direction that may be given under one provision of this Act are not limited by any direction given, or that may be given, under that or any other provision of this Act.

131FA RSE licensee and connected entity have power to comply with a direction under this Act

(1) An RSE licensee has power to comply with a direction given to the RSE licensee under this Act despite anything in its constitution or any contract or arrangement to which it is a party.

(2) If the direction requires the RSE licensee to cause a connected entity to do, or not to do, something:

(a) the RSE licensee has power to cause the connected entity to do, or to not to do, the thing; and

(b) the connected entity has power to do, or not to do, the thing;

despite anything in the connected entity's constitution or any contract or arrangement to which the connected entity is a party.

(3) A connected entity of an RSE licensee has power to comply with a direction given to the connected entity under this Act despite anything in its constitution or any contract or arrangement to which it is a party.

131FB Protection from liability—general

(1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without

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negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

(2) To avoid doubt, any information provided by a person to APRA under section 130A is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.

(3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

131FC Protection from liability—directions

(1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of complying with a direction under this Act given by APRA to an RSE licensee, or a connected entity of an RSE licensee; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is any of the following:

(i) an officer of the RSE licensee, or of the connected entity of the RSE licensee;

(ii) an employee or agent of the RSE licensee, or of the connected entity of the RSE licensee.

(2) In subsection (1):

employee:

(a) of an RSE licensee, includes a person engaged to provide advice or services to the RSE licensee; or

(b) of a connected entity of an RSE licensee, includes a person engaged to provide advice or services to the connected entity.

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officer has the meaning given by section 9 of the *Corporations Act 2001*.

131FD Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

(b) section 131FB;

(c) section 131FC;

(d) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

131FE Informing the Treasurer about issue and revocation of directions

(1) If the Treasurer requests APRA to provide information about:

(a) any directions given under this Act to a particular entity; or

(b) any directions given under this Act, during a specified period, to any entity of a specified kind;

APRA must comply with the request.

(2) APRA may provide any information that it considers appropriate to the Treasurer about:

(a) any directions given under this Act at any time; or

(b) any revocations of any such directions.

(3) If APRA provides the Treasurer with information about a direction and then later revokes the direction, APRA must notify the Treasurer of the revocation of the direction as soon as practicable after the revocation. Failure to notify the Treasurer does not affect the validity of the revocation.

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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; or

(f) the Regulator has reason to believe that:

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(i) either a person holds a controlling stake in the RSE licensee or a person has practical control of the RSE licensee; and

(ii) because of the person's control of the RSE licensee, or the way in which that control has been, is or is likely to be exercised, the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A; or

(g) the Regulator has reason to believe that:

(i) a person holds a controlling stake in an RSE licensee; and

(ii) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee.

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.

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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***.

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

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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*.

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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.)

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

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(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:

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(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.

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.

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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*.

(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.

(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***.

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(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.

(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*.

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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).

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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.

Publishing notice

(7) The Regulator must publish notice of the making of each instrument under subsection (1) in a manner that results in the notice being accessible to the public and reasonably prominent.

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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:

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(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.

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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.

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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.

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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.

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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:

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(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.

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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.

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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

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(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).

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(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.

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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.

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(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*.

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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.

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(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.

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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.

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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:

(aa) subsection 54B(1);
(ab) subsection 54B(2);
(a) subsection 62(1);
(b) subsection 65(1);
(c) subsection 67(1);
(caa) subsection 68A(1);
(cab) subsection 68A(3);
(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).

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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 that is not an offence 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.

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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 2,400 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.

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(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:

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(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).

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Division 3—Criminal proceedings

201A Criminal jurisdiction of the Federal Court of Australia in relation to certain indictable offences

The Federal Court of Australia has jurisdiction to hear and determine prosecutions for indictable offences against provisions of this Act that are administered by ASIC.

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.

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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;

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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

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(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.

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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

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(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.

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Division 6—Miscellaneous

220A Burden of proof—civil proceedings relating to duty to act in best financial interests of beneficiaries

(1) In civil proceedings for a contravention of subsection 54B(1) in relation to a covenant set out in paragraph 52(2)(c), it is presumed that a trustee did not perform the trustee's duties and exercise the trustee's powers in the best financial interests of beneficiaries, unless the trustee adduces evidence to the contrary.

(2) If, in such proceedings:
  (a) a trustee wishes to adduce evidence to the contrary—the trustee bears an evidential burden in relation to the matter; and
  (b) in the case that evidence to the contrary is so adduced—the Regulator must prove, on the balance of probabilities, that the trustee did not perform the trustee's duties and exercise the trustee's powers in the best financial interests of beneficiaries.

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;

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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.

(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.

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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);
(aa) subsection 29JCB(1);
(b) subsection 29W(1);
(c) subsection 29WA(3);
(d) subsection 29WB(3);
(e) subsection 35A(7);
(f) subsection 107(4);

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(g) subsection 108(4);
(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.

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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.

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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.

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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.

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(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.

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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.

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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).

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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.

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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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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).

(4A) An application for authority to operate a regulated superannuation fund as an eligible rollover fund must not be made on or after the day Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences.

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

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(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 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 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

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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.

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:

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(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

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(f) APRA is satisfied that the RSE licensee is likely to comply with the enhanced trustee obligations for eligible rollover funds; and

(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.

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(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:

(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).

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(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

(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.

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(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 IA 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:

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(a) requiring an RSE licensee whose authority to operate a regulated superannuation fund as an eligible rollover fund is 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.

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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.

(2A) The application must not be made on or after the later of:
  (a) 1 May 2021; and
  (b) the seventh day after the day Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences.

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)).

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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

(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.

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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).

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Part 24B—Provisions relating to the administration by APRA and the Commissioner of Taxation of superannuation funds with no more than 6 members

Division 1—Monitoring of superannuation funds with no more than 6 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 no more than 6 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

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

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(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

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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.

252H Regulations

The regulations may deal with other transitional matters arising from the enactment of the *Superannuation Legislation Amendment Act (No. 3) 1999.*

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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, 254A 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 5(4). 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

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investigating superannuation entities: see subsection 5(5). However, this does not affect any powers and duties the Commissioner of Taxation has under this Part in relation to contributing employers: see subsection 5(6).

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.

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Division 2—Monitoring

254 Information to be given on establishment of superannuation entity

(1) After a superannuation entity is established, each trustee of the superannuation entity must ensure that the information (if any) mentioned in subsection (2A) is given to the person or body mentioned in subsection (2B) in accordance with subsection (2).

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

(2) The information must be given:

(a) in the approved form (if any); and

(b) no later than:

(i) the end of the period, starting immediately after the establishment of the superannuation entity, prescribed by the regulations for the purposes of this subparagraph; or

(ii) if no period is prescribed—7 days after the establishment of the superannuation entity.

(2A) The information that must be given is:

(a) the information that the approved form (if any) requires to be included; or

(b) if there is no approved form—the information prescribed by the regulations for the purposes of this paragraph in relation to the superannuation entity.

Note: The information may include the tax file number of the entity. See subsections 299U(8) and (8A).

(2B) The information must be given to:

(a) the person or body prescribed by the regulations for the purposes of this paragraph in relation to the superannuation entity; or

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(b) if no person or body is prescribed in relation to the superannuation entity—the Commissioner of Taxation.

Receipt

(3) If a trustee of a superannuation entity gives information to a person or body under subsection (1), the person or body must give to the trustee a written statement that the information has been received.

Offences

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

Penalty: 50 penalty units.

(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*.

254A Information to be given to Regulator

The Regulator or an authorised person may, by written notice given 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:

(a) such information; or

(b) a report on such matters;

as is set out in the notice.

Note 1: The information may include the tax file number of the entity. See subsection 299U(9).

Note 2: Failure to comply with the requirement is an offence. See section 285.

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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 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.

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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.

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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

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.

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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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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.

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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*.

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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.

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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

(d) 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 made under the AFCA scheme;

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:

(a) in relation to a superannuation entity if a notice is given under subsection (1) to a trustee of the entity;

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(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—a Chapter 5 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.

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(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 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:

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(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 staff of the Regulator, or a member of staff of another person or body referred to in the definition of ***Regulator*** in subsection 10(1), 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.

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(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

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(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.

(3) The reference in subsection (1) to an inspector does not include:

(a) an inspector that is appointed by ASIC; or

(b) ASIC, where ASIC is exercising the powers of an inspector under section 267.

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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:

(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

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(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, or Division 2 of Part IAA of the *Crimes Act 1914*, as applied under section 39D of the *Australian Securities and Investments Commission Act 2001*, 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.

(1A) However, if paragraph (1)(b) applies because of the operation of section 39D of the *Australian Securities and Investments Commission Act 2001*, subsections (4), (5), (6), (7) and (8) do not apply.

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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.

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.

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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

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(b) to explain how a trustee or an investment manager of the entity has kept account of that property.

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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.

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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.

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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.

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(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.

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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

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(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.

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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:

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(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:

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(a) a copy of the report has been given to the other party; and
(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.

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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.

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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 another person or body referred to in the definition of ***Regulator*** in subsection 10(1), 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.

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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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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

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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.

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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:

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(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.

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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*.

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

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(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.

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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.

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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.

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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.

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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*.

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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.

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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*.

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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(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.

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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*.

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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:

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(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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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.

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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.

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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.

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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.

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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.

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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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(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.

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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.

(8A) Information prescribed for the purposes of paragraph 254(2A)(b) in relation to an entity may include the tax file number of the entity.

Notice to give information

(9) Information that may be required to be given in relation to a superannuation entity under section 254A 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.

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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*.

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*.

tax file number has the meaning given by section 202A of the *Income Tax Assessment Act 1936.*

299X State insurance

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

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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

(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

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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 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

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(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.

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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.

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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* or the *Financial Accountability Regime Act 2023*, 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

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(c) the Court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person;

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;

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(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

(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.

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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

(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

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person affected by the order, make a further order discharging or varying the first-mentioned order.

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:

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(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
  (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; or

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(b) attempting to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act; or

(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; 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; 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; or

(f) conspiring with others to contravene this Act, a condition imposed on an RSE licence or a direction given under this Act;

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

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licence or a direction given under this Act to do, the Court may, on the application of:

(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

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(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.

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.

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This section extends Federal Court's powers

(11A) The powers this section gives the Court are additional to (and do not limit) it's other powers.

Definition

(12) In this section:

do an act or thing includes:

(a) give effect to a determination made under the AFCA scheme; or

(b) reconsider a matter in accordance with a determination made under that scheme.

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

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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.

(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.

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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.

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.

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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 subsection 55(3).

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

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(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:

(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

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(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.

324B Instituting criminal proceedings

(1) Proceedings before the Federal Court of Australia for an offence against a provision of this Act must not be instituted except with the written consent of the Minister, or of a person authorised in writing by the Minister to give such consents.

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(2) Subsection (1) does not apply to proceedings instituted by the Regulator or a person authorised in writing by the Regulator.

(3) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

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.

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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

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).

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.

(3) Otherwise, an exemption is a legislative instrument.

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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.

(2) A declaration that applies to a particular person or group is not a legislative instrument.

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(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.

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Part 29A—Protections in relation to information

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

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 the Regulator 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, 129A, 130 or 130AA or under Part 25.

Note 1: See section 130B in relation to requirements under section 129 , 129A, 130 or 130AA.

Note 2: See section 287 in relation to requirements under Part 25.

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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 former 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.

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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.

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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.

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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

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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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ART review

(8) Applications may be made to the Administrative Review Tribunal for review of decisions that have been confirmed or varied under subsection (4).

Continued operation of decision despite request for review

(10) If a request is made under subsection (1) in respect of a reviewable decision, section 32 (reviewable decision continues to operate unless Tribunal orders otherwise) of the *Administrative Review Tribunal Act 2024* applies as if the making of the request were the making of an application to the Administrative Review Tribunal for a review of that decision.

(11) An order must not be made under subsection 32(2) of the *Administrative Review Tribunal Act 2024* in respect of a reviewable decision except by the Administrative Review Tribunal.

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:

(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 Review Tribunal Act 2024*, if dissatisfied with a decision made by the

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Regulator upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Review 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 Review Tribunal Act 2024*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Review 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***).

Instructions in survey forms

(3) A survey form must contain instructions about the following matters:

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(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.

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

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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 notifiable instrument, 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.

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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.

(4) In this section:

Regulator means APRA.

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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

(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;

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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.

(6A) If, apart from this section, this Act would result in such an acquisition of property because it would require a person to comply with a direction given under this Act, then despite any other provision of this Act, the person is not required to comply with the direction in circumstances that would result in such an acquisition.

(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; and

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(f) a direction given under this Act.

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.

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;

(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*.

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 as in force immediately before its repeal by the *Treasury Laws Amendment (2019 Measures No. 1) Act 2019*.

(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.

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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 how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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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	s 30–116, 118–142 and 253–308: 1 Dec 1993 (s 2(4)) s 117: 21 Oct 1992 (s 2(2)) s 143–191, 223–252 and 342: 1 July 1994 (s 2(3)) Remainder: 30 Nov 1993 (s 2(1))	
Taxation Laws Amendment Act (No. 3) 1993	118, 1993	24 Dec 1993	s 156–159: 25 Dec 1993 (s 2(4)(b))	s 157 and 159
Superannuation Industry (Supervision) Legislation Amendment Act 1994	140, 1994	28 Nov 1994	s 3–11, 14–16, 21–25, 32–35, 40, 41 and 44–48: 28 Nov 1994 (s 2(1)) s 12, 13, 28–31 and 36–39: 1 Dec 1993 (s 2(2)) s 17–20, 26, 27, 42 and 43: 26 Dec 1994 (s 2(3))	s 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	Sch 3 (items 103–117): 19 Dec 1994 (s 2(1))	Sch 3 (items 103, 108, 109, 112, 113, 117)
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	Sch (item 80): 1 July 1995 (s 2)	—
Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995	53, 1995	23 June 1995	Sch 5 and Note about section heading: 1 July 1995 (s 2)	Sch 5 (item 36)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Industry (Supervision) Legislation Amendment Act 1995	144, 1995	12 Dec 1995	s 3, 4(1) and Sch 4 (items 1, 6, 10, 22–27, 30–33, 71–75, 86): 12 Dec 1995 (s 2(1)) s 4(2) and Sch 4 (items 2, 5, 7, 11–13, 28, 29, 34–70, 77–81, 83, 84): 9 Jan 1996 (s 2(3)) s 4(3) and Sch 4 (items 3, 4, 8, 9, 14–21, 76, 82, 85): 16 Dec 1995 (s 2(2))	s 3, 4 and Sch 4 (items 19, 33, 43, 53)
Commonwealth Bank Sale Act 1995	161, 1995	16 Dec 1995	s 3 and 20: 16 Dec 1995 (s 2(1)) Sch (item 59): 19 July 1996 (s 2(2))	s 3 and 20
Taxation Laws Amendment Act (No. 2) 1995	169, 1995	16 Dec 1995	Sch 4 (items 11–13) and Sch 6: 16 Dec 1995 (s 2(1))	Sch 6 (item 17)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 110): 1 Dec 1993 (s 2(2))	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 19 (item 51): 25 Nov 1996 (s 2(1))	—
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Taxation Laws Amendment Act (No. 2) 1996	76, 1996	18 Dec 1996	Sch 4 (items 1–18): 16 Feb 1997 (s 2(4))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	Sch 3 (item 128): 1 July 1997 (s 2)	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	Sch 4: 2 June 1997 (s 2)	—
Superannuation Contributions Tax (Consequential Amendments) Act 1997	71, 1997	5 June 1997	Sch 3: 5 June 1997 (s 2)	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Sch 14: 30 June 1997 (s 2(1))	—
Taxation Laws Amendment Act (No. 1) 1997	122, 1997	8 July 1997	Sch 7: 16 Feb 1997 (s 2(10))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2: (items 1242–1245): 1 Jan 1998 (s 2(2))	—
Superannuation Industry (Supervision) Amendment Act 1997	172, 1997	17 Nov 1997	Sch 1: 1 July 1996 (s 2(2))	—
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997	191, 1997	7 Dec 1997	Sch 6: 7 Dec 1997 (s 2(1))	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (items 184–191): 1 July 1998 (s 2(2))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 16 (items 1–222): 1 July 1998 (s 2(2)(n)) Sch 16 items 223–231): 31 May 1999 (s 2(14)(b)) Sch 16 (items 232–236): never commenced (s 2(15)(b), (16)(b)) Sch 16 (item 237): 29 June 1998 (s 2(1) as added by Act No. 44, 1999)	—
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 6 (items 8, 9, 11, 12): 29 June 1998 (s 3(7A) as added by Act No. 24, 2000) Sch 6 (item 13): 17 June 1999 (s 3(1))	—
as amended by				
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Sch 11 (item 1): 29 June 1998 (s 2(9)) Sch 11 (item 4): 17 June 1999 (s 2(10))	—
Superannuation Legislation Amendment (Resolution of Complaints) Act 1998	118, 1998	11 Dec 1998	Sch 2: 11 Dec 1998 (s 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment Act 1999	38, 1999	31 May 1999	Sch 2 (items 1–32): 31 May 1999 (s 2(1)) Sch 2 (items 33–42): 28 June 1999 (s 2(2)) Sch 2 (items 43, 44): 5 June 1997 (s 2(3)) Sch 2 (item 45): 1 July 1999 (s 2(4)) Sch 2 (item 46): 1 Dec 1999 (s 2(5))	—
Superannuation Legislation Amendment Act (No. 3) 1999	121, 1999	8 Oct 1999	Sch 1 (items 1–28, 30–43, 45–49, 51–53, 55–136): 8 Oct 1999 (s 2(1)) Sch 1 (items 29, 54): 1 Apr 2000 (s 2(2)) Sch 1 (items 44, 50): 1 July 2000 (s 2(3))	Sch 1 (items 133–136)
Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999	128, 1999	13 Oct 1999	s 4–8 and Sch 1 (items 44–74): 13 Oct 1999 (s 2(1), (2))	s 4–8
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999	131, 1999	13 Oct 1999	Sch 5: 13 Oct 1999 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 901): 5 Dec 1999 (s 2(1), (2))	—
Superannuation Legislation Amendment Act (No. 4) 1999	199, 1999	23 Dec 1999	23 Dec 1999 (s 2)	Sch 1 (items 47, 48)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Sch 9 (items 5–14), Sch 10 (items 1, 2, 4, 6, 7, 9, 10) and Sch 12 (items 1–3, 10): 3 Apr 2000 (s 2(1), (12), (13)) Sch 10 (items 3, 5, 8, 11–13): 12 May 2000 (s 2(7) and gaz 2000, No S239)	Sch 12 (items 1–3, 10)
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	108, 2000	3 Aug 2000	Sch 3 (items 5, 6): 1 Jan 2001 (s 2(2) and gaz 2000, No GN50)	—
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	Sch 3: 18 Jan 2001 (s 2(1))	Sch 3 (item 42)
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	Sch 1 (items 171, 172): 18 Jan 2001 (s 2(2)) Sch 1 (items 173–239): 15 Dec 2001 (s 2(4))	—
as amended by				
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	s 4 and Sch 2 (items 35–54): 15 Dec 2001 (s 2(1), (4))	s 4

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 498–506): 15 July 2001 (s 2(1), (3))	s 4–14
Family Law Legislation Amendment (Superannuation) Act 2001	61, 2001	28 June 2001	Sch 1 (items 5, 6): 28 Dec 2002 (s 2(2))	—
as amended by				
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 5 (item 10): 1 Jan 2003 (s 2(1) item 4)	—
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	Sch 2 (items 97–147): 1 July 2002 (s 2(2))	Sch 2 (item 147)
as amended by				
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 2 (item 2): 11 Mar 2002 (s 2(19)(a)(i))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (items 282–285, 287–289, 326–341) and Sch 2 (items 8, 11–48): 11 Mar 2002 (s 2(1), (6), (9A), (18)(a)) Sch 1 (items 286, 290–325C): never commenced (s 2(9A), (10)) Sch 2 (items 9, 10): 1 July 2002 (s 2(1), (21))	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)	—
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Sch 3 (item 63): 12 May 2003 (s 2(1) item 29)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (item 124): 1 Jan 2003 (s 2(1) item 6)	Sch 2 (item 226)
Superannuation Industry (Supervision) Amendment Act 2003	52, 2003	26 June 2003	26 June 2003 (s 2(1) items 1, 2)	—
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Sch 6: 28 Nov 2003 (s 2(1) item 8)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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	Sch 1 (items 209, 212, 213, 215): 1 Dec 2004 (s 2(1) item 2 and gaz 2004, No GN34)	Sch 1 (items 212, 213, 215)
Superannuation Laws Amendment (2004 Measures No. 2) Act 2004	93, 2004	29 June 2004	Sch 1 (item 8): 1 July 2004 (s 2(1) item 4)	—
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004	102, 2004	30 June 2004	Sch 1 (item 23): 1 July 2005 (s 2(1) item 2) Sch 2 (items 7–9, 10(2)): 30 June 2004 (s 2(1) item 3)	Sch 2 (item 10(2))
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4 and Sch 1 (items 419–423, 496): 22 Feb 2005 (s 2(1) items 1, 2, 10)	s 4 and Sch 1 (item 496)
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005	82, 2005	29 June 2005	Sch 1 (items 12–14): 1 July 2005 (s 2(1) item 5)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 4 (items 28–30): 15 Mar 2007 (s 2(1) item 44)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (Simplified Superannuation) Act 2007	9, 2007	15 Mar 2007	Sch 1 (items 28–35, 37) and Sch 5 (items 9–23, 36(1)): 15 Mar 2007 (s 2(1) items 2, 5, 8)	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	Sch 3 and Sch 5 (items 27, 48(1), (3)): 24 Sept 2007 (s 2(1) items 4, 5, 7)	Sch 5 (item 48(1), (3))
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Sch 1 (items 136–155, 294–296), Sch 2 (items 3–21), Sch 3 (items 4–12, 14) and Sch 4 (items 57–73): 24 Sept 2007 (s 2(1) items 2, 6, 7) Sch 1 (items 239–244): 1 Jan 2008 (s 2(1) item 3) Sch 1 (items 246–255): 24 Sept 2008 (s 2(1) item 4)	Sch 1 (items 294–296), Sch 2 (item 21) and Sch 3 (item 14)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 1 (items 41–70), Sch 2 (items 26, 27), Sch 3 (items 32–38) and Sch 4 (items 38–43): 26 May 2008 (s 2(1) items 2, 5, 6, 11)	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	Sch 2 (item 11): 1 Mar 2010 (s 2(1) item 14)	—
First Home Saver Accounts (Consequential Amendments) Act 2008	45, 2008	25 June 2008	Sch 3 (item 38): 26 June 2008 (s 2)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	Sch 4 (items 8–17): 1 July 2008 (s 2(1) item 4) Sch 4 (item 20): 4 Dec 2008 (s 2(1) item 4A)	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)	—
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 221): 27 Feb 2010 (s 2(1) item 2) Sch 2 (items 9–12, 14): 28 Aug 2009 (s 2(1) item 3)	Sch 2 (item 14)
Tax Laws Amendment (2010 Measures No. 1) Act 2010	56, 2010	3 June 2010	Sch 1 (items 6, 9): 1 July 2010 (s 2(1) item 2, 5) Sch 6 (items 99–101): 4 June 2010 (s 2(1) item 16)	Sch 1 (item 9) and Sch 6 (item 101)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 4 (items 30–36) and Sch 6 (items 1, 51–78): 27 July 2010 (s 2(1) items 15, 17–19)	—
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 (s 2)	Sch 1 (item 14)
Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010	114, 2010	14 July 2010	Sch 1 (items 87, 93(1)): 14 July 2010 (s 2(1) items 2, 4)	Sch 1 (item 93(1))
Superannuation Legislation Amendment Act 2010	117, 2010	16 Nov 2010	s 4: 16 Nov 2010 (s 2(1) item 1) Sch 2 (item 1): 1 Dec 2010 (s 2(1) item 3) Sch 3: 17 Nov 2010 (s 2(1) item 5)	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	Sch 2 (items 83–85, 127): 17 Dec 2010 (s 2(1) item 2)	Sch 2 (item 127)
Tax Laws Amendment (2011 Measures No. 2) Act 2011	41, 2011	27 June 2011	Sch 2 and Sch 3 (items 3–13): 1 July 2011 (s 2(1) items 5, 6) Sch 3 (items 17, 18, 19(2)): 1 Jan 2012 (s 2(1) item 7)	Sch 2 (item 3) and Sch 3 (items 13, 18, 19(2))

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1091–1095) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 11, 12)	Sch 3 (items 10, 11)
Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011	108, 2011	14 Oct 2011	Sch 1 (items 8–16, 20, 21): 1 Nov 2011 (s 2(1) item 2)	Sch 1 (items 20, 21)
Tax Laws Amendment (2011 Measures No. 9) Act 2012	12, 2012	21 Mar 2012	Sch 1 (items 11–19): 22 Mar 2012 (s 2(1) item 2) Sch 6 (item 23, 193–199, 204–211): 21 Mar 2012 (s 2(1) items 10, 31)	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	Sch 6 (items 1–9): 27 June 2013 (s 2(1) item 3) Sch 6 (items 10, 11): 27 June 2012 (s 2(1) item 4)	Sch 6 (item 9)

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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)
as amended by				
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012	158, 2012	28 Nov 2012	Sch 4 (item 73): 29 Nov 2012 (s 2(1) item 10)	—
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)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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)
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 (s 2(1) item 3)	—
as amended by				
Treasury Laws Amendment (2018 Measures No. 4) Act 2019	8, 2019	1 Mar 2019	Sch 8 (item 1): 28 Nov 2012 (s 2(1) item 8)	—

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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)
as amended by				
Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013	61, 2013	26 June 2013	Sch 1 (items 119A–119C): 1 Jan 2013 (s 2(1) item 29A)	—
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)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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))	—
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)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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)
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)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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)	—
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): 1 Mar 2017 (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)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 1 (items 20–25, 31(1), 43, 44) and Sch 2 (items 8–11): 6 Mar 2018 (s 2(1) items 2, 4, 5, 7) Sch 3 (items 20–29, 32): 5 Mar 2022 (s 2(1) item 8)	s 4, Sch 1 (items 31(1), 44), Sch 2 (item 10) and Sch 3 (item 32)
Treasury Laws Amendment (2018 Measures No. 1) Act 2018	23, 2018	29 Mar 2018	Sch 1 (items 68–71): 1 Apr 2018 (s 2(1) item 8) Sch 1 (items 75–79): 30 Mar 2018 (s 2(1) item 9) Sch 4 (items 11–23): 1 July 2018 (s 2(1) item 11)	Sch 1 (items 75–79) and Sch 4 (item 23)
Superannuation Industry (Supervision) Amendment (ASIC Fees) Act 2018	58, 2018	28 June 2018	29 June 2018 (s 2(1) item 1)	—
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019	10, 2019	12 Mar 2019	Sch 1 (items 29–32): 1 July 2019 (s 2(1) item 2)	Sch 1 (item 32)
Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019	16, 2019	12 Mar 2019	Sch 1 and 2: 13 Mar 2019 (s 2(1) item 2)	Sch 1 (items 19, 20) and Sch 2 (items 3, 6)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019	40, 2019	5 Apr 2019	Sch 1–3, 5, Sch 6 (items 21, 22), Sch 7 and 9: 6 Apr 2019 (s 2(1) items 2, 4) Sch 4: 5 July 2019 (s 2(1) item 3)	Sch 2 (item 3), Sch 3 (item 7), Sch 4 (items 13–15), Sch 5 (item 14), Sch 7 (item 6) and Sch 9 (item 8)
Treasury Laws Amendment (2019 Measures No. 1) Act 2019	49, 2019	5 Apr 2019	Sch 4 (items 95–104): 1 July 2019 (s 2(1) item 12)	—
Treasury Laws Amendment (Putting Members' Interests First) Act 2019	79, 2019	2 Oct 2019	Sch 1 (items 1–5, 8–10): 3 Oct 2019 (s 2(1) item 1)	Sch 1 (items 8–10)

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020 (C2020A00003)	3, 2020	17 Feb 2020	sch 1 (items 24-27): 18 Feb 2020 (s 2(1) item 1)	sch 1 (item 27)
Defence Legislation Amendment (Miscellaneous Measures) Act 2020 (C2020A00045)	45, 2020	25 May 2020	sch 2 (items 6-13): 26 May 2020 (s 2(1) item 3)	—

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Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2019 Measures No. 3) Act 2020 (C2020A00064)	64, 2020	22 June 2020	sch 3 (items 50-53): 23 June 2020 (s 2(1) item 4)	sch 3 (item 51)
Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020 (C2020A00069)	69, 2020	22 June 2020	sch 1 (items 1415-1430): repealed before commencing (s 2(1) item 5) sch 1 (items 1465-1467): 10 Aug 2022 (s 2(1), note 2)	sch 1 (items 1465-1468)
as amended by				
Treasury Laws Amendment (2021 Measures No. 5) Act 2021 (C2021A00127)	127, 2021	7 Dec 2021	sch 3 (items 105, 106): 22 June 2020 (s 2(1) item 8)	—
Treasury Laws Amendment (2022 Measures No. 1) Act 2022 (C2022A00035)	35, 2022	9 Aug 2022	sch 4 (item 7): 21 June 2022 (s 2(1) item 5) sch 4 (item 15): 10 Aug 2022 (s 2(1) item 6)	—
Treasury Laws Amendment (Business Registries Stabilisation and Uplift) Act 2026 (C2026A00057)	57, 2026	30 June 2026	sch 3 (items 1-5): 30 June 2026 (s 2(1) item 10)	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020 (C2020A00112)	112, 2020	8 Dec 2020	sch 3 (items 98, 99): 28 Sept 2022 (s 2(1) item 1)	—
Financial Sector Reform (Hayne Royal Commission Response) Act 2020 (C2020A00135)	135, 2020	17 Dec 2020	sch 8: 1 July 2021 (s 2(1) item 9) sch 9 (items 1-27, 61-66): 1 Jan 2021 (s 2(1) item 10)	sch 8 (item 2), sch 9 (items 27, 65, 66)
Treasury Laws Amendment (2020 Measures No. 6) Act 2020 (C2020A00141)	141, 2020	17 Dec 2020	sch 4 (items 65-73, 145): 18 Dec 2020 (s 2(1) item 6) sch 4 (items 127-141): 1 July 2024 (s 2(1) item 14)	sch 4 (item 145)
as amended by				
Treasury Laws Amendment (2021 Measures No. 5) Act 2021 (C2021A00127)	127, 2021	7 Dec 2021	sch 3 (item 108): 17 Dec 2020 (s 2(1) item 9)	—
Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021 (C2021A00019)	19, 2021	2 Mar 2021	sch 3: 1 July 2021 (s 2(1) item 2)	sch 3 (item 8)
Treasury Laws Amendment (Reuniting More Superannuation) Act 2021 (C2021A00024)	24, 2021	22 Mar 2021	sch 1 (items 16, 17): 23 Mar 2021 (s 2(1) item 2)	—

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Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Your Future, Your Super) Act 2021 (C2021A00046)	46, 2021	22 June 2021	sch 2 (items 4-10): 23 June 2021 (s 2(1) item 3) sch 2 (items 11, 12), sch 3 (items 1, 2, 5-9, 11-13, 15-17, 20-22): 1 July 2021 (s 2(1) items 4, 6) sch 2 (item 13): 28 Sept 2022 (s 2(1) item 5)	sch 2 (item 10), sch 3 (items 21, 22)
Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021 (C2021A00047)	47, 2021	22 June 2021	sch 1 (items 1, 2, 10-34): 1 July 2021 (s 2(1) item 1)	—
Treasury Laws Amendment (2021 Measures No. 5) Act 2021 (C2021A00127)	127, 2021	7 Dec 2021	sch 2 (item 61): 8 Dec 2021 (s 2(1) item 3)	—
Corporate Collective Investment Vehicle Framework and Other Measures Act 2022 (C2022A00008)	8, 2022	22 Feb 2022	sch 9 (items 1-3): 23 Feb 2022 (s 2(1) item 13)	sch 9 (item 3)
Treasury Laws Amendment (2022 Measures No. 4) Act 2023 (C2023A00029)	29, 2023	23 June 2023	sch 6 (items 192-270): 1 July 2023 (s 2(1) item 3)	sch 6 (item 270)
Financial Accountability Regime (Consequential Amendments) Act 2023 (C2023A00068)	68, 2023	14 Sept 2023	sch 1 (items 85-93), sch 2 (items 1, 28): 15 Sept 2023 (s 2(1) items 2, 4)	sch 2 (items 1, 28)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023 (C2023A00069)	69, 2023	14 Sept 2023	sch 1 (items 136-142): 1 Jan 2024 (s 2(1) item 3) sch 4 (items 24-41, 48, 65-68): 15 Sept 2023 (s 2(1) item 5) sch 4 (items 111-113): 1 Oct 2023 (s 2(1) item 6)	sch 4 (item 68)
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023 (C2023A00076)	76, 2023	20 Sept 2023	sch 2 (items 708-722): 20 Oct 2023 (s 2(1) item 2) sch 6 (items 1, 37, 38): 21 Sept 2023 (s 2(1) items 20, 22)	sch 6 (item 38)
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (C2024A00038)	38, 2024	31 May, 2024	sch 1 (items 46, 71): 14 Oct 2024 (s 2(1) item 2)	—
Attorney-General's Portfolio Miscellaneous Measures Act 2024 (C2024A00041)	41, 2024	11 June, 2024	sch 1 (items 11, 12): 12 June 2024 (s 2(1) item 19)	—
Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024 (C2024A00067)	67, 2024	9 July 2024	sch 1 (items 1-3), sch 5 (items 21-39): 10 July 2024 (s 2(1) items 2, 9) sch 5 (item 53): 9 Jan 2025 (s 2(1) item 11)	sch 1 (item 3), sch 5 (items 23, 31, 38, 39)
Administrative Review Tribunal (Miscellaneous Measures) Act 2025 (C2025A00014)	14, 2025	20 Feb 2025	sch 2 (item 36): 21 Feb 2025 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Payday Superannuation) Act 2025 (C2025A00057)	57, 2025	6 Nov 2025	sch 1 (items 129-143, 181, 183): 1 July 2026 (s 2(1) item 1)	sch 1 (items 181, 183)
Treasury Laws Amendment (The Survivors Law) Act 2026 (C2026A00047)	47, 2026	20 May 2026	sch 1 (item 13): 21 May 2026 (s 2(1) item 1)	—
Treasury Laws Amendment (Business Registries Stabilisation and Uplift) Act 2026 (C2026A00057)	57, 2026	30 June 2026	sch 3 (items 75-86): 30 June 2026 (s 2(1) item 10) sch 2 (items 35-41, 60, 61): 1 July 2026 (s 2(1) items 6, 9)	—
Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Act 2026 (C2026A00058)	58, 2026	30 June 2026	sch 3 (items 2-5): 1 July 2026 (s 2(1) item 3)	—

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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; No 75, 2012; No 91, 2012; No 117, 2012; No 162, 2012; No 171, 2012; No 61, 2013; No 11, 2014; No 2, 2015; No 5, 2015; No 40, 2019
	rs No 135, 2020
	am No 47, 2021 (amdt never applied (Sch 1 item 10))
s 5	rep No 53, 2004
	ad No 135, 2020
s 6	rs No 54, 1998
	am No 121, 1999; No 128, 1999; No 24, 2000; No 160, 2000; No 123, 2001; No 53, 2004; No 82, 2005; No 9, 2007; No 154, 2007; No 145, 2010; No 108, 2011; No 12, 2012; No 75, 2012; No 91, 2012; No 117, 2012; No 158, 2012 (as am by No 88, 2013); No 162, 2012; No 171, 2012; No 61, 2013; No 11, 2014; No 2, 2015; No 13, 2018 (md not incorp); No 23, 2018; No 40, 2019
	rs No 135, 2020
	am No 46, 2021; No 29, 2023; No 69, 2023; No 67, 2024
s. 9A	ad. No. 160, 2000
	rs. No. 31, 2001
Division 2	
s 10	am No 118, 1993; No 140, 1994; No 181, 1994; No 5, 1995; No 53, 1995; No 144, 1995; No 161, 1995; No 169, 1995; No 60, 1996; No 39, 1997; No 62, 1997; No 107, 1997; No 172, 1997; No 48, 1998; No 54, 1998; No 38, 1999; No 121, 1999; No 128, 1999; No 146, 1999; No 199, 1999; No 24, 2000; No 160, 2000; No 55, 2001; No 61, 2001; No 123, 2001; No 105, 2002; No 53, 2004; No 80, 2004; No 102, 2004; No 9, 2007; No 15, 2007; No 154, 2007;

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Provision affected	How affected
	No 25, 2008; No 134, 2008; No 54, 2009; No 75, 2009; No 82, 2010; No 100, 2010; No 117, 2010; No 46, 2011; No 108, 2011; No 12, 2012; No 75, 2012; No 91, 2012; No 117, 2012; No 158, 2012; No 162, 2012; No 171, 2012; No 61, 2013; No 85, 2013; No 11, 2014; No 2, 2015; No 13, 2018; No 23, 2018; No 16, 2019; No 40, 2019; No 49, 2019; No 135, 2020; No 141, 2020
	ed C107
	am No 19, 2021; No 46, 2021; No 29, 2023; No 68, 2023; No 69, 2023; No 76, 2023; No 57, 2025; No 57, 2026
s. 10A	ad. No. 102, 2004
s. 11	am. No. 54, 1998
s. 11A	ad. No. 24, 2000
	am No 57, 2026
s 11AA	ad No 57, 2026
s 11B	ad No 24, 2000
	am No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 57, 2026
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
	am No 57, 2026
s. 11E	ad. No. 53, 2004
	am. No. 154, 2007
s 11F	ad No 29, 2023
s 12	am No 55, 2001
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

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Endnote 4—Amendment history

Provision affected	How affected
s. 16	am. No. 53, 2004
s 17	rep No 31, 2001
	ad No 64, 2020
s 17A	ad No 121, 1999
	am No 53, 2004; No 9, 2007; No 134, 2008; No 12, 2012; No 47, 2021; No 58, 2026
s. 17B	ad. No. 12, 2012
	am No 58, 2026
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 76, 1996; No 54, 1998; No 121, 1999; No 24, 2000; No 53, 2004; No 49, 2019; No 135, 2020
s. 20	am. No. 55, 2001
s. 20A	ad. No. 181, 1994
s. 20B	ad. No. 171, 2012
s 21	am No 121, 1999; No 37, 2002; No 53, 2004
	rep No 53, 2004
Part 2	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

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Provision affected	How affected
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
s. 27C	ad. No. 144, 1995
	am. No. 54, 1998; No. 53, 2004
	rep. No. 53, 2004
s. 27D	ad. No. 144, 1995
	am. No. 54, 1998
	rep. No. 53, 2004
s. 27E	ad. No. 144, 1995
	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
s 29CA	ad No 53, 2004
s 29CB	ad No 53, 2004
	rep No 69, 2023

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Endnote 4—Amendment history

Provision affected	How affected
s 29CC	ad No 53, 2004
	am No 69, 2023
Division 4	
s 29D	ad No 53, 2004
	am No 117, 2012; No 29, 2023; No 69, 2023
s. 29DA	ad. No. 53, 2004
	rep. No. 117, 2012
s. 29DB	ad. No. 53, 2004
	rs. No. 154, 2007
s. 29DC	ad. No. 53, 2004
	am. No. 154, 2007
s 29DD	ad No 53, 2004
s 29DE	ad No 53, 2004
Division 5	
s 29E	ad No 53, 2004
	am No 154, 2007; No 117, 2012; No 162, 2012; No 171, 2012; No 85, 2013; No 40, 2019; No 135, 2020; No 29, 2023
s 29EA	ad No 53, 2004
	am No 117, 2012; No 40, 2019; No 135, 2020
s 29EB	ad No 53, 2004
	rep No 40, 2019
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; No 25, 2008; No 45, 2008; No 70, 2015; No 40, 2019
s 29GA	ad No 53, 2004
s 29GB	ad No 53, 2004
	am No 117, 2012

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Provision affected	How affected
Division 8	
Division 8	rep No 117, 2012
	ad No 40, 2019
Subdivision A	
s 29H	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
Subdivision B	
s 29HA	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
s 29HB	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
s 29HC	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
Subdivision C	
s 29HD	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
s 29HE	ad No 40, 2019
s 29HF	ad No 40, 2019
Division 9	
s. 29J	ad. No. 53, 2004
	am. No. 53, 2004
s 29JA	ad No 53, 2004
	am No 154, 2007; No 135, 2020; No 29, 2023
s 29JB	ad No 53, 2004
	rep No 40, 2019
s 29JC	ad No 53, 2004

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 117, 2012
s 29JCA	ad No 154, 2007
s 29JCB	ad No 40, 2019
s 29JD	ad No 53, 2004
	am No 117, 2012; No 40, 2019
s 29JE	ad No 53, 2004
	rep No 154, 2007
Part 2B	
Part 2B	ad. No. 53, 2004
Division 1	
s 29K	ad No 53, 2004
	am No 40, 2019
Division 2	
s 29L	ad No 53, 2004
	am No 154, 2007; No 117, 2012
s 29LA	ad No 53, 2004
s 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
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
Division 5	
Division 5 heading	rs No 40, 2019
Division 5	rep No 117, 2012

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Provision affected	How affected
	ad No 171, 2012 (as am by No 21, 2015)
Subdivision A	
Subdivision A	ad No 40, 2019
s 29P	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
	am No 47, 2021; No 29, 2023; No 69, 2023
	ed C117
s 29PA	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
	am No 29, 2023
s 29PB	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
s 29PC	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
s 29PD	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
	am No 29, 2023
s 29PE	ad No 53, 2004
	rep No 117, 2012
	ad No 40, 2019
Division 6	rep No 117, 2012
s 29Q	ad No 53, 2004
	rep No 117, 2012
s 29QA	ad No 53, 2004
	rep No 117, 2012
Subdivision B	

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Provision affected	How affected
Subdivision B heading	ad No 40, 2019
s 29QB	ad No 53, 2004
	rep No 154, 2007
	ad No 171, 2012
	rep No 29, 2023
s 29QC	ad No 171, 2012
Part 2C	
Part 2C	ad No 162, 2012
Division 1	
s 29R	ad No 162, 2012; No 57, 2025
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
	am No 76, 2023
s. 29SA	ad. No. 162, 2012
s. 29SB	ad. No. 162, 2012
Division 3	
s 29T	ad No 162, 2012
	am No 117, 2012; No 171, 2012; No 61, 2013; No 40, 2019; No 47, 2021
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; No 16, 2019; No 141, 2020
s. 29TD	ad. No. 162, 2012
s. 29TE	ad. No. 162, 2012
Division 4	

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Provision affected	How affected
s 29U	ad No 162, 2012
	am No 117, 2012; No 171, 2012; No 61, 2013; No 40, 2019; No 47, 2021
s. 29UA	ad. No. 162, 2012
s. 29UB	ad. No. 162, 2012
	am. No. 117, 2012
Division 5	
s 29V	ad No 162, 2012
	am No 171, 2012; No 16, 2019; No 19, 2021
s 29VA	ad No 162, 2012
	am No 171, 2012; No 61, 2013; No 103, 2013; No 16, 2019; No 141, 2020; No 19, 2021
s 29VB	ad No 162, 2012
	am No 171, 2012; No 61, 2013; No 16, 2019
s 29VC	ad No 171, 2012
s 29VD	ad No 171, 2012
s 29VE	ad No 61, 2013
	am No 16, 2019
Division 6	ad No 117, 2012
	rep No 40, 2019
s 29VN	ad No 117, 2012
	rep No 40, 2019
s 29VO	ad No 117, 2012
	rep No 40, 2019
s 29VP	ad No 117, 2012
	rs No 61, 2013
	rep No 40, 2019
s 29VPA	ad No 61, 2013
	rep No 40, 2019
s 29VQ	ad No 117, 2012
	rep No 40, 2019

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Provision affected	How affected
Division 7	
Division 7 heading	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	
Division 8	ad No 171, 2012
s 29X	ad No 171, 2012
s. 29XA	ad. No. 171, 2012
s. 29XB	ad. No. 171, 2012
s. 29XC	ad. No. 171, 2012
	am. No. 61, 2013
Part 3	
Part 3 heading	rs No 53, 2004
Division 1	
Division 1 heading	ad No 12, 2012
s 30	rs No 53, 2004
Division 2	
Division 2 heading	ad No 12, 2012
s 31	am No 54, 1998; No 53, 2004; No 171, 2012; No 16, 2019
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; No 46, 2021
Division 3	
Division 3	ad No 12, 2012
s 34A	ad No 12, 2012
Part 3A	
Part 3A	ad. No. 117, 2012

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Provision affected	How affected
s. 34B	ad. No. 117, 2012
s 34C	ad No 117, 2012
	am No 46, 2021
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
	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	
s. 34M	ad. No. 91, 2012
	am. No. 158, 2012
s. 34N	ad. No. 91, 2012
	am. 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

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Endnote 4—Amendment history

Provision affected	How affected
Division 4	
Division 4 heading	rs No 158, 2012
Subdivision A	
Subdivision A heading	ad No 158, 2012
s 34X	ad No 91, 2012
Subdivision B	
Subdivision B	ad No 158, 2012
s. 34Y	ad. No. 158, 2012
s. 34Z	ad. No. 158, 2012
Part 4	
Part 4 heading	rs No 54, 1998; No 121, 1999; No 154, 2007
Part 4	rs. No. 154, 2007
Division 1	
Division 1 heading	ad No 61, 2013
s. 35	am. No. 54, 1998; No. 121, 1999
	rs. No. 53, 2004; No. 154, 2007
Division 2	
Division 2	ad No 61, 2013
s 35A	ad No 154, 2007
	am No 82, 2010
	rs No 61, 2013
	am No 29, 2023
s 35AB	ad No 61, 2013
	am No 29, 2023
s 35AC	ad No 61, 2013
	am No 29, 2023
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
s 35B	ad No 154, 2007

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Provision affected	How affected
	am No 12, 2012; No 61, 2013; No 11, 2014; No 47, 2021
s. 35C	ad. No. 154, 2007
	am. No. 25, 2008; Nos. 117 and 158, 2012; No. 61, 2013
s. 35D	ad. No. 154, 2007
	am. No. 12, 2012; No. 61, 2013
s. 36	am. No. 144, 1995; No. 76, 1996; No. 54, 1998; No. 121, 1999; No. 160, 2000; No. 121, 2001; No. 53, 2004
	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
Part 5	
Division 2	
Division 2 heading	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; No 40, 2019; No 68, 2023; No 76, 2023
s. 39	am. No. 181, 1994; No. 123, 2001; No. 9, 2007; No. 56, 2010
s 40	am No 76, 1996; No 54, 1998; No 121, 1999; No 53, 2004; No 135, 2020
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; No 49, 2019; No 135, 2020
s 42A	ad No 121, 1999
	am No 123, 2001; No 53, 2004; No 15, 2007; No 49, 2019; No 135, 2020
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

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Provision affected	How affected
s 47	am No 54, 1998; No 15, 2007
s 48	am No 54, 1998; No 15, 2007
s 50	am No 172, 1997; No 54, 1998; No 121, 1999; No 53, 2004; No 154, 2007; No 126, 2015
	rep No 49, 2019
Part 6	
s 51A	ad No 117, 2012
	am No 40, 2019
s 52	am No 53, 2004
	rs No 117, 2012
	am No 62, 2014; No 40, 2019; No 46, 2021; No 47, 2021; No 8, 2022
s 52AA	ad No 8, 2022
s 52A	ad No 117, 2012
	am No 62, 2014; No 40, 2019; No 46, 2021
s 52B	ad No 117, 2012
	am No 46, 2021
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
s 54B	ad No 40, 2019
s 54C	ad No 40, 2019
s 55	am No 53, 2004; No 117, 2012; No 61, 2013; No 40, 2019
s. 55A	ad. No. 15, 2007
s. 55B	ad. No. 171, 2012
	am. No. 171, 2012
s. 55C	ad. No. 171, 2012
s 55D	ad No 40, 2019
s 56	am No 53, 2004; No 117, 2012; No 61, 2013; No 11, 2014; No 135, 2020

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Provision affected	How affected
s 57	am No 55, 2001; No 61, 2013; No 11, 2014; No 135, 2020
s 58	am No 140, 1994; No 54, 1998; No 121, 1999; No 131, 1999; No 53, 2004; No 117, 2012; No 171, 2012; No 13, 2018; No 47, 2021
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
Part 6A	
Part 6A	ad No 46, 2021
s 60B	ad No 46, 2021
s 60C	ad No 46, 2021
	am No 46, 2021
s 60D	ad No 46, 2021
s 60E	ad No 46, 2021
s 60F	ad No 46, 2021
	am No 46, 2021
s 60G	ad No 46, 2021
s 60H	ad No 46, 2021
s 60J	ad No 46, 2021
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; No 57, 2025
s 64A	ad No 144, 1995
	am No 53, 2004
	rep No 13, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s. 65	am. No. 199, 1999; No. 53, 2004; No. 134, 2008; No 11, 2014
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; No 112, 2020; No 47, 2021; No 76, 2023
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 68AAA	ad No 16, 2019
	am No 45, 2020; No 141, 2020; No 47, 2021
s 68AAB	ad No 79, 2019
	am No 45, 2020; No 141, 2020; No 47, 2021; No 67, 2024
s 68AAC	ad No 79, 2019
	am No 45, 2020; No 141, 2020; No 47, 2021; No 67, 2024
s 68AAD	ad No 16, 2019
	am No 79, 2019; No 47, 2021
s 68AAE	ad No 16, 2019
	am No 57, 2025
s 68AAF	ad No 79, 2019
s 68AA	ad No 171, 2012
	am No 120, 2015; No 16, 2019; No 79, 2019; No 45, 2020
s 68A	ad No 102, 2004
	am No 40, 2019; No 57, 2025
s 68B	ad No 11, 2014
s 68C	ad No 61, 2013
s 68D	ad No 61, 2013
Part 8	
Division 1	
Subdivision A	
Subdivision A heading	ad No 199, 1999

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Provision affected	How affected
s. 69A	ad. No. 38, 1999
s. 70	rep. No. 199, 1999
s. 70A	ad. No. 144, 1995
	am. No. 54, 1998; No. 121, 1999; No. 53, 2004
Subdivision B	
Subdivision B	ad No 199, 1999
s 70B	ad No 199, 1999
	am No 47, 2021
s 70C	ad No 199, 1999
s 70D	ad No 199, 1999
s. 70E	ad. No. 199, 1999
	am. No. 134, 2008
Subdivision C	
Subdivision C heading	ad No 199, 1999
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; No 47, 2021
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; No 47, 2021
s 71EA	ad No 117, 2010
	am No 112, 2020
s 71F	ad No 199, 1999

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Provision affected	How affected
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	
Division 3A	ad No 38, 1999
s. 83A	ad. No. 38, 1999
	am. No. 55, 2001
s. 83B	ad. No. 38, 1999
	am. No. 53, 2004
s 83C	ad No 38, 1999
s 83D	ad No 38, 1999
s. 83E	ad. No. 38, 1999
	am. No. 53, 2004
Division 4	
s. 84	am. No. 38, 1999; No. 53, 2004; 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; No 47, 2021
s 93	am No 140, 1994; No 144, 1995; No 47, 2021
s. 93A	ad. No. 144, 1995
	am. No. 54, 1998

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Provision affected	How affected
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 99BA	ad No 16, 2019
s 99C	ad No 171, 2012
	am No 16, 2019
s. 99D	ad. No. 171, 2012
s. 99E	ad. No. 171, 2012
s 99F	ad No 171, 2012
	am No 19, 2021
s 99FA	ad No 19, 2021
	rs No 67, 2024
s 99G	ad No 16, 2019
	am No 64, 2020
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; No 13, 2018; No 76, 2023
s 102	am No 31, 2001 (as rep by No 117, 2001); No 53, 2004; No 4, 2016
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
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

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Endnote 4—Amendment history

Provision affected	How affected
s 105	am No 48, 1998; No 54, 1998; No 160, 2000; No 53, 2004; No 82, 2010 (as am by No 136, 2012); No 11, 2014; No 4, 2016; No 141, 2020
s 106	am No 54, 1998; No 121, 1999; No 53, 2004; No 154, 2007; No 11, 2014; No 67, 2024
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; No 47, 2021
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
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
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

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Provision affected	How affected
s 117	am No 144, 1995; No 54, 1998; No 38, 1999; No 121, 1999; No 53, 2004; No 15, 2007; No 69, 2023
Part 15	
Division 1	
Division 1 heading	ad No 25, 2008
s 120	am No 144, 1995; No 54, 1998; No 160, 2000; No 8, 2007; No 25, 2008; No 127, 2021; No 47, 2026
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
s 121A	ad No 121, 1999
	am No 121, 1999; No 37, 2002; No 53, 2004
	rep No 53, 2004
Division 2	
Division 2 heading	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
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
s 125	am No 121, 1999
Division 3	
Division 3 heading	ad No 25, 2008
Subdivision A	
Subdivision A heading	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

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Provision affected	How affected
	rs No 25, 2008
	am No 141, 2020 (md not incorp); No 69, 2023
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
s. 126E	ad. No. 144, 1995
	am. No. 54, 1998; No. 160, 2000
s. 126F	ad. No. 144, 1995
	am. No. 54, 1998; No. 160, 2000
Subdivision B	
Subdivision B	ad. No. 25, 2008
s. 126G	ad. No. 25, 2008
s 126H	ad No 25, 2008
	am No 61, 2013; No 68, 2023; No 69, 2023
s. 126J	ad. No. 25, 2008
Subdivision C	
Subdivision C heading	rs No 82, 2010
Subdivision C	ad No 25, 2008
s 126K	ad No 25, 2008
s 126L	ad No 82, 2010
	am No 29, 2023; No 38, 2024
Division 4	
Division 4 heading	ad No 25, 2008
Part 16	
Division 1	
Division 1 heading	ad No 25, 2008
Division 1A	
Division 1A	ad No 158, 2012

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Provision affected	How affected
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
	am No 57, 2026
s 128K	ad No 158, 2012
	am No 57, 2026
Subdivision D	
s 128L	ad No 158, 2012
	am No 58, 2018;
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; No 9, 2007; No 154, 2007; No 46, 2011; No 61, 2013; No 4, 2016; No 68, 2023
s 129A	ad No 29, 2023

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Provision affected	How affected
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; No 29, 2023; No 67, 2024
s 130AA	ad No 29, 2023
	am No 67, 2024
s 130A	ad No 53, 2004
	am No 154, 2007; No 61, 2013; No 29, 2023; No 68, 2023
s 130B	ad No 53, 2004
	am No 29, 2023
s 130BA	ad No 82, 2010
	am No 29, 2023
s 130BAA	ad No 29, 2023
s 130BB	ad No 82, 2010
s 130C	ad No 53, 2004
	am No 61, 2013; No 4, 2016; No 29, 2023
s 130CA	ad No 29, 2023
Division 3	
Division 3 heading	ad No 25, 2008
s 130D	ad No 25, 2008
	am No 61, 2013; No 29, 2023; No 68, 2023; No 69, 2023
s 130E	ad No 25, 2008
	am No 29, 2023
s 130EA	ad No 29, 2023
s 130EB	ad No 29, 2023
s 130F	ad No 158, 2012
	am No 69, 2023; No 38, 2024
s 131	am No 144, 1995; No 54, 1998; No 38, 1999; No 121, 1999; No 121, 2001; No 25, 2008; No 158, 2012; No 69, 2023; No 38, 2024
s 131AA	ad No 154, 2007
	am No 25, 2008; No 158, 2012; No 61, 2013; No 29, 2023; No 68, 2023

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Provision affected	How affected
Division 4	
Division 4 heading	ad No 25, 2008
s 131A	ad No 144, 1995
	am No 54, 1998; No 121, 1999; No 24, 2000; No.121, 2001; No 25, 2008; No.145, 2010; No 158, 2012; No 61, 2013; No 29, 2023; No 68, 2023
s 131B	ad No 160, 2000
	am No 82, 2010 (as am by No 136, 2012); No 158, 2012; No 61, 2013; No 29, 2023
s 131BA	ad No 29, 2023
s 131C	ad No 25, 2008
	am No 158, 2012
s 131CA	ad No 29, 2023
s 131CB	ad No 29, 2023
Division 5	
Division 5	ad No 29, 2023
s 131CC	ad No 29, 2023
s 131CD	ad No 29, 2023
Part 16A	
Part 16A	ad No 40, 2019
Division 1	
s 131D	ad No 40, 2019
	ed C99
	am No 29, 2023
s 131DA	ad No 40, 2019
	ed C99
s 131DB	ad No 40, 2019
s 131DC	ad No 40, 2019
s 131DD	ad No 40, 2019
Division 2	
Division 2	ad No 40, 2019

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Endnote 4—Amendment history

Provision affected	How affected
s 131E	ad No 40, 2019
s 131EA	ad No 40, 2019
s 131EB	ad No 40, 2019
s 131EC	ad No 40, 2019
s 131ED	ad No 40, 2019
s 131EE	ad No 40, 2019
	am No 38, 2024
s 131EF	ad No 40, 2019
Division 3	
s 131F	ad No 40, 2019
s 131FA	ad No 40, 2019
s 131FB	ad No 40, 2019
s 131FC	ad No 40, 2019
s 131FD	ad No 40, 2019
	am No 76, 2023
s 131FE	ad No 40, 2019
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; No 40, 2019
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
s. 141	am. No. 54, 1998; No. 121, 1999; No. 31, 2001 (as rep. by No. 117, 2001)

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Provision affected	How affected
s 141A	ad No 160, 2000
	am No 82, 2010 (as am by No 136, 2012); No 4, 2016
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; No 69, 2023
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
s 148	rep No 123, 2001
s 149	rep No 123, 2001
Part 19	
Part 19 heading	rs No 123, 2001
s. 150	rep. No. 123, 2001
Division 2	
s. 152	am. No. 31, 2001; No. 53, 2004
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
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

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Endnote 4—Amendment history

Provision affected	How affected
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
Part 20	
Part 20	rep. No. 123, 2001
	ad No 11, 2014
Division 1	
s. 157	am. No. 53, 1995; No. 62, 1997; No. 31, 2001
	rep. No. 123, 2001
	ad No 11, 2014
s. 157A	ad. No. 53, 1995
	am. No. 62, 1997; 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
Division 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
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

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Provision affected	How affected
s. 164	am. No. 54, 1998
	rep. No. 123, 2001
	ad No 11, 2014
s. 165	rep. No. 123, 2001
	ad No 11, 2014
Division 3	
s. 166	am. No. 54, 1998
	rep. No. 123, 2001
	ad No 11, 2014
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
s 185	rep No 123, 2001
s 186	rep No 123, 2001
s. 187	am. No. 54, 1998
	rep. No. 123, 2001
s 188	rep No 123, 2001

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Endnote 4—Amendment history

Provision affected	How affected
s 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; No 40, 2019; No 135, 2020
s 194	am No 64, 2020
Division 2	
s 196	am No 40, 2019
s. 197	am. No. 54, 1998; No. 121, 1999
s. 200	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 201A	ad No 41, 2024
s 202	am No 31, 2001; No 4, 2016
Division 5	
s 215	am No 53, 2004
s 216	am No 53, 2004
s 218	am No 53, 2004
Division 6	
s 220A	ad No 46, 2021
Part 22	
Part 22 heading	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

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Provision affected	How affected
Division 1	
s. 223	rep. No. 128, 1999
	ad. No. 61, 2013
s 223A	ad No 61, 2013
	am No 40, 2019
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
s. 224E	ad. No. 61, 2013
s. 225	am. No. 53, 1995; No. 76, 1996; No. 54, 1998
	rep. No. 128, 1999
s. 226	am. No. 76, 1996; No. 54, 1998
	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

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Endnote 4—Amendment history

Provision affected	How affected
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
s. 236	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	
Part 24 heading	am No 53, 1995
	rs No 171, 2012
Division 1	
Division 1 heading	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	
Division 2	ad No 171, 2012
Subdivision A	
s 242A	ad No 171, 2012
	am No 24, 2021
s. 242B	ad. No. 171, 2012
s 242C	ad No 171, 2012
	am No 76, 2023
s. 242D	ad. No. 171, 2012
s. 242E	ad. No. 171, 2012

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Provision affected	How affected
Subdivision B	
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	
Division 3 heading	ad No 171, 2012
s 243	rs No 53, 1995
	am No 53, 2004; No 24, 2021
s 244	rs No 53, 1995
	am No 53, 2004
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
Part 24A	
Part 24A heading	ad No 53, 1995
s 249	rs No 53, 1995

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Endnote 4—Amendment history

Provision affected	How affected
s 250	rs No 53, 1995
s. 251	am. No. 140, 1994; No. 53, 1995
s. 252	am. No. 53, 1995; No. 76, 1996; No. 53, 2004; No. 12, 2012
Part 24B	
Part 24B heading	am No 47, 2021
Part 24B	ad. No. 121, 1999
Division 1	
Division 1 heading	am No 47, 2021
s 252A	ad No 121, 1999
	am No 53, 2004; No 4, 2016; No 47, 2021
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
s. 252H	ad. No. 121, 1999
Part 25	
Part 25 heading	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; No 135, 2020; No 67, 2024
s 253A	ad No 38, 1999
	am No 158, 2012

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Provision affected	How affected
Division 2	
Division 2 heading	rs No 158, 2012
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; No 67, 2024
s 254A	ad No 67, 2024
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	
Division 3 heading	rs No 54, 1998
s. 257	am. No. 54, 1998; No. 160, 2000; No. 53, 2004
s. 258	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	
Division 3A	ad No 160, 2000
s. 262A	ad. No. 160, 2000
	am. No. 117, 2012
Division 4	
Division 4 heading	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; No 11, 2016; No 13, 2018
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; No 135, 2020
s. 266	am. No. 54, 1998
s. 267	am. No. 54, 1998

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Endnote 4—Amendment history

Provision affected	How affected
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
s 271	am No 3, 2020
s 273	am No 54, 1998; No 3, 2020
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
s. 298	am. No. 54, 1998

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Provision affected	How affected
Division 9	
s 298A	ad No 54, 1998
	am No 135, 2020
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
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
s. 299J	ad. No. 76, 1996

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Endnote 4—Amendment history

Provision affected	How affected
	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
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
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
s. 299LA	ad. No. 41, 2011
	am. No. 41, 2011; 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
s. 299R	ad. No. 76, 1996
	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

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Provision affected	How affected
Division 3A	
Division 3A heading	rs No 158, 2012
Division 3A	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; No 67, 2024
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; No 23, 2018
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
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

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Endnote 4—Amendment history

Provision affected	How affected
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
	ed C97
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; No 68, 2023
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; No 13, 2018; No 135, 2020
	ed C113
s 317	am No 4, 2016
Part 28	
s. 320	am. No. 54, 1998; No. 108, 2011; No 23, 2018
s 323	am No 123, 2001; No 61, 2013; No 40, 2019
s. 324A	ad. No. 160, 2000
s 324B	ad No 41, 2024
Part 29	
s. 326	am. No. 54, 1998; No. 123, 2001; No. 108, 2011
s. 327	am. No. 128, 1999; No. 123, 2001; No. 53, 2004; No. 154, 2007; No. 108, 2011; No. 12, 2012; No. 61, 2013; No 23, 2018
s. 328	am. No. 54, 1998
	rs. No. 154, 2007
s. 329	am. No. 54, 1998
	rep. No. 123, 2001
s. 330	am. No. 54, 1998

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Provision affected	How affected
s. 331	am. No. 54, 1998; No. 160, 2000
s. 332	am. No. 54, 1998
	rs. No. 154, 2007
s. 333	am. No. 54, 1998
	rep. No. 123, 2001
s. 334	am. No. 54, 1998
s 335	am No 54, 1998
	rs No 154, 2007
s 336	am No 54, 1998
	rs No 154, 2007
Part 29A	
Part 29A	ad No 154, 2007
	am No 10, 2019
Division 1	rep No 10, 2019
s 336A	ad No 154, 2007
	rep No 10, 2019
s 336B	ad No 154, 2007
	rep No 10, 2019
s 336C	ad No 154, 2007
	rep No 10, 2019
s 336D	ad No 154, 2007
	rep No 10, 2019
s 336E	ad No 154, 2007
	rep No 10, 2019
Division 2 heading	rep No 10, 2019
s 336F	ad No 154, 2007
	am No 135, 2020; No 29, 2023
Part 29B	ad. No. 75, 2012
	rep No 2, 2015
s. 336J	ad. No. 75, 2012
	rep No 2, 2015

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Endnote 4—Amendment history

Provision affected	How affected
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
	am No 13, 2018
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
s 344	am No 144, 1995; No 54, 1998; No 160, 2000; No 53, 2004; No 25, 2008; No 91, 2012; No 158, 2012; No 61, 2013; No 141, 2020; No 38, 2024; No 14, 2025; No 57, 2026
s 345	am No 54, 1998; No 141, 2020; No 38, 2024; No 57, 2026
s. 346	am. No. 140, 1994; Nos. 144 and 169, 1995; No. 107, 1997
	rep. No. 54, 1998
s. 347	am. No. 54, 1998
s 347A	ad No 169, 1995

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Provision affected	How affected
	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; No 69, 2023
s. 348	am. No. 169, 1995; No. 54, 1998; No. 121, 1999; No. 121, 2001
s. 348A	ad. No. 171, 2012
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; No 40, 2019
s. 351	rep. No. 54, 1998
	ad. No. 108, 2011
	rep No 23, 2018
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
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
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
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
s. 362	am. No. 54, 1998
	rep. No. 154, 2007

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Endnote 4—Amendment history

Provision affected	How affected
s. 363	am. No. 140, 1994; No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
s. 364	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 154, 2007
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
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
s 373	rep No 154, 2007
s 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	
s. 381	am. No. 128, 1999
s 382	(1) exp 1 July 1994 (s 382(2))
	rep No 49, 2019
s 383	am No 76, 1996; No 49, 2019
s 384	(1) exp 1 July 1994 (s 384(3))

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Provision affected	How affected
	(2) exp 1 July 1994 (s 384(3))
	rep No 49, 2019
s 385	(1) exp 1 July 1994 (s 385(2))
	rep No 49, 2019
Part 33	ad No 171, 2012
	rep No 135, 2020
s 386	ad No 171, 2012
	rep No 135, 2020
s 387	ad No 171, 2012
	rep No 135, 2020
s 388	ad No 171, 2012
	rep No 135, 2020
s 389	ad No 171, 2012
	am No 61, 2013
	rep No 135, 2020
s 390	ad No 171, 2012
	am No 61, 2013
	rep No 135, 2020
Part 34	ad No 171, 2012
	rep No 135, 2020
s 391	ad No 171, 2012
	rep No 135, 2020
s 392	ad No 171, 2012
	rep No 135, 2020
s 393	ad No 171, 2012
	rep No 135, 2020
s 394	ad No 171, 2012
	rep No 135, 2020

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