



# **First Home Saver Accounts Act 2008**

**No. 44, 2008**

**An Act to provide for first home saver accounts,  
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
<b>Division 1—General</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	2
3 General administration of Act .....	2
4 Application of Act not to be excluded or modified .....	2
5 Act extends to external Territories .....	2
6 Crown to be bound .....	2
<b>Division 2—Simplified outline</b>	<b>4</b>
7 Simplified outline .....	4
<b>Part 2—Key concepts and other definitions</b>	<b>6</b>
<b>Division 1—Key concepts</b>	<b>6</b>
8 Meaning of <i>FHSA</i> .....	6
9 Meanings of <i>hold</i> and <i>FHSA holder</i> .....	6
10 Meanings of <i>provide</i> and <i>FHSA provider</i> .....	6
11 Meanings of <i>Government FHSA contribution</i> and <i>personal FHSA contribution</i> .....	7
12 Meaning of <i>qualifying interest</i> in a dwelling .....	8
13 Meaning of <i>main residence</i> .....	9
14 Meaning of <i>FHSA home acquisition payment</i> .....	9
15 Meaning of <i>FHSA eligibility requirements</i> .....	9
16 Meaning of <i>FHSA ineligibility payment</i> .....	10
17 Meaning of <i>FHSA payment conditions</i> .....	10
<b>Division 2—Other definitions</b>	<b>13</b>
18 Definitions .....	13
<b>Part 3—Eligibility, contribution and payment rules</b>	<b>19</b>
<b>Division 1—Eligibility rules</b>	<b>19</b>
19 Obligation of FHSA provider in opening or issuing FHSA .....	19
20 FHSA holder must notify provider if he or she does not satisfy the FHSA eligibility requirements .....	20
21 Commissioner must notify provider if reason to believe that certain circumstances exist .....	21
22 FHSA provider to close inactive FHSA .....	21
23 Inactive FHSA .....	22
24 Default superannuation plan .....	23

---

<b>Division 2—Contributions to FHSAs</b>	25
25 Limit on contributions to FHSAs—account holder aged 65 or over .....	25
26 Limit on contributions to FHSAs—inactive FHSA .....	25
27 Limit on contributions to FHSAs—holder in breach of account balance cap .....	26
28 Breach of account balance cap .....	27
29 Account balance cap.....	28
30 Indexation of account balance cap.....	28
<b>Division 3—Restrictions on payments from FHSAs</b>	30
31 FHSA provider must not make payment from FHSA unless authorised by law etc. ....	30
<b>Division 4—Requirements to make payments from FHSAs</b>	32
32 Payment from FHSA for purposes of acquiring a home.....	32
33 Payment from FHSA if FHSA holder aged 60 or over .....	33
34 Payment of FHSA balance as contribution to superannuation.....	33
35 Payment of FHSA balance as transfer to another FHSA .....	34
<b>Part 4—Government FHSA contributions</b>	35
<b>Division 1—Eligibility for and amount of a Government FHSA contribution</b>	35
36 Whether a Government FHSA contribution is payable .....	35
37 Notification of eligibility status .....	35
38 Amount of Government FHSA contribution .....	36
39 Government FHSA contribution threshold.....	36
40 Indexation of Government FHSA contribution threshold.....	36
<b>Division 2—Payment of Government FHSA contribution</b>	38
41 Commissioner’s determinations .....	38
42 Payment of Government FHSA contribution.....	38
43 Providers to return Government FHSA contribution in certain circumstances.....	39
44 Government FHSA contribution increased by interest amount if paid late in certain circumstances .....	40
45 Commissioner to notify if Government FHSA contribution paid.....	40
<b>Division 3—Underpayments of Government FHSA contribution</b>	41
46 Underpayment determinations.....	41
47 Providers to return underpaid amounts in certain circumstances .....	42

---

---

48	Government FHSA contribution increased by interest amount if underpaid amount paid late in certain circumstances .....	42
49	Small underpayments paid by cheque .....	43
<b>Division 4—Overpayments of Government FHSA contribution</b>		<b>44</b>
50	Recovery of overpayments .....	44
51	Small overpayments .....	46
<b>Part 5—Administration</b>		<b>47</b>
<b>Division 1—General</b>		<b>47</b>
52	When general interest charge payable .....	47
53	Decisions under Part 4 to be in writing.....	48
54	Commissioner may arrange for use of computer programs to make decisions under Part 4 .....	48
55	Approved forms approved by Commissioner .....	48
<b>Division 2—Tax file numbers</b>		<b>49</b>
<b>Subdivision A—Quotation, use and transfer of FHSA holder's tax file number</b>		<b>49</b>
56	FHSA holder or applicant may quote tax file number .....	49
57	FHSA provider may request FHSA holder's or applicant's tax file number.....	49
58	FHSA provider must request FHSA holder to quote tax file number if not quoted previously .....	49
59	No obligation to quote tax file number .....	50
60	Use of tax file number for certain purposes .....	50
61	FHSA provider must inform other FHSA provider or superannuation provider of tax file number for certain purposes.....	52
<b>Subdivision B—Method of quotation of tax file numbers, including deemed quotation</b>		<b>53</b>
62	Method of quoting tax file number .....	53
63	FHSA holder taken to have quoted where Commissioner gives notice.....	54
64	Information provided by FHSA provider taken to have been provided by FHSA holder.....	54
65	FHSA holder or applicant taken to have quoted if he or she quoted for other purposes .....	54
<b>Subdivision C—Incorrect quotation of tax file number</b>		<b>55</b>
66	Effect of mistaken quotation of tax file number .....	55
67	Effect of invalid quotation of tax file number.....	55
<b>Subdivision D—Provision of tax file numbers in forms etc.</b>		<b>56</b>

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<b>Subdivision B—Grant of authorisation as FHSA provider</b>	75
92 Grant of authorisation as FHSA provider .....	75
93 Capital requirements.....	76
94 Documents required to bear ABN .....	77
95 When an authorisation is in force .....	77
96 APRA to give notice of refusal of applications .....	78
<b>Subdivision C—Conditions on authorisation as FHSA provider</b>	78
97 Conditions imposed on all authorisations .....	78
98 Additional conditions imposed by APRA on individual authorisations.....	79
99 Directions to comply with conditions on authorisation .....	80
<b>Subdivision D—Variation or revocation of condition on authorisation as FHSA provider</b>	80
100 Applications for variation or revocation of condition on authorisation as FHSA provider .....	80
101 APRA may request further information.....	81
102 Period for deciding applications .....	81
103 APRA may vary or revoke conditions on authorisation—in accordance with application .....	82
104 APRA may vary or revoke conditions on authorisation—on its own initiative .....	83
105 Notification of APRA’s decisions under this Division .....	84
106 When variations or revocations come into force etc. ....	84
<b>Subdivision E—Cancelling authorisation as FHSA provider</b>	85
107 Cancellation of authorisation as FHSA provider .....	85
108 Cancellation of authorisation for FHSA provider that is financial services licensee .....	85
109 APRA may allow authorisation as FHSA provider to continue in effect.....	86
<b>Subdivision F—Offences and self-incrimination</b>	86
110 Providing an FHSA while unauthorised etc.....	86
111 Failing to notify breach of condition on authorisation.....	87
112 Not complying with direction to comply with condition on authorisation .....	88
113 Breach does not affect validity of issue of FHSA etc. ....	88
<b>Division 2—Application of the Superannuation Industry (Supervision) Act 1993</b>	89
114 Modified application of the <i>Superannuation Industry (Supervision) Act 1993</i> .....	89
115 Provisions of the <i>Superannuation Industry (Supervision) Act 1993</i> that do not apply .....	90

---

---

116	General modifications of applicable provisions of the <i>Superannuation Industry (Supervision) Act 1993</i> .....	90
117	References to Prudential Standards .....	91
118	Persons who may be appointed to be custodians of FHSA trusts—approved guarantee etc.....	92
119	Transfer of FHSA trusts .....	92
120	Covenants to be included in governing rules—investment management.....	92
<b>Division 3—Prudential Standards</b> .....		94
121	Prudential Standards.....	94
122	Notice of determination, variation or revocation of certain Prudential Standards.....	95
<b>Division 4—Other prudential provisions</b> .....		96
123	Requirement for ADIs and life insurance companies to notify APRA of intention to provide FHSAs .....	96
124	Obligations of FHSA providers in relation to certain life policies .....	96
125	Protection for small balances.....	97
<b>Part 8—Miscellaneous</b> .....		99
126	Annual reports .....	99
127	Civil immunity where defendant was complying with this Act .....	99
128	Payment out of a fund in accordance with the <i>Bankruptcy Act 1966</i> .....	99
129	Compensation for acquisition of property .....	100
130	State insurance.....	100
131	Regulations.....	100

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# **First Home Saver Accounts Act 2008**

**No. 44, 2008**

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## **An Act to provide for first home saver accounts, and for related purposes**

*[Assented to 25 June 2008]*

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **Division 1—General**

##### **1 Short title**

This Act may be cited as the *First Home Saver Accounts Act 2008*.

Section 2

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**2 Commencement**

This Act commences on the day after it receives the Royal Assent.

**3 General administration of Act**

- (1) The Commissioner has the general administration of the following provisions of this Act:
  - (a) Part 3;
  - (b) Part 4;
  - (c) Part 5 (other than Subdivision B of Division 4);
  - (d) Part 6.
- (2) APRA has the general administration of the following provisions of this Act:
  - (a) Subdivision B of Division 4 of Part 5;
  - (b) Part 7 (subject to subsection (3)).
- (3) ASIC has the general administration of Division 2 of Part 7 of this Act, to the extent that section 6 of the *Superannuation Industry (Supervision) Act 1993* (as that section applies under subsection 114(2) of this Act) confers powers and duties on ASIC.

**4 Application of Act not to be excluded or modified**

This Act applies in relation to an FHSA despite any provision in the terms and conditions of the FHSA, 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.

**5 Act extends to external Territories**

This Act extends to every external Territory.

**6 Crown to be bound**

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

- (2) This Act does not make the Crown liable to be prosecuted for an offence.

## **Division 2—Simplified outline**

### **7 Simplified outline**

The following is a simplified outline of this Act:

- This Act provides for first home saver accounts, or FHSAs, to be offered by certain financial institutions.
- It deals with who is eligible to hold an FHSA, limits on contributions to FHSAs and when payments can be made from an FHSA.
- Provision is made for an annual Government contribution to be paid to an FHSA if certain conditions are met.
- Payments from FHSAs are subject to conditions under this Act, such as a requirement to use a payment towards the purchase of a first home.
- Failure to comply with the payment conditions can make a person liable to FHSA misuse tax under the *Income Tax Assessment Act 1997*. The tax may also apply if the person holds an FHSA while ineligible to do so.
- This Act also provides for the approval of entities that can offer FHSAs (other than ADIs and life insurance companies) and for the supervision of the FHSA business of those entities.
- The general prudential supervision of ADIs and life insurance companies that offer FHSAs is not dealt with in this Act, but is dealt with instead under the *Banking Act 1959* and the *Life Insurance Act 1995*.
- FHSAs are also subject to concessional treatment in respect of income tax and social security benefits. This

Section 7

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treatment is similar to that of superannuation. It is not dealt with in this Act, but is dealt with instead under the *Income Tax Assessment Act 1997*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*.

## Part 2—Key concepts and other definitions

### Division 1—Key concepts

#### 8 Meaning of *FHSA*

An individual's account, life policy or beneficial interest in a trust is an ***FHSA*** (short for first home saver account) if:

- (a) it is described as an FHSA; and
- (b) it is opened or issued on or after 1 October 2008 (or a later day (if any) specified in the regulations); and
- (c) it is:
  - (i) an account to which an ADI accepts, or has accepted, contributions; or
  - (ii) a life policy issued by a life insurance company; or
  - (iii) a beneficial interest in a trust constituted by a deed, the trustee of which holds an authorisation as an FHSA provider.

#### 9 Meanings of *hold* and *FHSA holder*

- (1) A person ***holds*** an FHSA if:
  - (a) for an FHSA that is an account—the account is opened solely in the person's name; or
  - (b) for an FHSA that is a life policy—the person is the sole owner of the life policy; or
  - (c) for an FHSA that is a beneficial interest in a trust—the person is the sole holder of the interest.
- (2) A person who holds an FHSA is an ***FHSA holder***.

#### 10 Meanings of *provide* and *FHSA provider*

- (1) An entity ***provides*** an FHSA if:
  - (a) for an FHSA that is an account—the entity is the ADI that accepts, or has accepted, contributions to the account; or

- (b) for an FHSA that is a life policy—the entity is the life insurance company that provides the policy; or
  - (c) for an FHSA that is a beneficial interest in a trust—the entity is the trustee of the trust.
- (2) An entity that provides an FHSA is an ***FHSA provider***.

## **11 Meanings of *Government FHSA contribution* and *personal FHSA contribution***

- (1) A contribution to an FHSA or other payment by the Commissioner that is payable under Part 4 of this Act for a person is a ***Government FHSA contribution*** of the person.
- (2) A contribution that a person makes, or that is made for the benefit of the person, to an FHSA held by the person is a ***personal FHSA contribution*** of the person (unless the contribution is a Government FHSA contribution of the person).
- (3) However, a contribution to an FHSA held by a person is not a ***personal FHSA contribution*** of the person if:
- (a) the contribution is by way of transfer to the FHSA from another FHSA held by the person; or
  - (b) the contribution is made because of a family law obligation; or
  - (c) the following conditions are satisfied:
    - (i) an FHSA home acquisition payment was previously made from an FHSA held by the person;
    - (ii) the payment satisfies the FHSA payment conditions because of subsection 17(3) (recontribution of FHSA home acquisition payment after failure to occupy a dwelling);
    - (iii) the contribution to the FHSA is by way of a recontribution of the FHSA home acquisition payment; or
  - (d) the payment is repaid from the FHSA in accordance with:
    - (i) subsection 25(2), 26(2) or 27(2); or
    - (ii) subsection 992A(4) (unsolicited offer of financial product), section 1016F (defective product disclosure

## Section 12

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document) or section 1019B (cooling-off period) of the *Corporations Act 2001*.

### 12 Meaning of *qualifying interest* in a dwelling

- (1) A person holds a ***qualifying interest*** in a dwelling if the person is the legal owner of the dwelling (whether alone or together with others).
- (2) Without limiting the scope of subsection (1), a person holds a ***qualifying interest*** in a dwelling if:
  - (a) the person is a lessee or licensee (whether alone or together with others) under a lease or licence that gives the person reasonable security of tenure over the dwelling; and
  - (b) in the case of a lease—the lease is a Crown lease (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (c) in the case of a licence—the licence was granted by the Commonwealth, a State or a Territory.
- (3) Without limiting the scope of subsection (1), a person holds a ***qualifying interest*** in a dwelling if:
  - (a) the person holds an equity of redemption in respect of the dwelling; or
  - (b) where the dwelling is a flat or home unit—the person is the legal owner of a share that:
    - (i) is in a company that is the legal owner of the land on which the flat or home unit is erected; and
    - (ii) gives the person a right to occupy the flat or home unit; or
  - (c) where the dwelling is in an aged care facility or retirement village—the person holds a right for him or her to occupy the dwelling.
- (4) A person also holds a ***qualifying interest*** in a dwelling if circumstances exist as specified in regulations made for the purposes of this subsection.
- (5) Despite anything else in the section, a person does not hold a ***qualifying interest*** in a dwelling if:
  - (a) the dwelling is not fixed to land; or



- (b) circumstances exist as specified in regulations made for the purposes of this paragraph.
- (6) A person **acquires** a qualifying interest in a dwelling when he or she starts to hold a qualifying interest in the dwelling.

### **13 Meaning of *main residence***

- (1) Subject to this section, a reference in this Act to a person's ***main residence*** has its ordinary meaning.
- (2) The regulations may specify circumstances in which a dwelling is a person's ***main residence*** for the purposes of this Act.
- (3) The regulations may specify circumstances in which a dwelling is not a person's ***main residence*** for the purposes of this Act.

### **14 Meaning of *FHSA home acquisition payment***

A payment from an FHSA is an ***FHSA home acquisition payment*** if the FHSA provider must make the payment under section 32 (payments for the purposes of acquiring a qualifying interest in a dwelling).

### **15 Meaning of *FHSA eligibility requirements***

- (1) A person meets the ***FHSA eligibility requirements*** if:
  - (a) the person is an individual; and
  - (b) the person is aged at least 18 years and under 65 years; and
  - (c) the person has never held a qualifying interest in a dwelling in Australia or Norfolk Island at a time when the dwelling was the person's main residence; and
  - (d) the person has never held an FHSA when the person was aged less than 18 years; and
  - (e) either:
    - (i) the person has never held more than one FHSA at a time; or
    - (ii) the person has held 2 FHSAs at a time, and the balance of one of the FHSAs was transferred to the other FHSA as the initial contribution to the other FHSA; and

**Section 16**

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- (f) either:
    - (i) the person has never held an FHSA that was closed; or
    - (ii) the requirement in subsection (2) is met for each FHSA that the person has held that was closed; and
  - (g) the person meets the requirements (if any) specified in the regulations.
- (2) The requirement in this subsection is met for an FHSA if:
- (a) the FHSA was closed following an FHSA home acquisition payment that met the FHSA payment conditions in subsection 17(3) (recontribution to an FHSA after failure to occupy a dwelling); or
  - (b) the FHSA was closed following an FHSA home acquisition payment, and it is still possible for the payment to meet the FHSA payment conditions in subsection 17(3); or
  - (c) the FHSA was closed as a result of a repayment made in accordance with subsection 992A(4) (unsolicited offer of financial product), section 1016F (defective product disclosure document) or section 1019B (cooling-off period) of the *Corporations Act 2001*.

**16 Meaning of *FHSA ineligibility payment***

A payment from an FHSA held by a person is an ***FHSA ineligibility payment*** if:

- (a) the payment is an FHSA home acquisition payment; and
- (b) the person did not satisfy the FHSA eligibility requirements when the payment was made.

Note: This Act does not provide for the consequences of the payment being an FHSA ineligibility payment. However, the FHSA holder will be liable for FHSA misuse tax in accordance with Subdivision 345-C of the *Income Tax Assessment Act 1997*.

**17 Meaning of *FHSA payment conditions***

- (1) An FHSA home acquisition payment satisfies the ***FHSA payment conditions*** if:
- (a) no later than 6 months after the payment is made, the person who holds or held the FHSA uses an amount equal to the

- payment in acquiring a qualifying interest in a dwelling in Australia or Norfolk Island; and
- (b) the dwelling is the person's main residence for a continuous period that:
    - (i) is at least 6 months long; and
    - (ii) starts within the period mentioned in subsection (2); and
  - (c) if the construction of the dwelling is not complete when the payment is made—that construction is complete within a reasonable period after the payment is made.
- (2) The period:
- (a) starts:
    - (i) if the construction of the dwelling is not complete when the payment is made—when the construction of the dwelling is complete; or
    - (ii) otherwise—when the person acquires the qualifying interest in the dwelling; and
  - (b) ends 12 months after the period starts, or at a later time that the Commissioner considers reasonable in the circumstances.
- (3) An FHSA home acquisition payment also satisfies the ***FHSA payment conditions*** if:
- (a) the person who holds or held the FHSA fails to satisfy the conditions in subsection (1); and
  - (b) within 6 months after the payment was made, the person contributes to an FHSA held by the person:
    - (i) an amount equal to the payment; or
    - (ii) a lesser amount that is reasonable to pay in the circumstances.
- (4) For the purposes of subparagraph (3)(b)(ii), in determining whether it is reasonable to pay a lesser amount in the circumstances, have regard to:
- (a) whether the failure to satisfy the conditions in subsection (1) was beyond the person's control; and
  - (b) whether that failure was reasonably foreseeable by the person; and
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**Part 2** Key concepts and other definitions

**Division 1** Key concepts

**Section 17**

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- (c) whether any previous FHSA home acquisition payment in respect of the person has failed to satisfy the conditions in subsection (1); and
- (d) any other relevant matter.

## Division 2—Other definitions

### 18 Definitions

In this Act:

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

**account balance cap** has the meaning given by section 29.

**acquire**: a person **acquires** a qualifying interest in a dwelling in the circumstances mentioned in subsection 12(6).

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

**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.

**authorisation as an FHSA provider** means an authorisation granted under section 92.

**authorised person** means a person appointed as an authorised person under section 80.

**base interest rate** for a day has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

**breach**: an FHSA holder is in **breach** of the account balance cap in the circumstances mentioned in section 28.

**Commissioner** means the Commissioner of Taxation.

Section 18

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***complying superannuation plan*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***contribution*** means a contribution of money, and includes a deposit into an account held at an ADI and a payment of a premium to a life insurance company.

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

***decision*** includes a decision not to make a determination under section 41 or 46.

***deed*** includes an instrument having the effect of a deed.

***default superannuation plan*** has the meaning given by section 24.

***Deputy Commissioner*** means a Deputy Commissioner of Taxation.

***examinable documents*** means any documents relevant to the operation of a provision of this Act for which the Commissioner has the general administration, or regulations made for the purposes of such a provision.

***family law obligation*** means:

- (a) a court order under the *Family Law Act 1975*; or
- (b) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act.

***FHSA*** (short for first home saver account) has the meaning given by section 8.

***FHSA eligibility requirements*** has the meaning given by section 15.

***FHSA holder*** has the meaning given by section 9.

***FHSA home acquisition payment*** has the meaning given by section 14.

***FHSA ineligibility payment*** has the meaning given by section 16.

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Section 18

**FHSA payment conditions:** an FHSA home acquisition payment satisfies the FHSA payment conditions in the circumstances set out in section 17.

**FHSA provider** has the meaning given by section 10.

**FHSA trust** means a trust of a kind mentioned in subparagraph 8(c)(iii).

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

**financial year** has the same meaning as in the *Income Tax Assessment Act 1997*.

**function** includes duty.

**general interest charge** means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

**Government FHSA contribution** has the meaning given by section 11.

**Government FHSA contribution threshold** has the meaning given by section 39.

**hold:**

- (a) a person **holds** an FHSA in the circumstances mentioned in section 9; and
- (b) a person **holds** a qualifying interest in a dwelling in the circumstances mentioned in section 12.

**inactive:** an FHSA is **inactive** in the circumstances mentioned in section 23.

**income tax return** means:

- (a) a return under section 161, 162 or 163 of the *Income Tax Assessment Act 1936*; or
- (b) a return by the trustee of a deceased person's estate under Subdivision 260-E of Schedule 1 to the *Taxation Administration Act 1953*.

Section 18

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**income year** has the same meaning as in the *Income Tax Assessment Act 1997*.

**indexation factor** has the meaning given by subsections 30(3) and 40(3).

**index number** has the meaning given by subsections 30(5) and 40(5).

**legal personal representative** has the same meaning as in the *Income Tax Assessment Act 1997*.

**life insurance company** means a company registered under the *Life Insurance Act 1995*.

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

**main residence** has the meaning given by section 13.

**overpaid amount** has the meaning given by subsection 50(2).

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

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

**personal FHSA contribution** has the meaning given by section 11.

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

**produce** includes permit access to.

**protected information** means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom section 70 applies in the course of, or because of, the person's duties under or in relation to this Act or the regulations.

**provides** has the meaning given by section 10.

**Prudential Standards** has the meaning given by subsection 121(1).



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Section 18

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

**qualifying interest** in a dwelling has the meaning given by section 12.

**quarter** has the same meaning as in the *Income Tax Assessment Act 1997*.

**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; or
- (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; or
- (c) the Commissioner, if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner.

**reporting period** has the same meaning as in subsection 1017D(2) of the *Corporations Act 2001*.

**reviewable decision** has the meaning given by section 74.

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

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

**Second Commissioner** means a Second Commissioner of Taxation.

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

**Superannuation Acts** means:

- (a) the *Retirement Savings Accounts Act 1997*; and
- (b) the *Superannuation Industry (Supervision) Act 1993*; and
- (c) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and

**Section 18**

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- (d) the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; and
- (e) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
- (f) the *Termination Payments Tax (Assessment and Collection) Act 1997*.

***superannuation interest*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***superannuation provider*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***taxation law*** has the same meaning as in the *Income Tax Assessment Act 1997*.

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

***underpaid amount*** has the meaning given by subsection 46(2).

## **Part 3—Eligibility, contribution and payment rules**

### **Division 1—Eligibility rules**

#### **19 Obligation of FHSA provider in opening or issuing FHSA**

- (1) An FHSA provider must not open or issue an FHSA for a person unless:
- (a) the person has given the provider an application in the approved form; and
  - (b) the application states that:
    - (i) the person meets the FHSA eligibility requirements; and
    - (ii) if the person already holds an FHSA—the person will ensure that the balance of the FHSA will be transferred to the FHSA to be opened or issued; and
    - (iii) if the person held an FHSA that was closed, and nevertheless meets the FHSA eligibility requirements because of paragraph 15(2)(b)—the initial contribution to the FHSA to be opened or issued will be made in accordance with paragraph 17(3)(b); and
  - (c) the person has quoted his or her tax file number to the provider in connection with the operation of this Act and the Superannuation Acts.

Note: Making a false statement in the application may constitute an offence: see subsection 8J(9) and sections 8K and 8N of the *Taxation Administration Act 1953*.

#### *Offence*

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

Penalty: 100 penalty units.

#### *Validity of transaction not affected by contravention*

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

Section 20

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**20 FHSA holder must notify provider if he or she does not satisfy the FHSA eligibility requirements**

- (1) The holder of an FHSA must give the FHSA provider a notice in the approved form in accordance with this section if circumstances arise resulting in the FHSA holder not satisfying the FHSA eligibility requirements.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for a breach of this subsection. A breach of this subsection may also be an offence under section 8C of that Act.

- (2) The FHSA holder must give the notice within 30 days after the circumstances arise.
- (3) However, the FHSA holder need not give the notice if:
- (a) the FHSA is closed within 30 days after the circumstances arise; or
  - (b) the FHSA provider must pay an amount from the FHSA under section 32 (FHSA home acquisition payment) because the FHSA holder requests the FHSA provider within 30 days after the circumstances arise to do so.
- (4) The notice must contain:
- (a) if the FHSA holder is aged 60 or over and wants the balance of the FHSA paid to him or her—a statement to that effect; or
  - (b) otherwise—an authority for the FHSA provider to contribute the balance of the FHSA to a superannuation interest of the FHSA holder in a complying superannuation plan.
- (5) The FHSA holder may give the FHSA provider a written revocation of the notice if:
- (a) the FHSA holder becomes satisfied that he or she satisfies the FHSA eligibility requirements; and
  - (b) 30 days have not yet elapsed since the FHSA holder gave the FHSA provider the notice; and
  - (c) the FHSA has not yet been closed in accordance with paragraph 22(2)(b).

**21 Commissioner must notify provider if reason to believe that certain circumstances exist**

- (1) The Commissioner must give the provider of an FHSA a notice in accordance with this section if the Commissioner has reason to believe that the FHSA holder does not satisfy the FHSA eligibility requirements.

Note: The Commissioner may give the provider a notice under subsection 67(2) if a correct TFN was not quoted for the FHSA holder.

- (2) If the Commissioner gives a notice under subsection (1), the Commissioner must give a copy of the notice to the FHSA holder.
- (3) The notice must describe the operation of the following provisions that results from the notice being given:
- (a) section 22 (requirement to close inactive FHSA);
  - (b) section 26 (limit on contributions to inactive FHSA);
  - (c) sections 32 and 35 (limit on payments from FHSA).
- (4) The Commissioner must give the FHSA provider a written revocation of the notice if:
- (a) the Commissioner becomes satisfied that the FHSA holder satisfies the FHSA eligibility requirements; and
  - (b) 30 days have not yet elapsed since the Commissioner gave the FHSA provider the notice; and
  - (c) the FHSA has not yet been closed in accordance with paragraph 22(2)(b).
- (5) If the Commissioner gives a revocation under subsection (4), the Commissioner must give a copy of it to the FHSA holder.

**22 FHSA provider to close inactive FHSA**

- (1) This section applies if:
- (a) an FHSA becomes inactive under subsection 23(1), and the FHSA provider has not received a revocation of the notice mentioned in that subsection before the 30th day (the **trigger day**) after the FHSA provider received the notice; or
  - (b) an FHSA becomes inactive under subsection 23(2), (3) or (4) on a particular day (also the **trigger day**).
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**Section 23**

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- (2) The FHSA provider must, within 14 days after the trigger day:
- (a) pay the entire balance of the FHSA to:
    - (i) if the FHSA holder is aged 60 or over and has given the FHSA provider a statement that he or she wants the balance of the FHSA to be paid to him or her—the FHSA holder; or
    - (ii) otherwise—the superannuation interest mentioned in subsection (3); and
  - (b) close the FHSA.

**Note:** If the FHSA holder becomes bankrupt, this section does not prevent a payment from the FHSA that is property divisible amongst the holder's creditors (see section 128).

- (3) The superannuation interest is:
- (a) if, for the purposes this paragraph, the FHSA holder has notified the FHSA provider in writing of a particular superannuation interest of the holder in a complying superannuation plan—that superannuation interest; or
  - (b) otherwise—to a superannuation interest for the benefit of the FHSA holder in the FHSA provider's default superannuation plan (see section 24).

*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

- (5) A contravention of subsection (2) does not affect the validity of a transaction.

**23 Inactive FHSA**

- (1) An FHSA is *inactive* if the provider of the FHSA:
- (a) has received a notice from the FHSA holder in accordance with subsection 20(1) (and has not received a revocation of that notice under subsection 20(5)); or

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Section 24

- (b) has received a notice from the Commissioner in accordance with subsection 21(1) (and has not received a revocation of that notice under subsection 21(4)); or
  - (c) has received a notice from the Commissioner in accordance with subsection 67(2) (and has not received a revocation of that notice).
- (2) An FHSA is also *inactive* if:
  - (a) the provider of the FHSA makes a payment from the FHSA; and
  - (b) the provider must make the payment under:
    - (i) section 32 (FHSA home acquisition payment); or
    - (ii) section 33 (FHSA holder aged 60 or over); and
  - (c) the balance of the FHSA immediately after the payment is more than nil.
- (3) An FHSA is also *inactive* if the holder of the FHSA is 65 years of age or over.
- (4) An FHSA is also *inactive* if:
  - (a) the FHSA was opened or issued for a person because he or she made a statement in an application, in accordance with subparagraph 19(1)(b)(ii), that he or she would ensure that the balance of another FHSA held by him or her would be transferred to the FHSA; and
  - (b) a period of 44 days has elapsed since the FHSA was opened or issued; and
  - (c) the transfer did not take place within that period.

**24 Default superannuation plan**

- (1) An entity that provides an FHSA or offers to provide an FHSA at a time must have nominated in writing, before that time, a complying superannuation plan to be its *default superannuation plan* for the purposes of paragraph 22(3)(b).

*Offence*

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

**Part 3** Eligibility, contribution and payment rules

**Division 1** Eligibility rules

**Section 24**

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Penalty: 100 penalty units.



**Division 2—Contributions to FHSAs****25 Limit on contributions to FHSAs—account holder aged 65 or over**

- (1) The provider of an FHSA must not allow an amount to be contributed to the FHSA if the holder of the account is aged 65 or older.

Note: In these circumstances the Commissioner may be able to pay a Government FHSA contribution directly to the FHSA holder (see section 41).

- (2) The FHSA provider does not contravene subsection (1) if the provider repays the amount from the FHSA to the FHSA holder within 30 days after receiving it.

*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

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

**26 Limit on contributions to FHSAs—inactive FHSA**

- (1) The provider of an FHSA must not allow an amount to be contributed to the FHSA if it is inactive.
- (2) The FHSA provider does not contravene subsection (1) if the provider repays the amount from the FHSA to the FHSA holder within 30 days after receiving it.

**Section 27**

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*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

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

**27 Limit on contributions to FHSAs—holder in breach of account balance cap**

- (1) The provider of an FHSA must not allow an amount to be contributed to the FHSA at a time if:
- (a) either:
    - (i) the FHSA holder is in breach of the account balance cap at the time the amount is to be paid; or
    - (ii) the FHSA holder would be in breach of the account balance cap at that time if the amount were paid; and
  - (b) the contribution would not be:
    - (i) a Government FHSA contribution; or
    - (ii) a contribution mentioned in paragraph 11(3)(a) (transfer to the FHSA from another FHSA held by the FHSA holder); or
    - (iii) a contribution mentioned in paragraph 11(3)(c) (recontribution of FHSA home acquisition payment after failure to occupy a dwelling).
- Note: This subsection does not prevent the FHSA provider from allowing part of a sum paid to it to be contributed to the FHSA.
- (2) The FHSA provider does not contravene subsection (1) if the provider repays the amount from the FHSA to the FHSA holder within 30 days after receiving it.

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Section 28

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*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

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

**28 Breach of account balance cap**

- (1) If the balance of an FHSA at a time exceeds the account balance cap for the financial year in which that time occurs, the person who holds the FHSA is in breach of the account balance cap:

- (a) at that time; and
- (b) at all later times (subject to this section).

Note: The FHSA holder is in breach of the account balance cap at a later time even if the balance of his or her FHSA falls short of the account balance cap for the financial year in which that later time occurs.

- (2) However, the person is not in breach of the account balance cap during the period mentioned in subsection (3) if:

- (a) the person applies to open or be issued with an FHSA; and
- (b) the initial contribution to the FHSA to be opened or issued will be made in accordance with paragraph 17(3)(b) (recontribution of FHSA home acquisition payment after failure to occupy a dwelling).

- (3) The period:

- (a) starts when the FHSA mentioned in paragraph (2)(a) is opened or issued; and
- (b) ends at the first time when the balance of that FHSA (or any other FHSA later held by the person) exceeds the account balance cap for the financial year in which that time occurs.

- (4) The person is also not in breach of the account balance cap during the period mentioned in subsection (5) if:

## Section 29

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- (a) a payment of a kind mentioned in paragraph 31(1)(c) (payments because of a family law obligation) is made from an FHSA held by the person; and
  - (b) the balance of that FHSA immediately after the payment is less than the account balance cap for the financial year in which the payment is made.
- (5) The period:
- (a) starts when the payment is made; and
  - (b) ends at the first time when the balance of that FHSA (or any other FHSA later held by the person) exceeds the account balance cap for the financial year in which that time occurs.

### 29 Account balance cap

The *account balance cap* for the 2008-09 financial year is \$75,000. This amount is indexed annually.

Note: Section 30 shows how to index this cap. However, the cap only moves by increments of \$5,000.

### 30 Indexation of account balance cap

- (1) The amount of the account balance cap is indexed annually by:
  - (a) multiplying the amount for the 2008-09 financial year by its indexation factor; and
  - (b) rounding the result in paragraph (a) down to the nearest multiple of \$5,000.
- (2) The account balance cap is not indexed if its indexation factor is 1 or less.
- (3) The *indexation factor* is:

Index number mentioned in subsection (5) for the quarter ending on 31 December just before the start of the relevant financial year  
Index number mentioned in subsection (5)  
for the quarter ending on 31 December 2007
- (4) The indexation factor mentioned in subsection (3) is calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Section 30

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- (5) The ***index number*** for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician for that month.

Section 31

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**Division 3—Restrictions on payments from FHSAs**

**31 FHSA provider must not make payment from FHSA unless authorised by law etc.**

- (1) The provider of an FHSA must not make a payment from the FHSA unless:
  - (a) the provider must make the payment under:
    - (i) section 32 (FHSA home acquisition payment); or
    - (ii) section 33 (FHSA holder aged 60 or over); or
  - (b) the provider must make the payment under:
    - (i) subsection 22(2) (compulsory contribution of balance of inactive FHSA to superannuation etc.); or
    - (ii) section 34 (voluntary contribution of balance of FHSA to superannuation); or
    - (iii) section 35 (voluntary transfer of balance of FHSA to another FHSA); or
  - (c) the payment is made because a family law obligation requires it to be made:
    - (i) by way of a contribution to a superannuation interest of the FHSA holder's spouse or former spouse in a complying superannuation plan; or
    - (ii) by way of transfer to an FHSA held by the FHSA holder's spouse or former spouse; or
    - (iii) to the FHSA holder's spouse or former spouse, if the spouse or former spouse is aged 60 or over; or
  - (d) the payment is a repayment made in accordance with:
    - (i) subsection 25(2), 26(2) or 27(2); or
    - (ii) subsection 992A(4) (unsolicited offer of financial product), section 1016F (defective product disclosure document) or section 1019B (cooling-off period) of the *Corporations Act 2001*; or
  - (e) the FHSA holder is deceased; or
  - (f) the payment is of an amount of fees owing to the FHSA provider for providing the FHSA; or

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Section 31

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- (g) the payment is of an amount owing to the Commonwealth in respect of overpayments of Government FHSA contributions.

Note: If the FHSA holder becomes bankrupt, this section does not prevent a payment from the FHSA that is property divisible amongst the holder's creditors (see section 128).

*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

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

## **Division 4—Requirements to make payments from FHSAs**

### **32 Payment from FHSA for purposes of acquiring a home**

- (1) This section applies if:
- (a) the holder of an FHSA has given the FHSA provider an application in the approved form requesting an amount to be paid from the FHSA; and
  - (b) the FHSA holder has declared in the application that the payment will satisfy the FHSA payment conditions mentioned in subsection 17(1); and
  - (c) any of the following requirements are met:
    - (i) personal FHSA contributions of at least \$1,000 per financial year have been made for the FHSA holder in at least 4 financial years (one of which may be the financial year in which the payment is to be made);
    - (ii) the FHSA holder is in breach of the account balance cap, and has held an FHSA in at least 4 financial years (one of which may be the financial year in which the payment is to be made);
    - (iii) the FHSA holder has declared in the application that he or she will acquire a qualifying interest in a dwelling together with another FHSA holder in respect of whom the requirement in subparagraph (i) or (ii) is met; and
  - (d) the provider is satisfied that the requirements (if any) specified in the regulations are met; and
  - (e) the FHSA is not inactive.
- (2) The FHSA provider must pay the amount as requested:
- (a) as soon as practicable after the application is made; and
  - (b) no later than 30 days after the application is made.

#### *Offence*

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

Penalty: 100 penalty units.



*Validity of transaction not affected by contravention*

- (4) A contravention of subsection (2) does not affect the validity of a transaction.

**33 Payment from FHSA if FHSA holder aged 60 or over**

- (1) This section applies if:
- (a) the holder of an FHSA has given the FHSA provider an application in the approved form requesting an amount to be paid from the FHSA; and
  - (b) the FHSA holder is aged 60 or over.
- (2) The FHSA provider must pay the amount as requested:
- (a) as soon as practicable after the application is made; and
  - (b) no later than 30 days after the application is made.

*Offence*

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

Penalty: 100 penalty units.

*Validity of transaction not affected by contravention*

- (4) A contravention of subsection (2) does not affect the validity of a transaction.

**34 Payment of FHSA balance as contribution to superannuation**

- (1) This section applies if:
- (a) an FHSA holder requests the FHSA provider to pay the balance of the FHSA by way of a contribution to a superannuation interest of the FHSA holder in a complying superannuation plan; and
  - (b) the request is in the approved form.
- (2) The FHSA provider must pay the amount as requested:
- (a) as soon as practicable after the application is made; and
  - (b) no later than 30 days after the application is made.

## Section 35

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### *Offence*

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

Penalty: 100 penalty units.

### *Validity of transaction not affected by contravention*

- (4) A contravention of subsection (2) does not affect the validity of a transaction.

## **35 Payment of FHSA balance as transfer to another FHSA**

- (1) This section applies if:
- (a) an FHSA holder requests the FHSA provider to pay the balance of the FHSA by way of transfer to another FHSA held by the FHSA holder; and
  - (b) the request is in the approved form; and
  - (c) the FHSA is not inactive.
- (2) The FHSA provider must pay the amount as requested:
- (a) as soon as practicable after the application is made; and
  - (b) no later than 30 days after the application is made.

Note: If the other FHSA is provided by another entity, the FHSA provider must give that entity a statement in accordance with section 391-10 in Schedule 1 to the *Taxation Administration Act 1953*.

### *Offence*

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

Penalty: 100 penalty units.

### *Validity of transaction not affected by contravention*

- (4) A contravention of subsection (2) does not affect the validity of a transaction.

## **Part 4—Government FHSA contributions**

### **Division 1—Eligibility for and amount of a Government FHSA contribution**

#### **36 Whether a Government FHSA contribution is payable**

- (1) A Government FHSA contribution is payable under this Act for a person for a financial year if:
  - (a) the person is an individual; and
  - (b) one or more personal FHSA contributions are made during the financial year for the person; and
  - (c) either:
    - (i) the person has lodged an income tax return for the income year corresponding to the financial year; or
    - (ii) the person has given a notice in accordance with section 37 for the income year corresponding to the financial year; and
  - (d) the return or notice (as the case requires) states that the person satisfied the residency requirement in subsection (2) for at least part of the income year corresponding to the financial year; and
  - (e) the person satisfied the residency requirement in subsection (2) for at least part of the income year corresponding to the financial year.
- (2) The residency requirement is that the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

#### **37 Notification of eligibility status**

For the purposes of this Part, a person may, in the approved form, notify the Commissioner that:

- (a) the person is not required to lodge an income tax return for an income year corresponding to a financial year; and

**Part 4** Government FHSA contributions

**Division 1** Eligibility for and amount of a Government FHSA contribution

**Section 38**

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- (b) the person satisfied the residency requirement in subsection 36(2) for at least part of that year.

**38 Amount of Government FHSA contribution**

- (1) Work out the amount of a Government FHSA contribution for a person for a financial year in accordance with this section.
- (2) First work out the following (the *covered contributions*):
  - (a) add up the personal FHSA contributions that were made during the financial year for the person; and
  - (b) if the total exceeds the Government FHSA contribution threshold for that financial year (see section 39)—disregard the excess.
- (3) The amount of the Government FHSA contribution is the covered contributions multiplied by 17%.
- (4) If (apart from this subsection) the amount of the Government FHSA contribution would be less than \$20, the amount of the Government FHSA contribution is increased to \$20.
- (5) If (apart from this subsection) the amount of the Government FHSA contribution would fall short of a multiple of \$1, the amount of the Government FHSA contribution is increased by that shortfall.

**39 Government FHSA contribution threshold**

The *Government FHSA contribution threshold* for the 2008-09 financial year is \$5,000. This amount is indexed annually.

Note: Section 40 shows how to index this threshold. However, the threshold only moves by increments of \$500.

**40 Indexation of Government FHSA contribution threshold**

- (1) The amount of the Government FHSA contribution threshold is indexed annually by:
  - (a) multiplying the amount for the 2008-09 financial year by its indexation factor; and

- (b) rounding the result in paragraph (a) down to the nearest multiple of \$500.
- (2) The Government FHSA contribution threshold is not indexed if its indexation factor is 1 or less.
- (3) The ***indexation factor*** is:  

Index number mentioned in subsection (5) for the quarter ending on 31 December just before the start of the relevant financial year  
Index number mentioned in subsection (5)  
for the quarter ending on 31 December 2007
- (4) The indexation factor mentioned in subsection (3) is calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (5) The ***index number*** for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician for that month.

## **Division 2—Payment of Government FHSA contribution**

### **41 Commissioner's determinations**

- (1) The Commissioner must determine that a Government FHSA contribution is payable for a person for a financial year if the Commissioner is satisfied that the contribution is payable for the person for the financial year.
- (2) In deciding whether to make a determination under this section, the Commissioner may have regard to:
  - (a) the income tax return lodged for the person, or the notice given in accordance with section 37 for the person, as the case requires, for the income year corresponding to the financial year; and
  - (b) the statement (relating to personal FHSA contributions) given to the Commissioner under section 391-5 in Schedule 1 to the *Taxation Administration Act 1953* for the person for the financial year; and
  - (c) any other information held by the Commissioner that is relevant to whether a Government FHSA contribution is payable for the person for the financial year.
- (3) If the Commissioner makes a determination under subsection (1), the Commissioner must determine whether the contribution is to be paid:
  - (a) to an FHSA held by the person; or
  - (b) to a superannuation interest of the person in a complying superannuation plan; or
  - (c) to the person; or
  - (d) to the person's legal personal representative.

### **42 Payment of Government FHSA contribution**

- (1) The Commissioner must, in accordance with a determination made under section 41, pay the Government FHSA contribution payable for a person for a financial year on or before the last day (the ***payment date***) of the period mentioned in subsection (2).
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- (2) The period:
- (a) starts on the later of the following days:
    - (i) the day on which the income tax return is lodged for the person, or the notice is given in accordance with section 37 for the person, as the case requires, for the income year corresponding to the financial year;
    - (ii) the day on which the statement (relating to personal FHSA contributions) for the person for the financial year is given to the Commissioner under section 391-5 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (b) ends 60 days later.

#### **43 Providers to return Government FHSA contribution in certain circumstances**

- (1) If:
- (a) a Government FHSA contribution for a person is paid to an FHSA provider or a superannuation provider; and
  - (b) the provider has not paid the contribution to an FHSA held by the person, or to a superannuation interest of the person in a complying superannuation plan, by the end of the 28th day after the day on which the contribution was paid to the provider;
- the provider:
- (c) is liable to repay the contribution to the Commonwealth; and
  - (d) must advise the Commissioner of the repayment, in the approved form, when the contribution is repaid.

Note 1: The liability to repay the contribution is a tax-related liability: see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* for collection and recovery provisions.

Note 2: Section 52 provides for the imposition of general interest charge if the contribution is not repaid within a certain period.

Note 3: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of paragraph (1)(d). A breach of that paragraph may also be an offence under section 8C of that Act.

**Section 44**

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- (2) The amount is due and payable 7 days after the day on which the provider first becomes liable to repay the contribution.

**44 Government FHSA contribution increased by interest amount if paid late in certain circumstances**

- (1) The amount of the Government FHSA contribution for a person for a financial year is increased by the amount of interest worked out under subsection (2) if the Commissioner pays none of the Government FHSA contribution on or before the payment date for the contribution (see subsection 42(1)).
- (2) The interest is to be calculated:
- (a) on the amount of the Government FHSA contribution; and
  - (b) for the period from the payment date for the Government FHSA contribution until the day on which the Commissioner first pays an amount in satisfaction of the Government FHSA contribution; and
  - (c) on a daily basis; and
  - (d) at the base interest rate for the day on which the interest is calculated.

**45 Commissioner to notify if Government FHSA contribution paid**

- (1) If the Commissioner pays a Government FHSA contribution for a person to:
- (a) the person; or
  - (b) the person's legal personal representative;
- the Commissioner must notify the person or the representative of the payment when the contribution is paid.
- (2) If the Commissioner pays a Government FHSA contribution for a person to an FHSA provider or superannuation provider, the Commissioner must notify the provider and the person of the contribution when it is paid.



## **Division 3—Underpayments of Government FHSA contribution**

### **46 Underpayment determinations**

- (1) This section applies if the Commissioner:
  - (a) pays an amount by way of a Government FHSA contribution for a person for a financial year; and
  - (b) is satisfied that the amount paid is less than the correct amount of the contribution.
- (2) The amount by which the correct amount exceeds the amount paid is the ***underpaid amount***.
- (3) The Commissioner must determine that the underpaid amount is to be paid for the person for the financial year.
- (4) If the Commissioner makes a determination under subsection (3), the Commissioner must determine whether the underpaid amount is to be paid:
  - (a) to an FHSA held by the person; or
  - (b) to a superannuation interest of the person in a complying superannuation plan; or
  - (c) to the person; or
  - (d) to the person's legal personal representative.
- (5) The Commissioner must, in accordance with determinations made under this section, pay the underpaid amount on or before the last day (the ***payment date***) of the period mentioned in subsection (6).
- (6) The period:
  - (a) starts on the later of the following days:
    - (i) the day on which the income tax return is lodged for the person, or the notice is given in accordance with section 37 for the person, as the case requires, for the income year corresponding to the financial year;
    - (ii) the day on which the statement (relating to personal FHSA contributions) for the person for the financial

**Section 47**

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year is given to the Commissioner under section 391-5 in Schedule 1 to the *Taxation Administration Act 1953*; and

- (b) ends 60 days later.

**47 Providers to return underpaid amounts in certain circumstances**

(1) If:

- (a) the underpaid amount for a person is paid to an FHSA provider or a superannuation provider; and
- (b) the provider has not paid the underpaid amount to an FHSA held by the person, or to a superannuation interest of the person in a complying superannuation plan, by the end of the 28th day after the day on which the contribution was paid to the provider;

the provider:

- (c) is liable to repay the underpaid amount to the Commonwealth; and
- (d) must notify the Commissioner of the repayment, in the approved form, at the time when the underpaid amount is repaid.

Note 1: The liability to repay the contribution is a tax-related liability: see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953* for collection and recovery provisions.

Note 2: Section 52 provides for the imposition of general interest charge if the contribution is not repaid within a certain period.

Note 3: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of paragraph (1)(d). A breach of that paragraph may also be an offence under section 8C of that Act.

- (2) The amount is due and payable 7 days after the day on which the provider first becomes liable to repay the underpaid amount.

**48 Government FHSA contribution increased by interest amount if underpaid amount paid late in certain circumstances**

- (1) The amount of the Government FHSA contribution for a person for a financial year is increased by the amount of interest worked out under subsection (2) if the Commissioner does not pay the

underpaid amount in full on or before the payment date for the underpaid amount (see subsection 46(5)).

- (2) The interest is to be calculated:
- (a) on the underpaid amount that remains unpaid on the payment date for the underpaid amount; and
  - (b) for the period from the payment date for the underpaid amount until the day on which the underpaid amount is paid in full; and
  - (c) on a daily basis; and
  - (d) at the base interest rate for the day on which the interest is calculated.

#### **49 Small underpayments paid by cheque**

The amount of the Government FHSA contribution is increased by the difference between \$5 and the underpaid amount if:

- (a) the Commissioner makes a determination under subsection 46(3) in relation to an underpaid amount; and
- (b) the underpaid amount is less than \$5; and
- (c) the underpaid amount is to be paid by cheque to:
  - (i) the person; or
  - (ii) the person's legal personal representative.

## **Division 4—Overpayments of Government FHSA contribution**

### **50 Recovery of overpayments**

- (1) This section applies if:
  - (a) the Commissioner pays an amount by way of a Government FHSA contribution for a person for a financial year; and
  - (b) either:
    - (i) the contribution was not payable for the person for the financial year; or
    - (ii) the amount paid is more than the correct amount of the contribution.
- (2) The *overpaid amount* is:
  - (a) if the contribution was not payable for the person for the financial year—the whole of the amount referred to in paragraph (1)(a); or
  - (b) if the amount paid is more than the correct amount of the contribution—the amount by which the amount paid exceeds the correct amount.
- (3) The Commissioner may take action to recover the overpaid amount under one or more of the items in the following table, but may only take action under an item if the conditions (if any) specified for that item are satisfied:

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<b>Methods for recovering overpaid amount</b>		
<b>Item</b>	<b>Action the Commissioner may take to recover overpaid amount</b>	<b>Conditions to be satisfied</b>
1	The Commissioner may deduct the whole or a part of the overpaid amount from any Government FHSA contribution payable for the person.	

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Section 50

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**Methods for recovering overpaid amount**

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<b>Item</b>	<b>Action the Commissioner may take to recover overpaid amount</b>	<b>Conditions to be satisfied</b>
2	The Commissioner may recover the whole or a part of the overpaid amount from the person (or the person's legal personal representative) as a debt due by the person (or the representative) to the Commonwealth.	<p>The Government FHSA contribution must have been paid by the Commissioner to the person (or the representative) or a payment of a kind mentioned in paragraph 31(1)(a) or (e) must have been made from an FHSA held by the person.</p> <p>The Commissioner must give the person (or the representative) written notice of the proposed recovery (including the amount to be recovered).</p> <p>At least 28 days must have elapsed since the notice was given.</p> <p>The amount recovered must not exceed the amount specified in the notice.</p>
3	<p>The Commissioner may recover the whole or a part of the overpaid amount from an FHSA provider or a superannuation provider to which:</p> <p>(a) the Commissioner paid the Government FHSA contribution; or</p> <p>(b) another FHSA provider or superannuation provider transferred the Government FHSA contribution;</p> <p>as a debt due by the FHSA provider or superannuation provider to the Commonwealth.</p>	<p>The amount recovered must not exceed the balance held by the provider for the person.</p> <p>The Commissioner must give the provider written notice of the proposed recovery (including the amount to be recovered).</p> <p>At least 28 days must have elapsed since the notice was given.</p> <p>The amount recovered must not exceed the amount specified in the notice.</p>

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Note: Section 52 provides for the imposition of general interest charge if an amount that the person must pay under a notice given to the person under item 2 or 3 of the above table is not repaid within a certain period.

**Part 4** Government FHSA contributions

**Division 4** Overpayments of Government FHSA contribution

**Section 51**

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- (4) The Commissioner may revoke a notice given under item 2 or 3 of the table in subsection (3) if the Commissioner is satisfied that it is appropriate in the circumstances to do so.
- (5) The total of the amounts deducted or recovered under subsection (3) in relation to an overpayment must not exceed the overpaid amount.
- (6) If the Commissioner makes a deduction under item 1 of the table in subsection (3) in relation to a Government FHSA contribution for a person, the Commissioner must notify the person within 28 days after the deduction is made.

**51 Small overpayments**

If the overpaid amount mentioned in subsection 50(2) is less than the greater of the following amounts:

- (a) \$100;
- (b) the amount (if any) specified in the regulations for the purposes of this paragraph;

the Government FHSA contribution is increased by the overpaid amount.

## **Part 5—Administration**

### **Division 1—General**

#### **52 When general interest charge payable**

- (1) If:
  - (a) a person is liable under subsection 43(1) or 47(1) to repay an amount; and
  - (b) the whole or a part of the amount remains unpaid after the time by which the amount is due to be paid;the person is liable to pay general interest charge on the unpaid amount.
- (2) If:
  - (a) the Commissioner gives a person a notice under item 2 or 3 of the table in subsection 50(3); and
  - (b) an amount that the person must pay under the notice remains unpaid after the time by which it is due to be paid;the person is liable to pay general interest charge on the unpaid amount.
- (3) A person who is liable under this section to pay general interest charge on an unpaid amount is liable to pay the charge for each day in the period that:
  - (a) started at the beginning of the day by which the unpaid amount was due to be paid; and
  - (b) finishes at the end of the last day at the end of which any of the following remains unpaid:
    - (i) the unpaid amount;
    - (ii) general interest charge on any of the unpaid amount.
- (4) For the purposes of this section:
  - (a) an amount that a person becomes liable under subsection 43(1) or 47(1) to repay is due to be paid 7 days after the day on which the person first becomes liable to repay the amount; and

**Section 53**

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- (b) an amount payable under a notice given under item 2 or 3 of the table in subsection 50(3) is due to be paid 28 days after the day on which the notice is given.

**53 Decisions under Part 4 to be in writing**

- (1) A decision of the Commissioner under Part 4 or regulations relating to that Part must be in writing.
- (2) Such a decision is taken to be in writing if it is made, or recorded, by means of a computer.

**54 Commissioner may arrange for use of computer programs to make decisions under Part 4**

- (1) The Commissioner may arrange for the use, under the Commissioner's control, of computer programs for any purposes for which the Commissioner may make decisions under Part 4 or regulations relating to that Part.
- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Commissioner.

**55 Approved forms approved by Commissioner**

To avoid doubt, an approved form approved by the Commissioner for the purposes of a provision of this Act is an approved form within the meaning of section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.



## **Division 2—Tax file numbers**

### **Subdivision A—Quotation, use and transfer of FHSA holder's tax file number**

#### **56 FHSA holder or applicant may quote tax file number**

An FHSA holder, or an applicant to become an FHSA holder, may quote his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

Note: Section 62 sets out the method of quoting.

#### **57 FHSA provider may request FHSA holder's or applicant's tax file number**

An FHSA provider may at any time request, in the approved form, an FHSA holder, or a person applying to become an FHSA holder, to quote his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

#### **58 FHSA provider must request FHSA holder to quote tax file number if not quoted previously**

- (1) Subject to subsection (3), if:
- (a) a person becomes a holder of an FHSA; and
  - (b) the person has not quoted his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts, by the time he or she becomes a holder;
- the FHSA provider must, before the required time (see subsection (2)), request the person in the approved form to quote his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

## Section 59

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Example: The FHSA provider must make the request if the person quoted the incorrect tax file number in his or her application for the FHSA.

### *Required time*

- (2) The **required time** is the end of the 28th day after the day on which the FHSA provider becomes aware that the person has not quoted his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

### *Exception*

- (3) The FHSA provider is not required to make the request if, before the required time, the person quotes his or her tax file number to the FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

### *Offences*

- (4) An FHSA provider commits an offence if it contravenes subsection (1).

Penalty: 100 penalty units.

- (5) An FHSA provider commits an offence if it contravenes subsection (1). This is an offence of strict liability.

Penalty: 50 penalty units.

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

## **59 No obligation to quote tax file number**

If the FHSA provider requests an FHSA holder or an applicant to quote his or her tax file number, the holder or applicant is not obliged to comply with the request.

## **60 Use of tax file number for certain purposes**

- (1) This section applies if an FHSA holder, or a person applying to become an FHSA holder, quotes his or her tax file number to the

Section 60

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FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

*Obligation to record tax file number*

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

*Obligation to retain tax file number until no longer required*

- (3) The FHSA provider must ensure that:
- (a) if the person applies to become an FHSA holder, but does not become an FHSA holder—the record is retained until the time (the ***last retention time***) at which the person ceases to be an applicant; and
  - (b) if the person is or becomes a holder of an FHSA provided by the FHSA provider—the record is retained until the later of the following times (also the ***last retention time***):
    - (i) the time the person ceases to be a holder of such an FHSA;
    - (ii) the last time at which the FHSA provider needs to use the tax file number in order to comply with its obligations under Division 391 in Schedule 1 to the *Taxation Administration Act 1953*.

*Obligation to destroy tax file number record when no longer required*

- (4) The FHSA provider must ensure that the record is destroyed as soon as is reasonably practicable after the last retention time.
- (5) Subsection (4) does not apply if the tax file number has also been provided for another purpose and is still required for that purpose.

*Use of tax file numbers to locate amounts*

- (6) Subject to subsection (7), the FHSA provider may use tax file numbers quoted to it as mentioned in subsection (1) in order to locate, in the records or accounts of the FHSA provider, amounts held in FHSAs provided by it.

## Section 61

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### *Use of tax file numbers to identify FHSA held by a particular person*

- (7) If the FHSA provider needs to identify the FHSA held by a particular person:
- (a) the FHSA provider must first use information (other than tax file numbers) to identify the FHSA; and
  - (b) the FHSA provider may only use the tax file number quoted by the person to the FHSA provider:
    - (i) if the information referred to in paragraph (a) is insufficient to identify the FHSA; or
    - (ii) to confirm the identification of the FHSA resulting from the use of the other information.

### *Offences*

- (8) An FHSA provider commits an offence if it contravenes a requirement of this section.

Penalty: 100 penalty units.

- (9) An FHSA provider commits an offence if it contravenes a requirement of this section. This is an offence of strict liability.

Penalty: 50 penalty units.

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

## **61 FHSA provider must inform other FHSA provider or superannuation provider of tax file number for certain purposes**

- (1) This section applies if:
- (a) a person is the holder of an FHSA provided by an FHSA 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 FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts.

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Section 62

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*Transfer of amounts in an FHSA to another FHSA*

- (2) If the FHSA provider transfers the balance of the FHSA to another FHSA held by the holder, the FHSA provider must, at the time of the transfer and in the approved form, inform the other FHSA provider of the holder's tax file number.

*Contribution of amounts in an FHSA to a complying superannuation plan*

- (3) If the FHSA provider contributes any amount from the FHSA to a complying superannuation plan for the benefit of the holder, the FHSA provider must, at the time of the contribution and in the approved form, inform the superannuation provider in relation to the plan of the holder's tax file number.

*Offences*

- (4) An FHSA provider commits an offence if it contravenes a requirement of this section.

Penalty: 100 penalty units.

- (5) An FHSA provider commits an offence if it contravenes a requirement of this section. This is an offence of strict liability.

Penalty: 50 penalty units.

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

**Subdivision B—Method of quotation of tax file numbers,  
including deemed quotation**

**62 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 Superannuation Acts if:

- (a) the person informs the other person of the number in the approved form; or
- (b) the person is taken to have quoted the number to the other person in connection with the operation or the possible future

**Section 63**

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operation of this Act and the Superannuation Acts under any of the following provisions of this Division.

**63 FHSA holder taken to have quoted where Commissioner gives notice**

- (1) An FHSA holder, or a person applying to become an FHSA holder, is taken to have quoted his or her tax file number to an FHSA provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts if the Commissioner 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 gave the notice.

**64 Information provided by FHSA provider taken to have been provided by FHSA holder**

- (1) This section applies if, in accordance with subsection 61(2) or (3), an FHSA provider (the *first FHSA provider*) informs another FHSA provider (the *second FHSA provider*), or a superannuation provider, of the tax file number of an FHSA holder.
- (2) The FHSA holder is taken:
  - (a) to have quoted the tax file number to the second FHSA provider or the superannuation provider in connection with the operation or the possible future operation of this Act and the Superannuation Acts; and
  - (b) to have quoted that tax file number at the time when the first FHSA provider informs the second FHSA provider or the superannuation provider.

**65 FHSA holder or applicant taken to have quoted if he or she quoted for other purposes**

For the purposes of this Act, an FHSA holder, or a person applying to become an FHSA holder, is taken to have quoted his or her tax file number to the FHSA provider in connection with the operation

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Section 66

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or the possible future operation of this Act and the Superannuation Acts, if:

- (a) the FHSA holder or applicant has quoted his or her tax file number to the FHSA provider under a provision of:
  - (i) the *Taxation Administration Act 1953*; or
  - (ii) the *Income Tax Assessment Act 1936*; or
  - (iii) the *Income Tax Assessment Act 1997*; and
- (b) the quotation was made on or after the commencement of this Part.

### **Subdivision C—Incorrect quotation of tax file number**

#### **66 Effect of mistaken quotation of tax file number**

- (1) The Commissioner may give an FHSA provider notice of the tax file number of the holder of an FHSA 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 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.

#### **67 Effect of invalid quotation of tax file number**

- (1) The Commissioner may give an FHSA provider a notice under subsection (2) if:
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## Section 68

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- (a) the provider has made a record of a number (the ***recorded TFN***) the FHSA provider believes to be the tax file number of the holder of an FHSA; and
  - (b) the Commissioner is satisfied that the recorded TFN:
    - (i) has been cancelled or withdrawn since it was quoted; or
    - (ii) is otherwise wrong; and
  - (c) the Commissioner is not satisfied that the holder has a tax file number.
- (2) The notice must:
- (a) identify the holder; and
  - (b) state that the Commissioner is not satisfied that the holder has a tax file number; and
  - (c) describe the operation of the following provisions that results from the notice being given:
    - (i) section 22 (requirement to close inactive FHSA);
    - (ii) section 26 (limit on contributions to FHSA);
    - (iii) sections 32 and 35 (limit on payments from FHSA).
- (3) If the Commissioner gives a notice under subsection (2), the Commissioner must give a copy of the notice to the holder.
- (4) If the Commissioner gives the FHSA provider notice of the person's tax file number at a later time, the Commissioner must at that time also give the FHSA provider a written revocation of the notice under subsection (2).

### **Subdivision D—Provision of tax file numbers in forms etc.**

#### **68 Forms etc. may require tax file number**

##### *Application for approval*

- (1) The approved form of an application for authorisation as an FHSA provider under section 89 may require the application to contain the tax file number of the applicant.



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Section 69

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*Financial returns*

- (2) The form of a financial return a copy of which is required to be given by an FHSA 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.

*Application for FHSA*

- (3) The approved form of an application for an FHSA in accordance with section 19 may require the application to contain the tax file number of the applicant.

**69 Failure to quote tax file number**

- (1) For the purposes of section 137.1 of the *Criminal Code*, a person does not omit a matter or thing from a statement made to a person covered under subsection (4) merely because the person has, in making the statement, failed to quote his or her tax file number.
- (2) For the purposes of subsection (1), a statement made to a person covered under subsection (4) includes a statement made orally, in writing, in a data processing device or in any other form.
- (3) Without limiting subsection (2), a statement made to a person covered under subsection (4) 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 a person covered under subsection (4) otherwise than under this Act or the regulations.
- (4) A person is covered under this section if the person is exercising powers or performing functions under or in relation to this Act or the regulations.

## Division 3—Secrecy

### 70 Secrecy

*Persons covered by this section*

- (1) This section applies to a person who is or has been:
- (a) the Commissioner, a Second Commissioner or a Deputy Commissioner; or
  - (b) a person engaged under the *Public Service Act 1999* in the Agency (within the meaning of that Act) of which the Commissioner is the Agency Head; or
  - (c) otherwise appointed or employed by, or a provider of services for, the Commonwealth.

*Information may be recorded or divulged only for purposes of Act*

- (2) A person to whom this section applies commits an offence if:
- (a) the person:
    - (i) makes a record of any protected information; or
    - (ii) whether directly or indirectly, divulges or communicates to a person any protected information about another person; and
  - (b) the record is not made, or the information is not divulged or communicated:
    - (i) under or for the purposes of this Act or the regulations; or
    - (ii) in the performance of duties, as a person to whom this section applies, under or in relation to this Act or the regulations.

Penalty: Imprisonment for 2 years.

*Information may be divulged to persons performing duties under taxation law*

- (3) Subsection (2) does not prohibit the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised

Section 70

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by any of them, from divulging or communicating any protected information to a person performing, as a person to whom this section applies, duties under, or in relation to, a taxation law for the purpose of enabling the person to perform the duties.

Note: In a prosecution for an offence against subsection (2), the defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Divulging information to Minister*

- (4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to a Minister.

*Court may not require information or documents*

- (5) A person to whom this section applies is not required:
- (a) to divulge or communicate protected information to a court; or
  - (b) to produce a protected document in court;
- except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

*Information may be divulged to persons performing duties under this Act*

- (6) Nothing in this Act or any other taxation law prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by any of them, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act or the regulations for the purpose of enabling the person to perform the duties.

Note: In a prosecution for an offence against subsection (2), the defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**Section 70**

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*Information may be divulged to court for purposes of this Act*

- (7) Nothing in this Act or any other taxation law prohibits the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by any of them, from:
- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
  - (b) producing in court a document obtained or made under or for the purposes of such an Act;

if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

Note: In a prosecution for an offence against subsection (2), the defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Oath, or affirmation, or declaration, of secrecy*

- (8) A person to whom this section applies must, if and when required by the Commissioner, a Second Commissioner or a Deputy Commissioner to do so, make an oath, or affirmation, or declaration, in a manner and form determined by the Commissioner in writing, to maintain secrecy in accordance with this section.

## **Division 4—Review of decisions**

### **Subdivision A—Review of Commissioner decisions relating to Government FHSA contributions**

#### **71 Review of decisions**

- (1) A person affected by a decision (the *original decision*) made by the Commissioner under Division 2, 3 or 4 of Part 4 may apply to the Commissioner for review of the decision.
- (2) If the person does so, the Commissioner must either:
  - (a) review the original decision and decide to:
    - (i) affirm it; or
    - (ii) vary it; or
    - (iii) set it aside and substitute a new decision; or
  - (b) arrange for an authorised review officer (see section 72) to do so.
- (3) In making arrangements for a review under subsection (2), the Commissioner must have regard to the need for the review to be an independent one.

#### **72 Authorised review officers**

The Commissioner must authorise persons employed or engaged under the *Public Service Act 1999* who are exercising powers or performing functions under, pursuant to or in relation to a taxation law to be authorised review officers for the purposes of this Division.

#### **73 Withdrawal of review applications**

- (1) An applicant for review under section 71 may, in writing or in any other manner approved by the Commissioner, withdraw the application at any time before the reviewer of the decision does any of the things in subsection 71(2).

**Section 74**

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- (2) If an application is so withdrawn, it is taken never to have been made.

**Subdivision B—Review of certain APRA decisions**

**74 Reviewable decision**

Each of the following decisions is a *reviewable decision*:

- (a) a decision of APRA to make a Prudential Standard referred to in paragraph 121(1)(c);
- (b) a decision of APRA to vary or revoke a Prudential Standard referred to in paragraph 121(1)(c);
- (c) a decision of APRA under subsection 90(2) to treat an application for an authorisation as an FHSA provider as having been withdrawn;
- (d) a decision of APRA under subsection 92(2) refusing an application for an authorisation as an FHSA provider;
- (e) a decision of APRA under subsection 98(1) to impose any additional conditions on an authorisation as an FHSA provider;
- (f) a decision of APRA under subsection 101(2) to treat an application for variation or revocation of a condition imposed on an authorisation as an FHSA provider as having been withdrawn;
- (g) a decision of APRA to refuse to vary or revoke under subsection 103(1) any conditions imposed on an authorisation as an FHSA provider;
- (h) a decision of APRA under subsection 104(1) to vary or revoke any conditions imposed on an authorisation as an FHSA provider;
- (i) a decision of APRA under subsection 107(1) to cancel an authorisation as an FHSA provider.

## **75 Review of certain decisions**

### *Request for review*

- (1) A person who is affected by a reviewable decision of APRA may, if dissatisfied with the decision, request APRA to reconsider the decision.

### *How request must be made*

- (2) The request must be made by written notice given to APRA 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 APRA allows.

### *Request must set out reasons*

- (3) The request must set out the reasons for making the request.

### *APRA to reconsider decision*

- (4) Upon receipt of the request, APRA must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as APRA thinks fit.

### *Deemed confirmation of decision if delay*

- (5) If APRA does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which APRA received the request under subsection (1) to reconsider the decision, APRA is taken, at the end of that period, to have confirmed the decision under subsection (4).

### *Notice of APRA's action*

- (6) If APRA confirms, revokes or varies a decision before the end of the period referred to in subsection (5), APRA must give written notice to the person stating:
  - (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.

**Section 76**

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*AAT review of APRA's decisions*

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

*Period for making certain AAT applications*

- (8) If a decision is taken to be confirmed because of subsection (5), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

*Only trustees affected by certain reviewable decisions*

- (9) For the purposes of this section and section 76, a person is taken not to be affected by a reviewable decision mentioned in paragraph 74(f), (g) or (h) unless the person is a trustee of an FHSA trust that is affected by the decision.

**76 Statements to accompany notification of decisions**

- (1) If a written notice is given to a person affected by a reviewable decision stating 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 APRA in accordance with subsection 75(1); and
  - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by APRA upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (2) If APRA confirms or varies a reviewable decision under subsection 75(4) and gives to the person written notice of the confirmation or variation of the decision, that notice is to include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or



Section 76

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varied, make application to the Administrative Appeals Tribunal for review of the decision.

- (3) A failure to comply with the requirements of subsections (1) and (2) in relation to a reviewable decision or a decision under subsection 75(4) does not affect the validity of that decision.

## **Part 6—Enforcement**

### **Division 1—Information gathering**

#### **77 Commissioner may require person or legal representative to give information**

- (1) The Commissioner may give a person, or the legal personal representative of a person, a written notice requiring the person or representative to give the Commissioner a statement setting out:
  - (a) information to enable the Commissioner to determine:
    - (i) whether a Government FHSA contribution is payable for the person; or
    - (ii) the amount of any Government FHSA contribution payable for the person; or
  - (b) information to enable the Commissioner to determine to whom the Commissioner should pay a Government FHSA contribution, or an underpaid amount, payable for the person; or
  - (c) information to enable the Commissioner to determine:
    - (i) whether an amount is recoverable under section 50 (which deals with overpayments) in relation to a Government FHSA contribution paid for the person; or
    - (ii) the overpaid amount in relation to a Government FHSA contribution paid for the person; or
  - (d) any other matters relating to Government FHSA contributions specified in the regulations.

The notice must specify the period within which the statement must be given to the Commissioner. The period specified must end not less than 21 days after the day on which the notice is given.
- (2) The person or representative commits an offence if:
  - (a) the notice requires the person or representative to give the Commissioner a statement setting out information to enable the Commissioner to determine:

Section 78

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- (i) whether an amount is recoverable under section 50 (which deals with overpayments) in relation to a Government FHSA contribution paid for the person; or
- (ii) the overpaid amount in relation to a Government FHSA contribution paid for the person; and
- (b) the person or representative fails to comply with the notice.

Penalty: 30 penalty units.

- (3) The Commissioner may give a notice under subsection (1) at any time and from time to time.

**78 Commissioner may require FHSA provider to give information**

- (1) The Commissioner may give an FHSA provider a written notice requiring the provider to give the Commissioner a statement setting out:
  - (a) information to enable the Commissioner to determine:
    - (i) whether a Government FHSA contribution is payable for a person; or
    - (ii) the amount of any Government FHSA contribution payable for a person; or
  - (b) information to enable the Commissioner to determine to whom the Commissioner should pay a Government FHSA contribution, or an underpaid amount, for a person; or
  - (c) information to enable the Commissioner to determine:
    - (i) whether an amount is recoverable under section 50 (which deals with overpayments) in relation to a Government FHSA contribution paid for a person; or
    - (ii) the overpaid amount in relation to a Government FHSA contribution paid for a person; or
  - (d) any other matters relating to Government FHSA contributions specified by the regulations.

The notice must specify the period within which the statement must be given to the Commissioner. The period specified must end not less than 21 days after the day on which the notice is given.

- (2) The FHSA provider commits an offence if the provider fails to comply with the notice.

**Section 79**

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Penalty: 30 penalty units.

- (3) The Commissioner may give a notice under subsection (1) at any time and from time to time.

**79 Self-incrimination**

- (1) A person is not excused from giving a statement under section 77 or 78 on the ground that the statement might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, neither:
- (a) the statement; nor
  - (b) anything obtained as a direct or indirect result of the giving of the statement;
- is admissible in evidence against the individual in any criminal proceedings (other than proceedings for an offence against section 77 or 78 of this Act or proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act).

## **Division 2—Access to premises**

### **80 Appointment of authorised persons**

The Commissioner may, by writing signed by the Commissioner, appoint a person:

- (a) appointed or engaged under the *Public Service Act 1999*; and
  - (b) performing duties in the Australian Taxation Office;
- to be an authorised person for the purposes of this Division or of a specified provision of this Division.

### **81 Powers of authorised person in relation to premises**

- (1) An authorised person may:
  - (a) with the consent of the occupier or person in charge of premises; or
  - (b) in accordance with a warrant issued under section 87 in relation to premises;enter the premises for the purposes of:
  - (c) obtaining information to determine:
    - (i) whether a Government FHSA contribution is payable for a person; or
    - (ii) the amount of a Government FHSA contribution that is payable for a person; or
    - (iii) whether an amount is recoverable under section 50 (which deals with overpayments) in relation to a Government FHSA contribution paid for a person; or
    - (iv) the overpaid amount in relation to a Government FHSA contribution for a person; or
  - (d) ascertaining whether a person has contravened or is contravening a provision of this Act.
- (2) If an authorised person enters any premises under subsection (1), the authorised person may search the premises for, inspect, examine, take extracts from, and make copies of, any examinable documents.

## Section 82

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### **82 Obligations of authorised persons—all cases**

- (1) An authorised person is authorised to enter premises in accordance with subsection 81(1) only if:
  - (a) the authorised person has shown his or her identity card, if required by the occupier or person in charge of the premises; and
  - (b) the authorised person has given the occupier or person in charge of the premises a written statement of the occupier's or person's rights and obligations in relation to the authorised person's proposed entry onto the premises.
- (2) An authorised person is not entitled to exercise any powers under this Division in relation to premises if, after entering the premises:
  - (a) the occupier or person in charge of the premises has required the authorised person to produce his or her identity card for inspection; and
  - (b) the authorised person fails to comply with the requirement.

### **83 Obligations of authorised persons—entry by consent**

- (1) An authorised person is authorised to enter premises in accordance with paragraph 81(1)(a) only if the authorised person has informed the occupier or person in charge of the premises that the occupier or person may refuse consent.
- (2) If an authorised person is on premises by consent in accordance with paragraph 81(1)(a), the authorised person must leave the premises if the occupier or person in charge of the premises asks the authorised person to do so.

### **84 Obligations of authorised persons—entry by warrant**

- (1) An authorised person must, before entering premises under a warrant issued under section 87:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.

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Section 85

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- (2) An authorised person is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.
- (3) If, when executing the warrant, the occupier or person in charge of the premises is present at the premises, the authorised person must make available to the occupier or person a copy of the warrant.
- (4) The authorised person must identify himself or herself to the occupier or person.
- (5) The copy of the warrant referred to in subsection (3) need not include the signature of the magistrate who issued the warrant.

**85 Obstruction of authorised person acting under a warrant**

A person commits an offence if:

- (a) the person obstructs or hinders an authorised person in the exercise of the authorised person's power under section 81; and
- (b) the authorised person exercises that power in accordance with a warrant issued under section 87.

Penalty: 30 penalty units.

**86 Persons to assist authorised persons acting under a warrant**

- (1) If an authorised person enters any premises in accordance with paragraph 81(1)(b), the occupier or the person in charge of the premises must, if requested to do so by the authorised person, provide reasonable assistance to the authorised person in the exercise of his or her power under that section in relation to those premises.
- (2) The occupier or the person in charge of the premises commits an offence if he or she fails to provide that reasonable assistance to the authorised person.

Penalty: 30 penalty units.

## Section 87

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### **87 Issue of warrant to enter premises**

- (1) If a magistrate, on application by an authorised person, is satisfied, by information on oath or affirmation:
  - (a) that there are reasonable grounds for believing that there are examinable documents on particular premises of an FHSA provider; and
  - (b) that the issue of the warrant is reasonably required for the purpose of ascertaining:
    - (i) whether a Government FHSA contribution is payable for a person; or
    - (ii) the amount of a Government FHSA contribution that is payable for a person; or
    - (iii) whether an amount is recoverable under section 50 (which deals with overpayments) in relation to a Government FHSA contribution paid for a person; or
    - (iv) the overpaid amount in relation to a Government FHSA contribution for a person; or
    - (v) whether a person has contravened or is contravening a provision of this Act;

the magistrate may issue a warrant authorising the authorised person to enter the premises:

  - (c) with such assistance as is necessary and reasonable; and
  - (d) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.
- (2) A warrant must specify:
  - (a) the powers exercisable under subsection 81(2) by the authorised person to whom the warrant is issued; and
  - (b) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
  - (c) the purpose for which the warrant is issued.
- (3) The function of issuing a warrant is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the function conferred.



## **88 Identity cards**

- (1) The Commissioner may cause an identity card to be issued to an authorised person.
- (2) An identity card must:
  - (a) contain a recent photograph of the authorised person to whom it is issued; and
  - (b) be in a form approved, in writing, by the Commissioner.
- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card under subsection (1); and
  - (b) the person ceases to be an authorised person for the purposes of this Division; and
  - (c) the person does not immediately return the identity card to the Commissioner.

Penalty: 1 penalty unit.

## **Part 7—Prudential provisions**

### **Division 1—Authorisation of RSE licensees as FHSA providers**

#### **Subdivision A—Applying for authorisation as FHSA provider**

#### **89 RSE licensee applications for authorisation as FHSA providers**

*Who may apply for authorisation as FHSA provider*

- (1) An RSE licensee that holds an RSE licence of a class that would enable it to be a trustee of a public offer entity may apply to APRA for an authorisation as an FHSA provider.

*Requirements for applications*

- (2) An application for an authorisation as an FHSA provider must:
  - (a) be in the approved form; and
  - (b) contain the information required by the approved form; and
  - (c) be accompanied by the application fee (if any) specified in regulations made for the purposes of this paragraph.

Note: The approved form may require the application to contain the tax file number of the applicant (see section 68).

#### **90 APRA may request further information**

- (1) APRA may give an applicant for an authorisation as an FHSA provider a notice, in writing, requesting it to give specified information relating to the application to APRA by a specified time. The specified time must be reasonable in the circumstances.
- (2) APRA may decide to treat the application as having been withdrawn if the applicant:
  - (a) does not comply with a request to provide information under this section; and
  - (b) does not have a reasonable excuse for not complying.

- (3) If APRA decides under subsection (2) to treat the application as having been withdrawn, APRA must take all reasonable steps to ensure that the applicant is given a notice informing the applicant of:
  - (a) APRA's decision; and
  - (b) the reasons for that decision;as soon as practicable after making the decision.

## **91 Period within which application is to be decided**

- (1) APRA must decide an application for an authorisation as an FHSA provider within 30 days after receiving the application unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application by up to 14 days if APRA informs the applicant of the extension:
  - (a) in writing; and
  - (b) within 30 days after receiving the application.
- (3) If APRA extends the period for deciding an application, it must decide the application within the extended period.
- (4) If APRA has not decided an application by the end of the period in which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

## **Subdivision B—Grant of authorisation as FHSA provider**

### **92 Grant of authorisation as FHSA provider**

- (1) APRA must grant an authorisation as an FHSA provider to an applicant if, and only if:
  - (a) APRA has no reason to believe that the applicant would fail to comply with this Act, the regulations or the Prudential Standards if the authorisation were granted; and
  - (b) APRA has no reason to believe that the applicant would fail to comply with any condition imposed on the authorisation if it were granted; and

## Section 93

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- (c) the application complies with section 89; and
- (d) APRA is satisfied that the applicant holds an RSE licence of a class that would enable it to be a trustee of a public offer entity; and
- (e) APRA is satisfied that the applicant meets the capital requirements under section 93; and
- (f) the application has not been withdrawn, treated as withdrawn under subsection 90(2) or taken to have been refused under subsection 91(4).

Note: Conditions apply to every authorisation as an FHSA provider. See Subdivision C.

- (2) Otherwise APRA must refuse the application.

### 93 Capital requirements

- (1) The capital requirements under this section are met by an applicant if it satisfies at least one of the following subsections.
- (2) An applicant satisfies this subsection if it satisfies subsection 29DA(2) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) An applicant satisfies this subsection if:
  - (a) it satisfies subsection 29DA(3) of the *Superannuation Industry (Supervision) Act 1993* because it is entitled to the benefit of an approved guarantee (within the meaning of that Act); and
  - (b) the approved guarantee is also in respect of its duties as trustee of each FHSA trust of which it is, or is proposing to become, the trustee.
- (4) An applicant satisfies this subsection if:
  - (a) it satisfies subsection 29DA(4) of the *Superannuation Industry (Supervision) Act 1993* because it is entitled to the benefit of an approved guarantee (within the meaning of that Act); and
  - (b) the approved guarantee is also in respect of its duties as trustee of each FHSA trust of which it is, or is proposing to become, the trustee.

- (5) An applicant satisfies this subsection if:
- (a) it satisfies subsection 29DA(5) of the *Superannuation Industry (Supervision) Act 1993*; and
  - (b) it has agreed, in writing, to comply with written requirements that have been given to it by APRA; and
  - (c) the written requirements relate to the custody of the assets of each FHSA trust of which it is, or is proposing to become, the trustee.

#### **94 Documents required to bear ABN**

- (1) An RSE licensee that is an FHSA provider must ensure that its ABN is included in:
- (a) each document that it gives to APRA in the capacity of an FHSA provider; and
  - (b) any other document in which it identifies itself as an FHSA provider; and
  - (c) any document in which it identifies itself as a trustee of an FHSA trust.
- (2) An RSE licensee that is an FHSA provider must ensure that the ABN of an FHSA trust of which it the trustee is included in:
- (a) each document that it gives to APRA in the capacity of the trustee of the trust; and
  - (b) any document in which it identifies itself as the trustee of the trust.
- (3) However, an RSE licensee is not required to comply with subsection (1) in respect of a particular document if it has been given written approval by APRA not to be required to ensure that the ABN is included in that document or in a class of documents that includes that document.

#### **95 When an authorisation is in force**

- (1) An authorisation as an FHSA provider comes into force at the later of:
- (a) the time when it is granted; or

**Section 96**

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- (b) the time specified in the authorisation as the time when it comes into force.
- (2) An authorisation as an FHSA provider continues in force, subject to:
  - (a) any imposition of conditions under Subdivision C; or
  - (b) any variation or revocation of those conditions under Subdivision D;until the authorisation is cancelled under Subdivision E.

**96 APRA to give notice of refusal of applications**

If APRA refuses an application for an authorisation as an FHSA provider, APRA must take all reasonable steps to ensure that the applicant is given a notice informing it of:

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

**Subdivision C—Conditions on authorisation as FHSA provider**

**97 Conditions imposed on all authorisations**

- (1) The following conditions are imposed on all authorisations as an FHSA provider:
  - (a) the FHSA provider must comply with this Act, the regulations and the Prudential Standards;
  - (b) the FHSA provider must perform properly the duties of a trustee in respect of each FHSA trust of which it is the trustee;
  - (c) the FHSA provider must ensure that every FHSA trust of which it is the trustee is maintained solely in respect of the provision of FHSAs;
  - (d) the FHSA provider must continue to meet the capital requirements under section 93;
  - (e) the FHSA provider must continue to hold an RSE licence of a class that would enable it to be a trustee of a public offer entity;

- (f) the FHSA provider must comply with any other conditions specified by regulations made for the purposes of this paragraph.

Note 1: Breach of a condition may lead to consequences such as a direction from APRA to comply with the condition (see section 99) or cancellation of the authorisation (see section 107).

Note 2: An FHSA provider must notify APRA of certain breaches of conditions: see section 111.

Note 3: Additional conditions may be imposed on various types of authorisation (see subsection (2)) or a particular authorisation (see section 98).

- (2) An additional condition specified by a regulation made for the purposes of this subsection as a condition applying to all authorisations of a specified class is imposed on each authorisation of that class.

## **98 Additional conditions imposed by APRA on individual authorisations**

- (1) APRA may, at any time, impose an additional condition on an authorisation as an FHSA provider by giving the FHSA provider a notice setting out the additional condition.
- (2) A condition imposed under subsection (1) must not be inconsistent with the following:
- (a) any condition imposed by, or under, section 97 on an authorisation as an FHSA provider;
  - (b) any condition imposed on the RSE licence of the FHSA provider under the *Superannuation Industry (Supervision) Act 1993*.

Note 1: Breach of a condition may lead to consequences such as a direction from APRA to comply with the condition (see section 99) or cancellation of the authorisation (see section 107).

Note 2: An FHSA provider must notify APRA of certain breaches of conditions (see section 111).

Note 3: FHSA providers may apply to APRA to have conditions imposed under this section varied or revoked (see section 100).

- (3) If the FHSA provider is also a financial services licensee:

## Section 99

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- (a) APRA must consult ASIC before imposing a condition that, in APRA's opinion, might reasonably be expected to affect the FHSA provider's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the FHSA provider provides; and
  - (b) APRA must inform ASIC about the imposition of any condition not covered by paragraph (a) within one week after the condition is imposed.
- (4) A failure to comply with a requirement of subsection (3) does not affect the validity of the imposition of any condition.
- (5) An additional condition imposed under this section comes into force on the later of:
- (a) the day on which APRA gives the FHSA provider the notice of the condition; or
  - (b) the day specified in the notice as the day on which the condition comes into force.

### **99 Directions to comply with conditions on authorisation**

APRA may direct an FHSA provider to comply with a specified condition on its authorisation as an FHSA provider by a specified time if APRA has reasonable grounds to believe that the FHSA provider has breached the condition. The direction must:

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

**Note:** A failure to comply with a direction may lead to cancellation of the authorisation (see section 107) and may be an offence (see section 112).

### **Subdivision D—Variation or revocation of condition on authorisation as FHSA provider**

#### **100 Applications for variation or revocation of condition on authorisation as FHSA provider**

- (1) An FHSA provider may apply to APRA for variation or revocation of a condition that APRA has imposed on its authorisation as an FHSA provider under section 98.



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Section 101

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- (2) An application under this section must:
  - (a) be in the approved form; and
  - (b) contain the information required by the approved form.

**101 APRA may request further information**

- (1) APRA may give an FHSA provider that makes an application under section 100 a notice requesting the FHSA provider to give APRA, in writing, specified information relating to the application by a specified time that is reasonable in the circumstances.
- (2) APRA may decide to treat an application under section 100 as having been withdrawn if the FHSA provider:
  - (a) does not comply with a request to provide information under this section; and
  - (b) does not have a reasonable excuse for not complying.
- (3) If APRA decides to treat an application under section 100 as having been withdrawn, APRA must take all reasonable steps to ensure that the FHSA provider is given a notice informing it of:
  - (a) APRA's decision; and
  - (b) the reasons for that decision;as soon as practicable after making the decision.

**102 Period for deciding applications**

- (1) APRA must decide an application under section 100 within 30 days of receiving the application, unless APRA extends the period for deciding the application under subsection (2).
- (2) APRA may extend the period for deciding an application under section 100 by up to 14 days if APRA informs the FHSA provider of the extension:
  - (a) in writing; and
  - (b) within 30 days after receiving the application.

## Section 103

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- (3) If APRA extends the period for deciding an application under section 100, it must decide the application within the extended period.
- (4) If APRA has not decided an application under section 100 by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

### **103 APRA may vary or revoke conditions on authorisation—in accordance with application**

- (1) If an FHSA provider makes an application in accordance with section 100, APRA may vary or revoke a condition that APRA has imposed under section 98 on the FHSA provider's authorisation as an FHSA provider.
- (2) However:
  - (a) a condition as varied must not be inconsistent with the following:
    - (i) any condition imposed by section 97;
    - (ii) any condition imposed on the RSE licence of the FHSA provider under the *Superannuation Industry (Supervision) Act 1993*; and
  - (b) if the FHSA provider is also a financial services licensee:
    - (i) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the FHSA provider's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the FHSA provider provides; and
    - (ii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (ii); and
    - (iii) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i) or (ii) within one week after the condition is varied or revoked.

Section 104

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- (3) A failure to comply with a requirement of paragraph (2)(b) does not invalidate the variation or revocation of a condition.
- (4) APRA is not required to vary or revoke any condition on an authorisation as an FHSA provider in the terms requested by an FHSA provider in an application under section 100.

**104 APRA may vary or revoke conditions on authorisation—on its own initiative**

- (1) APRA may, on its own initiative, vary or revoke any condition that it imposed on an authorisation as an FHSA provider under section 98.
- (2) However:
  - (a) a condition as varied must not be inconsistent with the following:
    - (i) any condition imposed by section 97;
    - (ii) any condition imposed on the RSE licence of the FHSA provider under the *Superannuation Industry (Supervision) Act 1993*; and
  - (b) if the FHSA provider is also a financial services licensee:
    - (i) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the FHSA provider's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the FHSA provider provides; and
    - (ii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (i); and
    - (iii) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i) or (ii) within one week after the condition is varied or revoked.
- (3) A failure to comply with a requirement of paragraph (2)(b) does not affect the validity of the variation or revocation of a condition.

Section 105

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**105 Notification of APRA's decisions under this Division**

- (1) APRA must give a notice to an FHSA provider if APRA varies or revokes, under section 103 or 104, a condition on the FHSA provider's authorisation as an FHSA provider.
- (2) The notice must:
  - (a) identify the authorisation condition being varied or revoked; and
  - (b) specify any conditions imposed under section 98 to which the authorisation is subject after the variation or revocation comes into force; and
  - (c) state the reasons for the variation or revocation; and
  - (d) specify the day, not earlier than the day on which APRA gives the notice, on which the variation or revocation comes into force.
- (3) If APRA refuses an application for a variation or revocation under section 103, APRA must take all reasonable steps to ensure that the applicant is given a notice informing it of:
  - (a) APRA's refusal of the application; and
  - (b) the reasons for the refusal;as soon as practicable after refusing the application.

**106 When variations or revocations come into force etc.**

- (1) If, under section 103 or 104, APRA varies a condition imposed on an authorisation as an FHSA provider:
  - (a) the variation comes into force on the day specified in the notice under paragraph 105(2)(d); and
  - (b) the variation remains in force until:
    - (i) the condition is varied in an inconsistent manner; or
    - (ii) the condition is revoked; or
    - (iii) the authorisation is cancelled.
- (2) If, under section 103 or 104, APRA revokes a condition imposed on an authorisation as an FHSA provider, the revocation comes into force on the day specified in the notice under paragraph 105(2)(d).

## **Subdivision E—Cancelling authorisation as FHSA provider**

### **107 Cancellation of authorisation as FHSA provider**

- (1) Subject to subsection (3), APRA may, in writing, cancel an authorisation as an FHSA provider.  
  

Note: In some circumstances, APRA must inform or consult ASIC before cancelling an authorisation (see section 108).
- (2) Without limiting subsection (1), APRA may cancel an authorisation as an FHSA provider under that subsection if:
  - (a) the FHSA provider has requested, in the approved form, that the authorisation be cancelled; or
  - (b) the FHSA provider is a disqualified person for the purposes of Part 15 of the *Superannuation Industry (Supervision) Act 1993* (as that Part applies under subsection 114(2)); or
  - (c) the FHSA provider has breached a condition imposed on the authorisation; or
  - (d) APRA has reason to believe that the FHSA provider will breach a condition imposed on the authorisation; or
  - (e) the FHSA provider has failed to comply with a direction by APRA under section 99; or
  - (f) APRA has reason to believe that the FHSA provider will fail to comply with a direction by APRA under section 99.
- (3) If APRA cancels an authorisation as an FHSA provider it must take all reasonable steps to ensure that the FHSA provider is given a notice informing it:
  - (a) that APRA has cancelled the authorisation; and
  - (b) of the reasons for the cancellation.

### **108 Cancellation of authorisation for FHSA provider that is financial services licensee**

- (1) Before cancelling the authorisation as an FHSA provider of an FHSA provider that is also a financial services licensee, APRA must consult ASIC if, in APRA's opinion, the cancellation might reasonably be expected to affect the FHSA provider's ability to

**Section 109**

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provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the FHSA provider provides.

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

**109 APRA may allow authorisation as FHSA provider to continue in effect**

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

- (a) a specified provision, administered by APRA, of this Act or the regulations; or
  - (b) the Prudential Standards; or
  - (c) a specified provision, administered by APRA, of any other law of the Commonwealth;
- in relation to specified matters, a specified period, or both.

**Subdivision F—Offences and self-incrimination**

**110 Providing an FHSA while unauthorised etc.**

- (1) A person commits an offence if:
  - (a) the person purports to provide an FHSA; and
  - (b) the person is not an RSE licensee that holds an authorisation as an FHSA provider; and
  - (c) either:
    - (i) the person is not an ADI; or
    - (ii) the person is an ADI with an authority granted under section 9 of the *Banking Act 1959* that does not allow the person to provide an FHSA; and

- (d) either:
  - (i) the person is not a life insurance company; or
  - (ii) the person is a life insurance company with conditions of registration imposed under section 22 of the *Life Insurance Act 1995* that do not allow the person to provide an FHSA.
- (2) A person that contravenes subsection (1) commits an offence.  
Penalty: Imprisonment for 2 years, or 120 penalty units, or both.
- (3) This section does not prevent an FHSA provider from engaging or authorising persons to act on its behalf.

### **111 Failing to notify breach of condition on authorisation**

- (1) If an FHSA provider becomes aware that:
  - (a) the FHSA provider has breached or will breach a condition imposed on its authorisation as an FHSA provider; and
  - (b) the breach is or will be significant (see subsection (2));the FHSA provider must give APRA a written report about the breach as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.
- (2) For the purposes of subsection (1), a breach is or will be **significant** if the breach is or will be significant having regard to any one or more of the following factors:
  - (a) the number or frequency of similar previous breaches;
  - (b) the impact the breach has or will have on the FHSA provider's ability to fulfil its obligations as an FHSA provider;
  - (c) the extent to which the breach indicates that the FHSA provider's arrangements to ensure compliance with this Act, the regulations and the Prudential Standards might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the breach to the holders of FHSAs provided by the FHSA provider;
  - (e) any other matters specified in regulations made for the purposes of this paragraph.

**Part 7** Prudential provisions

**Division 1** Authorisation of RSE licensees as FHSA providers

**Section 112**

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- (3) A person commits an offence if:
- (a) the person is an FHSA provider; and
  - (b) the person is in breach of subsection (1).

Penalty: 50 penalty units.

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

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

**112 Not complying with direction to comply with condition on authorisation**

- (1) An FHSA provider must comply with a direction given to it under section 99 within the time specified in the direction.

- (2) A person commits an offence if:
- (a) the person is an FHSA provider; and
  - (b) the person is in breach of subsection (1).

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*.

**113 Breach does not affect validity of issue of FHSA etc.**

A contravention of section 110, 111 or 112 does not affect the validity of a transaction.



## **Division 2—Application of the Superannuation Industry (Supervision) Act 1993**

### **114 Modified application of the *Superannuation Industry (Supervision) Act 1993***

- (1) The object of this section is to apply certain prudential provisions of the *Superannuation Industry (Supervision) Act 1993* to RSE licensees that hold an authorisation as an FHSA provider.
- (2) For the purposes of this Act, the provisions of the *Superannuation Industry (Supervision) Act 1993* apply:
  - (a) to an FHSA provider that holds such an authorisation in the same way that they apply to an RSE licensee that is a trustee of a public offer superannuation fund; and
  - (b) to an FHSA trust in the same way that they apply to a public offer superannuation fund; and
  - (c) to the holder of an FHSA provided by such an FHSA provider in the same way that they apply to a beneficiary or member of a public offer superannuation fund; and
  - (d) to an FHSA provided by such an FHSA provider in the same way that they apply to a superannuation interest.

Example: An FHSA provider that is the trustee of an FHSA trust may commit an offence under section 35A of the *Superannuation Industry (Supervision) Act 1993* as applied by this section if the provider fails to comply with the obligations in section 35A concerning the accounting records of the FHSA trust.

- (3) However:
  - (a) subsection (2) does not apply to the provisions of the *Superannuation Industry (Supervision) Act 1993* mentioned in section 115; and
  - (b) the remaining provisions of that Act apply under subsection (2) as modified by this Division.

Section 115

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**115 Provisions of the *Superannuation Industry (Supervision) Act 1993* that do not apply**

For the purposes of paragraph 114(3)(a), the provisions of the *Superannuation Industry (Supervision) Act 1993* that do not apply are as follows:

- (a) sections 1 to 4 and section 10A;
- (b) Parts 2A, 2B and 3;
- (c) Part 5;
- (d) sections 54 and 55A and subsection 59(1A);
- (e) Part 7, other than:
  - (i) sections 65 and 66; and
  - (ii) subsections 67(1), (2), (3) and (7); and
  - (iii) section 68;
- (f) Part 8, other than:
  - (i) sections 69, 70B, 70C, 70D, 70E, 71D, 71E, 73, 75, 83, 84 and 85; and
  - (ii) section 71 (other than paragraph 71(1)(c));
- (g) Parts 9 to 11;
- (h) sections 104, 107, 108, 117 and 118;
- (i) Parts 24, 24A, 24B and 25A;
- (j) sections 337A, 342, 349, 349A and 353;
- (k) Part 32.

**116 General modifications of applicable provisions of the *Superannuation Industry (Supervision) Act 1993***

The provisions of the *Superannuation Industry (Supervision) Act 1993* that apply for the purposes of this Act under subsection 114(2) apply with the following modifications:

- (a) treat references to “this Act” as references to this Act (including provisions of the *Superannuation Industry (Supervision) Act 1993* that apply for the purposes of this Act);
- (b) treat references to “the regulations” as references to the regulations under this Act;

- (c) treat references to a year of income as references to a financial year;
- (d) treat conduct (including an omission) that is inconsistent with the Prudential Standards in the same way as conduct (including an omission) that is inconsistent with the *Superannuation Industry (Supervision) Act 1993*;
- (e) treat conduct (including an omission) that is required or authorised by, or otherwise performed in connection with, the Prudential Standards in the same way as conduct (including an omission) that is required or authorised by, or otherwise performed in connection with, the *Superannuation Industry (Supervision) Act 1993*.

### **117 References to Prudential Standards**

- (1) The *Superannuation Industry (Supervision) Act 1993* applies in accordance with subsection 114(2) with the modifications set out in this section.
- (2) Treat the reference in paragraph 130A(a) of the *Superannuation Industry (Supervision) Act 1993* to “this Act” as including the Prudential Standards.
- (3) Insert after paragraph 133(1)(c) of the *Superannuation Industry (Supervision) Act 1993* the following paragraph:
  - (d) the FHSA provider breaches:
    - (i) the Prudential Standards; or
    - (ii) its authorisation as an FHSA provider; or
- (4) Insert after paragraph 135(1)(c) of the *Superannuation Industry (Supervision) Act 1993* the following paragraph:
  - (ca) the Prudential Standards; and
- (5) Treat the reference in paragraph 139(b) of the *Superannuation Industry (Supervision) Act 1993* to “this Act” as including the Prudential Standards.
- (6) Treat the reference in subsection 320(1) of the *Superannuation Industry (Supervision) Act 1993* to “this Act” as including the Prudential Standards.

## Section 118

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- (7) Treat the reference in section 341 of the *Superannuation Industry (Supervision) Act 1993* to “this Act” as including the Prudential Standards.

### **118 Persons who may be appointed to be custodians of FHSA trusts—approved guarantee etc.**

The requirement in paragraph 123(1)(b) of the *Superannuation Industry (Supervision) Act 1993* is satisfied in relation to a person who is the custodian of an FHSA trust if:

- (a) the person satisfies the requirement in that paragraph in relation to the person’s duties as the custodian of a superannuation entity, because of an approved guarantee; and
- (b) the trustee of the FHSA trust is also entitled to the benefit of the approved guarantee in respect of the due performance of the person’s duties as custodian of the FHSA trust.

### **119 Transfer of FHSA trusts**

- (1) The *Superannuation Industry (Supervision) Act 1993* applies in accordance with subsection 114(2) with the modifications set out in this section.
- (2) Omit references in Part 18 of the *Superannuation Industry (Supervision) Act 1993* to an approved deposit fund.
- (3) Replace paragraph 146(1)(d) of the *Superannuation Industry (Supervision) Act 1993* with the following paragraph:
  - (d) the transferee fund has an RSE licensee that holds an authorisation as an FHSA provider.

### **120 Covenants to be included in governing rules—investment management**

- (1) The *Superannuation Industry (Supervision) Act 1993* applies in accordance with subsection 114(2) with the modifications set out in this section.

Section 120

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- (2) Insert at the beginning of paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993* “if paragraph (fa) does not apply—”.
- (3) Add at the end of paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993* the following subparagraph:
  - (v) the risk of capital losses in light of the purpose of the FHSA and the minimum term of the FHSA having regard to subparagraph 32(1)(c)(i) or (ii) of the *First Home Saver Accounts Act 2008*;
- (4) Insert after paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993* the following paragraph:
  - (fa) if the FHSA provider allows individual FHSA holders to choose between investment options specified by the FHSA provider—to formulate and give effect to an investment strategy for each option having regard to the matters mentioned in subparagraphs 52(2)(f)(i), (ii), (iii), (iv) and (v);
- (5) Omit subsection 52(4) of the *Superannuation Industry (Supervision) Act 1993*.
- (6) Treat the reference in subsection 55(5) of the *Superannuation Industry (Supervision) Act 1993* to “an investment strategy formulated under a covenant referred to in paragraph 52(2)(f)” as including a reference to an investment option formulated under a covenant referred to in paragraph 52(2)(fa) of that Act (as it applies because of subsection (4) of this section).
- (7) Replace paragraph 58(2)(d) of the *Superannuation Industry (Supervision) Act 1993* with the following paragraph:
  - (d) a direction given by an FHSA holder by way of a choice mentioned in paragraph 52(2)(fa); or

## **Division 3—Prudential Standards**

### **121 Prudential Standards**

- (1) APRA may, in writing, determine standards (known as ***Prudential Standards***) in relation to prudential matters to be complied with by:
  - (a) all RSE licensees that are FHSA providers; or
  - (b) a specified class of RSE licensees that are FHSA providers; or
  - (c) one or more specified RSE licensees that are FHSA providers;in order to protect the interests of holders of FHSAs provided by the FHSA providers concerned.
- (2) A Prudential Standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (3) A Prudential Standard is of no effect to the extent that it conflicts with this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*.
- (4) A Prudential Standard may provide for APRA to exercise powers and discretions under the Prudential Standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified RSE licensees that are FHSA providers.
- (5) APRA may, in writing, vary or revoke a Prudential Standard.
- (6) A Prudential Standard referred to in paragraph (1)(c), or an instrument varying or revoking such a Prudential Standard, has effect:
  - (a) from the day on which the Prudential Standard, variation or revocation is made; or
  - (b) if the Prudential Standard, variation or revocation specifies a later day—from that later day.

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Section 122

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- (7) The following instruments made under this section are not legislative instruments:
  - (a) a Prudential Standard referred to in paragraph (1)(c);
  - (b) an instrument varying or revoking a Prudential Standard referred to in paragraph (1)(c).
- (8) Otherwise, an instrument made under this section is a legislative instrument.

**122 Notice of determination, variation or revocation of certain Prudential Standards**

- (1) If APRA determines or varies a Prudential Standard referred to in paragraph 121(1)(c) it must, as soon as practicable, give a copy of the standard, or of the variation, to the FHSA provider, or to each FHSA provider, to which the standard applies.
- (2) If APRA revokes a Prudential Standard referred to in paragraph 121(1)(c) it must, as soon as practicable, give notice of the revocation to the FHSA provider, or to each FHSA provider, to which the standard applied.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of the action concerned.

## **Division 4—Other prudential provisions**

### **123 Requirement for ADIs and life insurance companies to notify APRA of intention to provide FHSAs**

- (1) A life insurance company or ADI commits an offence if:
  - (a) the life insurance company or ADI provides an FHSA or offers to provide an FHSA; and
  - (b) the life insurance company or ADI had not previously informed APRA in writing of its intention to provide FHSAs.

Penalty: 120 penalty units.

*Validity of transaction not affected by contravention*

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

### **124 Obligations of FHSA providers in relation to certain life policies**

- (1) This section applies if an FHSA provider that is a life insurance company provides an FHSA as a life policy that is an investment-linked contract.
- (2) In considering the specified class or group of assets (as mentioned in paragraph 14(4)(a) of the *Life Insurance Act 1995*) covered under the policy, the provider must have regard to the following matters:
  - (a) the extent to which the composition of the class or group exposes FHSA holders to risks from inadequate diversification;
  - (b) the:
    - (i) risk of a reduction in the value of the units to which the class or group relates; and
    - (ii) liquidity of the class or group;in light of the purpose of the FHSA and the minimum term of the FHSA if the requirements in subparagraph 32(1)(c)(i) or (ii) are met;



- (c) any other relevant matter.
- (3) To avoid doubt, if the life policy allows an FHSA holder to choose between different investment options specified by the FHSA provider, the provider must, in considering the class or group of assets covered under each of those options, also have regard to the matters mentioned in paragraphs (2)(a) to (c).

## **125 Protection for small balances**

- (1) A provider of an FHSA commits an offence if:
  - (a) the provider allows an amount to be paid from the FHSA; and
  - (b) the amount is an amount of fees owing to the FHSA provider for providing the FHSA; and
  - (c) the amount of those fees is for a reporting period that applies to the FHSA; and
  - (d) the total earnings or other return credited to the FHSA for the reporting period is less than the amount of those fees; and
  - (e) the balance of the FHSA is \$1,000 or less.

Penalty: 100 penalty units.

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

- (2) Subsection (1) does not apply if:
  - (a) the FHSA holder consents in writing to the payment; or
  - (b) the FHSA is an interest in an FHSA trust and the earnings or other return credited to the FHSA are calculated by reference to the price of units in the trust; or
  - (c) the FHSA is provided by a life insurance company.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) also does not apply if:
  - (a) the total amount of fees paid for the reporting period from all FHSAs provided by the provider is greater than the total amount of earnings or other return credited by the provider to all those FHSAs for the reporting period; and

**Section 125**

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- (b) the amount of fees paid from an FHSA for that period bears the same proportion to the total amount of fees mentioned in paragraph (a) that the:
  - (i) earnings or other return credited to the FHSA for that period bears to the total amount of earnings or other return mentioned in paragraph (a); or
  - (ii) balance of the FHSA at the end of that period bears to the total of the balances of all FSAs provided by the provider at the end of that period.

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

*Validity of transaction not affected by contravention*

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

## **Part 8—Miscellaneous**

### **126 Annual reports**

- (1) The Commissioner must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the working of this Act during that year, to the extent that that Commissioner has the general administration of this Act.
- (2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

### **127 Civil immunity where defendant was complying with this Act**

An FHSA provider 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.

### **128 Payment out of a fund in accordance with the *Bankruptcy Act 1966***

If a holder of an FHSA becomes a bankrupt, within the meaning of subsection 5(1) of the *Bankruptcy Act 1966*, nothing in this Act or the regulations prevents the FHSA provider from paying to the trustee in bankruptcy an amount out of the FHSA that is property divisible amongst the FHSA holder's creditors, within the meaning of section 116 of the *Bankruptcy Act 1966*.

## Section 129

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### 129 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### 130 State insurance

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

### 131 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.
- (2) Without limiting subsection (1), the regulations may:
  - (a) prescribe fees in respect of any matter under this Act; and
  - (b) prescribe penalties not exceeding 10 penalty units in respect of offences against the regulations.

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*[Minister's second reading speech made in—  
House of Representatives on 28 May 2008  
Senate on 16 June 2008]*

(109/08)