

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| EXPOSURE DRAFT |
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Treasury Legislation Amendment (Improving Accountability and Member Outcomes in Superannuation) Bill 2017

No. , 2017

(Treasury)

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

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

| | | |
|---|--|-----------|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 1 |
| 3 | Schedules..... | 2 |
| | Schedule 1—Annual MySuper outcomes assessment | 3 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 3 |
| | Schedule 2—Authority to offer a MySuper product | 5 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 5 |
| | Schedule 3—Director penalties | 7 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 7 |
| | Schedule 4—Approval to own or control an RSE licensee | 9 |
| | Part 1—Amendments | 9 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 9 |
| | Part 2—Application and transitional provisions | 21 |
| | Schedule 5—APRA directions power | 22 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 22 |
| | Schedule 6—Annual members’ meetings | 37 |
| | <i>Superannuation Industry (Supervision) Act 1993</i> | 37 |
| | Schedule 7—Reporting standards | 44 |
| | <i>Financial Sector (Collection of Data) Act 2001</i> | 44 |

EXPOSURE DRAFT

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

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Legislation Amendment (Improving*
7 *Accountability and Member Outcomes in Superannuation) Act*
8 *2017*.

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.
14

Commencement information

| Column 1 | Column 2 | Column 3 |
|---|---|---------------------|
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day after this Act receives the Royal Assent. | |
| 2. Schedules 1, 2 and 3 | The day after this Act receives the Royal Assent. | |
| 3. Schedule 4 | Immediately after the commencement of the provisions covered by table item 4. | |
| 4. Schedules 5, 6 and 7 | The day after this Act receives the Royal Assent. | |

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

No. , 2017 *Treasury Legislation Amendment (Improving Accountability and* 1
Member Outcomes in Superannuation) Bill 2017

EXPOSURE DRAFT

EXPOSURE DRAFT

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

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

2 *Treasury Legislation Amendment (Improving Accountability and* No. , 2017
Member Outcomes in Superannuation) Bill 2017

EXPOSURE DRAFT

EXPOSURE DRAFT

Annual MySuper outcomes assessment Schedule 1

Schedule 1—Annual MySuper outcomes assessment

Superannuation Industry (Supervision) Act 1993

1 Section 29VN

Before “Each trustee”, insert “(1)”.

2 Paragraph 29VN(b)

Repeal the paragraph, substitute:

- (b) determine, in writing, on an annual basis whether the financial interests of the beneficiaries of the fund who hold the MySuper product are being promoted by the trustee, having regard to:
 - (i) the factors mentioned in subsection (2); and
 - (ii) a comparison of the MySuper product with other MySuper products, based on the factors mentioned in subsection (3); and

3 At the end of section 29VN

Add:

- (2) In determining whether the financial interests of the beneficiaries of the fund who hold the MySuper product are being promoted by the trustee, the trustee must assess each of the following:
 - (a) whether the options, benefits and facilities offered under the MySuper product are appropriate to those beneficiaries;
 - (b) whether the investment strategy for the MySuper product, including the level of investment risk and the return target, is appropriate to those beneficiaries;
 - (c) whether the insurance strategy for the MySuper product is appropriate to those beneficiaries;
 - (d) whether any insurance fees charged in relation to the MySuper product inappropriately erode the retirement income of those beneficiaries;

EXPOSURE DRAFT

Schedule 1 Annual MySuper outcomes assessment

- 1 (e) whether there are problems of scale in relation to the
2 MySuper product:
- 3 (i) because the number of beneficiaries of the fund who
4 hold the MySuper product is insufficient; or
- 5 (ii) because the number of beneficiaries of the fund is
6 insufficient; or
- 7 (iii) where the assets of the fund that are attributed to the
8 MySuper product are, or are to be, pooled with other
9 assets of the fund or assets of another entity or other
10 entities—because that pool of assets is insufficient; or
- 11 (iv) in a case to which subparagraph (iii) does not apply—
12 because the assets of the fund that are attributed to the
13 MySuper product are insufficient;
- 14 (f) any other relevant matters, including any matters prescribed
15 for the purposes of this paragraph.
- 16 (3) In comparing the MySuper product with other MySuper products,
17 the trustees must compare each of the following:
- 18 (a) the fees, costs and taxes that affect the return to the
19 beneficiaries holding the MySuper products;
- 20 (b) the return target for the MySuper products;
- 21 (c) the return for the MySuper products;
- 22 (d) the level of investment risk for the MySuper products;
- 23 (e) any other matter prescribed for the purposes of this
24 paragraph.
- 25 (4) The regulations may prescribe:
- 26 (a) standards to be applied by trustees in determining any matter
27 mentioned in subsection (2); and
- 28 (b) methodology to be used by trustees in determining any matter
29 mentioned in subsection (2); and
- 30 (c) standards to be applied by trustees in comparing a MySuper
31 product with other MySuper products, based on the factors
32 mentioned in subsection (3); and
- 33 (d) methodology to be used by trustees in comparing a MySuper
34 product with other MySuper products, based on the factors
35 mentioned in subsection (3).

EXPOSURE DRAFT

Authority to offer a MySuper product **Schedule 2**

1 **Schedule 2—Authority to offer a MySuper**
2 **product**
3

4 *Superannuation Industry (Supervision) Act 1993*

5 **1 Paragraphs 29T(1)(h), (ha), (i) and (j)**

6 Repeal the paragraphs, substitute:

7 (h) APRA has no reason to believe that:

8 (i) where the RSE licensee is a body corporate—the RSE
9 licensee; or

10 (ii) where the RSE licensee is made up of a group of
11 individual trustees—any of those individual trustees;
12 may fail to comply with the enhanced trustee obligations for
13 MySuper products; and

14 (i) where the RSE licensee is a body corporate—APRA has no
15 reason to believe that the directors of the RSE licensee may
16 fail to comply with the enhanced director obligations for
17 MySuper products; and

18 (j) APRA has no reason to believe that:

19 (i) where the RSE licensee is a body corporate—the RSE
20 licensee; or

21 (ii) where the RSE licensee is made up of a group of
22 individual trustees—any of those individual trustees;
23 may fail to comply with the general fees rules and the fees
24 rules in relation to MySuper products; and

25 (k) APRA has no reason to believe that:

26 (i) where the RSE licensee is a body corporate—the RSE
27 licensee; or

28 (ii) where the RSE licensee is made up of a group of
29 individual trustees—any of those individual trustees;
30 may contravene section 29W, 29WA or 29WB.

31 **2 Paragraphs 29U(2)(c), (ca), (d) and (e)**

32 Repeal the paragraphs, substitute:

33 (c) APRA has reason to believe that:

EXPOSURE DRAFT

Schedule 2 Authority to offer a MySuper product

- 1 (i) where the RSE licensee is a body corporate—the RSE
2 licensee; or
- 3 (ii) where the RSE licensee is made up of a group of
4 individual trustees—any of those individual trustees;
5 may not comply with the enhanced trustee obligations for
6 MySuper products (whether because of a previous failure to
7 do so, or for any other reason); or
- 8 (ca) where the RSE licensee is a body corporate—APRA has
9 reason to believe that the directors of the RSE licensee may
10 not comply with the enhanced director obligations for
11 MySuper products (whether because of a previous failure to
12 do so, or for any other reason); or
- 13 (d) APRA has reason to believe that:
- 14 (i) where the RSE licensee is a body corporate—the RSE
15 licensee; or
- 16 (ii) where the RSE licensee is made up of a group of
17 individual trustees—any of those individual trustees;
18 may not comply with the general fees rules and the fees rules
19 in relation to MySuper products (whether because of a
20 previous failure to do so, or for any other reason); or
- 21 (e) APRA has reason to believe that:
- 22 (i) where the RSE licensee is a body corporate—the RSE
23 licensee; or
- 24 (ii) where the RSE licensee is made up of a group of
25 individual trustees—any of those individual trustees;
26 may contravene section 29W, 29WA or 29WB (whether
27 because of a previous contravention of that section, or for any
28 other reason); or

3 Application

29 The amendment made by item 1 of this Schedule applies where an
30 entity applies to APRA on or after the day on which this Schedule
31 commences for authority to offer a class of beneficial interest in a
32 regulated superannuation fund as a MySuper product.
33

1 **Schedule 3—Director penalties**
2

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

4 **1 Subsection 29VPA(2)**

5 Repeal the subsection, substitute:

6 (2) Subsection (1) is a civil penalty provision as defined by
7 section 193, and Part 21 therefore provides for civil and criminal
8 consequences of contravening, or of being involved in a
9 contravention of, that subsection.

10 (2A) A contravention of subsection (1) does not result in the invalidity
11 of a transaction.

12 **2 After section 55**

13 Insert:

14 **55AA Additional consequences of contravention of covenant relating**
15 **to directors**

16 (1) A person must not contravene a covenant that:

17 (a) is to the effect of a covenant set out in subsection 52A(2);
18 and

19 (b) is contained, or taken to be contained, in the governing rules
20 of a superannuation entity.

21 (2) Subsection (1) is a civil penalty provision as defined by
22 section 193, and Part 21 therefore provides for civil and criminal
23 consequences of contravening, or of being involved in a
24 contravention of, that subsection.

25 (3) A contravention of subsection (1) does not result in the invalidity
26 of a transaction.

27 (4) This section does not limit the operation of section 55.

EXPOSURE DRAFT

Schedule 3 Director penalties

1 **3 Before paragraph 193(a)**

2 Insert:

3 (aa) subsection 29VPA(1);

4 (ab) subsection 55AA(1);

5 **4 Application**

6 The amendments made by this Schedule apply in relation to
7 contraventions occurring on or after the day this Schedule commences.

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

1 **Schedule 4—Approval to own or control an**
2 **RSE licensee**

3 **Part 1—Amendments**

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

5 **1 Subsection 10(1)**

6 Insert:

7 ***controlling stake***: a person holds a ***controlling stake*** in an RSE
8 licensee that is a body corporate if the person holds a stake of more
9 than 15% in the RSE licensee.

10 ***practical control*** of an RSE licensee that is a body corporate has
11 the meaning given by subsection 131EC.

12 **2 Subsection 10(1) (after paragraph (dl) of the definition of**
13 ***reviewable decision*)**

14 Insert:

15 (dla) a decision of APRA under section 29HD to refuse to give a
16 person approval to hold a controlling stake in an RSE
17 licensee; or

18 **3 Subsection 10(1) (after paragraph (taab) of the definition of**
19 ***reviewable decision*)**

20 Insert:

21 (taac) a decision of the Regulator under subsection 131EB(1) to
22 give a person a direction to relinquish control of an RSE
23 licensee; or

24 **4 Subsection 10(1)**

25 Insert:

26 ***stake*** in an RSE licensee that is a body corporate, has the same
27 meaning as in the *Financial Sector (Shareholdings) Act 1998*.

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

1 **5 Paragraph 29E(1)(f)**

2 Repeal the paragraph, substitute:

- 3 (f) the RSE licensee must notify APRA of any change in the
4 composition or control of the RSE licensee (see
5 subsection (2)) within 14 days after the change takes place;

6 **6 Subsection 29E(2)**

7 Omit “*change in the composition of the RSE licensee*”, substitute
8 “*change in the composition or control of the RSE licensee*”.

9 **7 Paragraph 29E(2)(a)**

10 Repeal the paragraph, substitute:

- 11 (a) if the RSE licensee is a body corporate:
12 (i) a person becoming, or ceasing to be, a director of the
13 RSE licensee; or
14 (ii) a person’s stake in the RSE licensee changing; or

15 **8 After Division 7 of Part 2A**

16 Insert:

17 **Division 8—Approval to hold a controlling stake in an RSE**
18 **licensee**

19 **Subdivision A—Application of this Division**

20 **29H Application**

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

23 **Subdivision B—Applying for approval**

24 **29HA Application for approval to hold a controlling stake**

- 25 (1) A person may apply to APRA for approval to hold a controlling
26 stake in an RSE licensee.

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

- 1 (2) The application must:
2 (a) be in the approved form; and
3 (b) contain the information required by the approved form.
- 4 (3) If:
5 (a) a person applies for approval to hold a controlling stake in an
6 RSE licensee; and
7 (b) after the application is made, but before APRA decides the
8 application, information contained in the application ceases
9 to be correct;
10 the person must give APRA the correct information, in writing, as
11 soon as practicable after the information in the application ceases
12 to be correct.
- 13 (4) An application is taken not to comply with this section if
14 subsection (3) is contravened.

15 **29HB APRA may request further information**

16 APRA may give a person who has applied for approval to hold a
17 controlling stake in an RSE licensee a notice requesting the person
18 to give APRA, in writing, specified information relating to the
19 application.

20 **29HC Period for deciding applications for approval**

- 21 (1) APRA must decide an application by a person for approval to hold
22 a controlling stake in an RSE licensee:
23 (a) within 90 days after receiving the application; or
24 (b) if the applicant was requested to provide information under
25 section 29HB—within 90 days after:
26 (i) receiving from the person all of the information the
27 person was requested to provide under that section; or
28 (ii) all notices relating to that information being disposed
29 of;
30 unless APRA extends the period for deciding the application under
31 subsection (2).

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

- 1 (2) APRA may extend the period for deciding an application by a
2 person for approval to hold a controlling stake in an RSE licensee
3 by up to 30 days if APRA informs the person of the extension:
4 (a) in writing; and
5 (b) within 90 days after receiving the application.
- 6 (3) If APRA extends the period for deciding the application, it must
7 decide the application within the extended period.
- 8 (4) If APRA has not decided an application for approval to hold a
9 controlling stake in an RSE licensee by the end of the period by
10 which it is required to decide the application, APRA is taken to
11 have decided, at the end of the last day of that period, to refuse the
12 application.

13 Subdivision C—Approval

14 29HD Approval to hold a controlling stake in an RSE licensee

15 APRA must give approval for a person to hold a controlling stake
16 in an RSE licensee if, and only if:

- 17 (a) the application for approval complies with section 29HA; and
18 (b) the applicant has provided to APRA all information that the
19 applicant was requested under section 29HB to provide, or
20 the request has been disposed of; and
21 (c) APRA has no reason to believe that, because of the person's
22 controlling stake in the RSE licensee, or the way in which
23 that controlling stake is likely to be used, the RSE licensee
24 may be unable to satisfy one or more of the trustee's
25 obligations contained in a covenant set out in sections 52 to
26 53, or prescribed under section 54A, or referred to in
27 section 29VN or 29VO.

28 29HE Notice of approval

29 If APRA gives a person approval to hold a controlling stake in an
30 RSE licensee, APRA must notify the RSE licensee in writing of the
31 approval.

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

1 **29HF APRA to give notice of refusal of approval**

2 If APRA refuses an application by a person for approval to hold a
3 controlling stake in an RSE licensee, APRA must take all
4 reasonable steps to ensure that the person is given a notice:

- 5 (a) informing it of APRA's refusal of the application; and
6 (b) setting out the reasons for the refusal;
7 as soon as practicable after refusing the application.

8 **9 After section 29JCA**

9 Insert:

10 **29JCB Holding a controlling stake in an RSE licensee without**
11 **approval**

- 12 (1) A person commits an offence if:
13 (a) the person holds a controlling stake in an RSE licensee; and
14 (b) the person does not have approval under section 29HD to
15 hold a controlling stake in the RSE licensee.

16 Penalty: 400 penalty units for each day on which the person holds
17 a controlling stake in the RSE licensee without approval.

- 18 (2) Strict liability applies to subsection (1).

19 **10 After Division 1 of Part 16A**

20 Insert:

21 **Division 2—Directions to relinquish control over an RSE**
22 **licensee**

23 **131E Object of this Division**

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

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

1 **131EA Application of this Division**

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

4 **131EB Direction to relinquish control**

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

7 (a) the Regulator has reason to believe that:

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

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

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

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

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

16 the RSE licensee has been, is or is likely to be unable to
17 satisfy one or more of the trustee's obligations contained in a
18 covenant set out in sections 52 to 53, or prescribed under
19 section 54A, or referred to in section 29VN or 29VO.

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

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

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

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

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

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

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

- 1 (c) information given to the Regulator in relation to the
2 application for approval was false or misleading in a material
3 particular.
- 4 (4) To avoid doubt, a direction under subsection (1) or (3) to a person
5 to relinquish a controlling stake in an RSE licensee may be given
6 even if the person has approval to hold a controlling stake in the
7 RSE licensee.
- 8 (5) The direction must be given in writing.
- 9 (6) The Regulator must give the person:
10 (a) a copy of the direction; and
11 (b) a statement of the Regulator's reasons for giving the
12 direction.
- 13 (7) The Regulator may revoke a direction to relinquish control of an
14 RSE licensee.
- 15 (8) The revocation must be in writing and a copy of the revocation
16 must be given to the person.

17 **131EC Meaning of practical control**

- 18 A person has *practical control* over an RSE licensee that is a body
19 corporate if:
20 (a) either of the following is satisfied:
21 (i) the directors of the RSE licensee are accustomed or
22 under an obligation, whether formal or informal, to act
23 in accordance with the directions, instructions or wishes
24 of the person (either alone or together with associates);
25 (ii) the person (either alone or together with associates) is in
26 a position to exercise control over the RSE licensee; and
27 (b) the person does not hold a controlling stake in the RSE
28 licensee.

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

131ED Consequences of a direction to relinquish control

- (1) If the Regulator gives a person a direction to relinquish control over an RSE licensee, the person must take such steps as are necessary to ensure that:
- (a) the directors of the RSE licensee are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
 - (b) the person (either alone or together with associates) is not in a position to exercise control over the RSE licensee; and
 - (c) the person does not hold a controlling stake in the RSE licensee.
- (2) The person must take those steps:
- (a) within 90 days after being given a copy of the direction; or
 - (b) if the Regulator, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.
- (3) A person commits an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person intentionally or recklessly contravenes the requirement.

Penalty: 400 penalty units.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence under subsection (3), so a person commits an offence, after the period for relinquishment expires, on each day on which the person does not relinquish control.

131EE Interim orders

Orders where the direction is stayed by the Administrative Appeals Tribunal

- (1) The Regulator may apply to the Federal Court of Australia (the **Federal Court**) for orders under subsection (2) if:
- (a) the Regulator has given a direction to relinquish control over an RSE licensee to a person; and

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

- 1 (b) an application has been made to the Administrative Appeals
2 Tribunal for a review of the decision to give the direction;
3 and
4 (c) the Tribunal has made an order or orders staying or otherwise
5 affecting the operation or implementation of the decision to
6 give the direction, or a part of that decision.

- 7 (2) The Federal Court may make such orders as the court considers
8 appropriate to ensure that the person does not, during the period to
9 which an order of the Tribunal relates, exercise control over the
10 RSE licensee in a manner that results in the RSE licensee being
11 unable to satisfy one or more of the trustee's obligations contained
12 in a covenant set out in sections 52 to 53, or prescribed under
13 section 54A, or referred to in section 29VN or 29VO.

14 *Orders to deal with conduct during the compliance period*

- 15 (3) The Regulator may apply to the Federal Court of Australia (the
16 **Federal Court**) for orders under subsection (4) if:
17 (a) a direction to relinquish control over an RSE licensee is in
18 force in relation to a person; and
19 (b) the Regulator has reason to believe that the person may,
20 during the period under subsection 131ED(2) during which
21 the person is required to take steps under the direction (the
22 **compliance period**), exercise control over the RSE licensee
23 in a manner that results in the RSE licensee being unable to
24 satisfy one or more of the trustee's obligations contained in a
25 covenant set out in sections 52 to 53, or prescribed under
26 section 54A, or referred to in section 29VN or 29VO.
- 27 (4) The Federal Court may make such orders as the court considers
28 appropriate to ensure that the person does not, during the
29 compliance period, exercise control over the RSE licensee in a
30 manner that results in the RSE being unable to satisfy one or more
31 of the trustee's obligations contained in a covenant set out in
32 sections 52 to 53, or prescribed under section 54A, or referred to in
33 section 29VN or 29VO.

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

131EF Remedial orders

- 1
- 2 (1) The Regulator may apply to the Federal Court of Australia (the
- 3 ***Federal Court***) for orders under this section if a direction to
- 4 relinquish control over an RSE licensee is in force in relation to a
- 5 person.
- 6 (2) The Federal Court may make such orders as the court considers
- 7 appropriate to ensure that:
- 8 (a) the directors of the RSE licensee are not accustomed or under
- 9 an obligation, whether formal or informal, to act in
- 10 accordance with the directions, instructions or wishes of the
- 11 person (either alone or together with associates); and
- 12 (b) the person (either alone or together with associates) is not in
- 13 a position to exercise control over the RSE licensee; and
- 14 (c) the person does not hold a controlling stake in the RSE
- 15 licensee.
- 16 (3) However, the Federal Court may only make orders under this
- 17 section if the court is satisfied that:
- 18 (a) both of the following are satisfied:
- 19 (i) the person holds a controlling stake in the RSE licensee,
- 20 or has practical control of the RSE licensee;
- 21 (ii) because of the person's control of the RSE licensee, or
- 22 the way in which that control has been, is or is likely to
- 23 be exercised, the RSE licensee has been, is or is likely
- 24 to be unable to satisfy one or more of the trustee's
- 25 obligations contained in a covenant set out in
- 26 sections 52 to 53, or prescribed under section 54A, or
- 27 referred to in section 29VN or 29VO; or
- 28 (b) both of the following are satisfied:
- 29 (i) the person holds a controlling stake in the RSE licensee;
- 30 (ii) the person does not have approval under section 29HD
- 31 to hold a controlling stake in the RSE licensee; or
- 32 (c) each of the following is satisfied:
- 33 (i) the person has a controlling stake in the RSE licensee;
- 34 (ii) the person has approval under section 29HD to hold a
- 35 controlling stake in the RSE licensee;
-

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Amendments **Part 1**

- 1 (iii) information given to the Regulator in relation to the
2 application for approval was false or misleading in a
3 material particular.
- 4 (4) The Federal Court's orders include:
5 (a) an order directing the disposal of shares; or
6 (b) an order restraining the exercise of any rights attached to
7 shares; or
8 (c) an order prohibiting or deferring the payment of any sums
9 due to a person in respect of shares held by the person; or
10 (d) an order that any exercise of rights attached to shares be
11 disregarded.
- 12 (5) Subsection (4) does not, by implication, limit subsection (2).
- 13 (6) In addition to the Federal Court's powers under subsections (2) and
14 (4), the court:
15 (a) has power, for the purpose of securing compliance with any
16 other order made under this section, to make an order
17 directing any person to do or refrain from doing a specified
18 act; and
19 (b) has power to make an order containing such ancillary or
20 consequential provisions as the court thinks just.
- 21 (7) The Federal Court may, before making an order under this section,
22 direct that notice of the Regulator's application be given to such
23 persons as it thinks fit or be published in such manner as it thinks
24 fit, or both.
- 25 (8) The Federal Court may, by order, rescind, vary or discharge an
26 order made by it under this section or suspend the operation of
27 such an order.

11 At the end of subsection 133(1)

28 Add:

29 ; or (f) the Regulator has reason to believe that:

- 30 (i) either a person holds a controlling stake in the RSE
31 licensee or a person has practical control of the RSE
32 licensee; and
33

EXPOSURE DRAFT

Schedule 4 Approval to own or control an RSE licensee

Part 1 Amendments

- 1 (ii) because of the person's control of the RSE licensee, or
2 the way in which that control has been, is or is likely to
3 be exercised, the RSE licensee has been, is or is likely
4 to be unable to satisfy one or more of the trustee's
5 obligations contained in a covenant set out in
6 sections 52 to 53, or prescribed under section 54A, or
7 referred to in section 29VN or 29VO; or
8 (g) the Regulator has reason to believe that:
9 (i) a person holds a controlling stake in an RSE licensee;
10 and
11 (ii) the person does not have approval under section 29HD
12 to hold a controlling stake in the RSE licensee.

13 **12 After paragraph 223A(1)(a)**

14 Insert:

- 15 (aa) subsection 29JCB(1);

EXPOSURE DRAFT

Approval to own or control an RSE licensee **Schedule 4**
Application and transitional provisions **Part 2**

1 **Part 2—Application and transitional provisions**

2 **13 Definitions**

3 In this Part:

4 *commencement day* means the day on which this Schedule commences.

5 **14 Treatment of persons holding a controlling stake in an**
6 **RSE licensee before the commencement day**

7 (1) This item applies if:

8 (a) a person holds a controlling stake in an RSE licensee
9 immediately before the commencement day; and

10 (b) the person continues to hold a controlling stake in the RSE
11 licensee on, or on and after, the commencement day.

12 (2) For the purposes of the *Superannuation Industry (Supervision) Act*
13 *1993*, the person is taken to have approval under section 29HD to hold a
14 controlling stake in the RSE licensee during the period:

15 (a) beginning on the commencement day; and

16 (b) ending when the period during which the person holds a
17 controlling stake in the RSE licensee is broken.

18 **15 Holding a controlling stake without approval**

19 Section 29JCB of the *Superannuation Industry (Supervision) Act 1993*,
20 as inserted by item 9 of this Schedule, applies where a person begins to
21 hold a controlling stake in an RSE licensee on or after the day that is 3
22 months after the commencement day.

EXPOSURE DRAFT

Schedule 5 APRA directions power

1
2

Schedule 5—APRA directions power

3

Superannuation Industry (Supervision) Act 1993

4

1 Section 4 (after table item dealing with Part No. 16)

5

Insert:

16A APRA’s powers to issue directions

6

2 Subparagraph 6(1)(a)(vii)

7

Repeal the subparagraph, substitute:

8

(vii) Parts 14 to 16A.

9

3 Subsection 10(1) (after paragraph (ta) of the definition of *reviewable decision*)

10

11

Insert:

12

(taaa) a decision of APRA to give a direction under
subsection 131D(1), 131DA(1) or 131DA(3); or

13

14

(taab) a decision of APRA to vary a direction under
subsection 131DC(1); or

15

16

4 Subsection 29E(1) (note 1)

17

Omit “(see section 29EB)”, substitute “(see Division 1 of Part 16A)”.

18

5 Subsection 29EA(2) (note 1)

19

Omit “(see section 29EB)”, substitute “(see Division 1 of Part 16A)”.

20

6 Section 29EB

21

Repeal the section.

22

7 Paragraphs 29G(2)(e) and (f)

23

Omit “under section 29EB”, substitute “under subsection 131D(1) or
131DA(1)”.

24

25

8 Section 29JB

26

Repeal the section.

22

*Treasury Legislation Amendment (Improving Accountability and
Member Outcomes in Superannuation) Bill 2017*

No. , 2017

EXPOSURE DRAFT

EXPOSURE DRAFT

APRA directions power **Schedule 5**

1 **9 Subsection 29K(2) (note)**

2 Omit “(see section 29EB)”, substitute “(see paragraph 131D(2)(b))”.

3 **10 After Part 16**

4 Insert:

5 **Part 16A—APRA’s powers to issue directions**

6 **Division 1—General powers to issue directions**

7 **131D APRA may give directions to an RSE licensee in relation to**
8 **licensee’s own conduct**

- 9 (1) APRA may give an RSE licensee a direction of a kind mentioned
10 in subsection (2) if APRA has reason to believe that:
- 11 (a) the RSE licensee has contravened a provision of:
 - 12 (i) this Act; or
 - 13 (ii) the regulations; or
 - 14 (iii) the prudential standards; or
 - 15 (ii) the *Financial Sector (Collection of Data) Act 2001*; or
 - 16 (b) the RSE licensee is likely to contravene a provision
17 mentioned in paragraph (a), and the direction is reasonably
18 necessary to deal with one or more prudential matters in
19 relation to the RSE licensee; or
 - 20 (c) the RSE licensee has contravened a condition or direction
21 under this Act or the *Financial Sector (Collection of Data)*
22 *Act 2001*; or
 - 23 (d) the direction is necessary in the interests of beneficiaries of a
24 registrable superannuation entity of the RSE licensee; or
 - 25 (e) the RSE licensee is, or is about to become, unable to meet its
26 liabilities (whether as trustee of a registrable superannuation
27 entity or otherwise); or
 - 28 (f) there is, or there might be, a material risk to the security of
29 the assets of the RSE licensee (whether held as trustee of a
30 registrable superannuation entity or otherwise); or

EXPOSURE DRAFT

Schedule 5 APRA directions power

- 1 (g) there has been, or there might be, a material deterioration in
2 the financial condition of:
3 (i) the RSE licensee; or
4 (ii) a registrable superannuation entity of which it is trustee;
5 or
6 (h) the RSE licensee is conducting:
7 (i) its affairs; or
8 (ii) the affairs of a registrable superannuation entity of
9 which it is trustee;
10 in an improper or financially unsound way; or
11 (i) the failure to issue a direction would materially prejudice the
12 interests or reasonable expectations of beneficiaries of a
13 registrable superannuation entity of the RSE licensee; or
14 (j) the RSE licensee is conducting:
15 (i) its affairs; or
16 (ii) the affairs of a registrable superannuation entity of
17 which it is trustee;
18 in a way that may cause or promote instability in the
19 Australian financial system.
- 20 (2) APRA may give a direction to do one or more of the following:
21 (a) to comply with the whole or a part of:
22 (i) this Act; or
23 (ii) the regulations; or
24 (iii) the prudential standards; or
25 (ii) the *Financial Sector (Collection of Data) Act 2001*;
26 (b) to comply with the whole or a part of a condition or direction
27 referred to in paragraph (1)(c);
28 (c) if the RSE licensee is a body corporate, to do one or more of
29 the following:
30 (i) to remove a responsible officer of the RSE licensee
31 from office;
32 (ii) to ensure that a responsible officer of the RSE licensee
33 does not take part in the management or conduct of the
34 business of the RSE licensee, or the business of a
35 registrable superannuation entity of the RSE licensee,
36 except as permitted by APRA;
-

EXPOSURE DRAFT

APRA directions power **Schedule 5**

- 1 (iii) to appoint a person as a responsible officer of the RSE
2 licensee for such term as APRA directs;
- 3 (d) to order an audit of:
4 (i) the affairs of the RSE licensee; or
5 (ii) the affairs of a registrable superannuation entity of the
6 RSE licensee;
7 at the expense of the RSE licensee, by an auditor chosen by
8 APRA;
- 9 (e) to remove an auditor of the RSE licensee, or of a registrable
10 superannuation entity of the RSE licensee, from office and
11 appoint another auditor to hold office for such term as APRA
12 directs;
- 13 (f) to order an actuarial investigation of the affairs of a
14 registrable superannuation entity of the RSE licensee, at the
15 expense of the RSE licensee and by an actuary chosen by
16 APRA;
- 17 (g) to remove an actuary of a registrable superannuation entity of
18 the RSE licensee from office and appoint another actuary to
19 hold office for such term as APRA directs;
- 20 (h) not to accept, or to cease to accept (permanently or
21 temporarily), contributions to a registrable superannuation
22 entity of the RSE licensee;
- 23 (i) not to borrow any amount;
- 24 (j) not to pay or transfer any amount or asset to any person, or
25 create an obligation (contingent or otherwise) to do so;
- 26 (k) not to undertake any financial obligation (contingent or
27 otherwise) on behalf of any other person;
- 28 (l) not to discharge any liability of:
29 (i) the RSE licensee; or
30 (ii) a registrable superannuation entity of the RSE licensee;
- 31 (m) to make changes to the RSE licensee's systems, business
32 practices or operations (including the RSE licensee's systems
33 business practices or operations in relation to a registrable
34 superannuation entity of the RSE licensee);
- 35 (n) to do, or refrain from doing, anything else in relation to the
36 affairs of:
37 (i) the RSE licensee; or
-

EXPOSURE DRAFT

Schedule 5 APRA directions power

- 1 (ii) a registrable superannuation entity of the RSE licensee.
- 2 (3) A direction under paragraph (2)(j) not to pay or transfer any
3 amount or asset does not apply to the payment or transfer of money
4 pursuant to an order of a court or a process of execution.
- 5 (4) Without limiting the generality of subsection (2), a direction
6 referred to in a paragraph of that subsection may:
- 7 (a) deal with some only of the matters referred to in that
8 paragraph; or
- 9 (b) deal with a particular class or particular classes of those
10 matters; or
- 11 (c) make different provision with respect to different matters or
12 different classes of matters.
- 13 (5) The direction may deal with the time by which, or period during
14 which, it is to be complied with.

15 **131DA APRA may give directions in relation to the conduct of a** 16 **connected entity of an RSE licensee**

- 17 (1) APRA may give an RSE licensee a direction of a kind mentioned
18 in subsection (5), or a direction to cause a connected entity of the
19 RSE licensee to do or not to do something of a kind mentioned in
20 subsection (5), if APRA has reason to believe that:
- 21 (a) a connected entity of the RSE licensee has contravened a
22 provision of:
- 23 (i) this Act; or
- 24 (ii) the regulations; or
- 25 (iii) the prudential standards; or
- 26 (ii) the *Financial Sector (Collection of Data) Act 2001*; or
- 27 (b) a connected entity of the RSE licensee is likely to contravene
28 a provision mentioned in paragraph (a); or
- 29 (c) the direction relates to a connected entity of the RSE licensee
30 and is necessary in the interests of beneficiaries of a
31 registrable superannuation entity of the RSE licensee; or
- 32 (d) a connected entity of the RSE licensee is, or is about to
33 become, unable to meet the connected entity's liabilities; or

EXPOSURE DRAFT

APRA directions power **Schedule 5**

- 1 (e) there is, or there might be, a material risk to the security of
2 the assets of a connected entity of the RSE licensee; or
3 (f) there has been, or there might be, a material deterioration in
4 the financial condition of a connected entity of the RSE
5 licensee; or
6 (g) a connected entity of the RSE licensee is conducting the
7 entity's affairs in an improper or financially unsound way; or
8 (h) a connected entity of the RSE licensee is conducting the
9 entity's affairs in a way that may cause or promote instability
10 in the Australian financial system; or
11 (i) a connected entity of the RSE licensee is conducting the
12 entity's affairs in a way that may cause it to be unable to
13 continue to supply products or services to the RSE licensee,
14 or a registrable superannuation entity of the RSE licensee; or
15 (j) the direction relates to a connected entity of the RSE licensee
16 and the failure to issue a direction would materially prejudice
17 the interests of beneficiaries of a registrable superannuation
18 entity of the RSE licensee.
- 19 (2) However, APRA can only make a direction under subsection (1) as
20 a result of a ground referred to in paragraph (1)(d), (e), (f), (g), (h)
21 or (i) if APRA considers that the direction is reasonably necessary
22 to ensure that the RSE licensee's duties as trustee of a registrable
23 superannuation entity are properly performed.
- 24 (3) APRA may give a connected entity of an RSE licensee a direction
25 of a kind mentioned in subsection (5) if:
26 (a) APRA has given the RSE licensee a direction under
27 subsection (1) because one or more of the grounds referred to
28 in that subsection have been satisfied in respect of the
29 connected entity; or
30 (b) APRA may give the RSE licensee a direction under
31 subsection (1) because one or more of the grounds referred to
32 in that subsection have been satisfied in respect of the
33 connected entity.
- 34 (4) APRA cannot give a direction under subsection (3) to a connected
35 entity of a kind specified in regulations (if any) made for the
36 purposes of this subsection.
-

EXPOSURE DRAFT

Schedule 5 APRA directions power

- 1 (5) APRA may give a direction to do one or more of the following:
2 (a) to comply with the whole or a part of:
3 (i) this Act; or
4 (ii) the regulations; or
5 (iii) the prudential standards; or
6 (ii) the *Financial Sector (Collection of Data) Act 2001*;
7 (b) if the connected entity is a body corporate:
8 (i) to remove a responsible officer of the entity from office;
9 or
10 (ii) to ensure that a responsible officer of the entity does not
11 take part in the management or conduct of the business
12 of the entity (including any business the entity conducts
13 in relation to a registrable superannuation entity of the
14 RSE licensee) except as permitted by APRA; or
15 (iii) to appoint a person as a responsible officer of the entity
16 for such term as APRA directs;
17 (c) to order an audit of:
18 (i) the affairs of the connected entity; or
19 (ii) the affairs of a registrable superannuation entity of the
20 RSE licensee;
21 at the expense of the connected entity, by an auditor chosen
22 by APRA;
23 (d) to:
24 (i) remove from office an auditor of the connected entity,
25 or of a registrable superannuation entity of the RSE
26 licensee; and
27 (ii) appoint another auditor to hold office for such term as
28 APRA directs;
29 (e) to order an actuarial investigation of the affairs of a
30 registrable superannuation entity of the RSE licensee, at the
31 expense of the connected entity and by an actuary chosen by
32 APRA;
33 (f) to:
34 (i) remove from office an actuary of a registrable
35 superannuation entity of the RSE licensee; and

EXPOSURE DRAFT

APRA directions power **Schedule 5**

- 1 (ii) appoint another actuary to hold office for such term as
2 APRA directs;
- 3 (g) not to borrow any amount;
- 4 (h) not to pay or transfer any amount or asset to any person, or
5 create an obligation (contingent or otherwise) to do so;
- 6 (i) not to undertake any financial obligation (contingent or
7 otherwise) on behalf of any other person;
- 8 (j) not to discharge any liability of one or more of the following:
9 (i) the connected entity;
10 (ii) a registrable superannuation entity of the RSE licensee;
- 11 (k) to make changes to the connected entity's systems, business
12 practices or operations (including the connected entity's
13 systems, business practices or operations in relation to a
14 registrable superannuation entity of the RSE licensee);
- 15 (l) to do, or refrain from doing, anything else in relation to the
16 affairs of:
17 (i) the connected entity; or
18 (ii) a registrable superannuation entity of the RSE licensee.
- 19 (6) A direction under paragraph (5)(h) not to pay or transfer any
20 amount or asset does not apply to the payment or transfer of money
21 pursuant to an order of a court or a process of execution.
- 22 (7) Without limiting the generality of subsection (5), a direction
23 referred to in a paragraph of that subsection may:
24 (a) deal with some only of the matters referred to in that
25 paragraph; or
26 (b) deal with a particular class or particular classes of those
27 matters; or
28 (c) make different provision with respect to different matters or
29 different classes of matters.
- 30 (8) The direction may deal with the time by which, or period during
31 which, it is to be complied with.

EXPOSURE DRAFT

Schedule 5 APRA directions power

131DB Machinery provisions relating to directions under this Division

- (1) A direction under this Division must:
- (a) be given by notice in writing:
 - (i) in the case of a direction to an RSE licensee under subsection 131D(1) or 131DA(1)—to the RSE licensee; and
 - (ii) in the case of a direction to a connected entity of an RSE licensee under subsection 131DA(3)—to the connected entity of the RSE licensee and the RSE licensee; and
 - (b) specify:
 - (i) in the case of a direction under subsection 131DA(3)—the ground referred to in subsection 131DA(1) as a result of which the direction is given; or
 - (ii) otherwise—the ground referred to in subsection 131D(1) or 131DA(1) as a result of which the direction is given.
- (2) A direction under this Division is not a legislative instrument.
- Note: Under paragraph 11(2)(c) of the *Legislation Act 2003*, APRA may register a direction under this Division as a notifiable instrument.
- (3) In deciding whether to give a direction under subsection 131D(1) to an RSE licensee, APRA may disregard any external support for the RSE licensee.
- (4) In deciding whether to give a direction under subsection 131DA(1) or (3), APRA may disregard any external support for the RSE licensee, or the connected entity of the RSE licensee, in relation to which the direction is given.
- (5) The regulations may specify that a particular form of support is not external support for the purposes of subsection (3) or (4).

131DC Varying or revoking a direction under this Division

- (1) APRA may:
-

EXPOSURE DRAFT

APRA directions power **Schedule 5**

- 1 (a) vary a direction given to an RSE licensee under this Division,
2 by notice in writing to the RSE licensee; or
3 (b) vary a direction given to a connected entity of an RSE
4 licensee under this Division, by notice in writing to the
5 connected entity and the RSE licensee;
6 if, at the time of the variation, APRA considers that the variation is
7 necessary and appropriate.
- 8 (2) A direction under this Division has effect until APRA revokes it.
- 9 (3) APRA may:
- 10 (a) revoke a direction given to an RSE licensee under this
11 Division, by notice in writing to the RSE licensee; or
12 (b) revoke a direction given to a connected entity of an RSE
13 licensee under this Division, by notice in writing to the
14 connected entity and the RSE licensee;
15 if, at the time of revocation, APRA considers that the direction is
16 no longer necessary or appropriate.

17 **131DD Non-compliance with a direction**

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

- 20 (1) A person commits an offence if:
- 21 (a) the person is an RSE licensee or a member of a group of
22 individual trustees that is an RSE licensee; and
23 (b) a direction is given to the RSE licensee under this Division;
24 and
25 (c) the RSE licensee does, or fails to do, something; and
26 (d) doing, or failing to do, the thing results in a contravention of
27 the direction.

28 **Penalty:** 100 penalty units.

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

EXPOSURE DRAFT

Schedule 5 APRA directions power

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

- 3 (2) A person commits an offence if:
4 (a) the person is an officer of an RSE licensee that is a body
5 corporate; and
6 (b) the officer fails to take reasonable steps to ensure that the
7 RSE licensee complies with a direction given to it under this
8 Division; and
9 (c) the officer's duties include ensuring that the RSE licensee
10 complies with the direction or with a class of directions that
11 includes the direction; and
12 (d) the RSE licensee does not comply with the direction.

13 Penalty: 100 penalty units.

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

- 16 (3) A connected entity of an RSE licensee commits an offence if:
17 (a) a direction is given to the connected entity under this
18 Division; and
19 (b) the connected entity does, or fails to do, something; and
20 (c) doing, or failing to do, the thing results in a contravention of
21 the direction.

22 Penalty: 100 penalty units.

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

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

- 28 (4) A person commits an offence if:
29 (a) the person is an officer of a body corporate that is a
30 connected entity of an RSE licensee; and
31 (b) the officer fails to take reasonable steps to ensure that the
32 connected entity complies with a direction given to it under
33 this Division; and

EXPOSURE DRAFT

APRA directions power **Schedule 5**

- 1 (c) the officer's duties include ensuring that the connected entity
2 complies with the direction or with a class of directions that
3 includes the direction; and
4 (d) the connected entity fails to comply with the direction.

5 Penalty: 100 penalty units.

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

- 8 (5) If a person commits an offence against subsection (1), (2), (3) or
9 (4), the person commits an offence against that subsection in
10 respect of:
11 (a) the first day on which the offence is committed; and
12 (b) each subsequent day (if any) on which the circumstances that
13 gave rise to the person committing the offence continue
14 (including the day of conviction for any such offence or any
15 later day).

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

18 *Strict liability*

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

20 *Meaning of officer*

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

23 **Division 3—Provisions relating to all directions under this** 24 **Act**

25 **131F APRA may give more than one direction**

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

EXPOSURE DRAFT

Schedule 5 APRA directions power

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

4 **131FA RSE licensee and connected entity have power to comply**
5 **with a direction under this Act**

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

- 9 (2) If the direction requires the RSE licensee to cause a connected
10 entity to do, or not to do, something:
11 (a) the RSE licensee has power to cause the connected entity to
12 do, or to not to do, the thing; and
13 (b) the connected entity has power to do, or not to do, the thing;
14 despite anything in the connected entity's constitution or any
15 contract or arrangement to which the connected entity is a party.

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

20 **131FB Protection from liability—general**

- 21 (1) A person is not subject to any liability to any person in respect of
22 anything done, or omitted to be done, in good faith and without
23 negligence in the exercise or performance, or the purported
24 exercise or performance, of powers, functions or duties under this
25 Act.
- 26 (2) To avoid doubt, any information provided by a person to APRA
27 under section 130A is taken, for the purposes of subsection (1), to
28 be provided in the exercise of a power or the performance of a
29 function under this Act.
- 30 (3) Subsection (1) does not apply to a person referred to in section 58
31 of the *Australian Prudential Regulation Authority Act 1998* and, to
32 avoid doubt, does not affect the operation of that section.

1 **131FC Protection from liability—directions**

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

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

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

11 (c) the person is any of the following:

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

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

16 (2) In subsection (1):

17 ***employee:***

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

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

22 ***officer*** has the meaning given by section 9 of the *Corporations Act*
23 *2001*.

24 **131FD Protection from liability—provisions do not limit each other**

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

26 (a) section 336B;

27 (b) section 131FB;

28 (c) section 131FC;

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

EXPOSURE DRAFT

Schedule 5 APRA directions power

1 **131FE Informing the Treasurer about issue and revocation of**
2 **directions**

- 3 (1) If the Treasurer requests APRA to provide information about:
4 (a) any directions given under this Act to a particular entity; or
5 (b) any directions given under this Act, during a specified period,
6 to any entity of a specified kind;
7 APRA must comply with the request.
- 8 (2) APRA may provide any information that it considers appropriate to
9 the Treasurer about:
10 (a) any directions given under this Act at any time; or
11 (b) any revocations of any such directions.
- 12 (3) If APRA provides the Treasurer with information about a direction
13 and then later revokes the direction, APRA must notify the
14 Treasurer of the revocation of the direction as soon as practicable
15 after the revocation. Failure to notify the Treasurer does not affect
16 the validity of the revocation.

17 **11 After subsection 349B(6)**

18 Insert:

- 19 (6A) If, apart from this section, this Act would result in such an
20 acquisition of property because it would require a person to comply
21 with a direction given under this Act, then despite any other
22 provision of this Act, the person is not required to comply with the
23 direction in circumstances that would result in such an acquisition.

24 **12 At the end of subsection 349B(7)**

25 Add:

26 ; and (f) a direction given under this Act.

27 **13 Application**

28 The amendments made by this Schedule apply to events that occur, and
29 anything that a person does or fails to do, on or after the commencement
30 of this Schedule.

1 **Schedule 6—Annual members' meetings**
2

3 *Superannuation Industry (Supervision) Act 1993*

4 **1 Subparagraph 6(1)(a)(i)**

5 Omit “and sections 29QB and 29QC”, substitute “and sections 29P to
6 29QC”.

7 **2 Subparagraph 6(1)(c)(ia)**

8 Omit “and sections 29QB and 29QC”, substitute “and sections 29P to
9 29QC”.

10 **3 Subsection 10(1)**

11 Insert:

12 *annual members' meeting*, for a registrable superannuation entity,
13 means a meeting of members of the entity held under
14 subsection 29P(1) for a year of income of the entity.

15 **4 Division 5 of Part 2B (heading)**

16 Repeal the heading, substitute:

17 **Division 5—RSE licensees must provide information about**
18 **registrable superannuation entities**

19 **5 Before section 29QB**

20 Insert:

21 **Subdivision A—Annual members' meetings**

22 **29P Annual members' meeting**

23 *RSE licensees must hold annual members' meetings*

24 (1) The RSE licensee of a registrable superannuation entity must hold
25 an annual meeting of members of the entity for each year of
26 income of the entity.

EXPOSURE DRAFT

Schedule 6 Annual members' meetings

1

Timing of meeting

2

- (2) The annual members' meeting must be held within 5 months after the end of the year of income of the entity.

3

4

Notice of meeting

5

- (3) The RSE licensee must give notice of the annual members' meeting to each of the following at least 21 days before the meeting:

6

7

8

- (a) all members of the registrable superannuation entity;

9

- (b) if the RSE licensee is a body corporate—all responsible officers of the body corporate;

10

11

- (c) any person who has been an auditor of the registrable superannuation entity for the year of income of the entity;

12

13

- (d) any person who has been an actuary of the registrable superannuation entity during, or within the period of 5 months after the end of, the year of income of the entity.

14

15

16

- (4) The RSE licensee must:

17

- (a) include in the notice:

18

- (i) the time and location of the annual members' meeting; and

19

20

- (ii) if the annual members' meeting to be held by electronic means—details of how the meeting can be attended electronically; and

21

22

23

- (iii) the agenda of matters to be discussed at the annual members' meeting; and

24

25

- (b) include with the notice:

26

- (i) the annual report for the registrable superannuation entity for the year of income of the entity; and

27

28

- (ii) any other information prescribed by the regulations.

29

Conduct of an annual members' meeting

30

- (5) At the annual members' meeting, the RSE licensee must give members of the registrable superannuation entity reasonable opportunities to ask questions about:

31

32

33

- (a) the registrable superannuation entity; and
-

EXPOSURE DRAFT

Annual members' meetings **Schedule 6**

- 1 (b) if the RSE licensee is a body corporate—the RSE licensee
2 and the responsible officers of the RSE licensee; and
3 (c) if the RSE licensee is a group of individual trustees—each of
4 the individual trustees; and
5 (d) any audit of the registrable superannuation entity for the year
6 of income of the entity; and
7 (e) any actuarial investigation of the registrable superannuation
8 entity during the year of income of the entity, or within 5
9 months after the end of that year; and
10 (f) any information included with the notice of the meeting.

11 *Minutes of meeting*

- 12 (6) The RSE licensee must ensure that:
13 (a) minutes of the annual members' meeting are prepared; and
14 (b) those minutes are made available to all members on the
15 registrable superannuation entity's website.

16 *Subsection (1) does not apply in relation to certain entities*

- 17 (7) Subsection (1) does not apply in relation to a registrable
18 superannuation entity that is:
19 (a) a superannuation fund with fewer than 5 members; or
20 (b) an excluded approved deposit fund; or
21 (c) a pooled superannuation trust; or
22 (d) an eligible rollover fund.

23 *Offence*

- 24 (8) A person commits an offence if:
25 (a) the person is:
26 (i) a body corporate that is an RSE licensee; or
27 (ii) a member of a group of individual trustees that is an
28 RSE licensee; and
29 (b) the RSE licensee contravenes subsection (1), (2), (3), (4), (5)
30 or (6).

31 Penalty: 50 penalty units.

EXPOSURE DRAFT

Schedule 6 Annual members' meetings

29PA Obligation to attend an annual members' meeting

- 1
2 (1) A responsible officer of an RSE licensee that is a body corporate
3 must attend an annual members' meeting for a registrable
4 superannuation entity if the responsible officer is given notice of
5 the meeting in accordance with subsections 29P(3) and (4).

6 Penalty: 50 penalty units.

- 7 (2) A member of a group of individual trustees that is an RSE licensee
8 of a registrable superannuation entity must attend an annual
9 members' meeting for the entity.

10 Penalty: 50 penalty units.

- 11 (3) A person who has been an auditor of a registrable superannuation
12 entity for a year of income of the entity, must attend an annual
13 members' meeting for the entity relating to that year if the person
14 is given notice of the meeting in accordance with
15 subsections 29P(3) and (4).

16 Penalty: 50 penalty units.

- 17 (4) A person who has been an actuary of a registrable superannuation
18 entity during, or within the period of 5 months after the end of, a
19 year of income of the entity must attend an annual members'
20 meeting for the entity relating to that year if the person is given
21 notice of the meeting in accordance with subsections 29P(3) and
22 (4).

23 Penalty: 50 penalty units.

- 24 (5) Subsections (1), (2), (3) and (4) do not apply to a person if the
25 person has a reasonable excuse for not attending.

29PB Obligation on responsible officers of RSE licensees to answer questions

- 26
27
28 (1) This section applies if a member of a registrable superannuation
29 entity asks a responsible officer of the RSE licensee for the entity a
30 question at an annual members' meeting for the entity.

EXPOSURE DRAFT

Annual members' meetings **Schedule 6**

1 (2) The responsible officer of the RSE licensee must answer the
2 question at the meeting or, if it is not reasonably practicable to do
3 so, within 1 month after the meeting.

4 Penalty: 50 penalty units.

5 (3) Subsection (2) does not apply:

6 (a) if the question is not relevant to:

7 (i) an action, or failure to act, by the RSE licensee in
8 relation to the registrable superannuation entity or one
9 or more members of the registrable superannuation
10 entity; or

11 (ii) the registrable superannuation entity; or

12 (b) if it would be in breach of the governing rules of the
13 registrable superannuation entity, this Act or any other law to
14 answer the question; or

15 (c) if answering the question would result in detriment to the
16 members of the registrable superannuation entity, taken as a
17 whole; or

18 (d) in any other circumstances prescribed by the regulations.

19 **29PC Obligation on individual trustees to answer questions**

20 (1) This section applies if a member of a registrable superannuation
21 entity asks an individual trustee for the entity a question at an
22 annual members' meeting for the entity.

23 (2) The individual trustee must answer the question at the meeting or,
24 if it is not reasonably practicable to do so, within 1 month after the
25 meeting.

26 Penalty: 50 penalty units.

27 (3) Subsection (2) does not apply:

28 (a) if the question is not relevant to:

29 (i) an action, or failure to act, by the RSE licensee in
30 relation to the registrable superannuation entity or one
31 or more members of the registrable superannuation
32 entity; or

33 (ii) the registrable superannuation entity; or

EXPOSURE DRAFT

Schedule 6 Annual members' meetings

- 1 (b) if it would be in breach of the governing rules of the
2 registrable superannuation entity, this Act or any other law to
3 answer the question; or
4 (c) if answering the question would result in detriment to the
5 members of the registrable superannuation entity, taken as a
6 whole; or
7 (d) in any other circumstances prescribed by the regulations.

8 **29PD Obligation on auditor to answer questions**

- 9 (1) This section applies if a member of a registrable superannuation
10 entity asks a person who has been an auditor of the registrable
11 superannuation entity for a year of income of the entity a question
12 at an annual members' meeting for the entity for the year.
- 13 (2) The auditor must answer the question at the meeting or, if it is not
14 reasonably practicable to do so, within 1 month after the meeting.
- 15 Penalty: 50 penalty units.
- 16 (3) Subsection (2) does not apply:
- 17 (a) if the question is not relevant to:
- 18 (i) an action, or failure to act, by the RSE licensee in
19 relation to the registrable superannuation entity or one
20 or more members of the registrable superannuation
21 entity;
- 22 (ii) the registrable superannuation entity; or
- 23 (iii) an audit of the registrable superannuation entity; or
- 24 (iv) any matter that might reasonably be expected to be
25 apparent to the auditor of the entity in relation to the
26 entity; or
- 27 (b) if it would be in breach of the governing rules of the
28 registrable superannuation entity, this Act or any other law to
29 answer the question; or
- 30 (c) if answering the question would result in detriment to the
31 members of the registrable superannuation entity, taken as a
32 whole; or
- 33 (d) in any other circumstances prescribed by the regulations.

EXPOSURE DRAFT

Annual members' meetings **Schedule 6**

29PE Obligation on actuary to answer questions

(1) This section applies if a member of a registrable superannuation entity asks a person who has been an actuary of the registrable superannuation entity during, or within the period of 5 months after the end of, a year of income of the entity a question at an annual members' meeting for the entity for the year.

(2) The actuary must answer the question at the meeting or, if it is not reasonably practicable to do so, within 1 month after the meeting.

Penalty: 50 penalty units.

(3) Subsection (2) does not apply:

(a) if the question is not relevant to:

(i) an action, or failure to act, by the RSE licensee in relation to the registrable superannuation entity or one or more members of the registrable superannuation entity;

(ii) the registrable superannuation entity; or

(iii) an actuarial investigation of the registrable superannuation entity carried out by the actuary; or

(iv) any matter that might reasonably be expected to be apparent to the actuary of the entity in relation to the entity; or

(b) if it would be in breach of the governing rules of the registrable superannuation entity, this Act or any other law to answer the question; or

(c) if answering the question would result in detriment to the members of the registrable superannuation entity, taken as a whole; or

(d) in any other circumstances prescribed by the regulations.

Subdivision B—Other obligations in relation to information

6 Application

The amendments made by this Schedule apply in relation to years of income of a registrable superannuation entity beginning on or after the commencement of the Schedule.

EXPOSURE DRAFT

Schedule 7 Reporting standards

Schedule 7—Reporting standards

Financial Sector (Collection of Data) Act 2001

1 After subsection 13(4C)

Insert:

(4D) A reporting standard may require an RSE licensee to provide information in relation to any money, consideration or other benefit given to another entity by the RSE licensee out of the assets of a registrable superannuation entity of the RSE licensee, including information about the following:

- (a) details of the entity to which the money, consideration or other benefit is given;
- (b) the purpose for which the money, consideration or other benefit is given;
- (c) the way in which the money, consideration or other benefit is used by the entity to which it is given, and any entity with which that entity deals.

(4E) If:

- (a) a reporting standard requires an RSE licensee to provide information (the ***required information***) in relation to any money, consideration or other benefit given to another entity by the RSE licensee out of the assets of a registrable superannuation entity of the RSE licensee; and
- (b) the money, consideration or other benefit is given under a contract or other arrangement between the RSE licensee and the other entity (the ***second party***);

the contract or arrangement is taken to include:

- (c) a term requiring the RSE licensee, at the time the money, consideration or benefit is given or as soon as reasonably practicable after that time, to notify the second party that the money, consideration or benefit is given out of the assets of a registrable superannuation entity; and
- (d) a term requiring the second party, if notified by the RSE licensee in accordance with paragraph (c), to, as soon as

EXPOSURE DRAFT

Reporting standards **Schedule 7**

1 reasonably practicable after being notified, provide the RSE
2 licensee with the required information of which the second
3 party is aware.

4 (4F) Subsections (4D) and (4E) do not apply in relation to any money,
5 consideration or other benefit given to another entity by the RSE
6 licensee if it is an investment of assets, or assets derived from
7 assets, of the RSE licensee's registrable superannuation entities by
8 the RSE licensee or a person connected with the RSE licensee (as
9 defined in subsection (4C)).

10 **2 Application—reporting standards**

11 (1) Subsection 13(4E) of the *Financial Sector (Collection of Data) Act*
12 *2001*, as inserted by this Schedule, applies in relation to a contract or
13 arrangement whether entered into before, on or after this item
14 commences.

15 (2) Despite subitem (1), that subsection does not apply in relation to a
16 contract or arrangement that is entered into before this item commences,
17 to the extent that the operation of a reporting standard mentioned in that
18 subsection would result in an acquisition of property (within the
19 meaning of paragraph 51(xxxi) of the Constitution) from a person
20 otherwise than on just terms (within the meaning of that paragraph of
21 the Constitution).

22 (3) If, because of subitem (2), an RSE licensee is unable to obtain particular
23 information that a reporting standard (within the meaning of the
24 *Financial Sector (Collection of Data) Act 2001*) requires an RSE
25 licensee to provide in relation to any money, consideration or other
26 benefit given to another entity by the RSE licensee, or a person
27 connected with the RSE licensee, out of the assets of a registrable
28 superannuation entity of the RSE licensee, then the RSE licensee is not
29 required to comply with the reporting standard to the extent that it
30 requires the RSE licensee to provide that particular information.