Retirement Savings Accounts Act 1997

No. 61, 1997

Compilation No. 49

Compilation date: 14 October 2024

Includes amendments: Act No. 38, 2024

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2024C00661 registered 15/10/2024

About this compilation

This compilation

This is a compilation of the *Retirement Savings Accounts Act 1997* that shows the text of the law as amended and in force on 14 October 2024 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for retirement savings accounts, and for related purposes

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Retirement Savings Accounts Act 1997*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 General administration of Act

(1) Subject to subsection (3):

(a) APRA has the general administration of:

(i) Part 3; and

(ii) Division 4 of Part 4 (Other provisions relating to the operation of RSAs); and

(iii) Parts 6 and 9, and Part 11 (except the provisions mentioned in subparagraph (e)(ii)); and

(iv) section 183; and

(b) APRA also has the general administration of sections 37 to 39 and section 49 to the extent that it is not conferred on either of the following:

(i) ASIC by paragraph (d);

(ii) the Commissioner of Taxation by paragraph (g); and

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(bb) APRA also has the general administration of Divisions 2 and 3 of Part 4A to the extent that administration of the provisions is not conferred on the Commissioner of Taxation by paragraph (f); and

(c) ASIC has the general administration of:
  (i) Part 5 (other than section 49); and
  (ii) Part 7; and

(d) ASIC also has the general administration of sections 37 to 39 and section 49 to the extent to which they relate to:
  (i) the keeping and retaining of records in relation to RSA's; or
  (ii) the disclosure of information to holders of RSA's; or
  (iii) the disclosure of information about RSA's (including disclosure of information to ASIC but not including disclosure of information to APRA); or
  (iv) any other matter prescribed by the regulations for the purposes of this paragraph; and

(e) the Commissioner of Taxation has the general administration of:
  (i) Division 3 of Part 4 (Portability forms); and
  (ii) Division 2 of Part 11, section 138A, Division 4A of Part 11 and subsection 144(2A) (about tax file numbers); and

(f) the Commissioner of Taxation has the general administration of:
  (i) Division 1 of Part 4A; and
  (ii) Division 2 of Part 4A, to the extent it relates to employers; and
  (iii) Division 2 of Part 4A, to the extent it relates to payments and information given to the Commissioner of Taxation; and
  (iv) Division 4 of Part 4A; and

(g) the Commissioner of Taxation has the general administration of regulations made under section 38 to the extent that the regulations relate to the making and notification of

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determinations that an amount of benefits in an RSA may be released on compassionate grounds.

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

(2) The following provisions (amongst other things) confer powers and duties on APRA for the purposes of APRA's administration of the provisions it administers and on ASIC for the purposes of ASIC's administration of the provisions it administers:

(a) Parts 1 and 2;

(b) Part 10;

(c) Parts 12 to 15;

(d) Part 16 (other than section 183).

Note: Generally neither APRA nor ASIC are referred to in these provisions, Regulator is used instead. See the definition of ***Regulator*** in section 16.

(2A) Powers and duties are also conferred by Part 10 on the Commissioner of Taxation for the purposes of the administration of the provisions he or she administers.

Note: Generally, the Commissioner of Taxation is not referred to in these provisions, Regulator is used instead. See the definition of ***Regulator*** in section 16.

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

4 Application of Act not to be excluded or modified

This Act applies in relation to RSAs despite any provision in the terms and conditions of the RSA, including any provision that purports to substitute, or has the effect of substituting, the provisions of the law of a State or Territory or of a foreign country for all or any of the provisions of this Act.

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5 Act extends to external Territories

This Act extends to all the external Territories.

6 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

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

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Division 2—Summary and outline of the Act

7 Brief summary of the Act

The following is a brief summary of the Act:

Brief summary of the Act

Main purpose—provision for RSAs

This Act provides for retirement savings accounts, or RSAs, to be offered by certain financial institutions.

RSAs will provide benefits upon retirement or death and may also provide a limited range of other benefits.

RSAs will have certain restrictions placed upon them to make them similar to other superannuation products.

Concessional taxation and social security treatment of RSAs

RSAs are subject to concessional rules under income tax and social security law.

Supervision of RSA business of providers

The Act also provides for the approval of the entities that can offer RSAs and provides for supervision of the RSA business of those entities.

The general prudential supervision of these entities is not dealt with in this Act.

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Part 2—Key concepts and other definitions

Division 1—Key concepts

8 Definition of *RSA*

(1) An ***RSA***, or ***retirement savings account***, is an account or a policy:

(a) that is described as an RSA; and

(b) that is provided by an entity that is an RSA institution at the time the account is opened or the policy is issued; and

(c) that is capital guaranteed (see section 14); and

(d) that is held by a person who is an eligible person at the time the account is opened or the policy is issued (see section 13); and

(e) that, at the time that it is opened or issued, satisfies:

(i) the requirements in section 15; and

(ii) any prescribed criteria; and

(f) that is opened or issued on or after 1 July 1997 or such later day as is prescribed.

(2) However, an ***RSA***, or ***retirement savings account***, can only be provided by a life insurance company as a policy.

Note: Section 16 provides that ***policy*** has the same meaning as in the *Life Insurance Act 1995*.

9 Meaning of *hold* and *holder*

(1) A person ***holds*** an account if the account is opened in the person's name. The person is the ***holder*** of the account.

(2) A person ***holds*** a policy if the person is the person who is the owner of the policy. The person is the ***holder*** of the policy.

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10 Meaning of *provide* and *provider*

(1) A person ***provides*** an account if the person accepts, or has accepted, contributions to the account. The person is the ***provider*** of the account.

(2) A person ***provides*** a policy if the policy is issued by the person. The person is the ***provider*** of the policy.

11 Who is an *RSA institution*?

(1) A person is an ***RSA institution*** at a particular time if there is an approval under section 26 in force in relation to the person at that time which has not been suspended or revoked under section 33.

(2) Only an ADI or a life insurance company or a prescribed financial institution can be approved as an RSA institution.

12 Who is an *RSA provider*?

A person is an ***RSA provider*** at a particular time if, at that time, the person is the provider of one or more RSAs.

Note: Most RSA providers will also be RSA institutions. However, although every RSA provider must have been an RSA institution at one time, some may have ceased to be an RSA institution.

13 Who is an *eligible person*?

A person is an ***eligible person*** at a particular time if, at that time, the person satisfies any prescribed criteria.

14 What *capital guaranteed* means

(1) An RSA that is an account is ***capital guaranteed*** if the balance of the account may not be reduced by the crediting of any negative interest.

(2) An RSA that is a policy is ***capital guaranteed*** if the contributions and accumulated earnings may not be reduced by negative

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investment returns or any reduction in the value of assets in which the policy is invested.

15 RSA benefits

(1) An RSA must be maintained to provide one or more of the benefits specified in subsections (2) and (3). It may also be maintained to provide one or more of the benefits specified in subsection (4).

(2) The benefits specified in this subsection are benefits for the holder of the RSA on or after one of, or the earlier of, the following:

(a) the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged (whether the holder's retirement occurred before, or occurred after, the holder's account was opened);

(b) the holder's attainment of an age not less than the age specified in the regulations.

Note: A prescribed criterion under paragraph 8(e), or an operating standard under section 38, may prevent any benefits being provided before the holder attains a specified age.

(3) The benefits specified in this subsection are benefits in respect of the holder of the RSA on or after the holder's death, if:

(a) the death occurred before:

(i) the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged; or

(ii) the holder attained the age prescribed for the purposes of paragraph (2)(b); and

(b) the benefits are provided to the holder's legal personal representative, to any or all of the holder's dependants, or to both.

Note: These benefits may be provided directly from the RSA or from policies paid for using money from the RSA.

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(4) As long as the RSA is maintained to provide one or more of the benefits set out in subsections (2) and (3), it may also be maintained to provide one or more of the following:

(a) benefits for the holder on or after the termination of the holder's employment with an employer who had, or any of whose associates had, at any time, contributed amounts in the account;

(b) benefits for the holder on or after the holder's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged and the cessation is on account of ill-health (whether physical or mental);

Note: These benefits may be provided directly from the RSA or from policies paid for using money from the RSA.

(c) benefits in respect of the holder on or after the holder's death, if the benefits are provided to the holder's legal personal representative, to any or all of the holder's dependants, or to both and:

(i) the death occurred after the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged (whether the holder's retirement occurred before, or occurred after, the account was opened); or

(ii) the death occurred after the holder attained the age prescribed for the purposes of paragraph (2)(b);

(d) such other benefits as APRA approves in writing.

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Division 2—Interpretation

16 Definitions

In this Act, unless the contrary intention appears:

ADI (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

annuity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

approved auditor means a person included in a class of persons specified in regulations made for the purposes of this definition, but does not include a person who is disqualified from being or acting as an auditor of all RSA providers under section 67.

approved deposit fund means a fund that is an approved deposit fund for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

approved form means a form approved by the Regulator, in writing, for the purposes of the provision in which the expression appears.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

associate has the meaning given by section 18.

Australian court means:

(a) the High Court; or

(b) a court created by the Parliament; or

(c) a court of a State or Territory.

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authorised person means a person authorised by the Regulator under section 129A for the purposes of the provision in which the expression occurs.

books includes:

(a) any record; or

(b) any accounts or accounting records, however compiled, recorded or stored; or

(c) a document.

capital guaranteed has the meaning given by section 14.

constitutional corporation means a body corporate that is:

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

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

contributing employer means an employer having obligations under Part 4A (about the data and payment regulations and standards relating to RSAs).

contribution includes a deposit into an account held at an ADI or a prescribed financial institution and a payment of a premium to a life insurance company.

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

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

data and payment matter relating to RSAs has the meaning given by subsection 45B(5).

data and payment regulations and standards relating to RSAs means:

(a) the regulations made under section 45B; and

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(b) the standards issued by the Commissioner of Taxation under that section.

data and payment standard relating to RSAs means a standard issued by the Commissioner of Taxation under section 45B.

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

dependant has the meaning given by section 20.

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

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

eligible person has the meaning given by section 13.

eligible superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993.*

employee has the meaning given by section 19.

employer has the meaning given by section 19.

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

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

function includes duty.

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

holder has the meaning given by section 9.

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holds has the meaning given by section 9.

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

inspector has the meaning given by section 96.

interdependency relationship has the meaning given by section 20A.

investment means any mode of application of money or other property for the purpose of gaining interest, income or profit.

involved, in relation to a contravention, has the meaning given by section 21.

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

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

life insurance company means:

(a) a body corporate registered under section 21 of the *Life Insurance Act 1995*; or

(b) a public authority:

(i) that is constituted by a law of a State or Territory; and

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

member of the staff of APRA has the same meaning as that given to the expression ***APRA staff member*** in section 3 of the *Australian Prudential Regulation Authority Act 1998*.

member of the staff of ASIC has the same meaning as that given to the expression ***staff member*** in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*.

modifications includes additions, omissions and substitutions.

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

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

owner, in relation to a policy, has the same meaning as in the *Life Insurance Act 1995*.

pension (except in the expression ***old-age pension***) means a benefit, if the benefit is taken, under the regulations, to be a pension for the purposes of this Act.

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

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

premises includes:

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

premium means a premium in respect of a policy and includes an instalment of premium.

prescribed means prescribed by the regulations.

prescribed financial institution means a body prescribed by the regulations for the purposes of this definition.

procure includes cause.

produce includes permit access to.

provide has the meaning given by section 10.

provider has the meaning given by section 10.

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regulated document, in relation to an RSA provider, means a document:

(a) issued, or authorised to be issued, by the RSA provider; and

(b) that the RSA provider knows, or ought reasonably to know (having regard to the RSA provider's abilities, experience, qualifications and other attributes), may influence a person's decision:

(i) to apply to become a holder of an RSA; or

(ii) to make an application, on behalf of an employee, for the employee to become the holder of an RSA.

regulated exempt public sector superannuation scheme means an exempt public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) 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.

regulated exempt public sector superannuation scheme has the meaning given by Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

regulated superannuation fund means a fund that is a regulated superannuation fund for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

Regulator means:

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

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

(d) the Commissioner of Taxation, if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner of Taxation.

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relevant person in relation to bodies corporate, means:

(a) a responsible officer of the RSA provider; or

(b) an auditor of the RSA provider.

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

(a) a director of the body; or

(b) a secretary of the body; or

(c) an executive officer of the body.

retirement savings account has the meaning given by section 8.

reviewable decision means:

(a) a decision of APRA under subsection 24(2) to treat an application as having been withdrawn; or

(b) a decision of APRA under subsection 26(2) refusing an application for approval; or

(c) a decision of APRA under subsection 26(4) to specify conditions in an instrument of approval; or

(d) a decision of APRA under subsection 28(4) to treat an application as having been withdrawn; or

(e) a decision of APRA under section 29 or 30 to vary the approval of an RSA institution; or

(f) a decision of APRA under section 29 to refuse to vary the approval of an RSA institution; or

(g) a decision of the Regulator to give or vary a direction under section 45F or 45G; or

(k) a decision of the Regulator under section 174 to make an exemption; or

(l) a decision of the Regulator under section 177 to make a declaration; or

(m) a decision of the Regulator under section 179 to revoke an exemption or declaration; or

(n) a decision of the Regulator to give a direction under section 182; or

(o) a decision of the Regulator refusing to revoke a direction under section 182.

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RSA has the meaning given by section 8.

RSA institution has the meaning given by section 11.

RSA provider has the meaning given by section 12.

statement, in Parts 5 and 7, includes a promise, estimate or forecast.

Superannuation Acts means:

(a) this Act; and

(b) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and

(c) the *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997*; and

(d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

superannuation data and payment regulations and standards has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

superannuation entity means:

(a) a regulated superannuation fund; or

(b) an approved deposit fund.

superannuation interest has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

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

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

(a) if there is a trustee (within the ordinary meaning of that expression) of the fund, scheme or trust—the trustee; or

(b) in any other case—the person who manages the fund, scheme or trust.

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year of income in relation to a person, means a period that is, for the purposes of the *Income Tax Assessment Act 1936*, a year of income of the person (subsection 6(2A) of that Act applies accordingly).

17 Approvals, determinations etc. by Regulator

If:

(a) a provision of this Act refers to an approval given, determination made or other act or thing done by the Regulator; and

(b) there is no other provision of this Act expressly authorising the Regulator to give the approval, make the determination or do the act or thing;

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

18 Associates

(1) The question whether a person is an associate of another person for the purposes of this Act is to be determined in the same way as that question would be determined under the *Corporations Act 2001* if the assumptions set out in subsection (2) were made.

(2) The assumptions are as follows:

(a) that sections 12 and 14 and paragraphs 15(1)(b) and 16(1)(b) and (c) of that Act had not been enacted;

(b) that section 13 of that Act were not limited to Chapter 7, but extended to all provisions of that Act.

19 Definitions of *employee* and *employer*

(1) Subject to this section, in this Act, ***employee*** and ***employer*** have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (10):

(a) expand the meaning of those terms; and

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(b) make particular provision to avoid doubt as to the status of certain persons.

(2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.

(3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.

(4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth.

(5) A member of the Parliament of a State is an employee of the State.

(6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.

(7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.

(8) For the purposes of this Act:

(a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment; and

(b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment; and

(c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disk or of any television or radio broadcast is an employee of the person liable to make the payment.

(9) Subject to subsection (10), a person who:

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(a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or

(b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);

is an employee of the Commonwealth, the State or the Territory, as the case requires.

(10) A person who holds office as a member of a local government council is an employee of the council.

20 Definition of *dependant*

(1) For the purposes of this Act, ***dependant***, in relation to a person, includes the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship.

(2) The ***spouse***, in relation to a person, includes:

(a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

(3) Any ***child***, in relation to a person, includes:

(a) a stepchild, an ex-nuptial child or an adopted child of the person; and

(b) a child of the person's spouse; and

(c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

(4) An ***adopted child***, in relation to a person, means a person adopted by that person:

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(a) under the law of a State or Territory relating to the adoption of children; or

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

20A Interdependency relationship

(1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an ***interdependency relationship*** if:

(a) they have a close personal relationship; and

(b) they live together; and

(c) one or each of them provides the other with financial support; and

(d) one or each of them provides the other with domestic support and personal care.

(2) Subject to subsection (3), for the purposes of this Act, if:

(a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and

(b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and

(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;

they have an ***interdependency relationship***.

(3) The regulations may specify:

(a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an ***interdependency relationship***; and

(b) circumstances in which 2 persons have, or do not have, an ***interdependency relationship***.

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21 Persons involved in contravention

For the purposes of this Act, a person is involved in a contravention if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

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Part 3—Approval of RSA institutions

22 Object of Part

(1) The object of this Part is to provide for constitutional corporations that can be relied on to conduct RSAs in accordance with this Act and the regulations to be approved as RSA institutions for the purposes of this Act and to provide for the variation, suspension and revocation of those approvals.

(2) The significance of the approval of RSA institutions is that only RSA institutions can offer RSAs.

Note: In certain circumstances, an entity may cease to be approved as an RSA institution. Many provisions of this Act may continue to apply to that entity.

23 Application for approval

(1) A constitutional corporation that is an ADI or a life insurance company or prescribed financial institution may apply to APRA for approval as an RSA institution for the purposes of this Act.

(2) An application must:

(a) be in the approved form; and

(b) contain the information required by the form; and

(c) be accompanied by an application fee of the prescribed amount.

Note: The approved form of application may require the applicant to set out the applicant's tax file number. See subsection 144(1).

24 Further information may be requested

(1) If APRA needs further information to decide the application for approval, APRA may request the applicant, in writing, to supply APRA with such further information as is specified in the request within such time as is specified in the request.

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(2) If, without reasonable excuse, the applicant refuses or fails to comply with the request, APRA may decide to treat the application as having been withdrawn.

(3) If APRA decides, under subsection (2), to treat the application as having been withdrawn, APRA must, as soon as practicable after so deciding, inform the applicant in writing to that effect.

25 Period within which application for approval is to be decided

(1) Subject to this section, APRA must decide an application for approval within 60 days after receiving it.

(2) If APRA thinks that it will take longer to decide the application, APRA may extend, by up to 60 days, the period for deciding it.

(3) An extension must be made by written notice given to the applicant within 60 days after APRA receives the application.

(4) If APRA makes an extension, APRA must decide the application within the extended period.

(5) If APRA has not decided the application by the end of the day by which APRA is required to decide it, APRA is taken to have decided, at the end of that day, to approve the application.

26 Deciding an application for approval

(1) If an application that satisfies section 23 is made, APRA must, in writing, approve an applicant as an RSA institution for the purposes of this Act unless APRA is satisfied that the applicant cannot be relied on to conduct RSAs in accordance with this Act and the regulations.

(2) APRA must consult with the prescribed regulatory agency, if any, before it can be satisfied that the applicant cannot be relied on to conduct RSAs in accordance with this Act and the regulations.

(3) If APRA is so satisfied, it must, in writing, refuse the application.

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(4) The approval is subject to any conditions specified in the instrument of approval.

(5) If APRA refuses the application, APRA must set out the reasons for the refusal in the instrument of refusal.

(6) APRA must cause the applicant to be given a copy of the instrument of approval or refusal.

27 When an approval is in force

An approval under section 26:

(a) comes into force when it is granted, or, if a later time is specified in the instrument of approval as the time when the approval comes into force, at that later time; and

(b) remains in force, subject to any variation under section 29 or 30, until it is revoked under section 33.

28 Application for variation of an approval

(1) An RSA institution may apply to APRA for variation of the approval by requesting a variation of any conditions to which the approval is subject.

(2) An application must:

(a) be made in writing; and

(b) specify the variation requested by the RSA institution; and

(c) set out the reasons for the application; and

(d) be signed by a responsible officer of the RSA institution.

(3) If APRA needs further information to decide an application, APRA may request the RSA institution, in writing, to supply APRA with such further information as is specified in the request within such time as is specified in the request.

(4) If, without reasonable excuse, the RSA institution refuses or fails to comply with the request, APRA may decide to treat the application as having been withdrawn.

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(5) If APRA decides, under subsection (4), to treat the application as having been withdrawn, APRA must, as soon as practicable after so deciding, inform the RSA institution in writing to that effect.

29 An application must be decided within a period of time

(1) Subject to this section, APRA must decide an application for variation of the approval of an RSA institution within 60 days after receiving it.

(2) APRA is not required to vary the approval of an RSA institution in the terms requested by the RSA institution.

(3) If APRA thinks that it will take longer than 60 days to decide the application, APRA may extend the period for deciding it by no more than 60 days.

(4) An extension must be notified in writing to the RSA institution within 60 days after APRA receives the application.

(5) If APRA makes an extension, APRA must decide the application within the extended period.

(6) If APRA has not decided the application by the end of the day by which APRA is required to decide it, APRA is taken to have decided, at the end of that day, to refuse the application.

30 APRA may vary an approval on its own initiative

APRA may, on its own initiative, vary the approval of an RSA institution by varying any conditions to which the approval is subject.

31 Notifying the RSA institution of the outcome of an application

(1) If, under section 29 or 30, APRA decides to vary the approval of an RSA institution, APRA must:

(a) by notice in writing, vary the approval; and

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(b) give a copy of that notice, and a statement of the reasons for the variation, to the RSA institution.

(2) A notice varying an approval must:
(a) identify the approval being varied; and
(b) specify the day, not earlier than the day on which the notice of variation is made, when the variation begins; and
(c) specify any conditions to which the approval of the RSA institution is subject after the variation begins.

(3) If, under section 29, APRA decides to refuse to vary the approval of an RSA institution, APRA must:
(a) by notice in writing, record that it has so decided; and
(b) give a copy of that notice, and a statement of the reasons for the refusal to vary the approval, to the RSA institution.

32 When a variation of approval comes into force

If, under section 29 or 30, APRA decides to vary an approval of an RSA institution:
(a) that variation comes into force on the day specified in the notice under paragraph 31(2)(b); and
(b) the variation remains in force until the revocation of the approval to which it relates or the coming into force of a later variation of that approval.

33 Suspension or revocation of approval

(1) APRA may suspend or revoke the approval of an RSA institution by written notice given to the RSA institution.

(2) Without limiting subsection (1), APRA may suspend or revoke an approval under that subsection if APRA is satisfied, on reasonable grounds, that:
(a) the RSA institution has requested in writing that the approval be suspended or revoked; or
(b) the RSA institution ceases to be an ADI or a life insurance company or prescribed financial institution; or

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(c) there has been a contravention of any condition to which the approval is subject; or

(d) the RSA institution can no longer be relied on to conduct RSAs in compliance with this Act and the regulations.

(3) Except in a case covered by paragraph (2)(a), APRA must not make a decision under subsection (1) without consulting with the prescribed regulatory agency, if any, and obtaining the written consent of the Minister.

(4) APRA may lift a suspension of an approval of an RSA institution by written notice given to the RSA institution.

34 Consequences of suspension or revocation

(1) If the approval of an RSA institution is suspended or revoked:

(a) the RSA provider must, within the prescribed period, notify the holder of each RSA, and any employer who makes contributions to those RSAs, that the approval has been suspended or revoked; and

(b) the RSA provider must not accept any additional contributions to existing RSAs unless, and until, the suspension is lifted or the RSA provider is later approved as an RSA institution.

Note: It is not possible for the entity to allow any person to become the holder of a new RSA because it ceases to be an RSA institution. See paragraph 8(b) and subsection 11(1).

(2) Despite the suspension or revocation of an approval, RSAs that were being provided by that entity immediately before the suspension or revocation continue to be RSAs.

Note: Many provisions of this Act apply to an entity that was formerly an RSA institution, despite the suspension or revocation of an approval.

Offence of contravening subsection (1)

(3) An RSA provider must not, without reasonable excuse, contravene subsection (1).

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Penalty: 250 penalty units.

(3A) Subsection (3) is an offence of strict liability.

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

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

Note 3: A defendant bears an evidential burden in relation to the matter in paragraph (1)(b) (see subsection 13.3(3) of the *Criminal Code*).

Refund of contributions

(4) Accepting a contribution in contravention of subsection (1) does not result in the invalidity of a transaction. However, the RSA provider must refund the contribution within 28 days or such further period as APRA allows.

Offence of contravening subsection (4)

(5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

(5A) Subsection (5) 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*.

(6) For the purposes of the Income Tax Assessment Act and the *Superannuation Guarantee (Administration) Act 1992*, if a contribution is refunded under this section, the contribution is taken never to have been made.

35 Notification of breach of conditions

(1) An RSA institution must, as soon as practicable, and in any event within 30 days, after becoming aware of a contravention of a condition to which the approval of the RSA institution is subject, give APRA a written notice setting out particulars of the contravention.

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(2) An RSA institution must not, without reasonable excuse, contravene subsection (1).

Penalty: 250 penalty units.

(3) Subsection (2) 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*.

36 Interpretation

A reference in section 28, 29, 30, 31, 32, 33, 34 or 35 to an approval includes a reference to an approval as varied under section 29 or 30.

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Part 4—Operating standards etc. and annual returns for RSAs

Division 1—Object of Part

37 Object of Part

The object of this Part is to provide for a system of prescribed standards and specific rules applicable to the operation of RSAs.

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Division 2—Operating standards

38 Operating standards for RSAs

(1) The regulations may prescribe standards applicable to the operation of RSAs.

(2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:

(a) the persons who may hold RSAs;

(b) the circumstances in which an RSA institution may accept contributions to an RSA;

(c) the minimum benefits to be provided by RSAs;

(d) the form in which benefits may be provided by RSA providers;

(e) the preservation of certain benefits arising directly or indirectly from amounts contributed to RSAs;

(f) the payment by RSA providers of benefits arising directly or indirectly from amounts contributed to RSAs;

(g) the payment by RSA providers of death benefits;

(h) the portability of benefits arising directly or indirectly from amounts contributed to RSAs;

(i) the fees that may be charged for the provision of RSAs;

(j) the keeping and retention of records in relation to RSAs;

(k) the disclosure of information to holders of RSAs;

(l) the disclosure of information about RSAs to the Regulator;

(m) the disclosure of information about RSAs to persons other than holders of RSAs or the Regulator;

(o) dispute resolution.

(3) Regulations made in accordance with paragraph (2)(i) must further the objective of ensuring that RSAs are a low-cost product.

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39 Prescribed operating standards must be complied with

Standards must be complied with

(1) An RSA provider must ensure that the prescribed standards applicable to the operation of the RSA provider are complied with at all times.

Offence

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

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

Validity of transaction not affected by contravention of subsection (1)

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

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Division 3—Portability forms

39A Portability forms

(1) For the purposes of standards made under Division 2, and without limiting that Division, the regulations may prescribe a scheme under which:

(a) the holder of an RSA gives to the Commissioner of Taxation a request for the benefits held for the holder in the RSA to be rolled-over or transferred; and

(b) the Commissioner may pass the request on to the provider of the RSA.

Note: The standards may require the provider to act on the request. See paragraph 38(2)(h).

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

Note: The approved form may require the holder to set out his or her tax file number. See subsection 144(2A).

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Division 4—Other provisions relating to the operation of RSAs

40 Interest off-set arrangements etc. not permitted

(1) An RSA provider must not enter into any interest off-set arrangements or combination account arrangements where one of the accounts involved is an RSA.

Penalty: 100 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) A contravention of subclause (1) does not affect the validity of a transaction to the extent that the transaction relates to an account other than an RSA.

41 Certain uses of RSAs prohibited

(1) Any term or condition in a contract or other agreement providing for a charge over, or in relation to, an RSA is of no effect.

(2) Benefits provided under an RSA in relation to an RSA cannot be assigned.

(3) An RSA provider must not recognise, or in any way encourage or sanction, a charge over an RSA or an assignment of benefits provided under an RSA.

(4) If:

(a) a person does an act; and

(b) the doing of the act results in a contravention of subsection (3);

the person commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

(5) For the purposes of this section, a charge includes the placing of mortgage, lien or other encumbrance on the RSA.

(6) This section does not apply to a charge or assignment that is permitted, whether expressly or by necessary implication, by the regulations.

42 RSA provider not to breach capital guarantee

(1) An RSA provider must not:

(a) reduce the balance of an RSA that is an account by the crediting of any negative interest; or

(b) reduce the contributions or accumulated earnings of an RSA that is a policy by negative investment returns or any reduction in the value of assets in which the policy is invested.

Penalty: 100 penalty units.

(2) 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*.

43 Civil liability where section 42 contravened

(1) Subject to subsection (2), if a person (the ***plaintiff***) suffers loss or damage because of a contravention of section 42 by another person (the ***primary defendant***), the plaintiff may recover the amount of the loss or damage by action against:

(a) the primary defendant; or

(b) a person involved in the contravention.

(2) The action may be begun even if the defendant has been convicted of an offence in respect of the conduct constituting the contravention.

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(3) The action must be begun within 6 years after the day on which the cause of action arose.

(4) This section does not affect any liability that the defendant or another person has under any other provision of this Act or under any other law.

43A Rules about cashing benefits after death of RSA holder

(1) The terms and conditions of an RSA must not permit the RSA holder's benefits to be cashed after the holder's death otherwise than in accordance with standards prescribed for the purposes of section 38.

(2) If the terms and conditions of an RSA are inconsistent with subsection (1):
  (a) subsection (1) prevails; and
  (b) the terms and conditions are invalid, to the extent of the inconsistency.

44 RSA provider to give copy of audit report to APRA

Lodgment

(1) An RSA provider must, within the prescribed period after each year of income, give to APRA:
  (c) a copy of the report given to the RSA provider by an approved auditor under Part 6 in relation to the RSA provider in respect of that year of income, certified to be a true copy of the report by a responsible officer of the RSA provider.

Note: The *Financial Sector (Collection of Data) Act 2001* makes provision for annual returns and other financial documents to be given by RSA providers to APRA.

Offence

(2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

Endorsement of report on return

(4) If the return given under the *Financial Sector (Collection of Data) Act 2001* is not given on a data processing device, or by way of electronic transmission, the report referred to in subsection (1) may be endorsed on the return.

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Part 4A—Data and payment regulations and standards relating to RSAs

Division 1—Data and payment regulations and standards relating to RSAs

45 Object of Part

(1) The object of this Part is to further the interests of holders of RSAs by improving the productivity of the retirement savings account system.

(2) The Part does this by providing for a system of standards relating to payments and information connected with the operation of RSAs.

45A Alternative constitutional basis

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

45B Data and payment regulations and standards relating to RSAs

(1) The regulations may make provision for and in relation to data and payment matters relating to RSAs, to be complied with by:
  (a) RSA providers; and
  (b) employers in their dealings with RSA providers.

(2) The regulations may prescribe different requirements for different classes of RSA or employer.

(3) The Commissioner of Taxation may, by legislative instrument, determine standards (***data and payment standards relating to***

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RSAs) relating to data and payment matters relating to RSAs, applicable to:

(a) RSA providers; and

(b) employers in their dealings with RSAs.

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

(4) The data and payment standards relating to RSAs may specify different requirements for different classes of RSA or employer.

(5) A ***data and payment matter relating to RSAs*** is a matter relating to the manner in which payments and information of a kind mentioned in subsection (6):

(a) relating to:

(i) a holder of an RSA; or

(ii) an employee for whose benefit a contribution to an RSA is to be made by an employer; and

(b) connected with the operation of the RSA;

are dealt with.

(6) The kinds of payments and information are:

(a) transactions, including payments, contributions, roll-over superannuation benefits (within the meaning of the *Income Tax Assessment Act 1997*), allocations, transfers and refunds; and

(b) reports; and

(c) records, including registrations; and

(d) unique identifiers for use with such transactions, reports and records; and

(e) any other kind of payment or information that is prescribed by the regulations for the purposes of this paragraph; and

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

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Adoption of other instruments

(7) The regulations or standards may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

(8) Subsection (7) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

Consultations in preparing data and payment standards relating to RSAs

(9) The Commissioner of Taxation must consult with APRA in preparing the data and payment standards relating to RSAs.

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

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

45C Relationship between standards and other law

(1) A data and payment standard relating to RSAs may elaborate or supplement any aspect of regulations made under this Part.

(2) However, a data and payment standard relating to RSAs is of no effect to the extent that it conflicts with this Act or regulations made under this Act.

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Division 2—Compliance with data and payment regulations and standards relating to RSAs

45D Compliance requirement—RSA providers

(1) An RSA provider must ensure that payments and information relating to a holder of an RSA, or a person for whose benefit a contribution to the RSA is to be made, are dealt with in a manner that complies with any applicable:

(a) regulations made under this Part; and

(b) data and payment standards relating to RSAs.

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

Strict liability offence

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

Penalty: 20 penalty units.

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

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

45E Compliance requirement—employers

(1) An employer must deal with payments and information relating to an employee, for whose benefit a contribution to an RSA is to be made, in a manner that complies with any applicable:

(a) regulations made under this Part; and

(b) data and payment standards relating to RSAs.

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

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Strict liability offence

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

Penalty: 20 penalty units.

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

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

45F Regulator's power to give directions in certain circumstances—RSA providers

(1) The Regulator may give an RSA provider a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the RSA provider has contravened, or is likely to contravene:
  (a) a particular regulation made under this Part; or
  (b) a particular data and payment standard relating to RSAs.

(2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
  (a) the extent (if any) to which the RSA provider is operating in a way that is contrary to the object of this Part;
  (b) any other matter that the Regulator considers relevant.

(3) The direction must be given by notice in writing to the RSA provider.

(4) The kinds of direction that an RSA provider may be given are directions to do any one or more of the following by a specified time:
  (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);

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(b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).

(5) The time specified in the direction must be 21 days or more after the day the direction is given.

(6) The RSA provider must comply with the direction by the specified time.

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

Strict liability offence

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

Penalty: 50 penalty units.

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

(8) The Regulator may, by notice in writing to the RSA provider, vary the direction or the time specified if, at the time of the variation, the Regulator considers that the variation is necessary and appropriate.

(9) The direction has effect until the Regulator revokes it by notice in writing to the RSA provider. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

45G Regulator's power to give directions in certain circumstances—employers

(1) The Regulator may give an employer a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the employer has contravened, or is likely to contravene:

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(a) a particular regulation made under this Part; or

(b) a particular data and payment standard relating to RSAs.

(2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:

(a) the extent (if any) to which the employer is dealing with an RSA provider in a way that is contrary to the object of this Part;

(b) any other matter that the Regulator considers relevant.

(3) The direction must be given by notice in writing to the employer.

(4) The kinds of direction that the employer may be given are directions to do any one or more of the following by a specified time:

(a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);

(b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).

(5) The time specified in the direction must be 21 days or more after the day the direction is given.

(6) The employer must comply with the direction by the specified time.

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

Strict liability offence

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

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Penalty: 50 penalty units.

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

(8) The Regulator may, by notice in writing to the employer, vary the direction or the time specified if, at the time of the variation, it considers that the variation is necessary and appropriate.

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

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Division 3—Infringement notices

45H When an infringement notice may be given

(1) If the Regulator has reasonable grounds to believe that a person has contravened an offence of strict liability in Division 2, the Regulator may give to the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice may be given to a person in respect of:
  (a) 2 or more alleged contraventions of an offence of strict liability in Division 2; and
  (b) alleged contraventions of 2 or more offences of strict liability in Division 2.

45J Matters to be included in notice

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

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(unless the notice is withdrawn) the person is not liable to be prosecuted in a court in relation to the alleged contravention; and

(h) state that payment of the amount is not an admission of guilt or liability; and

(i) state that the person may apply to the Regulator to have the period in which to pay the amount extended; and

(j) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court in relation to the alleged contravention; and

(k) set out how the notice can be withdrawn; and

(l) state that if the notice is withdrawn:

(i) any amount paid under the notice must be refunded; and

(ii) the person may be prosecuted in a court for the alleged contravention; and

(m) state that the person may make written representations to the Regulator seeking the withdrawal of the notice.

(2) For the purposes of paragraph (1)(e), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum penalty that a court could impose on the person for that contravention.

45K Extension of time to pay amount

(1) A person to whom an infringement notice has been given may apply to the Regulator for an extension of the period referred to in paragraph 45J(1)(g).

(2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.

(3) If the Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 45J(1)(g) is taken to be a reference to that period so extended.

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(4) If the Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 45J(1)(g) is taken to be a reference to the period that ends on the later of the following days:
  (a) the day that is the last day of the period referred to in paragraph 45J(1)(g);
  (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend.

(5) The Regulator may extend the period more than once under subsection (2).

45L Withdrawal of an infringement notice

Representations seeking withdrawal of notice

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

Withdrawal of notice

(2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

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

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

(iv) any other matter the Regulator considers relevant.

Notice of withdrawal

(4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

(a) the person's name and address; and

(b) the day the infringement notice was given; and

(c) that the infringement notice is withdrawn; and

(d) that the person may be prosecuted in a court in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

(5) If:

(a) the Regulator withdraws the infringement notice; and

(b) the person has already paid the amount stated in the notice;

the Commonwealth must refund to the person an amount equal to the amount paid.

45M 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 45J(1)(g):

(a) any liability of the person for the alleged contravention is discharged; and

(b) the person may not be prosecuted in a court for the alleged contravention; and

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(c) the person is not regarded as having been convicted of the alleged offence; and

(d) the person is not regarded as having admitted guilt or liability for the alleged contravention.

(2) Subsection (1) does not apply if the notice has been withdrawn.

45N Effect of this Division

This Division does not:

(a) require an infringement notice to be given to a person for an alleged contravention of an offence of strict liability in Division 2; or

(b) affect the liability of a person for an alleged contravention of an offence of strict liability in Division 2 if:

(i) the person does not comply with an infringement notice given to the person for the contravention; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of an offence of strict liability in Division 2; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an offence of strict liability in Division 2.

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Division 4—Information

Subdivision A—Correction and rectification of information

45P Correction and rectification of information

(1) The Commissioner of Taxation may alter information in his or her possession for the purposes of ensuring the information complies with:
  (a) any applicable regulations made under this Part; and
  (b) any applicable data and payment standards relating to RSAs.

(2) An alteration made by the Commissioner of Taxation under subsection (1) does not have the effect of discharging any liability of a person for a contravention of a provision of this Part relating to the information.

Subdivision B—Register of information about certain RSAs

45Q Register of information about certain RSAs

(1) The Commissioner of Taxation must keep a register of information for the purposes of this Part.

(2) The Commissioner of Taxation is to keep the register by electronic means.

(3) The register is not a legislative instrument.

(4) The Commissioner of Taxation may cause the contents of all or part of the register to be made available to entities that must comply with:
  (a) the data and payment regulations and standards relating to RSAs; or
  (b) the superannuation data and payment regulations and standards.

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Contents of the register

(5) The register must contain the information given to the Commissioner of Taxation in accordance with section 45R.

(6) The Commissioner of Taxation is to combine the register kept under this section with the register kept under section 34Y of the *Superannuation Industry (Supervision) Act 1993*.

45R RSA providers to provide information for inclusion in register

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

(2) The RSA provider of a prescribed RSA must give the prescribed information in relation to the RSA to the Commissioner of Taxation in accordance with the regulation.

Contravening requirement to give information

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

Penalty: 25 penalty units.

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

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Part 5—Duties etc. of RSA providers and employers

Division 1—Preliminary

46 Contravention of Part does not affect validity of a transaction or any other act

A contravention of this Part does not affect the validity of a transaction or any other act.

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Division 2—Duties of RSA providers

47 Dispute resolution systems

(1) An RSA provider:

(a) must be a member of the AFCA scheme (within the meaning of the *Corporations Act 2001*); and

(b) must have an internal dispute resolution procedure that complies with the standards, and requirements, mentioned in subparagraph 912A(2)(a)(i) of the *Corporations Act 2001* in relation to financial services licensees; and

(c) must give to ASIC the same information as the RSA provider would be required to give under subparagraph 912A(1)(g)(ii) of the *Corporations Act 2001* if the RSA provider were a financial services licensee; and

(d) must ensure that written reasons are given, in accordance with requirements specified under subsection (2A) of this section, for any decision of the RSA provider (or failure by the RSA provider to make a decision) relating to a complaint.

Note: Part 7.10A of the *Corporations Act 2001* deals with situations where complaints are not resolved by the RSA provider.

(2) However, paragraphs (1)(a) to (c) do not apply to an RSA provider if the RSA provider is required under the *Corporations Act 2001* to have a dispute resolution system complying with subsection 912A(2) or 1017G(2) of that Act.

(2A) ASIC may, by legislative instrument, specify for the purposes of paragraph (1)(d) any or all of the following:

(a) the persons who must be given written reasons;

(b) the matters that must be included in those reasons;

(c) the times by which those reasons must be given;

(d) the circumstances that constitute a failure to make a decision.

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

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

48 Duty to keep minutes and records

(1) An RSA provider must keep, and retain for at least 10 years, minutes of all matters that relate to decisions of the RSA provider in relation to the operation of this Act and the regulations that are discussed at meetings of the RSA provider.

(2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

49 Duty to keep reports

(1) An RSA provider must:

(a) keep, and retain so long as they are relevant and in any event for at least 10 years, copies of reports that were given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given) to all RSA holders, or to all holders included in a particular class of holders, if the reports were given under this Act or under terms and conditions of the RSA; and

(b) make those copies available for inspection by a member of the staff of the Regulator if requested to do so by a member of that staff.

(2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

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Part 6—Records, audits and auditors

63 Object of Part

The object of this Part is to set out rules about the records, audits and auditors of RSA providers.

64 Records

(1) An RSA provider must keep such records as correctly record and explain the transactions related to RSAs provided by the RSA provider and must:

(a) retain the records for at least 5 years after the end of the year of income to which the transactions relate; and

(b) cause the records to be kept in Australia; and

(c) keep the records in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language.

(2) Records kept by the RSA provider must be sufficient to enable the RSA provider to prepare reporting documents referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*.

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

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

65 Audit of records

(1) An RSA provider must make such arrangements as are necessary to enable an approved auditor to give the RSA provider, within the prescribed period after the end of each year of income, a report in the approved form on the degree of compliance by the RSA provider with the provisions of this Act and the regulations and the

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Financial Sector (Collection of Data) Act 2001 specified in the form.

(1A) For the purposes of subsection (1), a person is not an approved auditor, in relation to an RSA provider, if the person is disqualified from being or acting as an approved auditor of that RSA provider under section 67.

(2) A person who intentionally or recklessly contravenes subsection (1) commits an offence punishable on conviction by imprisonment for 2 years.

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

(3) Without limiting the generality of subsection (1), an approved form must include a statement by the auditor as to whether, in the opinion of the auditor, the RSA provider has complied with the provisions of this Act and the regulations and the *Financial Sector (Collection of Data) Act 2001*, specified in the form, during that year of income.

(4) The auditor must give the report to the RSA provider within the period referred to in subsection (1).

(5) A person who intentionally or recklessly contravenes subsection (4) commits an offence punishable on conviction by imprisonment for 6 months.

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

66 Obligations of auditors—compliance

When section applies

(1) This section applies to a person in relation to an RSA provider if:

(a) the person forms the opinion that it is likely that a contravention of this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001* may have occurred,

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may be occurring, or may occur, in relation to the RSA provider; and

(b) the person formed the opinion in the course of, or in connection with, the performance by the person of audit functions under this Act or the regulations in relation to the RSA provider.

Section does not apply if the person believes that his or her opinion is not relevant to the performance of 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.

RSA provider and Regulator to be told about the matter

(3) Subject to subsection (4), the person must, as soon as practicable after forming the opinion mentioned in paragraph (1)(a):

(a) tell the RSA provider 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 holders of RSAs—tell the Regulator about the matter in writing.

The person may not have to tell the RSA provider or Regulator about the matter

(4) The person does not have to:

(a) tell the RSA provider 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 RSA provider 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

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(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

(5) 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 an RSA provider; and

(c) the first person tells another person to whom this section applies that the first person has told the RSA provider 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.

(5A) 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

(6) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or the RSA provider, about a matter as required by this section.

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Offences

(7) A person commits an offence if the person contravenes subsection (3).

Penalty: 50 penalty units.

(8) 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.

66A Auditor may give information to the Regulator

(1) A person who is or was an auditor of an RSA provider may give to the Regulator information about the RSA provider obtained in the course of, or in connection with, the performance by the person of audit functions under:

(a) this Act; or

(b) the regulations; or

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

if the person considers that giving the information will assist the Regulator in performing its functions under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*.

(2) A person who, in good faith, gives information to the Regulator in accordance with this section is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

66B Self incrimination

(1) An individual is not excused from complying with a requirement under section 66 to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

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(2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:

(a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

67 Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from holding any appointment as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied:

(a) as mentioned in subsection (3); and

(b) that the disqualification is justified.

Note: For offences relating to persons disqualified under this section, see section 67B.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as an auditor of:

(a) a particular RSA provider; or

(b) a class of RSA providers; or

(c) any RSA provider.

(3) The Court may disqualify a person, in accordance with subsection (1), 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 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

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(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 is otherwise not a fit and proper person to be an approved auditor for the purposes of this Act.

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

(5) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

(a) the person's conduct in relation to the functions or duties that the person is required to perform under this Act or the regulations; and

(b) any other matters the Court considers relevant.

(6) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) if the person is, or is acting as, an auditor of an RSA provider—to be given to the RSA provider concerned; and

(b) to be published in the *Gazette*.

67A Court power to revoke or vary a disqualification etc.

(1) A person who is disqualified under section 67, or APRA, may apply to the Federal Court of Australia for a variation or a revocation of an order made under that section.

(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 APRA; or

(b) if APRA makes the application—by APRA with the person who is disqualified.

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67AA Privilege against exposure to penalty—disqualification under section 67

Proceedings

(1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:

(a) to answer a question or give information; or

(b) to produce books; or

(c) to do any other act;

on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 67.

(2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

Statutory requirements

(3) A person is not entitled to refuse or fail to comply with a requirement under this Act:

(a) to answer a question or give information; or

(b) to produce books; or

(c) to do any other act;

on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 67.

Admissibility

(4) Subsections 66B(2), 117(3) and 120(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 67.

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Other provisions

(5) Subsections (1) and (3) of this section have effect despite anything in:

(a) any other provision of this Act; or

(b) the *Administrative Review Tribunal Act 2024*.

Definition

(6) In this section:

penalty includes forfeiture.

67B Disqualified persons not to be auditor of RSA provider

(1) A person commits an offence if:

(a) the person is, or acts as, an auditor of an RSA provider for the purposes of this Act; and

(b) the person is disqualified under section 67 from being or acting as an auditor of that RSA provider; and

(c) the person knows that he or she is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is, or acts as, an auditor of an RSA provider for the purposes of this Act; and

(b) the person is disqualified under section 67 from being or acting as an auditor of that RSA provider; and

(c) the person knows that he or she is so disqualified.

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*.

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68 APRA may refer matters to a professional association

(1) If APRA is of the opinion that an approved auditor:

(a) 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) is otherwise not a fit and proper person to be an approved auditor for the purposes of this Act;

APRA may refer the details of the matter to the persons specified in subsection (2).

Note: Persons to whom APRA refers the details of the matter are subject to secrecy obligations under section 56 of the *Australian Prudential Regulation Authority Act 1998*. In particular, see paragraph (c) of the definition of ***officer*** in subsection 56(1), and subsections 56(2), (9) and (10), of that Act.

(2) The persons specified in relation to an approved auditor for the purposes of subsection (1) are those members of the auditor's professional association whom APRA believes will be involved:

(a) in deciding whether the professional association should take any disciplinary or other action against the auditor in respect of the matter referred; or

(b) in taking that action.

(3) The power of APRA under subsection (1) may be exercised whether or not an order disqualifying the auditor has been made under section 67.

(4) If, under this section, APRA refers details of a matter involving an approved auditor, APRA must, as soon as practicable but, in any

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event, not later than 7 days after the referral, by notice in writing given to the auditor, inform the auditor:

(a) of the fact that a matter has been referred under subsection (1); and

(b) of the nature of the matter so referred.

69 Auditor must notify the Regulator of attempts to unduly influence etc. the auditor etc.

(1) If an auditor of an RSA provider for the purposes of this Act is aware of circumstances that amount to:

(a) an attempt, in relation to an audit of the RSA provider, 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.

70 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 an employee or officer of an RSA provider; and

(b) the person gives information, or allows information to be given, to an auditor of the RSA provider; and

(c) the information relates to the affairs of the RSA provider; and

(d) the person knows that the information:

(i) is false or misleading in a material particular; or

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(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 an employee or officer of an RSA provider; and

(b) the person gives information, or allows information to be given, to an auditor of the RSA provider; and

(c) the information relates to the affairs of the RSA provider; 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

(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.

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Part 7—Prohibited conduct in relation to RSAs

74 Civil liability where section 78 contravened

(1) Subject to subsection (2), if a person (the ***plaintiff***) suffers loss or damage because of a contravention of section 78 by another person (the ***primary defendant***), the plaintiff may recover the amount of the loss or damage by action against:

(a) the primary defendant; or

(b) a person involved in the contravention.

(3) The action may be begun even if the defendant has been convicted of an offence in respect of the conduct constituting the contravention.

(4) The action must be begun within 6 years after the day on which the cause of action arose.

(5) This section does not affect any liability that the defendant or another person has under any other provision of this Act or under any other law.

78 Improper conduct in the provision of RSAs

(1) An RSA provider, or an associate of an RSA provider, must not:

(a) supply, or offer to supply, goods or services to a person; or

(b) supply, or offer to supply, goods or services to a person at a particular price; or

(c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;

on the condition that one or more of the employees of the person will hold, or has applied or agreed to hold, an RSA provided by the RSA provider.

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(1A) However, subsection (1) does not apply in relation to a supply, or offer to supply, of a kind prescribed in the regulations for the purposes of this subsection.

(2) An RSA provider, or an associate of an RSA provider, must not refuse:

(a) to supply, or offer to supply, goods or services to a person; or

(b) to supply, or offer to supply, goods or services to a person at a particular price; or

(c) to give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;

for the reason that one or more of the employees of the person does not hold, or has not applied or agreed to hold, an RSA provided by the RSA provider.

(2A) However, subsection (2) does not apply in relation to a supply, or offer to supply, of a kind prescribed in the regulations for the purposes of this subsection.

(3) A contravention of subsection (1) or (2) is not an offence, but it does give rise to civil liability under section 74.

79 Contravention of Part does not affect validity of transactions etc.

A contravention of this Part does not affect the validity of any transaction or of any other act.

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Part 9—Facility to pay benefits to eligible rollover funds

87 Object of Part

The object of this Part is to provide for a facility for the payment of benefits to eligible rollover funds.

88 Interpretation

In this Part:

eligible rollover fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

89 Payment of benefits to eligible rollover fund

When section applies

(1) This section applies at a particular time if the conditions specified in the regulations are satisfied.

Application to eligible rollover fund

(2) The RSA provider may apply to the trustee of an eligible rollover fund, on behalf of the holder of an RSA, for the issue to the holder 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:

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(a) the consideration for the issue is to be paid, on behalf of the holder, by the RSA provider; and

(b) the amount of the consideration is equal to the amount ascertained in accordance with the regulations; and

(c) the RSA provider is not entitled to recover the consideration from the holder (except as a result of the operation of subsection (5)).

Authorisation by holder

(4) The holder is taken to have authorised the RSA provider:

(a) to make the application; and

(b) to pay the consideration.

This rule has effect despite any direction to the contrary by the holder.

RSA holder ceases to have rights against RSA provider etc.

(5) If the superannuation interest is issued in accordance with the application:

(a) the holder ceases to have rights against the RSA provider; and

(b) if:

(i) immediately before the interest was issued in accordance with the application, another person had a contingent right against the RSA provider to a death or disability benefit; and

(ii) the contingent right was derived from the holder's capacity as the holder of an RSA provided by the RSA provider;

the other person ceases to have the contingent right against the RSA provider.

Note: To avoid doubt, a reference in paragraph (a) to a right against the RSA provider includes a reference to a contingent right to a death or disability benefit.

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Terms and conditions overridden

(6) This section has effect despite anything in the terms and conditions of the RSA.

90 Operating standards for RSA providers—information and records

When section applies

(1) This section applies if an application is made under section 89 by an RSA provider to the trustee of an eligible rollover fund, on behalf of the holder of an RSA, for the issue to the holder 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 38, those standards may include standards relating to the following matters:

(a) requiring the RSA provider to give to the trustee of the eligible rollover fund such information about the holder as is specified in the standards;

(b) requiring the RSA provider to keep and retain a record of the application.

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Part 10—Monitoring and investigation

Division 1—Objects of Part

91 Objects of Part

The objects of this Part are:

(a) to ensure that the Regulator has sufficient power to monitor RSA providers in relation to the provision of RSAs (Division 2); and

(aa) to ensure that the Regulator has sufficient power to monitor employers' compliance with Part 4A (data and payment regulations and standards relating to RSAs) (Division 2); and

(b) to authorise the Regulator to conduct an investigation of the whole or a part of the affairs of an RSA provider to the extent that those affairs relate to the provision of RSAs (Divisions 3, 4, 5, 6, 7 and 8).

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Division 2—Monitoring

92 Information to be given to Regulator

For the purposes of this Act, the Regulator or an authorised person may, by written notice to an RSA provider, require the RSA provider, within a specified period, to give to the Regulator or to an authorised person in relation to a specified year of income of the RSA provider such information that relates to the provision of RSAs, or a report on such matters, as are set out in the notice.

Note: The information may include the tax file number of the RSA provider. See subsection 144(5).

93 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 relevant person in relation to an RSA provider, require the relevant person 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 RSA provider to the extent that those books relate to the provision of RSAs.

(1A) For the purposes of this Act, the Regulator or an authorised person may, by written notice to a contributing employer, require 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 obligations of the contributing employer under Part 4A.

(2) If any book produced to the Regulator or an authorised person under subsection (1) or (1A) 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,

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produced to the Regulator or an authorised person under this section.

94 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 relating to the provision of RSAs or obligations of a contributing employer under Part 4A are kept and may:

(a) inspect any book found on the premises that relates to the provision of RSAs or those obligations or that the authorised person believes on reasonable grounds to relate to the provision of RSAs 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.

94A 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—Investigations by the Regulator

95 Investigation of RSA provider

(1) If it appears to the Regulator that a contravention of this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001* may have occurred, or be occurring, in relation to an RSA provider, the Regulator may, by written notice, tell the RSA provider that the Regulator proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.

(1A) If it appears to ASIC that an RSA provider has refused or failed to give effect to a determination made under the AFCA scheme (within the meaning of the *Corporations Act 2001*), ASIC may, by written notice, tell the RSA provider that ASIC proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.

(2) If a notice is given under subsection (1) or (1A) to an RSA provider, the following provisions of this Division apply in relation to the RSA provider.

96 Inspectors

(1) The Regulator may, in writing, appoint:
  (a) a member of the staff of the Regulator; or
  (b) a member of the staff of the other Regulator; or
  (c) a member of staff of a prescribed regulatory agency;
to be an inspector for the purposes of the conduct of investigations under this Division in relation to the affairs of RSA providers.

(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

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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*.

97 Delegation by inspector

(1) An inspector appointed by a particular Regulator may, in writing, delegate to a staff member of that 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.

98 Regulator may exercise powers of inspector

The Regulator may exercise any of the powers of an inspector under this Part and, if the Regulator 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.

99 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 an RSA provider, the inspector may, at any reasonable time, enter the premises and:

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(a) inspect any book found on the premises that relates to the affairs of the RSA provider or that he or she believes on reasonable grounds to relate to those affairs; and

(b) make copies of, or take extracts from, any such book.

100 Inspector may require production of books

For the purposes of an investigation of the whole or a part of the affairs of an RSA provider, an inspector may, by written notice given to a person who:

(a) is a relevant person in relation to the RSA provider; or

(b) the inspector believes on reasonable grounds has the custody or control of any books relating to those affairs;

require the person to produce all or any of those books to the inspector.

101 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 an RSA provider whose affairs or a part of whose affairs 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;

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.

102 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

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(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 98.

103 Grant of warrant

Section applies if magistrate satisfied of certain things

(1) This section applies if, on an application under section 102, 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; 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).

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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 102(1) for the purposes of the application:
  (a) which of the grounds set out in the information; and
  (b) particulars of any other grounds;

he or she has relied on to justify the issue of the warrant.

Contents of warrant

(5) A warrant under this section must:
  (a) specify the premises and books referred to in subsection (1); and
  (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
  (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

104 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

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(b) under a warrant issued under section 103, 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.

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

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(d) for such a proceeding to be begun and carried on.

Claims or liens

(6) No-one is entitled, as against the person, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

Right of inspection

(7) While the books are in the person's possession, the person must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the first-mentioned person's possession.

Delivery into possession of Regulator etc.

(8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of the Regulator or of a person authorised by the Regulator to receive them.

Explanation of matters relating to books

(9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the books under subsection (8), may require:

(a) if paragraph (1)(a) applies—a person who so produced any of the books; or

(b) in any case—a person who was a party to the compilation of any of the books;

to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

105 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:

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(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.

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Division 4—Examinations

106 Application of Division

This Division applies if, pursuant to a requirement made under paragraph 101(d), a person (the ***examinee***) appears before an inspector.

107 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.

108 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 109(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 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

109 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.

110 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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111 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.

112 Copies given subject to conditions

(1) If a copy is given to a person under subsection 110(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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113 Record to accompany report

(1) When a report about the investigation is prepared under section 114, 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 3; and

(b) a record of the statement was made under section 110; and

(c) a report about the other investigation is prepared under section 114;

a copy of the record must accompany the report.

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Division 5—Reports

114 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 the RSA provider 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; and
  (d) must give a copy of the report to the other Regulator.

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Division 6—Offences

115 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: 30 penalty units.

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

116 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 6 months.

117 Self-incrimination

Self-incrimination not a reasonable excuse

(1) For the purposes of this Part, it is not a reasonable excuse for an individual to refuse or fail:

(a) to give information; or

(b) to sign a record; or

(c) to produce a book;

in accordance with a requirement made of the individual, that the information, signing the record or production of the book, as the

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case may be, might tend to incriminate the individual or make the individual 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; or

(iii) producing a book;

as required under this Part, an individual claims that the making of the statement, signing the record, or production of the book, as the case may be, might tend to incriminate the individual or make the individual liable to a penalty; and

(b) the making of the statement, signing the record, or production of the book, as the case may be, might in fact tend to incriminate the individual or make the individual liable to a penalty.

Inadmissibility of statements etc.

(3) Subject to subsection (4), none of the following:

(a) the making of the statement;

(b) the fact that the individual has signed the record or produced the book, as the case may be;

(c) in the case of the making of a statement or the signing of a record—any information, document or other thing obtained as a direct or indirect consequence of the individual making the statement or signing the record, as the case may be;

is admissible in evidence against the individual 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:

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(a) in the case of the making of a statement—the falsity of the statement; or

(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 4A.

118 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 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

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(b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and

(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.

119 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 7—Evidentiary use of certain material

120 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) before making the statement, the person claimed that it might tend to incriminate the person or make the person 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 a 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 110(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.

121 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.

122 Weight of evidence admitted under section 121

(1) This section applies if evidence of a statement made by a person at an examination of the person is admitted under section 121 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.

123 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.

124 Copies of, or extracts from, certain books

(1) A copy of, or an extract from, a book relating to affairs of an RSA provider is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the

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original book, as the case may be, whether or not the copy or extract was made under section 104.

(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.

125 Report under Division 5

Subject to section 126, if a copy of a report under Division 5 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.

126 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 125 in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:

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

(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

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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 relate, 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 125 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.

127 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 8—Miscellaneous

128 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.

129 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.

129A Authorisation of members of staff

(1) The Regulator may authorise in writing a member of the staff of the Regulator, or a member of the staff of the other Regulator, for the purposes of a specified provision of this Act.

(2) The authorisation may be restricted to a particular function or power under the provision.

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Part 11—Tax file numbers

Division 1—Object of Part

130 Object of Part

The object of this Part is to provide for the quotation and provision of tax file numbers in relation to RSAs.

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Division 2—Quotation of holder's tax file number

131 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 139 sets out the method of quoting.

132 Employer may inform RSA provider of tax file number

If:

(a) an employer makes a contribution to an RSA for the benefit of an employee; and

(b) after the contribution is made, 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 the RSA provider of the employee's tax file number.

133 Employer must inform RSA provider of tax file number

(1) If:

(a) an employee:

(i) quotes or first 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

(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 RSA for the benefit of the employee; and

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(c) the employer has not previously informed the RSA provider of the employee's tax file number;

the employer must inform the RSA provider 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) If the employer intentionally or recklessly contravenes subsection (1), the employer commits an offence punishable on conviction by a fine not exceeding 10 penalty units.

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

133A 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.

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(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 143E.

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Division 3—Quotation, use and transfer of holder's tax file number

134 Holder or applicant may quote tax file number

A holder, or a person applying to become a holder, of an RSA may quote his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Note: Section 139 sets out the method of quoting.

135 RSA provider may request holder's or applicant's tax file number

(1) An RSA provider may, at any time, request, in a manner approved by APRA, a holder, or a person applying to be a holder, of an RSA to quote his or her tax file number to the RSA provider 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 the RSA provider requests a holder or applicant to quote his or her tax file number, the holder or applicant is not obliged to comply with the request.

136 RSA provider must request person becoming holder of an RSA to quote tax file number

(1) Subject to subsection (3), if:
  (a) a person becomes a holder of an RSA; and
  (b) the person has not quoted his or her tax file number to the RSA provider 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 holder;

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the RSA provider must, before the required time (see subsection (2)), request, in a manner approved by APRA, the person to quote his or her tax file number to the RSA provider 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 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or possible future operation of this Act and the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

Required time

(2) The ***required time*** is the end of the 30th day after the day on which the person becomes a holder of an RSA.

Exception

(3) The RSA provider is not required to make the request if, before the request is made, and before the required time, the person quotes his or her tax file number to the RSA provider in connection with the operation or the possible future operation of:

(a) if the quotation was given before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or

(b) otherwise—this Act and the other Superannuation Acts.

Offence

(4) If the RSA provider intentionally or recklessly contravenes the requirement to make the request, it commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

No obligation to quote tax file number

(5) If the RSA provider requests the person to quote his or her tax file number to the RSA provider, the person is not obliged to comply with the request.

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137 Use of tax file number for certain purposes

(1) This section applies if a holder, or a person applying to become a holder, of an RSA quotes his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Obligation to record tax file number

(2) If the RSA provider does not already have a record of the tax file number, the RSA provider must, as soon as is reasonably practicable after the quotation, make a record of it.

Obligation to retain and later destroy tax file number

(3) The RSA provider must:

(a) retain the record until the time (the ***last retention time***) at which:

(i) if the person is, or becomes, a holder of an RSA—the person ceases to be a holder of an RSA provided by the RSA provider; or

(ii) if not—the person ceases to be an applicant; and

(b) unless the tax file number has also been provided for another purpose and is still required for that purpose—destroy the record as soon as is reasonably practicable after the last retention time.

Offence

(6) An RSA provider that intentionally or recklessly contravenes a requirement of this section commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

137A Use of tax file number to locate amounts or for consolidation

(1) This section applies if:

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(a) a holder of an RSA; or

(b) a person applying to become such a holder;

quotes his or her tax file number to the RSA provider in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.

(2) An RSA provider 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 RSA provider, amounts held in RSAs provided by it; 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 to be followed in a consolidation mentioned in paragraph (2)(b), including procedures to safeguard the integrity of the consolidation; or

(c) an RSA provider disclosing tax file numbers to another RSA provider, or to a trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme, 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 an RSA provider adopting a tax file number of an individual as the RSA provider's own identifier of the individual, such as by using the tax file number as an account or membership number.

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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.

137B Use of tax file number to validate information

(1) This section applies if:

(a) a holder of an RSA; or

(b) a person applying to become such a holder;

quotes his or her tax file number to the RSA provider in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.

(2) The RSA provider 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 143D.

138 RSA provider must inform other RSA provider or trustee of certain superannuation entities of tax file number for certain purposes

(1) This section applies if:

(a) a person is the holder of an RSA provided by an RSA provider; and

(b) the holder has quoted (whether as a holder or as a person applying to become a holder) his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act and the other Superannuation Acts.

Transfer of amounts in an RSA to another RSA provider or to a superannuation entity or regulated exempt public sector superannuation scheme

(2) Subject to subsection (3), if the RSA provider transfers any part of the amount to another RSA or to a superannuation entity or regulated exempt public sector superannuation scheme for the

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benefit of the holder, the RSA provider must, at the time of the transfer and in the manner approved by APRA, inform the other RSA provider or the trustee of the superannuation entity or regulated exempt public sector superannuation scheme of the holder's tax file number.

Exception

(3) Subsection (2) does not apply where an amount is transferred to another RSA or to a superannuation entity or regulated exempt public sector superannuation scheme if, before the transfer, the holder gives the RSA provider a written statement requesting the RSA provider not to inform any other RSA provider or any trustee of the holder's tax file number.

Offence

(4) An RSA provider that intentionally or recklessly contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

138A Portability forms

Requesting tax file numbers

(1) The Commissioner of Taxation may request a holder of an RSA to quote the holder'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 39A (Portability forms).

(2) The holder 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 provider of the RSA under the prescribed scheme.

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Passing on tax file numbers

(3) The Commissioner of Taxation may inform the provider of an RSA of the tax file number of a holder of the RSA as part of the Commissioner passing on to the provider a request made by the holder under a scheme prescribed for the purposes of section 39A (Portability forms).

(4) If the Commissioner does so, the holder is:

(a) taken to have quoted the tax file number to the provider 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 of Taxation informs the provider of the tax file number.

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Division 4—Method of quotation of tax file numbers, including deemed quotation

139 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 APRA 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.

140 Employee taken to have quoted to RSA provider where RSA provider informed by employer

If:

(a) an employee is a holder, or is applying to become a holder, of an RSA; and

(b) the employer informs the RSA provider of the employee's tax file number in accordance with section 132 or 133;

the employee is:

(c) taken to have quoted the tax file number to the RSA provider 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 RSA provider.

140A Holder taken to have quoted where Commissioner gives notice

(1) A holder, or a person applying to become a holder, of an RSA is taken to have quoted his or her tax file number to an RSA provider

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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 provider notice of the person's tax file number.

(2) The holder or applicant is taken to have quoted that tax file number at the time when the Commissioner of Taxation gave the notice.

141 Information provided by RSA provider taken to have been provided by holder

If an RSA provider (the ***first RSA provider***) informs another RSA provider (the ***second RSA provider***) or the trustee of a superannuation entity or regulated exempt public sector superannuation scheme of the tax file number of a holder of an RSA provided by the first RSA provider in accordance with subsection 138(2), the holder is:

(a) taken to have quoted the tax file number to the second RSA provider or the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts, or the *Superannuation Industry (Supervision) Act 1993* and the other Superannuation Acts, as the case may be; and

(b) taken to have quoted that tax file number at the time when the first RSA provider informs the second RSA provider or the trustee.

142 Person claiming benefit taken to have quoted where he or she provided tax file number in connection with claim

(1) This section applies if a person who considers that he or she is entitled to an RSA benefit applies to an RSA provider 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 person is:

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(a) taken to have quoted the tax file number to the RSA provider 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 RSA provider received or receives the application.

143 Holder or applicant taken to have quoted if he or she quoted for other purposes

If a holder, or a person applying to become a holder, of an RSA has quoted his or her tax file number to an RSA provider under a provision of the Income Tax Assessment Act, that person is taken, for the purposes of this Act:

(a) to have quoted the tax file number to the RSA provider in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; and

(b) to have quoted the tax file number to the RSA provider at the later of the time at which the quotation took place and the commencement of this section.

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Division 4A—Commissioner of Taxation may issue notices about tax file numbers

143A Effect of mistaken quotation of tax file number

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider notice of the tax file number of the holder of an RSA if:

(a) the provider has made a record of a number (the ***recorded TFN***) the provider believes to be the tax file number of the holder; 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 holder has a tax file number.

(2) The holder is taken to have quoted his or her tax file number to the provider 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 provider a notice under subsection (1); and

(b) had the recorded TFN been the tax file number of the holder, the holder would have quoted his or her tax file number to the trustee in that way at the time.

143B Effect of invalid quotation of tax file number

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider a notice under subsection (2) if:

(a) the provider has made a record of a number (the ***recorded TFN***) the trustee believes to be the tax file number of the holder of an RSA; and

(b) the Commissioner is satisfied that the recorded TFN:

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(i) has been cancelled or withdrawn since it was quoted; or
(ii) is otherwise wrong; and

(c) the Commissioner is not satisfied that the holder has a tax file number.

(2) The notice must identify the holder and state that the Commissioner is not satisfied that the holder 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 holder.

143C Commissioner of Taxation may inform RSA provider of tax file number

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider notice of the tax file number of a person if the Commissioner is satisfied that:

(a) the person is a holder of an RSA provided by the RSA provider, or a person applying to become such a holder; 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 provider not to record the person's tax file number:

(a) the notice is to be disregarded; and

(b) section 140A does not apply to deem the person to have quoted the tax file number to the provider when the notice was given.

Note: A consequence is that provisions that require or permit a provider to record or use a validly quoted tax file number do not apply.

143D Validation notice—holders of RSAs

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider a notice under subsection (2) if:

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(a) the RSA provider gives the Commissioner information that the RSA provider 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 holder of an RSA provided by the RSA provider, or a person applying to become such a holder; and
  (ii) the RSA provider is giving the information to the Commissioner in connection with the operation of the RSA; 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 143B.

143E Validation notice—employees

(1) The Commissioner of Taxation (the ***Commissioner***) may give an employer a notice under subsection (2) if:
(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 RSA is to be made; and

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(ii) the employer is giving the information to the Commissioner in connection with the operation of the RSA; and

(iii) that use by the employer of the tax file number complies with section 133A; 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*.

143F 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 5—Provision of tax file numbers in forms etc.

144 Forms etc. may require tax file number

Application for approval

(1) The approved form of an application for approval as an RSA institution under section 23 may require the application to contain the tax file number of the applicant.

Financial returns

(2) The form of a financial return a copy of which is required to be given by an RSA provider to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* may require the return to contain the provider's tax file number.

Portability forms

(2A) An approved form mentioned in subsection 39A(2) may require the tax file number of the holder making the relevant request to be set out in the request.

Notice to give information

(5) Information that may be required to be given by an RSA provider under section 92 may include the tax file number of the RSA provider.

145 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 an RSA officer (within the meaning of section 149) merely because the person has, in making the statement, failed to quote his or her tax file number.

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Division 6—General

146 State insurance

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

147 This Part to be superannuation law

This Part is taken to be a superannuation law for the purposes of any rules in force under section 17 of the *Privacy Act 1988*.

147A Transitional provisions

(1) Despite the amendments made to this Part by Schedule 2 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 holder, or a person applying to become a holder, of an RSA who, before that commencement, quoted his or her tax file number to the RSA provider 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 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, 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 an RSA provider of the employee's tax file number unless the employee tells the employer, within 30 days after the day on which the

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notification is received, that the employee objects to the employer informing the RSA provider 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 RSA provider 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 *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

(3) If:

(a) before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, a holder, or a person applying to become a holder, of an RSA has quoted his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and

(b) the RSA provider notifies the holder or applicant in writing that the provider intends to inform the Commissioner of Taxation, another RSA provider or the trustee of a superannuation entity or of a regulated exempt public sector superannuation scheme of the tax file number unless the holder or applicant tells the provider, within 30 days after the day on which the notification is received, that the holder or applicant objects to the provider informing the Commissioner of Taxation, the other RSA provider or the trustee of the entity or scheme, as the case may be, of the tax file number; and

(c) the holder or applicant does not tell the provider within that period that the holder or applicant objects to the provider informing the Commissioner of Taxation, the other RSA provider or the trustee of the entity or scheme, as the case may be, of the tax file number;

subsection (1) does not apply to the holder or applicant, and the holder or applicant is taken to have quoted the tax file number to

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the RSA provider in connection with the operation or the possible future operation of this Act and the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

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Part 12—Offences relating to records etc.

148 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 keeping of incorrect records and the falsification or concealment of identity.

149 Interpretation

In this Part:

RSA officer means a person exercising powers or performing functions under or in relation to this Act or the regulations.

statement made to an RSA officer means a statement made to an RSA 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 or the regulations; or

(b) made in answer to a question asked of a person under this Act or the regulations; or

(c) made in any information given, or purporting to be given, under this Act or the regulations; or

(d) made in a document given to an RSA officer otherwise than under this Act or the regulations;

but does not include a statement made in a document produced under subsection 93(1) or section 100.

151 Incorrectly keeping records etc.

(1) Where:

(a) a person who is required under this Act or the regulations to keep any records keeps them in such a way that they do not

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correctly record and explain the matters, transactions, acts or operations to which they relate; or

(b) a person who is required under this Act or the regulations 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 (1)(a)—the 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 (1)(b)—the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

154 Incorrectly keeping or making records

(1) If:

(a) a person is required under this Act or the regulations to keep any records; and

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(b) the person keeps those 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 or the regulations 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.

155 Incorrectly keeping records with intention of deceiving or misleading etc.

(1) A person commits an offence if the person:

(a) keeps any 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

(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 records (whether in whole or in part); or

(d) does or omits to do any other act or thing to any records;

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with any of the following intentions (whether or not the person had any other intention):

(e) deceiving or misleading the Regulator or a particular RSA officer;

(f) hindering or obstructing the Regulator or a particular RSA 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 or the regulations;

(i) defeating the purposes of this Act or the regulations.

(2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

156 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

(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 RSA officer;

(d) hindering or obstructing the Regulator or a particular RSA 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;

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(f) hindering, obstructing or defeating the administration, execution or enforcement of this Act or the regulations;

(g) defeating the purposes of this Act or the regulations.

(2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

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Part 13—Powers of courts

157 Object of Part

The object of this Part is to set out rules about the powers of the courts to deal with matters arising under this Act.

158 Power to grant relief

Court may relieve liability for misconduct

(1) If, in a civil proceeding against an RSA 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 judgment to be entered for the RSA official on such terms as to costs or otherwise as the judge thinks proper.

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Where claim yet to be made

(4) If an RSA 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 an RSA provider, means:

(a) a responsible officer or employee of the RSA provider; or

(b) a receiver, or receiver and manager, of property of the RSA provider; or

(c) an administrator of the RSA provider; or

(d) a liquidator or provisional liquidator of the RSA provider; or

(e) a trustee or other person administering a compromise or arrangement made between the RSA provider and another person or other persons.

official misconduct means negligence, default, breach of trust or breach of duty.

RSA official means:

(a) an officer of an RSA provider; or

(b) an auditor of an RSA provider.

*Special meaning of **employee***

(6) The meaning of ***employee***, when used in this section, is to be determined as if subsections (3) and (8) of the definition in section 19 had not been enacted. Those subsections deem certain contractors to be employees.

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159 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.

160 Irregularities

Definitions

(1) In this section:

procedural irregularity includes:

(a) the absence of a quorum at a meeting of the directors of an RSA provider;

(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.

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) any proceeding at such a meeting;

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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
    (ii) any proceeding purporting to have been instituted or taken;

  under this Act or in relation to an RSA provider is not invalid because of any contravention of a provision of:
    (iii) this Act; or
    (iv) the terms and conditions of an RSA provider;
  (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 an RSA provider (including extending a period if it ended before the application for the order was made); or

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(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

(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.

161 Power of Court to prohibit payment or transfer of money or property

Court's power to protect interests of certain creditors etc.

(1) If:

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

(iii) a civil proceeding has begun against a person (also the ***contravening person***) under this Act; and

(b) the Regulator or a person (an ***aggrieved person***) to whom the contravening person is liable, or may become liable:

(i) to pay money (whether in respect of a debt, by way of damages or compensation or otherwise); or

(ii) to account for property;

applies to the Court; and

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

the Court may make one or more of the orders specified in subsection (4).

Court's power to protect the interests of holders

(2) 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 (4) to protect the interests of any or all of the holders of an RSA; and

(b) the Regulator applies to the Court for such an order in relation to the RSA provider; and

(c) the Court considers it necessary or desirable to protect the interests of any or all of the holders;

the Court may make one or more of the orders specified in subsection (4).

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(3) For the purposes of subsection (2), subsection (4) has effect as if any reference to the contravening person were a reference to the RSA provider.

Orders that Court may make

(4) The orders that the Court may make are the following:

(a) an order prohibiting a person who is indebted to the contravening person or to an associate of the contravening person from making a payment in total or partial discharge of the debt to:

(i) the contravening person or associate; or

(ii) another person at the direction or request of the contravening person or associate;

(b) an order prohibiting a person holding money or property on behalf of the contravening person or of an associate of the contravening person from:

(i) paying all or any of the money; or

(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) 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;

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(f) if the contravening person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.

*Meaning of **property** in paragraph (4)(d)*

(5) A reference in paragraph (4)(d) 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 (5)

(6) Subsection (5) 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

(7) An order made under subsection (1) or (2) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

Interim orders

(8) If an application is made to the Court for an order under subsection (1) or (2), 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

(9) On an application under subsection (1) or (2), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (8), to give an undertaking as to damages.

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Further orders

(10) If the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

Period of order

(11) An order made under subsection (1), (2) or (8) 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

(12) This section does not affect the powers that the Court has apart from this section.

Section subject to Bankruptcy Act

(13) This section has effect subject to the *Bankruptcy Act 1966*.

Offence to contravene orders

(14) 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.

162 Court may order the disclosure of information or the publication of advertisements—contravention of provisions relating to provision of RSAs etc.

(1) If a person (the ***alleged offender***) has engaged, is engaging or is proposing to engage in conduct in contravention of Part 5 or 7, the Court may, on the Regulator's application, make an order or orders under either or both of subsections (2) and (3).

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(2) The Court may make an order:

(a) requiring the alleged offender, or a person involved in the contravention, to disclose information to:

(i) the public; or

(ii) a specified person; or

(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.

163 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; or

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(b) attempting to contravene this Act; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene 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; or

(f) conspiring with others to contravene 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 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.

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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 subsection (1), (3) or (5).

Restraining injunctions

(7) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

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

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(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 161 orders

(10) In proceedings under this section against a person, the Court may make an order under section 161 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.

Definition

(12) In this section:

do an act or thing includes:

(a) give effect to a determination made under the AFCA scheme (within the meaning of the *Corporations Act 2001*); or

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

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164 Effect of sections 161, 162 and 163

Nothing in any one of section 161, 162 or 163 limits the generality of anything else in any other of those sections.

165 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.

166 Court may resolve transitional difficulties

(1) If any difficulty:

(a) arises in applying a provision of this Act in relation to a particular case in relation to which, if this Act had not been enacted, a provision of another law corresponding to the first-mentioned provision would have applied; or

(b) arises, because of a provision of this Act, in applying, in relation to a particular case, another provision of this Act or a provision of another law corresponding to another provision of this Act;

the Court may, on the application of an interested person, make such order as it thinks proper to remove the difficulty.

(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 14—Proceedings

167 Object of Part

The object of this Part is to set out various rules about court proceedings.

168 Power of Regulator to intervene in proceeding

(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 it 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 section 16.

169 Civil proceeding not to be stayed

No civil proceeding under this Act is to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

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170 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.

171 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

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(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 15—Exemptions and modifications

172 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.

173 Interpretation

In this Part:

modifiable provision means a provision of:

(a) section 38 or 39; or

(b) Division 1 or 3 of Part 5; or

(c) Part 9; or

(d) regulations made for the purposes of a provision of any of those sections, Divisions or that Part.

Note: For the definition of ***Regulator***, see section 16.

174 Regulator's powers of exemption—modifiable provisions

The Regulator may, in writing, exempt a particular person or class of persons from compliance with any or all of the modifiable provisions.

175 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 RSA provider or class of RSA providers.

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176 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.

177 Regulator's powers of modification—modifiable provisions

The Regulator may, in writing, declare that a modifiable provision is to have effect, in relation to a particular person or class of persons, as if it were modified as specified in the declaration.

178 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 RSA provider or class of RSA providers.

179 Revocation of exemptions and modifications

The Regulator may, in writing, revoke an exemption or declaration under this Part.

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180 Publication of exemptions and modifications etc.

The Regulator must cause a copy of an exemption or declaration under this Part, or a revocation of such an exemption or declaration, to be published in the *Gazette*.

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Part 16—Miscellaneous

181 Object of Part

The object of this Part is to set out miscellaneous rules about various matters relating to the operation of this Act.

182 Regulator may direct RSA institutions not to accept employer contributions

Definition

(1A) In this section:

regulatory provision, in relation to an RSA institution, means:

(a) a provision of this Act or the regulations; or

(aa) a provision of the *Financial Sector (Collection of Data) Act 2001*; or

(b) any of the following provisions of the *Corporations Act 2001* as applying in relation to RSAs that are provided by the RSA institution:

(i) subsection 1013K(1) or (2);

(ii) subsection 1016A(2) or (3);

(iii) subsection 1017B(1);

(iv) subsection 1017C(2A), (3A) or (5);

(v) subsection 1017D(1);

(vi) subsection 1017DA(3);

(vii) subsection 1017E(3) or (4);

(viii) subsection 1020E(8) or (9);

(ix) subsection 1021C(1) or (3);

(x) subsection 1021D(1);

(xi) subsection 1021E(1);

(xii) subsection 1021O(1) or (3);

(xiii) section 1041E;

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(xiv) subsection 1041F(1);

(xv) any other provisions that are specified in regulations made for the purposes of this subparagraph.

Directions

(1) The Regulator may give an RSA institution a written notice directing the RSA institution not to accept any contributions made to RSAs by a specified employer.

When direction may be given

(2) The Regulator must not give a direction under this section to an RSA institution unless:

(a) the RSA institution has contravened any of the regulatory provisions on one or more occasions; and

(b) the Regulator, after consulting with the prescribed regulatory agency, if any, is satisfied that the seriousness or frequency, or both, of the contraventions warrants the giving of the direction.

Reasons

(3) A direction under this section must be accompanied by, or included in the same document as, a statement giving the reasons for the direction.

Revocation

(4) The Regulator may revoke a direction under this section if the RSA institution satisfies the Regulator that there is, and is likely to continue to be, substantial compliance by the RSA institution with the regulatory provisions applicable to the RSA institution.

Offence of contravening direction

(5) An RSA institution must not, without reasonable excuse, contravene a direction under this section.

Penalty: 100 penalty units.

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(5A) Subsection (5) 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*.

Refund of contributions

(6) A contravention of subsection (5) does not result in the invalidity of a transaction. However, if a contribution is accepted in contravention of that subsection, the RSA institution must refund the contribution within 28 days or such further period as the Regulator allows.

Notification to employer

(7) If an RSA institution is given a direction under this section, the RSA institution must take all reasonable steps to notify the direction to each employer specified in the direction.

Offence of contravening subsection (6) or (7)

(8) A person who, without reasonable excuse, contravenes subsection (6) or (7) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

(8A) Subsection (8) 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*.

Refunded contributions to be ignored for the purposes of income tax and superannuation guarantee charge

(9) For the purposes of the Income Tax Assessment Act and the *Superannuation Guarantee (Administration) Act 1992*, if a contribution is refunded under this section, the person who made the contribution is taken never to have made the contribution.

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Superannuation guarantee charge—shortfall component to be treated as employer contribution

(10) This section has effect as if the payment of a shortfall component to a fund under section 65 of the *Superannuation Guarantee (Administration) Act 1992* were a contribution made to the RSA by an employer.

183 RSA contributions—deductions from salary or wages to be remitted promptly

Application

(1) This section applies if:

(a) an employer of an employee is authorised (whether by the employee, by force of law or otherwise) to:

(i) deduct an amount from salary or wages payable by the employer to the employee; and

(ii) contribute the amount to an RSA held by the employee; and

(b) the employer makes such a contribution.

Prompt remittance

(2) The employer must contribute to the RSA the amount of the deduction before the end of the 28 day period beginning immediately after the end of the month in which the deduction was made.

(2A) Subsection (2) does not apply if:

(a) the employer pays to an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) the amount of the deduction before the end of period mentioned in that subsection; and

(b) the approved clearing house accepts the payment.

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Offence

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

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

Definition

(4) In this section:

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

Part-time domestic workers counted

(5) For the purposes of this section, the *Superannuation Guarantee (Administration) Act 1992* has effect as if subsection 11(2) of that Act had not been enacted.

185 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 his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

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,

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for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate.

Exception to subsection (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 his or her 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 subsection (5)

(6) Subsection (5) does not apply if the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

No imprisonment in subsection (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;

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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.

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.

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186 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) In this section:

offence against this Act has the same meaning as in section 185.

188 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 or the regulations.

189 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 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

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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.

ART review of Regulator's decisions

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

Period for making certain ART applications

(8) If a decision is taken to be confirmed because of subsection (5), then, despite section 18 (when to apply—general rule) of the *Administrative Review Tribunal Act 2024*, an application to the Administrative Review Tribunal must be made within 28 days beginning on the day on which the decision is taken to be confirmed.

Note: A person may, under section 19 of that Act, apply to the Administrative Review Tribunal to extend the period.

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Continued operation of decision despite request for review

(9) 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 to the Regulator were the making of an application to the Tribunal for a review of that decision.

(10) 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.

190 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 189(1); and

(b) the person may, subject to the *Administrative Review Tribunal Act 2024*, if dissatisfied with a decision made by the 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 189(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 189(4) does not affect the validity of that decision.

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195 This Act and the regulations have effect subject to the *Crimes (Superannuation Benefits) Act 1989* and the *Australian Federal Police Act 1979*

This Act and the regulations apply in relation to an RSA provider subject to the effect of any superannuation order within the meaning of the *Crimes (Superannuation Benefits) Act 1989* or Part VA of the *Australian Federal Police Act 1979* that is made in respect of any RSA holder.

196 Payment out of an RSA in accordance with the *Bankruptcy Act 1966*

If a holder of an RSA becomes a bankrupt, within the meaning of subsection 5(1) of the *Bankruptcy Act 1966*, nothing in this Act or the regulations prevents the RSA provider from paying to the trustee in bankruptcy an amount out of the RSA that is property divisible amongst the member's creditors, within the meaning of section 116 of the *Bankruptcy Act 1966*.

197 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.

200 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.

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(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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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 = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

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

F = Federal Register of Legislation

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)

o = order(s)

Ord = Ordinance

orig = original

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

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = 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
Retirement Savings Accounts Act 1997	61, 1997	28 May 1997	2 June 1997 (s 2(1) and gaz 1997, No S202)	
Superannuation Contributions Tax (Consequential Amendments) Act 1997	71, 1997	5 June 1997	Sch 2: 5 June 1997 (s 2)	—
as amended by				
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997	191, 1997	7 Dec 1997	Sch 5: 5 June 1997 (s 2(4))	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (items 155–160): 1 July 1998 (s 2(2))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 15: 1 July 1998(s 2(2)(m))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 133–141): 1 July 1999 (s 3(2)(e) and gaz 1999, No S283) Sch 8: 17 June 1999 (s 3(1))	Sch 8
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999	128, 1999	13 Oct 1999	s 5–8 and Sch 1 (items 12–35): 13 Oct 1999 (s 2(2))	s 5–8
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Sch 8: 3 Apr 2000 (s 2(1))	—
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	108, 2000	3 Aug 2000	Sch 3 (items 3, 4): 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 359–363, 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 4 (item 6): 18 Jan 2001 (s 2(1))	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	Sch 1 (items 87–170): 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	Sch 2 (items 6–34): 15 Dec 2001 (s 2(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 459–463): 15 July 2001 (s 2(1) and (3))	s 4–14
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	ss. 1–3: Royal Assent Remainder: 1 July 2002 (*see* s. 2(2) and *Gazette* 2002, No. GN24)	Sch. 2 (item 94)
as amended by				
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 2 (item 1): 11 Mar 2002 (s 2(19))	—
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (items 263–275, 279) and Sch 2 (items 3, 6, 7): 11 Mar 2002 (s 2(6) and (18)) Sch 1 (items 276–278): never commenced (s 2(9A)) Sch 2 (items 4, 5): 1 July 2002 (s 2(20))	Sch 2 (item 5)
Financial Services Reform (Consequential Provisions) Act 2002	29, 2002	5 Apr 2002	Sch 1: 28 Dec 2002 (s 2(1) item 2)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (item 119): 1 Jan 2003	—
Financial Services Reform Amendment Act 2003	141, 2003	17 Dec 2003	Schedule 3 (item 2): 18 Dec 2003	—

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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	Schedule 3 (items 2–4, 11(1)): 1 July 2004 (*see Gazette* 2004, No. GN22)	Sch. 3 (item 11(1))
Superannuation Laws Amendment (2004 Measures No. 2) Act 2004	93, 2004	29 June 2004	s. 4(2) and Schedule 1 (item 4): Royal Assent	s. 4(2)
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004	102, 2004	30 June 2004	Schedule 1: 1 July 2005 Remainder: Royal Assent	Sch. 2 (item 10(2))
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005	82, 2005	29 June 2005	Schedule 2: 1 July 2005	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 4 (items 23, 24): Royal Assent	—
Tax Laws Amendment (Simplified Superannuation) Act 2007	9, 2007	15 Mar 2007	Schedule 7 (items 1, 7): Royal Assent	Sch. 7 (item 7)
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Schedule 1 (items 277–283, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2)	Sch. 1 (item 406(1)–(3))
Tax Laws Amendment (2007 Measures No. 4) Act 2007	143, 2007	24 Sept 2007	Schedule 5 (items 26, 48(1), (3)): Royal Assent	Sch. 5 (item 48(1), (3))

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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	Schedule 1 (items 35–40): Royal Assent	Sch. 1 (item 40)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	Schedule 4 (items 1, 2): 1 July 2008 Schedule 4 (item 20): Royal Assent	Sch. 4 (items 2, 20)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Schedule 1 (item 219): 27 Feb 2010	—
Tax Laws Amendment (2010 Measures No. 1) Act 2010	56, 2010	3 June 2010	Schedule 1 (items 1, 9): 1 July 2010	Sch. 1 (item 9)
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Schedule 4 (items 28, 29): 27 July 2010	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (items 67, 68): 17 Dec 2010	—
Tax Laws Amendment (2011 Measures No. 2) Act 2011	41, 2011	27 June 2011	Schedule 3 (items 1, 2, 13): 1 July 2011 Schedule 3 (items 14–16, 18, 19(1)): 1 Jan 2012	Sch. 3 (items 13, 18, 19(1))

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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	Schedule 2 (item 994) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011	108, 2011	14 Oct 2011	Schedule 1 (items 1–7, 20, 21): 1 Nov 2011 (*see* F2011L02110)	Sch. 1 (items 20, 21)
Tax Laws Amendment (2011 Measures No. 9) Act 2012	12, 2012	21 Mar 2012	Schedule 1 (items 1–10): 22 Mar 2012	—
Superannuation Legislation Amendment (Stronger Super) Act 2012	91, 2012	28 June 2012	Schedule 1 (items 1, 4–8, 20): 29 June 2012	Sch. 1 (item 20) (am. by 158, 2012, Sch. 4 [item 73])
as amended by				
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012	158, 2012	28 Nov 2012	Schedule 4 (item 73): 29 Nov 2012	—
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012	158, 2012	28 Nov 2012	Sch 4 (items 25–47, 53): 29 Nov 2012	Sch 4 (item 30)
as amended by				
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 47, 48): 29 Nov 2012 (s 2(1) item 18)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 7 (item 18): 1 July 2013	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 77, 78, 178, 179) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 13, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (item 25): 20 Mar 2015 (s 2(1) item 15)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 506, 507): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 268–270): 10 Mar 2016 (s 2(1) item 6)	—
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 4, 16–18, 31(1), 42, 44) and Sch 2 (items 6, 7): 6 Mar 2018 (s 2(1) items 2, 4, 5, 7) Sch 3 (items 8–16, 32(2)): 5 Mar 2022 (s 2(1) item 8)	s 4, Sch 1 (items 31(1), 44) and Sch 3 (item 32(2))

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2018 Measures No. 1) Act 2018	23, 2018	29 Mar 2018	Sch 1 (items 63–67): 1 Apr 2018 (s 2(1) item 8) Sch 1 (items 75–79): 30 Mar 2018 (s 2(1) item 9) Sch 4 (items 1–10, 23): 1 July 2018 (s 2(1) item 11)	Sch 1 (items 75–79) and Sch 4 (item 23)
Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020	3, 2020	17 Feb 2020	Sch 1 (items 21–23, 27): 18 Feb 2020 (s 2(1) item 1)	Sch 1 (item 27)
Treasury Laws Amendment (Reuniting More Superannuation) Act 2021	24, 2021	22 Mar 2021	Sch 1 (item 15): 23 Mar 2021 (s 2(1) item 2)	—
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023	76, 2023	20 Sept 2023	Sch 2 (items 695–698): 20 Oct 2023 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024	38, 2024	31 May 2024	Sch 1 (items 43, 69): 14 Oct 2024 (s 2(1) item 2)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 1	
s 3	rs No 54, 1998
	am No 128, 1999; No 121, 2001; No 15, 2007; No 145, 2010; No 108, 2011; No 12, 2012; No 91, 2012; No 158, 2012; No 21, 2015; No 13, 2018; No 23, 2018
Part 2	
Division 1	
s. 8	am. No. 160, 2000
s. 11	am. No. 48, 1998; No. 44, 1999
s. 15	am. No. 54, 1998
Division 2	
s 16	am No 71, 1997; No 48, 1998; No 54, 1998; No 44, 1999; No 128, 1999; No 55, 2001; No 121, 2001; No 123, 2001; No 102, 2004; No 25, 2008; No 75, 2009; No 145, 2010; No 41, 2011; No 108, 2011; No 12, 2012; No 91, 2012; No 158, 2012; No 13, 2018; No 23, 2018
Heading to s. 17	am. No. 54, 1998
s. 17	am. No. 54, 1998
s. 18	am. No. 55, 2001
s. 20	am. No. 102, 2004; No. 134, 2008; No. 46, 2011
s. 20A	ad. No. 102, 2004
Part 3	
s. 23	am. Nos. 48 and 54, 1998; No. 44, 1999
ss. 24–26	am. No. 54, 1998
ss. 28, 29	am. No. 54, 1998
Heading to s. 30	am. No. 54, 1998
ss. 30–32	am. No. 54, 1998
s. 33	am. Nos. 48 and 54, 1998; No. 44, 1999

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Provision affected	How affected
s. 34	am. No. 54, 1998; No. 31, 2001; No 4, 2016
Note to s. 34(4)	rep. No. 123, 2001
s. 35	am. No. 54, 1998; No. 31, 2001
Part 4	
Division 1	
Heading to Div. 1 of Part 4	ad. No. 12, 2012
s. 37	am. No. 54, 1998; No. 121, 2001
Division 2	
Heading to Div. 2 of Part 4	ad. No. 12, 2012
s 38	am No 54, 1998; No 13, 2018
s. 39	am. No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 39(2)	ad. No. 31, 2001
Division 3	
Div. 3 of Part 4	ad. No. 12, 2012
s. 39A	ad. No. 12, 2012
Division 4	
Heading to Div. 4 of Part 4	ad. No. 12, 2012
s. 40	am. No. 31, 2001
s. 41	am. No. 31, 2001; No. 29, 2002; No 4, 2016
s. 42	am. No. 31, 2001
s. 43A	ad. No. 15, 2007
Heading to s. 44	rs. No. 121, 2001
s. 44	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No. 121, 2001; No 4, 2016
Note to s. 44(1)	ad. No. 121, 2001
Note to s. 44(2)	ad. No. 31, 2001
Part 4A	
Part 4A	ad. No. 91, 2012

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Endnote 4—Amendment history

Provision affected	How affected
Division 1	
s. 45	am. No. 54, 1998
	rep. No. 123, 2001
	ad. No. 91, 2012
s. 45A	ad. No. 91, 2012
s. 45B	ad. No. 91, 2012
	am No 126, 2015
s. 45C	ad. No. 91, 2012
Division 2	
s. 45D	ad. No. 91, 2012
s. 45E	ad. No. 91, 2012
s. 45F	ad. No. 91, 2012
s. 45G	ad. No. 91, 2012
Division 3	
s. 45H	ad. No. 91, 2012
s. 45J	ad. No. 91, 2012
s. 45K	ad. No. 91, 2012
s. 45L	ad. No. 91, 2012
s. 45M	ad. No. 91, 2012
s. 45N	ad. No. 91, 2012
Division 4	
Heading to Div. 4 of Part 4A	rs. No. 158, 2012
Subdivision A	
Heading to Subdiv. A of Div. 4 of Part 4A	ad. No. 158, 2012
s. 45P	ad. No. 91, 2012
Subdivision B	
Subdiv. B of Div. 4 of Part 4A	ad. No. 158, 2012
s. 45Q	ad. No. 158, 2012

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Provision affected	How affected
s. 45R	ad. No. 158, 2012
Part 5	
Division 2	
s 47	am No 31, 2001 (as rep by No 117, 2001); No 4, 2016; No 13, 2018; No 76, 2023
Note to s. 47(3)	ad. No. 31, 2001
s. 48	am. No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 48(2)	ad. No. 31, 2001
s. 49	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 49(2)	ad. No. 31, 2001
s. 50	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 93, 2004
	rep. No. 9, 2007
Note to s. 50(4)	ad. No. 31, 2001
	rep. No. 9, 2007
Div. 3 of Part 5	rep. No. 102, 2004
s. 51	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001
Note to s. 51(1)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 52	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 123, 2001
	rep. No. 102, 2004
Note to s. 52(3)	ad. No. 31, 2001
	rep. No. 102, 2004
Note to s. 52(6)	ad. No. 31, 2001
	rep. No. 102, 2004
Note to s. 52(8)	ad. No. 31, 2001
	rep. No. 102, 2004
Div. 4 of Part 5	rep. No. 123, 2001
s. 53	am. No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001

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Endnote 4—Amendment history

Provision affected	How affected
Note to s. 53(1)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 54	am. No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001
Notes 1, 2 to s. 54(4)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 55	am. No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001
Note to s. 55(2)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 56	rep. No. 123, 2001
Div. 5 of Part 5	rep. No. 123, 2001
s. 57	am. No. 54, 1998
	rep. No. 123, 2001
s. 58	rep. No. 123, 2001
s. 59	am. No. 54, 1998
	rep. No. 123, 2001
s. 60	rs. No. 31, 2001
	rep. No. 123, 2001
Div. 6 of Part 5	rep. No. 123, 2001
s. 61	am. No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001
Note to s. 61(4)	ad. No. 31, 2001
	rep. No. 123, 2001
Div. 7 of Part 5	rep. No. 123, 2001
s. 62	am. No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 123, 2001
Note to s. 62(5)	ad. No. 31, 2001
	rep. No. 123, 2001

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Provision affected	How affected
Part 6	
s. 64	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 121, 2001; No 4, 2016
Note to s. 64(3)	ad. No. 31, 2001
s. 65	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 121, 2001; No. 25, 2008; No 4, 2016
Note to s. 65(2)	ad. No. 31, 2001
Note to s. 65(5)	ad. No. 31, 2001
Subhead. to s. 66(6)	am. No. 54, 1998
	rs. No. 53, 2004
Subhead. to s. 66(8)	am. No. 54, 1998
	rep. No. 53, 2004
s. 66	am. No. 54, 1998; No. 31, 2001 (as am. by No. 117, 2001); No. 121, 2001; No. 53, 2004; No 4, 2016
Note to s. 66(5)	ad. No. 31, 2001
	rs. No. 53, 2004
Note to s. 66(9)	ad. No. 31, 2001
	rep. No. 53, 2004
ss. 66A, 66B	ad. No. 53, 2004
s. 67	am. No. 54, 1998; No. 121, 2001
	rs. No. 25, 2008
s. 67A	ad. No. 25, 2008
s 67AA	ad No 82, 2010
	am No 38, 2024
s. 67B	ad. No. 25, 2008
Heading to s. 68	am. No. 54, 1998
s. 68	am. No. 54, 1998; No. 24, 2000; No. 121, 2001; No. 25, 2008
s. 69	rep. No. 123, 2001
	ad. No. 82, 2010
s. 70	am. No. 108, 2000
	rep. No. 123, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	ad. No. 82, 2010
Part 7	
s. 71	am. No. 108, 2000
	rep. No. 123, 2001
ss. 72, 73	rep. No. 123, 2001
s. 74	am. No. 123, 2001
s. 75	am. No. 31, 2001
	rep. No. 123, 2001
Note to s. 75	ad. No. 31, 2001
	rep. No. 123, 2001
s. 76	rep. No. 123, 2001
s. 77	am. No. 31, 2001
	rep. No. 123, 2001
Note to s. 77(1)	ad. No. 31, 2001
	rep. No. 123, 2001
s. 78	am. No. 82, 2005
Part 8	rep. No. 128, 1999
ss. 80–86	rep. No. 128, 1999
Part 9	
s 88	am No 171, 2012
s 89	am No 24, 2021
Part 10	
Heading to Part 10	rs. No. 158, 2012
Division 1	
s. 91	am. No. 54, 1998; No. 158, 2012
Division 2	
Heading to Div. 2 of of Part 10	rs. No. 158, 2012
Heading to s. 92	am. No. 54, 1998
s. 92	am. No. 54, 1998
Heading to s. 93	am. No. 54, 1998

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Provision affected	How affected
s. 93	am. No. 54, 1998; No. 158, 2012
s. 94	am. No. 158, 2012
s. 94A	ad. No. 158, 2012
Division 3	
Heading to Div. 3 of Part 10	rs. No. 54, 1998
s 95	am No 54, 1998; No 121, 2001; No 13, 2018; No 76, 2023
s. 96	am. No. 54, 1998; No. 31, 2001
s. 97	am. No. 54, 1998
Heading to s. 98	am. No. 54, 1998
s. 98	am. No. 54, 1998
s. 101	am. No. 54, 1998
s 102	am No 3, 2020
s 104	am No 54, 1998; No 3, 2020
Division 4	
s. 107	am. No. 54, 1998
s. 108	am. No. 54, 1998; No. 31, 2001; No 4, 2016
Notes 1, 2 to s. 108(3)	ad. No. 31, 2001
s. 111	am. No. 54, 1998
s. 112	am. No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 112(2)	ad. No. 31, 2001
s. 113	am. No. 54, 1998
Division 5	
s. 114	am. No. 54, 1998; No. 125, 2002
Division 6	
s. 115	am. No. 54, 1998 rs. No. 31, 2001 (as rs. by No. 117, 2001)
s. 116	am. No. 54, 1998
s. 117	am. No. 158, 2012
s. 118	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 8, 2007; No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
Note to s. 118(4)	ad. No. 31, 2001
s. 119	am. No. 54, 1998
Division 7	
s. 125	am. No. 54, 1998
Division 8	
Heading to s. 128	am. No. 54, 1998
s. 128	am. No. 54, 1998
s. 129A	ad. No. 54, 1998
Part 11	
Division 2	
ss. 131, 132	am. No. 71, 1997; No. 128, 1999
s. 133	am. No. 71, 1997; No. 128, 1999; No. 31, 2001 (as rep. by No. 117, 2001); No. 15, 2007; No 4, 2016
Note to s. 133(1)	ad. No. 15, 2007
Note to s. 133(3)	ad. No. 31, 2001
s. 133A	ad. No. 158, 2012
Division 3	
s. 134	am. No. 71, 1997; No. 128, 1999
s. 135	am. No. 71, 1997; No. 54, 1998; No. 128, 1999
s. 136	am. No. 71, 1997; No. 54, 1998; No. 128, 1999; No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016; No 23, 2018
Note to s. 136(4)	ad. No. 31, 2001
s. 137	am. No. 71, 1997; No. 128, 1999; No. 31, 2001 (as rep. by No. 117, 2001); No. 41, 2011; No 4, 2016
Note to s. 137(6)	ad. No. 31, 2001
Heading to s. 137A	am. No. 41, 2011
s. 137A	ad. No. 41, 2011
	am. No. 41, 2011; No 197, 2012
Note 1 to s 137A(3)	am No 197, 2012
Note 2 to s 137A(3)	am No. 197, 2012
s. 137B	ad. No. 158, 2012

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Provision affected	How affected
s. 138	am. No. 71, 1997; No. 54, 1998; No. 128, 1999; No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 138(4)	ad. No. 31, 2001
s. 138A	ad. No. 12, 2012
Division 4	
s. 139	am. No. 71, 1997; No. 54, 1998; No. 128, 1999; No. 15, 2007
s. 140	am. No. 71, 1997; No. 128, 1999
s. 140A	ad. No. 143, 2007
s. 141	am. No. 71, 1997; No. 128, 1999
s. 142	am. No. 71, 1997; No. 54, 1998; No. 128, 1999
s. 143	am. No. 71, 1997; No. 128, 1999
Division 4A	
Heading to Div. 4A of Part 11	rs. No. 158, 2012
Div. 4A of Part 11	ad. No. 15, 2007
s. 143A	ad. No. 15, 2007
	am. No. 158, 2012
s. 143B	ad. No. 15, 2007
	am No 158, 2012
s. 143C	ad. No. 158, 2012
s. 143D	ad. No. 158, 2012
s. 143E	ad. No. 158, 2012
s. 143F	ad. No. 158, 2012
Division 5	
s. 144	am. No. 71, 1997; No. 128, 1999; No. 121, 2001; No. 12, 2012
s. 145	am. No. 137, 2000
Division 6	
s 147	am No 197, 2012
s. 147A	ad. No. 71, 1997 (as am. by No. 191, 1997); No 23, 2018
Part 12	
Heading to Part 12	rs. No. 137, 2000

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Endnote 4—Amendment history

Provision affected	How affected
s. 148	am. No. 137, 2000
s. 150	rep. No. 137, 2000
s. 151	am. No. 31, 2001; No 4, 2016
ss. 152, 153	rep. No. 137, 2000
s. 154	rs. No. 31, 2001
	am No 4, 2016
s 155	am No 54, 1998; No 4, 2016
s 156	am No 54, 1998; No 4, 2016
Part 13	
s. 158	am. No. 8, 2007
s. 160	am. No. 54, 1998
s. 161	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No. 121, 2001; No 4, 2016
Note to s. 161(14)	ad. No. 31, 2001
s. 162	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001); No 4, 2016
Note to s. 162(4)	ad. No. 31, 2001
s 163	am No 54, 1998; No 13, 2018
	ed C47
	am No 76, 2023
s 165	am No 4, 2016
Part 14	
s. 168	am. No. 54, 1998; No. 108, 2011; No 23, 2018
Part 15	
s. 172	am. No. 54, 1998
s. 173	am. No. 128, 1999; No. 123, 2001; No. 108, 2011; No 23, 2018
Heading to s. 174	am. No. 54, 1998
s. 174	am. No. 54, 1998
Heading to s. 175	am. No. 54, 1998
s. 176	am. No. 54, 1998; No. 31, 2001
Heading to s. 177	am. No. 54, 1998

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Provision affected	How affected
s. 177	am. No. 54, 1998
Heading to s. 178	am. No. 54, 1998
ss. 179, 180	am. No. 54, 1998
Part 16	
Heading to s. 182	am. No. 54, 1998
s 182	am No 54, 1998; No 31, 2001; No 123, 2001; No 141, 2003; No 4, 2016; No 76, 2023
Note to s. 182(6)	rep. No. 123, 2001
s. 183	am. No. 31, 2001 (as rep. by No. 117, 2001); No. 56, 2010; No 4, 2016
Note to s. 183(3)	ad. No. 31, 2001
s 184	rep No 13, 2018
s. 185	am. No. 31, 2001
s. 187	rep. No. 54, 1998
s 189	am No 54, 1998; No 38, 2024
s 190	am No 54, 1998; No 38, 2024
ss. 191, 192	rep. No. 54, 1998
Heading to s. 193	am. No. 54, 1998
	rep. No. 121, 2001
Subheads. to s. 193(4), (5)	am. No. 54, 1998
	rep. No. 121, 2001
s. 193	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 121, 2001
Note to s. 193(6)	ad. No. 31, 2001
	rep. No. 121, 2001
Heading to s. 194	am. No. 54, 1998
	rep. No. 121, 2001
s. 194	am. No. 54, 1998
	rep. No. 121, 2001
s. 198	rep. No. 54, 1998
	ad. No. 108, 2011

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 23, 2018
s. 199	rep. No. 54, 1998
s. 200	am. No. 54, 1998

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