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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Superannuation Legislation Amendment
(Stronger Super) Bill 2012**

No. , 2012

(Treasury)

**A Bill for an Act to amend the law relating to
superannuation, and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **superannuation, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Superannuation Legislation*
6 *Amendment (Stronger Super) Act 2012*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 3	Immediately after the commencement of item 9 of Schedule 2 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> . However, if that item commences before the provision(s) covered by table item 1, the provision(s) do not commence at all.	
4. Schedule 1, Part 4	The day after this Act receives the Royal Assent.	
5. Schedule 2	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Data and payment standards**
2 **relating to superannuation and**
3 **retirement savings**

4 **Part 1—Main amendments**

5 *Retirement Savings Accounts Act 1997*

6 **1 After Part 4**

7 Insert:

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

10 **Division 1—Data and payment regulations and standards**
11 **relating to RSAs**

12 **45 Object of Part**

- 13 (1) The object of this Part is to further the interests of holders of RSAs
14 by improving the productivity of the retirement savings account
15 system.
- 16 (2) The Part does this by providing for a system of standards relating
17 to payments and information connected with the operation of
18 RSAs.

19 **45A Alternative constitutional basis**

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

24 **45B Data and payment regulations and standards relating to RSAs**

- 25 (1) The regulations may make provision for and in relation to data and
26 payment matters relating to RSAs, to be complied with by:

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- 1 (a) RSA providers; and
2 (b) employers in their dealings with RSA providers.
- 3 (2) The regulations may prescribe different requirements for different
4 classes of RSA or employer.
- 5 (3) The Commissioner of Taxation may, by legislative instrument,
6 determine standards (***data and payment standards relating to***
7 ***RSAs***) relating to data and payment matters relating to RSAs,
8 applicable to:
9 (a) RSA providers; and
10 (b) employers in their dealings with RSAs.
- 11 Note: For variation and revocation, see subsection 33(3) of the *Acts*
12 *Interpretation Act 1901*.
- 13 (4) The data and payment standards relating to RSAs may specify
14 different requirements for different classes of RSA or employer.
- 15 (5) A ***data and payment matter relating to RSAs*** is a matter relating to
16 the manner in which payments and information of a kind
17 mentioned in subsection (6):
18 (a) relating to:
19 (i) a holder of an RSA; or
20 (ii) an employee for whose benefit a contribution to an RSA
21 is to be made by an employer; and
22 (b) connected with the operation of the RSA;
23 are dealt with.
- 24 (6) The kinds of payments and information are:
25 (a) transactions, including payments, contributions, roll-over
26 superannuation benefits (within the meaning of the *Income*
27 *Tax Assessment Act 1997*), allocations, transfers and refunds;
28 and
29 (b) reports; and
30 (c) records, including registrations; and
31 (d) unique identifiers for use with such transactions, reports and
32 records; and
33 (e) any other kind of payment or information that is prescribed
34 by the regulations for the purposes of this paragraph; and
-

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

4 *Adoption of other instruments*

5 (7) The regulations or standards may make provision in relation to a
6 matter by applying, adopting or incorporating, with or without
7 modification, any matter contained in any other instrument or
8 writing:

9 (a) as in force or existing at a particular time; or

10 (b) as in force or existing from time to time.

11 (8) Subsection (7) has effect despite anything in subsection 14(2) of
12 the *Legislative Instruments Act 2003*.

13 *Consultations in preparing data and payment standards relating to*
14 *RSAs*

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

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

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

22 **45C Relationship between standards and other law**

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

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

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

3 **45D Compliance requirement—RSA providers**

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

8 (a) regulations made under this Part; and

9 (b) data and payment standards relating to RSAs.

10 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
11 *1953* provides an administrative penalty for contravention of this
12 subsection.

13 *Strict liability offence*

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

16 Penalty: 20 penalty units.

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

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

21 **45E Compliance requirement—employers**

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

25 (a) regulations made under this Part; and

26 (b) data and payment standards relating to RSAs.

27 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
28 *1953* provides an administrative penalty for contravention of this
29 subsection.

30 *Strict liability offence*

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

1 Penalty: 20 penalty units.

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

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

6 **45F Regulator's power to give directions in certain circumstances—**
7 **RSA providers**

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

- 11 (a) a particular regulation made under this Part; or
12 (b) a particular data and payment standard relating to RSAs.

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

- 16 (a) the extent (if any) to which the RSA provider is operating in
17 a way that is contrary to the object of this Part;
18 (b) any other matter that the Regulator considers relevant.

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

21 (4) The kinds of direction that an RSA provider may be given are
22 directions to do any one or more of the following by a specified
23 time:

- 24 (a) do a specified act that the Regulator considers is necessary to
25 address the contravention mentioned in subsection (1) (or
26 prevent the likely contravention mentioned in that
27 subsection);
28 (b) refrain from doing an act, if the Regulator considers the
29 refraining is necessary to address the contravention
30 mentioned in subsection (1) (or prevent the likely
31 contravention mentioned in that subsection).

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

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

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1 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
2 *1953* provides an administrative penalty for contravention of this
3 subsection.

4 *Strict liability offence*

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

7 Penalty: 50 penalty units.

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

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

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

18 **45G Regulator's power to give directions in certain circumstances—**
19 **employers**

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

- 23 (a) a particular regulation made under this Part; or
24 (b) a particular data and payment standard relating to RSAs.

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

- 28 (a) the extent (if any) to which the employer is dealing with an
29 RSA provider in a way that is contrary to the object of this
30 Part;
31 (b) any other matter that the Regulator considers relevant.

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

- 1 (4) The kinds of direction that the employer may be given are
2 directions to do any one or more of the following by a specified
3 time:
4 (a) do a specified act that the Regulator considers is necessary to
5 address the contravention mentioned in subsection (1) (or
6 prevent the likely contravention mentioned in that
7 subsection);
8 (b) refrain from doing an act, if the Regulator considers the
9 refraining is necessary to address the contravention
10 mentioned in subsection (1) (or prevent the likely
11 contravention mentioned in that subsection).
- 12 (5) The time specified in the direction must be 21 days or more after
13 the day the direction is given.
- 14 (6) The employer must comply with the direction by the specified
15 time.
- 16 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
17 *1953* provides an administrative penalty for contravention of this
18 subsection.
- 19 *Strict liability offence*
- 20 (7) A person commits an offence of strict liability if the person
21 contravenes subsection (6).
- 22 Penalty: 50 penalty units.
- 23 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
24 *Code*.
- 25 (8) The Regulator may, by notice in writing to the employer, vary the
26 direction or the time specified if, at the time of the variation, it
27 considers that the variation is necessary and appropriate.
- 28 (9) The direction has effect until the Regulator revokes it by notice in
29 writing to the employer. The Regulator may revoke the direction if,
30 at the time of revocation, it considers that the direction is no longer
31 necessary or appropriate.

1 **Division 3—Infringement notices**

2 **45H When an infringement notice may be given**

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

15 **45J Matters to be included in notice**

- 16 (1) An infringement notice must:
- 17 (a) state the day on which it is given; and
- 18 (b) state the name of the person to whom it is given; and
- 19 (c) state the name of the person who gave the notice; and
- 20 (d) give brief details of the alleged contravention, including:
- 21 (i) the provision that was allegedly contravened; and
- 22 (ii) the maximum penalty that a court could impose for the
23 contravention; and
- 24 (iii) the time (if known) and day of, and the place of, the
25 alleged contravention; and
- 26 (e) state the amount that is payable under the notice; and
- 27 (f) give an explanation of how payment of the amount is to be
28 made; and
- 29 (g) state that, if the person to whom the notice is given pays the
30 amount within 28 days after the day the notice is given, then
31 (unless the notice is withdrawn) the person is not liable to be
32 prosecuted in a court in relation to the alleged contravention;
33 and

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

19 **45K Extension of time to pay amount**

- 20 (1) A person to whom an infringement notice has been given may
21 apply to the Regulator for an extension of the period referred to in
22 paragraph 45J(1)(g).
- 23 (2) If the application is made before the end of that period, the
24 Regulator may, in writing, extend that period. The Regulator may
25 do so before or after the end of that period.
- 26 (3) If the Regulator extends that period, a reference in this Division, or
27 in a notice or other instrument under this Division, to the period
28 referred to in paragraph 45J(1)(g) is taken to be a reference to that
29 period so extended.
- 30 (4) If the Regulator does not extend that period, a reference in this
31 Division, or in a notice or other instrument under this Division, to
32 the period referred to in paragraph 45J(1)(g) is taken to be a
33 reference to the period that ends on the later of the following days:
- 34 (a) the day that is the last day of the period referred to in
35 paragraph 45J(1)(g);

1 (b) the day that is 7 days after the day the person was given
2 notice of the Regulator's decision not to extend.

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

5 **45L Withdrawal of an infringement notice**

6 *Representations seeking withdrawal of notice*

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

11 *Withdrawal of notice*

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

15 (3) When deciding whether or not to withdraw an infringement notice
16 (the *relevant infringement notice*), the Regulator:

17 (a) must take into account any written representations seeking
18 the withdrawal that were given by the person to the
19 Regulator; and

20 (b) may take into account the following:

21 (i) whether a court has previously imposed a penalty on the
22 person for a contravention of an offence of strict
23 liability in Division 2;

24 (ii) the circumstances of the alleged contravention;

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

32 (iv) any other matter the Regulator considers relevant.

1 *Notice of withdrawal*

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

9 *Refund of amount if infringement notice withdrawn*

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

15 **45M Effect of payment of amount**

- 16 (1) If the person to whom an infringement notice for an alleged
17 contravention of a provision is given pays the amount stated in the
18 notice before the end of the period referred to in paragraph
19 45J(1)(g):
20 (a) any liability of the person for the alleged contravention is
21 discharged; and
22 (b) the person may not be prosecuted in a court for the alleged
23 contravention; and
24 (c) the person is not regarded as having been convicted of the
25 alleged offence; and
26 (d) the person is not regarded as having admitted guilt or liability
27 for the alleged contravention.
28 (2) Subsection (1) does not apply if the notice has been withdrawn.

29 **45N Effect of this Division**

- 30 This Division does not:
31 (a) require an infringement notice to be given to a person for an
32 alleged contravention of an offence of strict liability in
33 Division 2; or
-

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

15 **Division 4—Correction and rectification of information**

16 **45P Correction and rectification of information**

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

26 ***Superannuation Industry (Supervision) Act 1993***

27 **2 Before Part 4**

28 Insert:

1 **Part 3B—Superannuation data and payment**
2 **regulations and standards**

3 **Division 1—Superannuation data and payment regulations**
4 **and standards**

5 **34H Object of Part**

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

12 **34J Alternative constitutional basis**

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

17 **34K Superannuation data and payment regulations and standards**

- 18 (1) The regulations may make provision for and in relation to
19 superannuation data and payment matters, to be complied with by:
20 (a) trustees of superannuation entities; and
21 (b) employers in their dealings with superannuation entities.
- 22 (2) The regulations may prescribe different requirements for different
23 classes of superannuation entity or employer.
- 24 (3) The Commissioner of Taxation may, by legislative instrument,
25 determine standards (*superannuation data and payment*
26 *standards*) relating to superannuation data and payment matters,
27 applicable to:
28 (a) trustees of superannuation entities; and
29 (b) employers in their dealings with superannuation entities.

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

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- 1 (4) The superannuation data and payment standards may specify
2 different requirements for different classes of superannuation entity
3 or employer.
- 4 (5) A *superannuation data and payment matter* is a matter relating to
5 the manner in which payments and information of a kind
6 mentioned in subsection (6):
7 (a) relating to:
8 (i) a member of a superannuation entity; or
9 (ii) an employee for whose benefit a contribution to a
10 superannuation entity is to be made by an employer; and
11 (b) connected with the operation of the superannuation entity;
12 are dealt with.
- 13 (6) The kinds of payments and information are:
14 (a) transactions, including payments, contributions, roll-over
15 superannuation benefits (within the meaning of the *Income*
16 *Tax Assessment Act 1997*), allocations, transfers and refunds;
17 and
18 (b) reports; and
19 (c) records, including registrations; and
20 (d) unique identifiers for use with such transactions, reports and
21 records; and
22 (e) any other kind of payment or information that is prescribed
23 by the regulations for the purposes of this paragraph; and
24 (f) to avoid doubt, any payment or information of a kind
25 mentioned in paragraphs (a) to (e) and made or provided by
26 the Commissioner of Taxation.
- 27 *Adoption of other instruments*
- 28 (7) The regulations or standards may make provision in relation to a
29 matter by applying, adopting or incorporating, with or without
30 modification, any matter contained in any other instrument or
31 writing:
32 (a) as in force or existing at a particular time; or
33 (b) as in force or existing from time to time.
- 34 (8) Subsection (7) has effect despite anything in subsection 14(2) of
35 the *Legislative Instruments Act 2003*.
-

1 *Consultations in preparing superannuation data and payment*
2 *standards*

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

5 Note: For further consultation requirements, see section 17 of the *Legislative*
6 *Instruments Act 2003*.

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

10 **34L Relationship between standards and other law**

- 11 (1) A superannuation data and payment standard may elaborate on or
12 supplement any aspect of regulations made under this Part.

- 13 (2) However, a superannuation data and payment standard is of no
14 effect to the extent that it conflicts with this Act or the regulations.

15 **Division 2—Compliance with superannuation data and**
16 **payment regulations and standards**

17 **34M Compliance requirement—trustees of superannuation entities**

- 18 (1) Each trustee of a superannuation entity must ensure that payments
19 and information relating to a member of the superannuation entity,
20 or a person for whose benefit a contribution to the superannuation
21 entity is to be made, are dealt with in a manner that complies with
22 any applicable:

- 23 (a) regulations made under this Part; and
24 (b) superannuation data and payment standards.

25 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
26 *1953* provides an administrative penalty for contravention of this
27 subsection.

28 *Strict liability offence*

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

31 Penalty: 20 penalty units.

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

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

5 **34N Compliance requirement—employers**

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

9 (a) regulations made under this Part; and

10 (b) superannuation data and payment standards.

11 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
12 *1953* provides an administrative penalty for contravention of this
13 subsection.

14 *Strict liability offence*

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

17 Penalty: 20 penalty units.

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

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

22 **34P Regulator’s power to give directions in certain circumstances—**
23 **trustees of superannuation entities**

24 (1) The Regulator may give a trustee of a superannuation entity a
25 direction of a kind specified in subsection (4) if the Regulator
26 reasonably believes that a trustee of the superannuation entity has
27 contravened, or is likely to contravene:

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

29 (b) a particular superannuation data and payment standard.

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

-
- 1 (a) the extent (if any) to which the superannuation entity is
2 operating in a way that is contrary to the object of this Part;
3 (b) any other matter that the Regulator considers relevant.
- 4 (3) The direction must be given by notice in writing to the trustee of
5 the superannuation entity.
- 6 (4) The kinds of direction that a trustee of a superannuation entity may
7 be given are directions to do any one or more of the following by a
8 specified time:
9 (a) do a specified act that the Regulator considers is necessary to
10 address the contravention mentioned in subsection (1) (or
11 prevent the likely contravention mentioned in that
12 subsection);
13 (b) refrain from doing an act, if the Regulator considers the
14 refraining is necessary to address the contravention
15 mentioned in subsection (1) (or prevent the likely
16 contravention mentioned in that subsection).
- 17 (5) The time specified in the direction must be 21 days or more after
18 the day the direction is given.
- 19 (6) The trustee of the superannuation entity must ensure the direction
20 is complied with by the specified time.
- 21 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
22 *1953* provides an administrative penalty for contravention of this
23 subsection.
- 24 *Strict liability offence*
- 25 (7) A person commits an offence of strict liability if the person
26 contravenes subsection (6).
- 27 Penalty: 50 penalty units.
- 28 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
29 *Code*.
- 30 (8) The Regulator may, by notice in writing to the trustee of the
31 superannuation entity, vary the direction or the time specified if, at
32 the time of the variation, the Regulator considers that the variation
33 is necessary and appropriate.
- 34 (9) The direction has effect until the Regulator revokes it by notice in
35 writing to the trustee of the superannuation entity. The Regulator
-

1 may revoke the direction if, at the time of revocation, it considers
2 that the direction is no longer necessary or appropriate.

3 **34Q Regulator’s power to give directions in certain circumstances—**
4 **employers**

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

- 8 (a) a particular regulation made under this Part; or
9 (b) a particular superannuation data and payment standard.

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

- 13 (a) the extent (if any) to which the employer is operating in a
14 way that is contrary to the object of this Part;
15 (b) any other matter that the Regulator considers relevant.

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

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

- 20 (a) do a specified act that the Regulator considers is necessary to
21 address the contravention mentioned in subsection (1) (or
22 prevent the likely contravention mentioned in that
23 subsection);
24 (b) refrain from doing an act, if the Regulator considers the
25 refraining is necessary to address the contravention
26 mentioned in subsection (1) (or prevent the likely
27 contravention mentioned in that subsection).

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

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

32 Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act*
33 1953 provides an administrative penalty for contravention of this
34 subsection.

1 *Strict liability offence*

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

4 Penalty: 50 penalty units.

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

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

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

14 **Division 3—Infringement notices**

15 **34R When an infringement notice may be given**

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

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

22 (3) A single infringement notice may be given to a person in respect
23 of:

24 (a) 2 or more alleged contraventions of an offence of strict
25 liability in Division 2; and

26 (b) alleged contraventions of 2 or more offences of strict liability
27 in Division 2.

28 **34S Matters to be included in notice**

29 (1) An infringement notice must:

30 (a) state the day on which it is given; and

31 (b) state the name of the person to whom it is given; and

32 (c) state the name of the person who gave the notice; and

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- 1 (d) give brief details of the alleged contravention, including:
2 (i) the provision that was allegedly contravened; and
3 (ii) the maximum penalty that a court could impose for the
4 contravention; and
5 (iii) the time (if known) and day of, and the place of, the
6 alleged contravention; and
7 (e) state the amount that is payable under the notice; and
8 (f) give an explanation of how payment of the amount is to be
9 made; and
10 (g) state that, if the person to whom the notice is given pays the
11 amount within 28 days after the day the notice is given, then
12 (unless the notice is withdrawn) the person is not liable to be
13 prosecuted in a court in relation to the alleged contravention;
14 and
15 (h) state that payment of the amount is not an admission of guilt
16 or liability; and
17 (i) state that the person may apply to the Regulator to have the
18 period in which to pay the amount extended; and
19 (j) state that the person may choose not to pay the amount and, if
20 the person does so, the person may be prosecuted in a court
21 in relation to the alleged contravention; and
22 (k) set out how the notice can be withdrawn; and
23 (l) state that if the notice is withdrawn:
24 (i) any amount paid under the notice must be refunded; and
25 (ii) the person may be prosecuted in a court for the alleged
26 contravention; and
27 (m) state that the person may make written representations to the
28 Regulator seeking the withdrawal of the notice.
- 29 (2) For the purposes of paragraph (1)(e), the amount to be stated in the
30 notice for the alleged contravention of the provision must be equal
31 to one-fifth of the maximum penalty that a court could impose on
32 the person for that contravention.

33 **34T Extension of time to pay amount**

- 34 (1) A person to whom an infringement notice has been given may
35 apply to the Regulator for an extension of the period referred to in
36 paragraph 34S(1)(g).

- 1 (2) If the application is made before the end of that period, the
2 Regulator may, in writing, extend that period. The Regulator may
3 do so before or after the end of that period.
- 4 (3) If the Regulator extends that period, a reference in this Division, or
5 in a notice or other instrument under this Division, to the period
6 referred to in paragraph 34S(1)(g) is taken to be a reference to that
7 period as so extended.
- 8 (4) If the Regulator does not extend that period, a reference in this
9 Division, or in a notice or other instrument under this Division, to
10 the period referred to in paragraph 34S(1)(g) is taken to be a
11 reference to the period that ends on the later of the following days:
12 (a) the day that is the last day of the period referred to in
13 paragraph 34S(1)(g);
14 (b) the day that is 7 days after the day the person was given
15 notice of the Regulator's decision not to extend.
- 16 (5) The Regulator may extend the period more than once under
17 subsection (2).

18 **34U Withdrawal of an infringement notice**

19 *Representations seeking withdrawal of notice*

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

24 *Withdrawal of notice*

- 25 (2) The Regulator may withdraw an infringement notice given to a
26 person (whether or not the person has made written representations
27 seeking the withdrawal).
- 28 (3) When deciding whether or not to withdraw an infringement notice
29 (the *relevant infringement notice*), the Regulator:
30 (a) must take into account any written representations seeking
31 the withdrawal that were given by the person to the
32 Regulator; and
33 (b) may take into account the following:

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- 1 (i) whether a court has previously imposed a penalty on the
2 person for a contravention of an offence of strict
3 liability in Division 2;
- 4 (ii) the circumstances of the alleged contravention;
- 5 (iii) whether the person has paid an amount, stated in an
6 earlier infringement notice, for a contravention of an
7 offence of strict liability in Division 2 if the
8 contravention is constituted by conduct that is the same,
9 or substantially the same, as the conduct alleged to
10 constitute the contravention in the relevant infringement
11 notice;
- 12 (iv) any other matter the Regulator considers relevant.

13 *Notice of withdrawal*

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

21 *Refund of amount if infringement notice withdrawn*

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

27 **34V Effect of payment of amount**

- 28 (1) If the person to whom an infringement notice for an alleged
29 contravention of a provision is given pays the amount stated in the
30 notice before the end of the period referred to in paragraph
31 34S(1)(g):
- 32 (a) any liability of the person for the alleged contravention is
33 discharged; and
34 (b) the person may not be prosecuted in a court for the alleged
35 contravention; and

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

6 **34W Effect of this Division**

- 7 This Division does not:
- 8 (a) require an infringement notice to be given to a person for an
9 alleged contravention of an offence of strict liability in
10 Division 2; or
11 (b) affect the liability of a person for an alleged contravention of
12 an offence of strict liability in Division 2 if:
13 (i) the person does not comply with an infringement notice
14 given to the person for the contravention; or
15 (ii) an infringement notice is not given to the person for the
16 contravention; or
17 (iii) an infringement notice is given to the person for the
18 contravention and is subsequently withdrawn; or
19 (c) prevent the giving of 2 or more infringement notices to a
20 person for an alleged contravention of an offence of strict
21 liability in Division 2; or
22 (d) limit a court's discretion to determine the amount of a
23 penalty to be imposed on a person who is found to have
24 contravened an offence of strict liability in Division 2.

25 **Division 4—Correction and rectification of information**

26 **34X Correction and rectification of information**

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

1 of a person for a contravention of a provision of this Part relating
2 to the information.

3 ***Taxation Administration Act 1953***

4 **3 At the end of Division 288 in Schedule 1**

5 Add:

6 **288-110 Contravention of superannuation data and payment**
7 **regulation or standard**

8 *Liability to penalty—RSA providers and trustees of superannuation*
9 *entities*

- 10 (1) An entity is liable to an administrative penalty if the entity
11 contravenes:
- 12 (a) subsection 34M(1) of the *Superannuation Industry*
13 *(Supervision) Act 1993*; or
14 (b) subsection 45D(1) of the *Retirement Savings Accounts Act*
15 *1997*.
- 16 (2) An entity is liable to an administrative penalty if the entity
17 contravenes:
- 18 (a) subsection 34P(6) of the *Superannuation Industry*
19 *(Supervision) Act 1993*; or
20 (b) subsection 45F(6) of the *Retirement Savings Accounts Act*
21 *1997*.

22 *Liability to penalty—employers*

- 23 (3) An entity is liable to an administrative penalty if the entity
24 contravenes:
- 25 (a) subsection 34N(1) of the *Superannuation Industry*
26 *(Supervision) Act 1993*; or
27 (b) subsection 45E(1) of the *Retirement Savings Accounts Act*
28 *1997*.
- 29 (4) An entity is liable to an administrative penalty if the entity
30 contravenes:
- 31 (a) subsection 34Q(6) of the *Superannuation Industry*
32 *(Supervision) Act 1993*; or

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(b) subsection 45G(6) of the *Retirement Savings Accounts Act 1997*.

Amount of the penalty

(5) The amount of the penalty is:

(a) for an administrative penalty under subsection (1) or (3)—4 penalty units; or

(b) for an administrative penalty under subsection (2) or (4)—10 penalty units.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.

1 **Part 2—Consequential amendments**

2 ***Retirement Savings Accounts Act 1997***

3 **4 After paragraph 3(1)(ba)**

4 Insert:

5 (bb) APRA also has the general administration of Divisions 2 and
6 3 of Part 4A to the extent that administration of the
7 provisions is not conferred on the Commissioner of Taxation
8 by paragraph (f); and

9 **5 At the end of subsection 3(1) (before the note)**

10 Add:

11 ; and (f) the Commissioner of Taxation has the general administration
12 of:

13 (i) Division 1 of Part 4A; and

14 (ii) Division 2 of Part 4A, to the extent it relates to
15 employers; and

16 (iii) Division 2 of Part 4A, to the extent it relates to
17 payments and information given to the Commissioner of
18 Taxation; and

19 (iv) Division 4 of Part 4A.

20 **6 Section 16**

21 Insert:

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

24 **7 Section 16**

25 Insert:

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

28 **8 Section 16 (after paragraph (f) of the definition of**
29 ***reviewable decision*)**

30 Insert:

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

3 ***Superannuation Industry (Supervision) Act 1993***

4 **9 Section 4 (before table item dealing with Part 4)**

5 Insert:

3B | superannuation data and payment standards for funds
and employers

6 **10 Paragraph 6(1)(a)**

7 After “(e)”, insert “, (fa),”.

8 **11 Before subparagraph 6(1)(a)(ii)**

9 Insert:

10 (ib) Divisions 2 and 3 of Part 3B;

11 **12 Before subparagraph 6(1)(e)(i)**

12 Insert:

13 (ia) Division 2 of Part 3B;

14 **13 After paragraph 6(1)(f)**

15 Insert:

16 (fa) the Commissioner of Taxation has the general administration
17 of:

18 (i) Division 1 of Part 3B; and

19 (ii) Division 2 of Part 3B, to the extent it relates to
20 employers; and

21 (iii) Division 2 of Part 3B, to the extent it relates to
22 payments and information given to the Commissioner of
23 Taxation; and

24 (iv) Division 4 of Part 3B; and

25 **14 Subsection 10(1) (before paragraph (dp) of the definition**
26 ***of reviewable decision***)

27 Insert:

28 (dod) a decision of the Regulator to give or vary a direction under
29 section 34P or 34Q; or

Schedule 1 Data and payment standards relating to superannuation and retirement savings

Part 2 Consequential amendments

1 **15 Subsection 10(1)**

2 Insert:

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

5 **16 Subsection 10(1)**

6 Insert:

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

9 **17 Subsection 344(12)**

10 After “(dn)”, insert “, (dod)”.

11

1 **Part 3—Amendments contingent on the**
2 **Superannuation Legislation Amendment**
3 **(Trustee Obligations and Prudential**
4 **Standards) Act 2012**

5 *Superannuation Industry (Supervision) Act 1993*

6 **18 Subsection 10(1) (paragraph (dod) of the definition of**
7 ***reviewable decision*)**

8 Repeal the paragraph.

9 **19 Subsection 10(1) (before paragraph (dp) of the definition**
10 **of *reviewable decision*)**

11 Insert:

12 (dod) a decision of the Regulator to give or vary a direction under
13 section 34P or 34Q; or
14

1 **Part 4—Application provision**

2 **20 Application of amendments**

- 3 (1) The amendments made by this Schedule apply in relation to:
4 (a) a trustee of a superannuation entity; or
5 (b) an RSA provider;
6 in relation to conduct that occurs on or after 1 July 2013.
- 7 (2) The amendments made by this Schedule apply in relation to an entity
8 that is a medium to large employer on 1 July 2014 in relation to conduct
9 that occurs on or after 1 July 2014.
- 10 (3) The amendments made by this Schedule apply in relation to an entity
11 that is a small employer on 1 July 2014 in relation to conduct that
12 occurs on or after:
13 (a) if paragraph (b) does not apply—1 July 2015; or
14 (b) if the regulations prescribe a day after 1 July 2015 for the
15 purposes of this paragraph—that day.
- 16 (4) In this item:
17 *medium to large employer*, at a particular time, means an employer that
18 employs 20 or more employees at that time.
19 *small employer*, at a particular time, means an employer that employs
20 fewer than 20 employees at that time.
- 21 (5) For the purpose of calculating the number of employees employed by
22 an employer at a particular time, count all employees employed by the
23 employer at that time.
- 24 (6) The Governor-General may make regulations prescribing matters:
25 (a) required or permitted by this Schedule to be prescribed; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Schedule.
28

1 **Schedule 2—Costs of implementing**
2 **SuperStream measures**
3

4 *Australian Prudential Regulation Authority Act 1998*

5 **1 At the end of paragraph 50(1)(a)**

6 Add:

7 ; and (iii) implementing the SuperStream measures until 30 June
8 2018;

9 **2 At the end of paragraph 50(1)(b)**

10 Add:

11 ; and (iii) implementing the SuperStream measures until 30 June
12 2018.

13 **3 After subsection 50(1)**

14 Insert:

15 (1A) The Minister may make, by legislative instrument, for each
16 financial year, a determination specifying the proportion of
17 amounts of levy money paid to APRA, on behalf of the
18 Commonwealth, for the year, that is to be credited to the APRA
19 Special Account on an ongoing basis.

20 **4 Subsections 50(2) and 50(3)**

21 Repeal the subsections, substitute:

22 (2) The proportion determined under subsection (1A) of any amount of
23 levy money paid to APRA, on behalf of the Commonwealth, for a
24 financial year, is to be credited to the APRA Special Account.

25 (3) If the amount of levy money paid to APRA, on behalf of the
26 Commonwealth, for a financial year, exceeds the sum of:

27 (a) the amount determined under paragraph (1)(a), or the total of
28 the amounts determined under paragraph (1)(b), for that
29 financial year; and

30 (b) the proportion determined under subsection (1A) of amounts
31 of levy money, for that financial year;

32 the excess is to be credited to the APRA Special Account.

Schedule 2 Costs of implementing SuperStream measures

1 Note: The annual financial statements of APRA, in respect of the APRA
2 Special Account, must be prepared in accordance with the Finance
3 Minister's Orders (see section 49 of the *Financial Management and*
4 *Accountability Act 1997*).

5 **5 Subsection 50(6)**

6 Insert:

7 *SuperStream measures* means:

- 8 (a) the superannuation data and payment regulations and
9 standards made under the *Superannuation Industry*
10 *(Supervision) Act 1993*; and
11 (b) the data and payment regulations and standards for retirement
12 savings accounts made under the *Retirement Savings*
13 *Accounts Act 1997*; and
14 (c) the consolidation of active and inactive superannuation
15 interests; and
16 (d) the requirement that tax file numbers be the primary means
17 for identifying member accounts; and
18 (e) any other matter prescribed by the regulations made for the
19 purposes of this subsection.

20 **6 Application**

21 The amendments made by this Schedule apply from 1 July 2012.