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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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**Financial Sector Legislation Amendment
Bill (No. 1) 2000**

No. , 2000

(Treasury)

**A Bill for an Act to amend laws in connection with
the reform of the financial sector, and for related
purposes**

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1 **A Bill for an Act to amend laws in connection with**
2 **the reform of the financial sector, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Financial Sector Legislation*
7 *Amendment Act (No. 1) 2000*.

8 **2 Commencement**

- 9 (1) Subject to subsection (2), this Act commences on the 28th day after
10 the day on which it receives the Royal Assent.
- 11 (2) Item 21 of Schedule 1 commences on the day on which this Act
12 receives the Royal Assent.

1 **3 Schedule(s)**

2 Subject to section 2, each Act that is specified in a Schedule to this
3 Act is amended or repealed as set out in the applicable items in the
4 Schedule concerned, and any other item in a Schedule to this Act
5 has effect according to its terms.

6 **4 Actuarial services provided by APRA**

- 7 (1) APRA is taken to have had the function of providing actuarial
8 services for the period commencing on 1 July 1998 and ceasing at
9 the end of the day on which the Australian Government Actuary
10 ceases to be a part of APRA.
- 11 (2) Subsection (1) does not mean that APRA did not or does not have
12 the power to provide actuarial services that are incidental to
13 another function of APRA.
- 14 (3) Subsection (1) confers functions and powers to the extent to which
15 they are not in excess of the legislative power of the
16 Commonwealth.
- 17 (4) In this section:
- 18 *APRA* means the Australian Prudential Regulation Authority
19 established by section 7 of the *Australian Prudential Regulation*
20 *Authority Act 1998*.

21 **5 Compensation for acquisition of property**

- 22 (1) If:
- 23 (a) apart from this section, the operation of section 4 would
24 result in the acquisition of property from a person otherwise
25 than on just terms; and
- 26 (b) the acquisition would be invalid because of paragraph
27 51(xxxi) of the Constitution;
- 28 the Commonwealth is liable to pay to the person compensation of a
29 reasonable amount as agreed on between the Commonwealth and
30 the person. If the Commonwealth and the person do not agree on
31 the amount of the compensation, the person may institute
32 proceedings in the Federal Court of Australia for the recovery from

1 the Commonwealth of such reasonable amount of compensation as
2 the Court determines.

3 (2) Any damages or compensation recovered or other remedy given in
4 a proceeding that is commenced otherwise than under this section
5 is to be taken into account in assessing compensation payable in a
6 proceeding that is commenced under this section and that arises out
7 of the same event or transaction.

8 (3) In this section:

9 *acquisition of property* and *just terms* have the same respective
10 meanings as in paragraph 51(xxxi) of the Constitution.

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Schedule 1—Banking Act 1959

1 After paragraph 11CA(1)(a)

Insert:

(aa) the body corporate is likely to contravene a prudential regulation or a prudential standard, and such a contravention is likely to give rise to a prudential risk; or

2 After paragraph 11CA(1)(c)

Insert:

; or (d) the body corporate is conducting its affairs in an improper or in a financially unsound way.

3 At the end of subsection 11CA(6)

Add “, and the *affairs* of a body corporate include those set out in section 53 of that Law.

4 At the end of subsection 13(1)

Add:

The requirement to supply information may include a requirement to supply books, accounts or documents.

5 Subsection 13(4)

Repeal the subsection, substitute:

APRA’s power to investigate or appoint an investigator if information etc. not provided

(4) APRA may investigate the affairs of an ADI, or appoint a person to do so, if the ADI fails to comply with a requirement to provide information, books, accounts or documents under this section.

6 Subsection 13A(1)

After “APRA may”, insert “investigate the affairs of an ADI,”.

Note: The heading to subsection 13A(1) is altered by omitting “*or control*” and substituting “, *or investigation or control*”.

7 Subsection 13B(1)

1 Omit “A person appointed by APRA to investigate”, substitute “An
2 investigator of”.

3 **8 Subsection 13B(1)**

4 Omit “person”, substitute “investigator”.

5 **9 Paragraph 13B(1A)(a)**

6 Repeal the paragraph.

7 **10 Subparagraph 13B(1A)(b)(i)**

8 Omit “person”, substitute “investigator”.

9 **11 At the end of subsection 62(1)**

10 Add:

11 The requirement to supply information may include a requirement
12 to supply books, accounts or documents.

13 **12 At the end of paragraph 62(1A)(a)**

14 Add “, books, accounts or documents”.

15 **13 Subsection 62(2)**

16 After “information” (first occurring), insert “, books, accounts or
17 documents”.

18 **14 Subsection 62(2)**

19 Omit “information is”, substitute “information, books, accounts or
20 documents are”.

21 **15 Subsections 62(3) and (4)**

22 After “information” (wherever occurring), insert “, books, accounts or
23 documents”.

24 **16 Subsection 62(4)**

25 Omit “is not admissible”, substitute “is not, or are not, admissible”.

26 **17 Subsection 63(5)**

27 After “this section”, insert “and section 64”.

1 **18 After section 63**

2 Insert:

3 **64 Conditions on consent to restructure an ADI**

- 4 (1) The Treasurer's consent under subsection 63(1) is subject to the
5 conditions (if any) imposed by the Treasurer on the consent.
- 6 (2) The Treasurer may, by written notice given to the person who has
7 been given the consent:
- 8 (a) impose conditions, or further conditions, on the consent; or
9 (b) revoke or vary any condition imposed on the consent; or
10 (c) revoke the consent if the Treasurer is satisfied that there has
11 been a contravention of a condition to which the consent is
12 subject.
- 13 (3) The Treasurer's powers under subsection (2) may be exercised on
14 the Treasurer's own initiative. The Treasurer's powers under
15 paragraph (2)(a) or (b) may be exercised on application made to
16 the Treasurer by the person who has been given the consent.

17 **19 Application of new section 64**

18 Section 64 of the *Banking Act 1959* does not apply to a consent given
19 before the commencement of that section.

20 **20 After section 65**

21 Insert:

22 **65A Injunctions**

23 *Restraining injunctions*

- 24 (1) If a person has engaged, is engaging or is proposing to engage, in
25 conduct that constituted, constitutes or would constitute:
- 26 (a) a contravention of a provision of section 7, 8, 66, 66A or 67,
27 or a condition imposed under section 64; or
28 (b) attempting to contravene the provision or condition; or
29 (c) aiding, abetting, counselling or procuring a person to
30 contravene the provision or condition; or

- 1 (d) inducing or attempting to induce, whether by threats,
2 promises or otherwise, a person to contravene the provision
3 or condition; or
4 (e) being in any way, directly or indirectly, knowingly concerned
5 in, or party to, the contravention by a person of the provision
6 or condition; or
7 (f) conspiring with others to contravene the provision or
8 condition;
9 the Federal Court of Australia may grant an injunction in
10 accordance with subsection (2).

11 (2) The injunction:

- 12 (a) may restrain the person from engaging in the conduct; and
13 (b) may also require that person to do a particular act or thing, if
14 the Court thinks it desirable to do so.

15 The Court may grant the injunction on such terms as it thinks
16 appropriate.

17 (3) The power of the Court to grant an injunction restraining a person
18 from engaging in conduct may be exercised:

- 19 (a) whether or not it appears to the Court that the person intends
20 to engage again, or to continue to engage, in conduct of that
21 kind; and
22 (b) whether or not the person has previously engaged in conduct
23 of that kind; and
24 (c) whether or not there is an imminent danger of substantial
25 damage to any other person if the person engages in conduct
26 of that kind.

27 *Performance injunctions*

28 (4) If a person has refused or failed, is refusing or failing, or is
29 proposing to refuse or fail, to do an act or thing that the person is
30 required:

- 31 (a) by a provision of section 7, 8, 66, 66A or 67 to do; or
32 (b) by a condition on a consent given under subsection 63(1);
33 the Court may grant an injunction requiring the person to do that
34 act or thing. It may grant the injunction on such terms as the Court
35 thinks appropriate.

- 1 (5) The power of the Court to grant an injunction requiring a person to
2 do an act or thing may be exercised:
3 (a) whether or not it appears to the Court that the person intends
4 to refuse or fail again, or to continue to refuse or fail, to do
5 that act or thing; and
6 (b) whether or not the person has previously refused or failed to
7 do that act or thing; and
8 (c) whether or not there is an imminent danger of substantial
9 damage to any other person if the person refuses or fails to do
10 that act or thing.

11 *Who may apply for an injunction*

- 12 (6) The Court may only grant an injunction on the application of:
13 (a) APRA—in all cases; or
14 (b) the Treasurer—in the case of a contravention of a condition
15 imposed under section 64; or
16 (c) ASIC or a member of the ADI—in the case of a
17 contravention of a condition imposed under section 64 that
18 has been imposed in relation to a demutualisation of an ADI.

19 In this subsection, **demutualisation** has the same meaning as in
20 section 63.

21 *Consent injunctions*

- 22 (7) If an application for an injunction under subsection (1) or (4) has
23 been made, the Court may, if the Court thinks it appropriate, grant
24 an injunction by consent of all the parties to the proceedings,
25 whether or not the Court is satisfied that the subsection applies.

26 *Interim injunctions*

- 27 (8) The Court may grant an interim injunction pending determination
28 of an application under subsection (1).

29 *Variation or discharge of injunctions*

- 30 (9) The Court may discharge or vary an injunction granted under
31 subsection (1), (4) or (7).

1 *Damages undertakings*

2 (10) APRA, ASIC and the Treasurer cannot be required, as a condition
3 of granting an interim injunction, to give an undertaking as to
4 damages.

5 *Damages orders*

6 (11) If the Court has power under this section to grant an injunction
7 restraining a person from engaging in particular conduct, or
8 requiring a person to do a particular act or thing, the Court may,
9 either in addition to or in substitution for the grant of the
10 injunction, order that person to pay damages to any other person.

11 (12) The powers conferred on the Court by this section are in addition
12 to any other of its powers, and do not derogate from its other
13 powers.

14 **21 After subsection 69(11A)**

15 Insert:

16 (11B) The Treasurer may, by instrument in writing, delegate any of his of
17 her functions or powers under this section to:

18 (a) a Commonwealth authority for which the Treasurer is the
19 responsible Minister; or

20 (b) a member, or staff member, of such an authority.

21 In this section, *Commonwealth authority* and *responsible Minister*
22 have the respective meanings given by the *Commonwealth*
23 *Authorities and Companies Act 1997*.

24 (11C) The reference to the Treasurer in paragraph (3AA)(a) is to be read
25 as including a reference to the authority or person to whom the
26 Treasurer has delegated his or her function under subsection (3).

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Schedule 2—Reserve Bank Act 1959

1 Subsection 5(1) (definition of *officer of the Reserve Bank Service*)

Repeal the definition.

2 Subsection 5(1) (definition of *officer or officer of the Bank*)

Repeal the definition.

3 Subsection 5(1)

Insert:

staff member of the Reserve Bank Service means:

- (a) a person appointed by the Bank under section 67; or
- (b) a person engaged by the Bank under section 68.

4 Subsection 14(6) (paragraph (a) of the definition of *official*)

Repeal the paragraph, substitute:

- (a) a staff member of the Reserve Bank Service; or

5 Subsection 25B(1)

Omit “an officer”, substitute “a staff member”.

6 Paragraph 25L(1)(b)

Omit “an officer”, substitute “a staff member”.

7 Subsection 37(1)

Omit “an officer of the Bank”, substitute “a staff member of the Reserve Bank Service”.

8 Sections 66 to 69

Repeal the sections, substitute:

66 The Reserve Bank Service

The persons appointed, engaged or assisting the Bank under this Part constitute the Reserve Bank Service.

67 Appointment of staff

- (1) The Bank may appoint such staff as the Bank considers necessary for the performance of its functions.
- (2) The terms and conditions of appointment (including as to remuneration) are to be determined by the Bank.

68 Consultants and other people engaged to perform services

- (1) The Bank may engage consultants, or other people, that are suitably qualified to provide advice to it or perform services for it.
- (2) The terms and conditions of engagement (including as to remuneration) are to be determined by the Bank.

9 Transitional provision for staff of the Reserve Bank

- (1) A person appointed as an officer or a temporary or casual employee under Part VII of the *Reserve Bank Act 1959* as in force immediately before the commencement of this item and whose appointment is in force immediately before that commencement, is taken to have been appointed as a member of the Reserve Bank Service under section 67 of that Act as in force immediately after the commencement of this item.
- (2) The rights and entitlements of a person covered by subitem (1) are not affected merely because they cease to be appointed under Part VII of the *Reserve Bank Act 1959* as in force immediately before the commencement of this item and are taken to have been appointed under section 67 of that Act as in force immediately after the commencement of this item.

10 Sections 71 and 73

Repeal the sections.

11 Subsection 79A(1) (paragraphs (b) and (c) of the definition of officer)

Repeal the paragraphs, substitute:

- (b) a staff member of the Reserve Bank Service; or

12 Paragraph 79A(5)(b)

1 Omit “an officer of the Reserve Bank”, substitute “a staff member of
2 the Reserve Bank Service”.

3 **13 Paragraphs 79A(6)(b) and (c)**

4 Repeal the paragraphs, substitute:

5 (b) a staff member of the Reserve Bank Service;

6 **14 Subsection 79B(1)**

7 Omit “an officer, agent or other person carrying on any business of the
8 Reserve Bank”, substitute “a staff member of the Reserve Bank Service,
9 or an agent or other person carrying on any business of the Reserve
10 Bank,”.

1
2 **Schedule 3—Superannuation Industry**
3 **(Supervision) Act 1993**

4 **Part 1—Amendments relating to enforcement**

5 **1 Subparagraph 6(1)(e)(iv)**

6 Omit “(other than sections 126B to 126F)”.

7 **2 Subsection 10(1) (paragraph (b) of the definition of**
8 ***approved guarantee*)**

9 Repeal the paragraph.

10 **3 Subsection 10(1) (definition of *approved non-ADI financial***
11 ***institution*)**

12 Repeal the definition.

13 **4 Subsection 10(1) (paragraphs (m) and (n) of the definition**
14 ***of reviewable decision*)**

15 Repeal the paragraphs, substitute:

16 (m) a decision of APRA under section 92 refusing to grant an
17 arrangement approval or a trustee’s subsection 92(5)
18 approval; or

19 (n) a decision of APRA under section 92 revoking an
20 arrangement approval or a trustee’s subsection 92(5)
21 approval; or

22 **5 Subsection 10(1) (after paragraph (p) of the definition of**
23 ***reviewable decision*)**

24 Insert:

25 (pa) a decision of the Regulator under subsection 120A(1), (2) or
26 (3) to disqualify an individual; or

27 (pb) a decision of the Regulator under subsection 120A(5)
28 refusing to revoke the disqualification of an individual; or

29 **6 Subsection 10(1) (paragraphs (r), (ra) and (rb) of the**
30 **definition of *reviewable decision*)**

31 Omit “APRA”, substitute “the Regulator”.

1 **7 Paragraph 71(1)(ba)**

2 Repeal the paragraph.

3 **8 At the end of subsection 92(4)**

4 Add:

5 ; or (c) an arrangement in relation to the management and control of
6 the fund that:

7 (i) has been agreed to between a majority of the members
8 of the fund and the employer, or employers, of those
9 members; and

10 (ii) is approved by APRA in writing.

11 **9 After subsection 92(4)**

12 Insert:

13 *Arrangement approval*

14 (4A) When deciding whether or not to approve an arrangement under
15 subparagraph (4)(c)(ii), APRA must have regard to any written
16 guidelines determined by APRA under this subsection.

17 (4B) The approval of the arrangement given under
18 subparagraph (4)(c)(ii) (the *arrangement approval*):

19 (a) is subject to the conditions set out in the approval (if any);
20 and

21 (b) may be revoked by APRA by written notice given to the
22 trustee.

23 (4C) Without limiting paragraph (4B)(b), APRA may revoke an
24 arrangement approval if:

25 (a) APRA is satisfied that there has been a contravention of a
26 condition to which the approval is subject; or

27 (b) the trustee applies in writing for its revocation.

28 (4D) APRA may vary or revoke the conditions of the arrangement
29 approval by written notice given to the trustee.

30 **10 Paragraph 92(5)(a)**

31 Repeal the paragraph, substitute:

- 1 (a) there is a single trustee of the fund who is a constitutional
2 corporation; and

3 **11 Paragraph 92(5)(c)**

4 Repeal the paragraph, substitute:

- 5 (c) the trustee is an approved trustee (under section 26); and
6 (ca) the trustee's approval specifies that the trustee is also
7 approved for the purposes of this subsection, either generally
8 or in relation to the fund or a class of funds to which the fund
9 belongs; and

10 **12 Subsections 92(6), (7), (8), (9), (10), (11) and (12)**

11 Repeal the subsections, substitute:

12 *Trustee's subsection 92(5) approval*

- 13 (6) When deciding whether or not to specify in a trustee's approval
14 (under section 26) that the trustee is also approved for the purposes
15 of subsection 92(5), APRA must have regard to any written
16 guidelines determined by APRA under this subsection.
- 17 (7) The approval of the trustee for the purposes of subsection 92(5)
18 (the *trustee's subsection 92(5) approval*):
19 (a) is subject to the conditions set out in the approval (if any);
20 and
21 (b) may be revoked by APRA by written notice given to the
22 trustee.
- 23 (8) Without limiting paragraph (7)(b), APRA may revoke a trustee's
24 subsection 92(5) approval if:
25 (a) APRA is satisfied that there has been a contravention of a
26 condition to which the approval is subject; or
27 (b) the trustee applies in writing for its revocation.
- 28 (9) For the purposes of sections 27A, 27B, 27C, 27D, 27E and 29, the
29 trustee's subsection 92(5) approval and any conditions to which it
30 is subject are to be treated as conditions to which the trustee's
31 approval under section 26 is subject.

32 **13 At the end of subsection 120(1)**

1 Add:
2 ; or (c) the Regulator has disqualified the individual under
3 section 120A.

4 **14 After section 120**

5 Insert:

6 **120A The Regulator may disqualify individuals**

- 7 (1) The Regulator may disqualify an individual if satisfied that:
- 8 (a) the person has contravened this Act on one or more occasions
9 (whether before or after the commencement of this section);
10 and
11 (b) the nature or seriousness of the contravention or
12 contraventions, or the number of contraventions, provides
13 grounds for disqualifying the individual.
- 14 (2) The Regulator may disqualify an individual who is, or was
15 (including before the commencement of this section), a responsible
16 officer of a trustee, investment manager or custodian (the *body*
17 *corporate*) if satisfied that:
- 18 (a) the body corporate has contravened this Act on one or more
19 occasions (whether before or after the commencement of this
20 section); and
21 (b) at the time of one or more of the contraventions, the
22 individual was a responsible officer of the body corporate;
23 and
24 (c) in respect of the contravention or contraventions that
25 occurred while the individual was a responsible officer of the
26 body corporate—the nature or seriousness of it or them, or
27 the number of them, provides grounds for the disqualification
28 of the individual.
- 29 (3) The Regulator may disqualify an individual if satisfied that the
30 individual is otherwise not a fit and proper person to be a trustee,
31 investment manager or custodian, or a responsible officer of a body
32 corporate that is a trustee, investment manager or custodian.
- 33 (4) A disqualification takes effect on the day on which it is made.

1 (5) The Regulator may revoke a disqualification on application by the
2 disqualified individual or on its own initiative. A revocation takes
3 effect on the day on which it is made.

4 (6) The Regulator must give the individual written notice of a
5 disqualification, revocation of a disqualification or a refusal to
6 revoke a disqualification.

7 (7) The Regulator must cause particulars of a notice given under
8 subsection 120A(6) or 344(6) (result of internal review) to be
9 published in the *Gazette* as soon as practicable.

10 **15 Subsections 126(1) and (2)**

11 Omit “(other than a self managed superannuation fund)”.

12 **16 Subsections 126A(1) and (2)**

13 Omit “(other than a self managed superannuation fund)”.

14 **17 Subsections 126B(1) and (3)**

15 Omit “APRA” (wherever occurring), substitute “the Regulator”.

16 **18 Paragraph 126B(3)(e)**

17 Omit “APRA’s”, substitute “the Regulator’s”.

18 **19 Subsection 126B(4)**

19 Omit “APRA” (first occurring), substitute “The Regulator”.

20 **20 Subsection 126B(4)**

21 Omit “APRA” (second occurring), substitute “the Regulator”.

22 **21 Paragraph 126B(6)(b)**

23 Omit “APRA”, substitute “the Regulator”.

24 **22 Subsection 126B(7)**

25 Omit “APRA” (first occurring), substitute “The Regulator”.

26 **23 Subsection 126B(7)**

27 Omit “APRA” (second occurring), substitute “the Regulator”.

1 **24 Subsections 126C(1) to (5)**

2 Omit “APRA” (wherever occurring), substitute “the Regulator”.

3 **25 At the end of subsection 126D(1)**

4 Add:

5 Note: APRA’s power under this subsection does not extend to self managed
6 superannuation funds, see subsection 6(1).

7 **26 After subsection 126D(1)**

8 Insert:

9 (1A) If, having regard to any of the following:

- 10 (a) the offence to which the application relates;
11 (b) the time that has passed since the applicant committed the
12 offence;
13 (c) the applicant’s age when the applicant committed the
14 offence;
15 (d) the orders made by the court in relation to the offence;
16 (e) any other relevant matter;

17 the Commissioner of Taxation is satisfied that the applicant is
18 highly unlikely to:

- 19 (f) contravene this Act; and
20 (g) do anything that would result in a self managed
21 superannuation fund not complying with this Act;

22 the Commissioner must, by notice in writing given to the applicant,
23 make a declaration waiving the applicant’s status as a disqualified
24 person for the purposes of this Part.

25 Note: The Commissioner’s power under this subsection only extends to self
26 managed superannuation funds, see subsection 6(1).

27 **27 Subsections 126D(3) and (4)**

28 Omit “APRA” (wherever occurring), substitute “the Regulator”.

29 **28 Paragraphs 126E(2)(a) and (b) and (3)(e)**

30 Omit “APRA”, substitute “the Regulator”.

31 **29 Subsection 126F(1)**

32 Omit “APRA” (wherever occurring), substitute “the Regulator”.

1 Note: The heading to section 126F is altered by omitting “APRA’s” and substituting “The
2 **Regulator’s**”.

3 **30 Subsections 126F(2) and (3)**

4 Omit “APRA” (first occurring), substitute “The Regulator”.

5 **31 Subsections 126F(2) and (3)**

6 Omit “APRA” (wherever occurring, other than the first occurrence),
7 substitute “the Regulator”.

8 **32 Subsections 126F(4) and (5)**

9 Omit “APRA”, substitute “the Regulator”.

10 **33 At the end of Part 16**

11 Add:

12 **131B Offence of holding oneself out as an actuary or auditor**

13 (1) A person is guilty of an offence if:

- 14 (a) the person holds themselves out as an actuary; and
15 (b) the person is not an actuary.

16 Maximum penalty: 50 penalty units.

17 (2) A person is guilty of an offence if:

- 18 (a) the person holds themselves out as an approved auditor; and
19 (b) the person is not an approved auditor.

20 Maximum penalty: 50 penalty units.

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

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

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

25 **34 After section 141**

26 Insert:

1 **141A Property vested in acting trustee—former trustee’s obligations**
2 **relating to books, identification of property and transfer**
3 **of property**

- 4 (1) This section applies if:
- 5 (a) after the commencement of this section, the Regulator makes
6 an order under subsection 138(1) or (2) vesting the property
7 of a superannuation entity in an acting trustee; or
- 8 (b) the Regulator made such an order before the commencement
9 of this section and that order is still in force when this section
10 commences.
- 11 (2) In this section, the person in whom the property was vested
12 immediately before the order was made is referred to as the *former*
13 *trustee*.
- 14 (3) The former trustee is guilty of an offence:
- 15 (a) if paragraph (1)(a) applies—if the former trustee does not,
16 within 14 days of the order being made, give the acting
17 trustee all books relating to the entity’s affairs that are in the
18 former trustee’s possession, custody or control; or
- 19 (b) if paragraph (1)(b) applies—if the former trustee does not,
20 within 14 days of the commencement of this section, give the
21 acting trustee all books relating to the entity’s affairs that are
22 in the former trustee’s possession, custody or control.

23 Maximum penalty: 50 penalty units.

- 24 (4) The acting trustee may, by notice in writing to the former trustee,
25 require the former trustee, so far as the former trustee can do so:
- 26 (a) to identify property of the entity; and
27 (b) to explain how the former trustee has kept account of that
28 property.
- 29 (5) The acting trustee may, by notice in writing to the former trustee,
30 require the former trustee to take specified action that is necessary
31 to bring about a transfer of specified property of the entity to the
32 acting trustee.
- 33 (6) The former trustee is guilty of an offence if:
- 34 (a) the acting trustee gives the former trustee a notice under
35 subsection (4) or (5); and

1 (b) the former trustee does not, within 28 days of the notice
2 being given, comply with the requirement in the notice.

3 Maximum penalty: 50 penalty units.

4 (7) Subsections (3) and (6) are offences of strict liability.

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

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

8 **35 At the end of section 253**

9 Add:

10 ; and (d) to authorise the Regulator to accept written undertakings and
11 to apply to the Court for an order remedying breaches of such
12 undertakings.

13 **36 After Division 3 of Part 25**

14 Insert:

15 **Division 3A—Regulator may accept and enforce** 16 **undertakings**

17 **262A Acceptance and enforcement of undertakings**

18 (1) The Regulator may accept a written undertaking given by a person
19 in connection with a matter in relation to which the Regulator has a
20 function or power under this Act.

21 (2) The person may withdraw or vary the undertaking at any time, but
22 only with the Regulator's consent.

23 (3) If the Regulator considers that the person who gave the
24 undertaking has breached any of its terms, the Regulator may apply
25 to the Court for an order under subsection (4).

26 (4) If the Court is satisfied that the person has breached a term of the
27 undertaking, the Court may make all or any of the following
28 orders:

29 (a) an order directing the person to comply with that term of the
30 undertaking;

- 1 (b) an order directing the person to pay to the Commonwealth an
2 amount up to the amount of any financial benefit that the
3 person has obtained directly or indirectly and that is
4 reasonably attributable to the breach;
- 5 (c) any order that the Court considers appropriate directing the
6 person to compensate any other person who has suffered loss
7 or damage as a result of the breach;
- 8 (d) any other order that the Court considers appropriate.

9 **37 Subparagraph 287(2)(a)(ii)**

10 Omit “or”.

11 **38 Subparagraph 287(2)(a)(iii)**

12 Repeal the subparagraph.

13 **39 Paragraphs 287(2)(a) and (b)**

14 Omit “, signing the record, or production of the book”, substitute “or
15 signing the record”.

16 **40 Paragraph 287(3)(b)**

17 Omit “or produced the book, as the case may be”.

18 **41 Paragraph 287(3)(c)**

19 Repeal the paragraph.

20 **42 Application provisions for immunities relating to**
21 **production of books**

- 22 (1) Subsections 287(2) and (3) of the *Superannuation Industry*
23 *(Supervision) Act 1993*, as in force after the commencement of item 39,
24 apply in relation to a requirement made, as mentioned in paragraph
25 287(2)(a) of that Act as so in force, on or after that commencement.
- 26 (2) Subsections 287(2) and (3) of the *Superannuation Industry*
27 *(Supervision) Act 1993*, as in force before that commencement, continue
28 to apply in relation to a requirement made, as mentioned in paragraph
29 287(2)(a) of that Act as so in force, before that commencement.

30 **43 After section 324**

31 Insert:

1 **324A Time for instituting criminal proceedings**

2 Despite anything in any other law, proceedings for an offence
3 against a provision of this Act may be instituted within the period
4 of 5 years after the act or omission alleged to constitute the offence
5 or, with the Minister's consent, at any later time.

6 **44 Subsection 344(12)**

7 After "(d),", insert "(pa), (pb),".

1

2

Part 2—Amendments relating to application of Criminal Code

3

4

Division 1—Substantive amendments

5

45 At the end of Division 1 of Part 1

6

Add:

7

9A Application of the *Criminal Code*

8

(1) Chapter 2 of the *Criminal Code* applies to all offences against this Act, other than offences against the following provisions:

9

10

(a) subsections 34(2), 68(1), 101(2), 102(4), 129(3B), 129(7), 130(2B), 130(6), 141(2) and 142(3);

11

12

(b) section 145;

13

(c) subsections 152(2) and (3), 153(1) and (2), 157(1), 157A(2) and 158(1);

14

15

(d) section 161;

16

(e) subsections 163(1), 184(1), 202(1), 278(3) and 282(2);

17

(f) section 285;

18

(g) subsection 288(4);

19

(h) sections 306, 307 and 308;

20

(i) subsections 313(12), 314(4), 357(5), 359(5), 361(7), 363(6), 364(4) and 366(8).

21

22

(2) Sections 17 and 338 do not apply in relation to an offence against this Act to which the *Criminal Code* applies.

23

24

46 Subsection 36(2)

25

Repeal the subsection, substitute:

26

(2) The trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

27

28

Maximum penalty: 50 penalty units.

29

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

30

31

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

1 **47 Subsection 36A(7)**

2 Repeal the subsection, substitute:

3 (7) A person is guilty of an offence if the person contravenes this
4 section. This is an offence of strict liability.

5 Maximum penalty: 50 penalty units.

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

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

9 **48 Subsection 64(3)**

10 Repeal the subsection, substitute:

11 (3) The employer is guilty of an offence if the employer contravenes
12 subsection (2).

13 Maximum penalty: 100 penalty units.

14 (3A) The employer is guilty of an offence if the employer contravenes
15 subsection (2). This is an offence of strict liability.

16 Maximum penalty: 50 penalty units.

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

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

20 **49 Subsection 103(3)**

21 Repeal the subsection, substitute:

22 (3) A person is guilty of an offence if the person contravenes
23 subsection (1), (2) or (2A). This is an offence of strict liability.

24 Maximum penalty: 50 penalty units.

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

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

28 **50 Subsection 104(2)**

29 Repeal the subsection, substitute:

1 (2) The trustee is guilty of an offence if the trustee contravenes
2 subsection (1). This is an offence of strict liability.

3 Maximum penalty: 50 penalty units.

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

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

7 **51 Subsection 105(2)**

8 Repeal the subsection, substitute:

9 (2) The trustee is guilty of an offence if the trustee contravenes
10 subsection (1). This is an offence of strict liability.

11 Maximum penalty: 50 penalty units.

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

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

15 **52 Subsection 107(3)**

16 Repeal the subsection, substitute:

17 (3) The trustee is guilty of an offence if the trustee contravenes
18 subsection (2).

19 Maximum penalty: 100 penalty units.

20 (4) The trustee is guilty of an offence if the trustee contravenes
21 subsection (2). This is an offence of strict liability.

22 Maximum penalty: 50 penalty units.

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

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

26 **53 Subsection 108(3)**

27 Repeal the subsection, substitute:

28 (3) The trustee is guilty of an offence if the trustee contravenes
29 subsection (2).

30 Maximum penalty: 100 penalty units.

1 (4) The trustee is guilty of an offence if the trustee contravenes
2 subsection (2). This is an offence of strict liability.

3 Maximum penalty: 50 penalty units.

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

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

7 **54 Subsection 111(3)**

8 Repeal the subsection, substitute:

9 (3) The trustee is guilty of an offence if the trustee contravenes
10 subsection (1) or (2).

11 Maximum penalty: 100 penalty units.

12 (4) The trustee is guilty of an offence if the trustee contravenes
13 subsection (1) or (2). This is an offence of strict liability.

14 Maximum penalty: 50 penalty units.

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

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

18 **55 Subsection 112(5)**

19 Repeal the subsection, substitute:

20 (5) A person is guilty of an offence if the person contravenes this
21 section.

22 Maximum penalty: 100 penalty units.

23 (6) A person is guilty of an offence if the person contravenes this
24 section. This is an offence of strict liability.

25 Maximum penalty: 50 penalty units.

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

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

29 **56 Subsections 113(1) and (2)**

30 Repeal the subsections, substitute:

1 (1) For each year of income, the trustee of a superannuation entity
2 must appoint an approved auditor to give the trustee a report, in the
3 approved form, of the operations of the entity for that year. The
4 appointment must be made within whichever of the periods set out
5 in the regulations that apply to the entity.

6 (1A) The trustee must give to the auditor any document that the auditor
7 requests, in writing, be given to him or her. The trustee must do so
8 within 14 days of the request. Only documents that are relevant to
9 the preparation of the report may be requested.

10 (2) The trustee is guilty of an offence if the trustee contravenes
11 subsection (1) or (1A).

12 Maximum penalty: Imprisonment for 2 years.

13 Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an
14 appropriate fine instead of, or in addition to, a term of imprisonment.
15 If a body corporate is convicted of the offence, subsection 4B(3) of
16 that Act allows a court to impose a fine of an amount that is not
17 greater than 5 times the maximum fine that could be imposed by the
18 court on an individual convicted of the same offence.

19 (2A) The trustee is guilty of an offence if the trustee contravenes
20 subsection (1) or (1A). This is an offence of strict liability.

21 Maximum penalty: 50 penalty units.

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

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

25 **57 Subsections 113(4) and (5)**

26 Repeal the subsections, substitute:

27 (4) The auditor must give the report to the trustee within the specified
28 period after the end of the year of income. The period is specified
29 in the regulations.

30 (5) The auditor is guilty of an offence if the auditor contravenes
31 subsection (4).

32 Maximum penalty: Imprisonment for 6 months.

33 Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an
34 appropriate fine instead of, or in addition to, a term of imprisonment.
35 If a body corporate is convicted of the offence, subsection 4B(3) of

1 that Act allows a court to impose a fine of an amount that is not
2 greater than 5 times the maximum fine that could be imposed by the
3 court on an individual convicted of the same offence.

4 (6) The auditor is guilty of an offence if the auditor contravenes
5 subsection (4). This is an offence of strict liability.

6 Maximum penalty: 50 penalty units.

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

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

10 **58 Subsection 122(2)**

11 Repeal the subsection, substitute:

12 (2) The investment manager is guilty of an offence if the investment
13 manager contravenes subsection (1). This is an offence of strict
14 liability.

15 Maximum penalty: 50 penalty units.

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

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

19 **59 Subsection 124(2)**

20 Repeal the subsection, substitute:

21 (2) The trustee is guilty of an offence if the trustee contravenes
22 subsection (1). This is an offence of strict liability.

23 Maximum penalty: 50 penalty units.

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

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

27 **60 Subsection 154(2)**

28 Repeal the subsection, substitute:

29 (2) The trustee is guilty of an offence if the trustee contravenes
30 subsection (1).

31 Maximum penalty: 100 penalty units.

1 (2A) The trustee is guilty of an offence if the trustee contravenes
2 subsection (1). This is an offence of strict liability.

3 Maximum penalty: 50 penalty units.

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

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

7 **61 Subsection 169(3)**

8 Repeal the subsection, substitute:

9 (3) The trustee is guilty of an offence if the trustee contravenes
10 subsection (1) or (2).

11 Maximum penalty: Imprisonment for 1 year.

12 Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an
13 appropriate fine instead of, or in addition to, a term of imprisonment.
14 If a body corporate is convicted of the offence, subsection 4B(3) of
15 that Act allows a court to impose a fine of an amount that is not
16 greater than 5 times the maximum fine that could be imposed by the
17 court on an individual convicted of the same offence.

18 (4) The trustee is guilty of an offence if the trustee contravenes
19 subsection (1) or (2). This is an offence of strict liability.

20 Maximum penalty: 50 penalty units.

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

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

24 **62 Subsections 184(2) and (3)**

25 Repeal the subsections, substitute:

26 *Defences*

27 (2) Subsection (1) does not apply if the defendant proves that one of
28 the exceptions to the insider trading rules in sections 180 to 183
29 apply to the defendant.

30 (3) In the case of the defendant having entered into, or procured
31 another person to enter into, a transaction or agreement at a time
32 when certain information was in the defendant's possession,
33 subsection (1) does not apply if the defendant proves that:

- 1 (a) the information came into the defendant's possession solely
2 as a result of the information having been made known in a
3 way that would, or would be likely to, bring it to the attention
4 of persons who commonly invest in superannuation interests
5 of a kind whose price or value might be affected by the
6 information; or
7 (b) the other party to the transaction or agreement knew, or
8 ought reasonably to have known, of the information before
9 entering into the transaction or agreement.

10 **63 Subsection 254(4)**

11 Repeal the subsection, substitute:

- 12 (4) The trustee is guilty of an offence if the trustee contravenes
13 subsection (1). This is an offence of strict liability.

14 Maximum penalty: 50 penalty units.

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

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

18 **64 At the end of section 257**

19 Add:

- 20 (2) The trustee must give a copy of the notice to the individual or to
21 each member of the committee (whichever is relevant) within 3
22 days of the appointment of the individual or member.

23 **65 Subsection 260(2)**

24 Repeal the subsection, substitute:

- 25 (2) A person appointed to investigate and make a report under
26 subsection 257(1) (whether as an individual or as a member of a
27 committee) is guilty of an offence if the report is not given to
28 APRA:

- 29 (a) before the expiry of the deadline; or
30 (b) within such further time as APRA, by written notice, allows.

31 Maximum penalty: 100 penalty units.

- 1 (3) A person appointed to investigate and make a report under
2 subsection 257(1) (whether as an individual or as a member of a
3 committee) is guilty of an offence if the report is not given to
4 APRA:
5 (a) before the expiry of the deadline; or
6 (b) within such further time as APRA, by written notice, allows.
7 This is an offence of strict liability.

8 Maximum penalty: 50 penalty units.

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

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

12 **66 Section 262**

13 Repeal the section, substitute:

14 **262 Trustee must comply with requirements**

- 15 (1) The trustee is guilty of an offence if the trustee contravenes a
16 requirement imposed on the trustee by or under section 257, 258 or
17 259.

18 Maximum penalty: 100 penalty units.

- 19 (2) The trustee is guilty of an offence if the trustee contravenes a
20 requirement imposed on the trustee by or under section 257, 258 or
21 259. This is an offence of strict liability.

22 Maximum penalty: 50 penalty units.

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

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

26 **67 Subsection 299C(3)**

27 Repeal the subsection, substitute:

- 28 (3) The employer is guilty of an offence if the employer contravenes
29 subsection (1). This is an offence of strict liability.

30 Maximum penalty: 10 penalty units.

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

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

4 **68 Subsection 299F(4)**

5 Repeal the subsection, substitute:

6 (4) The trustee is guilty of an offence if the trustee contravenes the
7 requirement to make the request.

8 Maximum penalty: 100 penalty units.

9 (4A) The trustee is guilty of an offence if the trustee contravenes the
10 requirement to make the request. This is an offence of strict
11 liability.

12 Maximum penalty: 50 penalty units.

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

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

16 **69 Subsection 299G(4)**

17 Repeal the subsection, substitute:

18 (4) The trustee is guilty of an offence if the trustee contravenes the
19 requirement to make the request.

20 Maximum penalty: 100 penalty units.

21 (4A) The trustee is guilty of an offence if the trustee contravenes the
22 requirement to make the request. This is an offence of strict
23 liability.

24 Maximum penalty: 50 penalty units.

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

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

28 **70 Subsection 299H(6)**

29 Repeal the subsection, substitute:

30 (6) The trustee is guilty of an offence if the trustee contravenes a
31 requirement of this section.

1 Maximum penalty: 100 penalty units.

2 (7) The trustee is guilty of an offence if the trustee contravenes a
3 requirement of this section. This is an offence of strict liability.

4 Maximum penalty: 50 penalty units.

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

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

8 **71 Subsection 299J(6)**

9 Repeal the subsection, substitute:

10 (6) The trustee is guilty of an offence if the trustee contravenes a
11 requirement of this section.

12 Maximum penalty: 100 penalty units.

13 (7) The trustee is guilty of an offence if the trustee contravenes a
14 requirement of this section. This is an offence of strict liability.

15 Maximum penalty: 50 penalty units.

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

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

19 **72 Subsection 299K(6)**

20 Repeal the subsection, substitute:

21 (6) The trustee is guilty of an offence if the trustee contravenes a
22 requirement of this section.

23 Maximum penalty: 100 penalty units.

24 (7) The trustee is guilty of an offence if the trustee contravenes a
25 requirement of this section. This is an offence of strict liability.

26 Maximum penalty: 50 penalty units.

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

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

30 **73 Subsection 299L(6)**

1 Repeal the subsection, substitute:

2 (6) The trustee is guilty of an offence if the trustee contravenes a
3 requirement of this section.

4 Maximum penalty: 100 penalty units.

5 (7) The trustee is guilty of an offence if the trustee contravenes a
6 requirement of this section. This is an offence of strict liability.

7 Maximum penalty: 50 penalty units.

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

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

11 **74 Subsection 299M(4)**

12 Repeal the subsection, substitute:

13 (4) The trustee is guilty of an offence if the trustee contravenes
14 subsection (2).

15 Maximum penalty: 100 penalty units.

16 (5) The trustee is guilty of an offence if the trustee contravenes
17 subsection (2). This is an offence of strict liability.

18 Maximum penalty: 50 penalty units.

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

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

22 **75 Subsection 299Y(2)**

23 Repeal the subsection, substitute:

24 (2) The trustee is guilty of an offence if the trustee contravenes
25 subsection (1).

26 Maximum penalty: 100 penalty units.

27 (3) The trustee is guilty of an offence if the trustee contravenes
28 subsection (1). This is an offence of strict liability.

29 Maximum penalty: 50 penalty units.

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

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

4 **76 Subsection 347A(6)**

5 Repeal the subsection, substitute:

6 (6) The trustee is guilty of an offence if the trustee contravenes
7 subsection (5). This is an offence of strict liability.

8 Maximum penalty: 50 penalty units.

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

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

12 **Division 2—Technical amendments**

13 **77 After subsection 18(7B)**

14 Insert:

15 (7BA) Subsection (7B) is an offence of strict liability.

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

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

19 **78 At the end of section 29**

20 Add:

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

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

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

25 **79 After subsection 63(7)**

26 Insert:

27 (7A) Subsection (7) is an offence of strict liability.

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

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

1 **80 After subsection 63(10)**

2 Insert:

3 (10A) Subsection (10) is an offence of strict liability.

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

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

7 **81 At the end of section 121**

8 Add:

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

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

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

13 **82 At the end of subsection 123(1)**

14 Add:

15 Note: A defendant bears an evidential burden in relation to the matters in
16 paragraphs (1)(a) and (b) (see subsection 13.3(3) of the *Criminal*
17 *Code*).

18 **83 At the end of section 123**

19 Add:

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

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

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

24 **84 After subsection 140(3)**

25 Insert:

26 (3A) Subsection (3) is an offence of strict liability.

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

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

30 **85 At the end of subsection 163(1)**

31 Add:

1 Note: A defendant bears an evidential burden in relation to the matters in
2 paragraphs (1)(a) and (b) (see subsection 13.3(3) of the *Criminal*
3 *Code*).

4 **86 At the end of section 163**

5 Add:

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

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

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

10 **87 After subsection 201(4)**

11 Insert:

12 (4A) Paragraph (4)(a) is an offence of strict liability.

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

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

16 **88 At the end of section 265**

17 Add:

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

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

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

22 **89 After subsection 303(1)**

23 Insert:

24 (1A) Subsection (1) is an offence of strict liability.

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

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

28 **90 At the end of subsection 303(2)**

29 Add:

30 Note: A defendant bears a legal burden in relation to the matters in
31 subsection (2) (see section 13.4 of the *Criminal Code*).

1 **91 After subsection 331(1)**

2 Insert:

3 (1A) Subsection (1) is an offence of strict liability.

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

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

7 **92 After subsection 377(3)**

8 Insert:

9 (3A) Subsection (3) is an offence of strict liability.

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

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

1
2
3

Schedule 4—Miscellaneous amendments

4

Australian Prudential Regulation Authority Act 1998

5
6

1 Subsection 3(1) (definition of *officer of the Reserve Bank Service*)

7

Omit “an officer”, substitute “a person”.

8

Financial Corporations Act 1974

9

2 Paragraph 22A(1)(b)

10

Omit “a member”, substitute “a staff member”.

11

3 Subsection 22A(6) (definition of *Reserve Bank Service*)

12

Omit “subsection 66(2)”, substitute “section 66”.

13

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999

14

15

4 Paragraph 3(2)(e)

16

Omit “subsections (12), (14) and (15)”, substitute “subsection (12)”.

17

5 Subsections 3(14) and (15)

18

Repeal the subsections.

19

Note: These subsections have become redundant because the conditions for their operation have failed.

20

21

Retirement Savings Accounts Act 1997

22

6 At the end of section 8

23

Add:

24

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

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

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1 ***Superannuation (Resolution of Complaints) Act 1993***

2 **7 Subsection 7(1)**

3 Omit “nor more than 10”.