

EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

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By close of business on Friday, 2 November 2012.

Superannuation Legislation Amendment (Further Measures) Bill 2012

No. , 2012

(Treasury)

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A Bill for an Act to amend the law in relation to superannuation and corporations, and for related purposes

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

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Superannuation Legislation*
7 *Amendment (Further Measures) Act 2012*.

8 **2 Commencement**

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

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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, items 1 to 3	1 July 2013.	1 July 2013
3. Schedule 1, items 4 to 6	1 July 2014.	1 July 2014
4. Schedule 1, items 7 and 8	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	
5. Schedule 1, item 9	1 July 2013.	1 July 2013
6. Schedule 1, item 10	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	
7. Schedule 1, item 11	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	1 July 2013
8. Schedule 1, item 12	Immediately after the commencement of item 22 of Schedule 3 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> .	1 July 2013
9. Schedule 1, items 13 to 15	1 July 2013.	1 July 2013
10. Schedule 1, items 16 and 17	Immediately after the commencement of item 1 of Schedule 2 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	9 September 2012
11. Schedule 1, items 18 and 19	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 1, item 20	1 July 2013.	1 July 2013
13. Schedule 1, items 21 and 22	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	
14. Schedule 1, items 23 and 24	1 July 2013.	1 July 2013
15. Schedule 1, item 25	The day this Act receives the Royal Assent.	
16. Schedule 1, items 26 to 37	1 July 2013.	1 July 2013
17. Schedule 1, items 38 to 42	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	
18. Schedule 1, item 43	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	1 July 2013
19. Schedule 1, items 44 to 47	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	
20. Schedule 1, items 48 to 61	1 July 2013.	1 July 2013
21. Schedule 1, items 62 to 67	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	1 July 2013
22. Schedule 1, item 68	1 July 2013.	1 July 2013
23. Schedule 1, items 69 to 105	1 July 2013.	1 July 2013
24. Schedule 1, item 106	Immediately after the commencement of item 18 of Schedule 1 to the <i>Superannuation</i>	

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	
25. Schedule 1, item 107	Immediately after the commencement of Schedule 7 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	1 July 2013
26. Schedule 1, items 108 to 112	1 July 2013.	1 July 2013
27. Schedule 1, item 113	Immediately after the commencement of item 7 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012.</i>	
28. Schedule 1, item 114	Immediately after the commencement of Schedule 7 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	1 July 2013
29. Schedule 1, item 115	The day this Act receives the Royal Assent.	
30. Schedule 1, items 116 to 118	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012.</i>	
31. Schedule 1, items 119 to 124	1 July 2013.	1 July 2013

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
2 **Schedule 1—Amendments**

3 **Part 1—Amendments**

4 *Corporations Act 2001*

5 **1 Paragraph 211(3)(a)**

6 Omit “fund for the purposes of making provision for, or obtaining,
7 superannuation benefits”, substitute “fund or scheme for the purposes of
8 making provision for, or obtaining, superannuation benefits (including
9 defined benefits)”.

10 **2 Subsection 556(2) (definition of *superannuation***
11 ***contribution*)**

12 Omit “fund for the purposes of making provision for, or obtaining,
13 superannuation benefits”, substitute “fund or scheme for the purposes of
14 making provision for, or obtaining, superannuation benefits (including
15 defined benefits)”.

16 **3 Paragraph 596AA(2)(b)**

17 Omit “fund for the purposes of making provision for, or obtaining,
18 superannuation benefits”, substitute “fund or scheme for the purposes of
19 making provision for, or obtaining, superannuation benefits (including
20 defined benefits)”.

21 **4 Paragraph 912A(1)(d)**

22 Omit “unless the licensee is a body regulated by APRA—”, substitute
23 “subject to subsection (4)—”.

24 **5 Paragraph 912A(1)(h)**

25 Omit “unless the licensee is a body regulated by APRA—”, substitute
26 “subject to subsection (5)—”.

27 **6 At the end of section 912A**

28 Add:

29 (4) Paragraph (1)(d):

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Schedule 1 Amendments

Part 1 Amendments

- 1 (a) does not apply to a body regulated by APRA, unless the body
2 is an RSE licensee; and
3 (b) does not apply to an RSE licensee, unless the RSE licensee is
4 also the responsible entity of a registered scheme.

5 (5) Paragraph (1)(h):

- 6 (a) does not apply to a body regulated by APRA, unless the body
7 is an RSE licensee that is also the responsible entity of a
8 registered scheme; and
9 (b) does not apply to an RSE licensee that is also the responsible
10 entity of a registered scheme, to the extent that the risk
11 relates solely to the operation of a regulated superannuation
12 fund by the RSE licensee.

13 (6) In subsections (4) and (5):

14 *regulated superannuation fund* has the same meaning as in the
15 *Superannuation Industry (Supervision) Act 1993*.

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

18 7 Subsection 947D(1)

19 Repeal the subsection, substitute:

- 20 (1) This section applies (subject to subsection (4)) if the advice is or
21 includes a recommendation that:
22 (a) the client dispose of, or reduce the client's interest in, all or
23 part of a particular financial product and instead acquire all
24 or part of, or increase the client's interest in, another financial
25 product; or
26 (b) the client dispose of, or reduce the client's interest in, a
27 MySuper product offered by a regulated superannuation fund
28 and instead acquire an interest, or increase the client's
29 interest, in another MySuper product or a choice product
30 offered by the fund.

31 8 At the end of section 947D

32 Add:

33 (5) In this section:

1 *MySuper product* has the same meaning as in the *Superannuation*
2 *Industry (Supervision) Act 1993*.

3 **9 Subsection 964(3)**

4 Repeal the subsection, substitute:

5 (3) The definition of *custodial arrangement* in subsection 1012IA(1)
6 is to be read as if the reference in that definition to an instruction
7 included a reference to:

8 (a) a direction of the kind mentioned in paragraph 58(2)(d) or
9 (da) of the *Superannuation Industry (Supervision) Act 1993*
10 that will involve the acquisition of a particular financial
11 product, or a financial product of a particular kind; and

12 (b) a direction of the kind mentioned in subsection 52B(4) of the
13 *Superannuation Industry (Supervision) Act 1993* that will
14 involve the acquisition of a particular financial product, or a
15 financial product of a particular kind.

16 **10 Subsection 1017B(9)**

17 Insert:

18 *MySuper product* has the same meaning as in the *Superannuation*
19 *Industry (Supervision) Act 1993*.

20 **11 Subsection 1526(2)**

21 Repeal the subsection, substitute:

22 (2) The definition of *custodial arrangement* in subsection 1012IA(1)
23 is to be read as if the reference in that definition to an instruction
24 included a reference to:

25 (a) a direction of the kind mentioned in paragraph 58(2)(d) or
26 (da) of the *Superannuation Industry (Supervision) Act 1993*
27 that will involve the acquisition of a particular financial
28 product, or a financial product of a particular kind; and

29 (b) a direction of the kind mentioned in subsection 52B(4) of the
30 *Superannuation Industry (Supervision) Act 1993* that will
31 involve the acquisition of a particular financial product, or a
32 financial product of a particular kind.

33 **12 At the end of Chapter 10**

34 Add:

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Schedule 1 Amendments

Part 1 Amendments

1 **Part 10.23—Transitional provisions relating to the**
2 **Superannuation Legislation Amendment**
3 **(Further Measures) Act 2012**
4

5 **1542 Application of amendments relating to contributions to a fund**
6 **or scheme**

7 The amendments made by items 1, 2 and 3 of Schedule 1 to the
8 *Superannuation Legislation Amendment (Further Measures) Act*
9 *2012* apply to contributions made on or after 1 July 2013.

10 ***First Home Saver Accounts Act 2008***

11 **13 Section 18**

12 Insert:

13 *responsible officer* has the same meaning as in the *Superannuation*
14 *Industry (Supervision) Act 1993*.

15 **14 Section 93**

16 Repeal the section, substitute:

17 **93 Capital requirements**

18 The capital requirements under this section are met by an applicant
19 if it satisfies the financial requirements that apply under the
20 Prudential Standards.

21 **15 After paragraph 114(2)(a)**

22 Insert:

23 (aa) to:

- 24 (i) a director of an FHSA provider; and
25 (ii) a secretary of an FHSA provider; and
26 (iii) another person who is concerned or takes part in the
27 management of an FHSA provider;

28 where the FHSA provider holds such an authorisation, in the
29 same way that they apply to a responsible officer of an RSE

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Amendments **Schedule 1**
Amendments **Part 1**

1 licensee that is a trustee of a public offer superannuation
2 fund; and

3 **16 Paragraph 115(b)**

4 Omit “, 2B and 3”, substitute “and 2B”.

5 **17 After paragraph 115(b)**

6 Insert:

7 (ba) Parts 3, 3A and 3B;

8 **18 Paragraph 115(b)**

9 Omit “and 2B”, substitute “, 2B and 2C”.

10 **19 Paragraph 115(d)**

11 Omit “and 55A”, substitute “, 55A and 55B”.

12 **20 Paragraph 115(d)**

13 After “and 55B”, insert “and subsection 52(7)”.

14 **21 Paragraph 115(g)**

15 Omit “11”, substitute “11A”.

16 **22 Paragraph 115(k)**

17 Repeal the paragraph, substitute:

18 (k) Parts 32 and 33.

19 **23 Paragraph 115(k)**

20 Omit “and 33”, substitute “, 33 and 34”.

21 **24 After paragraph 116(b)**

22 Insert:

23 (ba) treat references to “the prudential standards” as references to
24 the Prudential Standards;

25 **25 Subsection 119(3)**

26 Omit “paragraph 146(1)(d)”, substitute “paragraph 146(d)”.

27 **26 Subsections 120(2) to (7)**

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Schedule 1 Amendments

Part 1 Amendments

- 1 Repeal the subsections, substitute:
- 2 (2) Treat the reference in paragraph 52(2)(b) of the *Superannuation*
3 *Industry (Supervision) Act 1993* to a “prudent superannuation
4 trustee” as a reference to a prudent FHSA provider.
- 5 (3) After subparagraph 52(6)(a)(vii) of the *Superannuation Industry*
6 *(Supervision) Act 1993*, insert the following subparagraph:
7 (vii) if the trustee holds an authorisation as an FHSA
8 provider—the risk of capital losses in light of the
9 purpose of the FHSA and the minimum term of the
10 FHSA having regard to subparagraph 32(1)(c)(i) or (ii)
11 of the *First Home Saver Accounts Act 2008*;
- 12 (4) Treat the reference in paragraph 52A(2)(b) of the *Superannuation*
13 *Industry (Supervision) Act 1993* to a “prudent superannuation
14 entity director” as a reference to a prudent director of an FHSA
15 provider.

Superannuation Industry (Supervision) Act 1993

27 Section 4 (after table item dealing with Part No. 21)

18 Insert:

22 | infringement notices

28 Subparagraph 6(1)(a)(x)

20 Omit “23”, substitute “22”.

29 Subsection 10(1) (definition of *actuary*)

22 Repeal the definition.

30 Subsection 10(1) (definition of *approved auditor*)

24 Repeal the definition.

31 Subsection 10(1)

26 Insert:

27 *APRA staff member* has the same meaning as in the *Australian*
28 *Prudential Regulation Authority Act 1998*.

1 **32 Subsection 10(1) (paragraph (dq) of the definition of**
2 **reviewable decision)**

3 Omit “subsection 35A(2A)”, substitute “subsection 35A(3)”.

4 **33 Subsection 10(1)**

5 Insert:

6 *RSE actuary* means a person who is appointed as an actuary of a
7 registrable superannuation entity.

8 **34 Subsection 10(1)**

9 Insert:

10 *RSE auditor* means a person who is appointed as an auditor of a
11 registrable superannuation entity.

12 **35 Subsection 10(1)**

13 Insert:

14 *SMSF actuary* means a person who is a Fellow or an Accredited
15 Member of the Institute of Actuaries of Australia.

16 **36 Subsection 10(1)**

17 Insert:

18 *superannuation actuary* means:
19 (a) an RSE actuary; or
20 (b) an SMSF actuary.

21 **37 Subsection 10(1)**

22 Insert:

23 *superannuation auditor* means:
24 (a) an RSE auditor; or
25 (b) an approved SMSF auditor.

26 **38 Paragraph 29T(1)(j)**

27 Omit “or 29WA”, substitute “, 29WA or 29WB”.

28 **39 Paragraph 29TC(1)(g)**

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Schedule 1 Amendments

Part 1 Amendments

1 Omit “unless the person who holds the interest consents in writing to
2 that replacement no more than 30 days before it occurs; and”, substitute
3 “unless:

- 4 (i) the person who holds the interest consents in writing to
5 that replacement no more than 30 days before it occurs;
6 or
7 (ii) the person who holds the interest has died and the
8 interest is replaced with a beneficial interest of another
9 class in the fund of a kind, and in the circumstances,
10 prescribed by the regulations; and

11 **40 Paragraph 29U(2)(b)**

12 Omit “the RSE licensee was authorised”, substitute “authority was
13 given”.

14 **41 Paragraph 29U(2)(e)**

15 Omit “or 29WA”, substitute “, 29WA or 29WB”.

16 **42 Before paragraph 29VB(1)(a)**

17 Insert:

- 18 (aa) although the trustee, or the trustees, of the fund are
19 authorised to offer the MySuper product, it is not on the basis
20 that section 29TB was satisfied in relation to that class of
21 beneficial interest in the fund; and

22 **43 Section 29VP**

23 Repeal the section, substitute:

24 **29VP Contravention of section 29VN**

- 25 (1) A person must not contravene section 29VN.
26 (2) A contravention of subsection (1) is not an offence and a
27 contravention of that subsection does not result in the invalidity of
28 a transaction.
29 (3) A person who suffers loss or damage as a result of the conduct of
30 another person that was engaged in in contravention of
31 subsection (1) may recover the amount of the loss or damage by
32 action against that other person or against any person involved in
33 the contravention.

- 1 (4) An action under subsection (3) may be begun at any time within 6
2 years after the day on which the cause of action arose.

3 **29VPA Contravention of section 29VO**

- 4 (1) A person must not contravene section 29VO.
- 5 (2) A contravention of subsection (1) is not an offence and a
6 contravention of that subsection does not result in the invalidity of
7 a transaction.
- 8 (3) A person who suffers loss or damage as a result of the conduct of
9 another person that was engaged in in contravention of
10 subsection (1) may, with the leave of the court, recover the amount
11 of the loss or damage by action against that other person or against
12 any person involved in the contravention.
- 13 (4) In deciding whether to grant an application for leave to bring such
14 an action, the court must take into account whether:
15 (a) the applicant is acting in good faith; and
16 (b) there is a serious question to be tried.

17 **44 Paragraph 29WA(1)(c)**

18 Repeal the paragraph, substitute:

19 (c) either:

- 20 (i) the person has not given the trustee, or the trustees, of
21 the fund a direction in writing that the contribution is to
22 be invested under one or more specified investment
23 options; or
- 24 (ii) the person has given the trustee, or the trustees, of the
25 fund a direction in writing that some of the contribution
26 is to be invested under one or more specified investment
27 options, but no such direction has been made in relation
28 to the remainder of the contribution.

29 **45 Subsection 29WA(2)**

30 Omit “election has been made” (wherever occurring), substitute
31 “direction has been given”.

32 **46 At the end of section 29WA**

33 Add:

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Schedule 1 Amendments

Part 1 Amendments

- 1 (4) The regulations may prescribe circumstances in which a direction
2 given to the trustee, or the trustees, of one regulated
3 superannuation fund is to be treated as a direction given to the
4 trustee, or the trustees, of another regulated superannuation fund
5 for the purposes of this section.

6 **47 After section 29WA**

7 Insert:

8 **29WB Contributions by large employer in relation to which no** 9 **election is made to be paid into large employer MySuper** 10 **product**

- 11 (1) This section applies if:
- 12 (a) the trustee, or the trustees, of a regulated superannuation fund
13 are authorised to offer a class of beneficial interest in the
14 fund as a MySuper product on the basis that section 29TB is
15 satisfied in relation to that class of beneficial interest; and
 - 16 (b) a member (other than a defined benefit member) is entitled to
17 hold the MySuper product; and
 - 18 (c) a contribution is made for the benefit of the member; and
 - 19 (d) either:
 - 20 (i) the member has not given the trustee, or the trustees, of
21 the fund a direction in writing that the contribution is to
22 be invested under one or more specified investment
23 options; or
 - 24 (ii) the member has given the trustee, or the trustees, of the
25 fund a direction in writing that some of the contribution
26 is to be invested under one or more specified investment
27 options, but no such direction has been made in relation
28 to the remainder of the contribution.
- 29 (2) The trustee, or the trustees, of the fund must treat so much of the
30 contribution in relation to which no direction is given as a
31 contribution to be paid into the MySuper product.
- 32 (3) A trustee commits an offence if the trustee contravenes
33 subsection (2). This is an offence of strict liability.
- 34 Penalty: 50 penalty units.

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

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

5 **48 Before section 35**

6 Insert:

7 **Division 1—Objects**

8 **49 Section 35A**

9 Repeal the section, substitute:

10 **Division 2—Obligations for registrable superannuation** 11 **entities**

12 **35A Accounting records**

13 *Accounting records must be kept etc.*

- 14 (1) Each trustee of a registrable superannuation entity must ensure
15 that:
- 16 (a) accounting records that correctly record and explain the
17 transactions and financial position of the RSE licensee for the
18 entity and the entity are kept; and
 - 19 (b) the accounting records of the RSE licensee and the entity are
20 kept in a way that enables:
 - 21 (i) the preparation of reporting documents referred to in
22 section 13 of the *Financial Sector (Collection of Data)*
23 *Act 2001*; and
 - 24 (ii) the preparation of any other documents required to be
25 audited under the RSE licensee law; and
 - 26 (c) the accounting records of the RSE licensee and the entity are
27 kept in a way that enables those reporting documents and
28 other documents to be conveniently and properly audited in
29 accordance with the RSE licensee law.
- 30 (2) If accounting records of an RSE licensee or a registrable
31 superannuation entity are kept in accordance with subsection (1),
32 each trustee of the entity must ensure that:
-

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Schedule 1 Amendments

Part 1 Amendments

- 1 (a) the records are retained for at least 5 years after the end of the
2 year of income to which the transactions relate; and
3 (b) the records are kept either:
4 (i) in Australia; or
5 (ii) in another country if the Regulator gives written
6 approval for the records to be kept in that country, and
7 the conditions (if any) specified in the approval are met;
8 and
9 (c) the records are kept:
10 (i) in writing in the English language; or
11 (ii) in a form in which they are readily accessible and
12 readily convertible into writing in the English language.
- 13 (3) An approval given under subparagraph (2)(b)(ii) may be given
14 subject to specified conditions.

Notification of address where accounting records are kept

- 15
- 16 (4) A trustee of a registrable superannuation entity must notify APRA,
17 in the approved form, of the address where the accounting records
18 of the RSE licensee and the entity are kept:
19 (a) if, immediately before the commencement of this subsection,
20 the entity is registered under section 29M—within 28 days
21 after that commencement; or
22 (b) otherwise—within 28 days after the entity is registered under
23 that section.
- 24 (5) If:
25 (a) a trustee of a registrable superannuation entity has notified
26 APRA of the address where the accounting records of the
27 RSE licensee and the entity are kept; and
28 (b) the entity moves the accounting records to a new address;
29 a trustee of the entity must notify APRA, in the approved form, of
30 the new address where the accounting records are kept.
- 31 (6) The notification must be given within 28 days after the day on
32 which the accounting records are moved to the new address.

1 *Offences*

2 (7) A trustee commits an offence if the trustee contravenes
3 subsection (1) or (2).

4 Penalty: 100 penalty units.

5 (8) A trustee commits an offence of strict liability if the trustee
6 contravenes subsection (1) or (2).

7 Penalty: 50 penalty units.

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

9 **35AB Auditor requests for documents**

10 (1) If the auditor of a registrable superannuation entity requests, in
11 writing, a trustee of the entity to give the auditor a document, each
12 trustee of the entity must ensure that the document is given to the
13 auditor within 14 days of the request being made. An auditor may
14 only request documents that are relevant to the preparation of a
15 report about the operations of the entity or the RSE licensee of the
16 entity.

17 (2) A trustee commits an offence if the trustee contravenes
18 subsection (1).

19 Penalty: Imprisonment for 2 years.

20 (3) A trustee commits an offence of strict liability if the trustee
21 contravenes subsection (1).

22 Penalty: 50 penalty units.

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

24 **35AC Appointed auditor's functions and duties**

25 (1) This section applies if the RSE licensee law:

26 (a) requires an auditor of a registrable superannuation entity to
27 be appointed; or

28 (b) requires or permits a function or duty to be performed, or a
29 power to be exercised, by an auditor.

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Schedule 1 Amendments

Part 1 Amendments

- 1 (2) The RSE licensee of the registrable superannuation entity must not
2 appoint a person as an auditor of the entity unless the RSE licensee
3 is reasonably satisfied that the person:
4 (a) meets the eligibility criteria for auditors of registrable
5 superannuation entities set out in the prudential standards;
6 and
7 (b) has not been disqualified from being or acting as an auditor
8 of a registrable superannuation entity under section 130D.
- 9 (3) The appointed auditor must perform the functions and duties of an
10 auditor that are set out in the RSE licensee law.
- 11 (4) The appointed auditor must comply with the RSE licensee law in
12 performing the functions and duties.
- 13 (5) The trustee of the registrable superannuation entity to whom the
14 RSE licensee law applies must make any arrangements that are
15 necessary to enable the appointed auditor to perform the functions
16 and duties.
- 17 (6) The RSE licensee of the registrable superannuation entity must end
18 the appointment of a person as an auditor of the entity if the RSE
19 licensee becomes aware that the person:
20 (a) no longer meets the eligibility criteria for auditors of
21 registrable superannuation entities set out in the prudential
22 standards; or
23 (b) has been disqualified from being or acting as an auditor of a
24 registrable superannuation entity under section 130D.

25 **35AD Appointed actuary's functions and duties**

- 26 (1) This section applies if the RSE licensee law:
27 (a) requires an actuary of a registrable superannuation entity to
28 be appointed; or
29 (b) requires or permits a function or duty to be performed, or a
30 power to be exercised, by an actuary.
- 31 (2) The RSE licensee of a registrable superannuation entity must not
32 appoint a person as an actuary of the entity unless the RSE licensee
33 is reasonably satisfied that the person:

- 1 (a) meets the eligibility criteria for actuaries of registrable
2 superannuation entities set out in the prudential standards;
3 and
4 (b) has not been disqualified from being or acting as an actuary
5 of a registrable superannuation entity under section 130D.
- 6 (3) The appointed actuary must perform the functions and duties of an
7 actuary that are set out in the RSE licensee law.
- 8 (4) The appointed actuary must comply with the RSE licensee law in
9 performing the functions and duties.
- 10 (5) The trustee of the registrable superannuation entity to whom the
11 RSE licensee law applies must make any arrangements that are
12 necessary to enable the appointed actuary to perform the functions
13 and duties.
- 14 (6) The RSE licensee of a registrable superannuation entity must end
15 the appointment of a person as an actuary of the entity if the RSE
16 licensee becomes aware that the person:
17 (a) no longer meets the eligibility criteria for actuaries of
18 registrable superannuation entities set out in the prudential
19 standards; or
20 (b) has been disqualified from being or acting as an actuary of a
21 registrable superannuation entity under section 130D.

22 **Division 3—Obligations for self managed superannuation** 23 **funds**

24 **35AE Accounting records**

25 *Accounting records must be kept etc.*

- 26 (1) Each trustee of a superannuation entity that is a self managed
27 superannuation fund must ensure that:
28 (a) accounting records that correctly record and explain the
29 transactions and financial position of the entity are kept; and
30 (b) the accounting records of the entity are kept in a way that
31 enables the following to be prepared:
32 (i) the accounts and statements of the entity referred to in
33 section 35B;

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1 (ii) the returns of the entity referred to in section 35D; and
2 (c) the accounting records of the entity are kept in a way that
3 enables those accounts, statements and returns to be
4 conveniently and properly audited in accordance with this
5 Act.

6 (2) If accounting records of a superannuation entity that is a self
7 managed superannuation fund are kept in accordance with
8 subsection (1), each trustee of the superannuation entity must
9 ensure that:

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

12 (b) the records are kept in Australia; and

13 (c) the records are kept:

14 (i) in writing in the English language; or

15 (ii) in a form in which they are readily accessible and
16 readily convertible into writing in the English language.

17 *Offences*

18 (3) A trustee commits an offence if the trustee contravenes
19 subsection (1) or (2).

20 Penalty: 100 penalty units.

21 (4) A trustee commits an offence of strict liability if the trustee
22 contravenes subsection (1) or (2).

23 Penalty: 50 penalty units.

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

25 **50 Section 35B (heading)**

26 Repeal the heading, substitute:

27 **35B Accounts and statements**

28 **51 Section 35C (heading)**

29 Repeal the heading, substitute:

1 **35C Audit of accounts and statements**

2 **52 Subsection 35C(1)**

3 After “superannuation entity”, insert “that is a self managed
4 superannuation fund”.

5 **53 Subsection 35C(1)**

6 Omit “approved auditor”, substitute “approved SMSF auditor”.

7 **54 Subsection 35C(1)**

8 Omit “, and the RSE licensee (if any) of the entity,”.

9 **55 Subsection 35C(1)(note)**

10 Repeal the note.

11 *Note: If the superannuation entity is a self managed superannuation fund,*
12 *the person appointed must be an approved SMSF auditor.*

13 **56 Subsection 35C(1A)**

14 Repeal the subsection.

15 **57 Subsection 35C(2)**

16 After “superannuation entity”, insert “that is a self managed
17 superannuation fund”.

18 **58 Subsection 35C(5)**

19 Repeal the subsection, substitute:

20 (5) Without limiting subsection (1), an approved form:

21 (a) must either:

22 (i) relate solely to the audit of the accounts and statements
23 referred to in subsection 35B(1) and prepared in respect
24 of a year of income; or

25 (ii) relate only to the audit of those accounts and statements
26 and of any other accounts and statements, prepared in
27 respect of a year of income, that are identified in the
28 form; and

29 (b) must include a statement by the auditor as to the extent of the
30 auditor’s compliance with the auditor independence
31 requirements referred to in paragraph 128F(d); and

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1 (c) must include a statement by the auditor as to whether, in the
2 auditor's opinion, each trustee of the entity has, during the
3 year of income, complied with the provisions of this Act and
4 the regulations that are identified in the form.

5 **59 Subsection 35C(7)**

6 Repeal the subsection.

7 **60 Section 35D (heading)**

8 Repeal the heading, substitute:

9 **35D Trustee to lodge annual returns**

10 **61 Section 36**

11 Repeal the section.

12 **62 Before subsection 55(1)**

13 Insert:

14 *Covenants must be complied with*

15 **63 Before subsection 55(2)**

16 Insert:

17 *Breach of covenant not an offence and does not result in invalidity*

18 **64 Before subsection 55(3)**

19 Insert:

20 *Breach of covenant may result in action to recover loss or damage*

21 **65 Subsection 55(3)**

22 Omit "A person", substitute "Subject to subsection (4A), a person".

23 **66 After subsection 55(4)**

24 Insert:

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1 *Leave of court required where directors' covenants breached*

2 (4A) An action under subsection (3) may only be brought with the leave
3 of the court if:

4 (a) the person who is alleged to have contravened subsection (1)
5 is or was a director of a corporate trustee of a registrable
6 superannuation entity; and

7 (b) it is alleged that the contravention is of a covenant that is
8 contained, or taken to be contained, in the governing rules of
9 the entity, and is:

10 (i) a covenant of the kind mentioned in subsection 52A(2);
11 or

12 (ii) a covenant prescribed under section 54A that relates to
13 the conduct of the director of a corporate trustee of a
14 registrable superannuation entity.

15 (4B) In deciding whether to grant an application for leave to bring such
16 an action, the court must take into account whether:

17 (a) the applicant is acting in good faith; and

18 (b) there is a serious question to be tried.

19 breach of directors' covenants

20 **67 Before subsection 55(5)**

21 Insert:

22 *Defences in actions to recover loss or damage*

23 **68 After section 58**

24 Insert:

25 **58A Service providers and investments cannot be limited to**
26 **particular persons or associates**

27 *Does not apply to self managed superannuation funds*

28 (1) The section does not apply to self managed superannuation funds.

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1 *Service providers*

- 2 (2) A provision in the governing rules of a regulated superannuation
3 fund is void if it specifies a person or persons (whether by name or
4 in any other way, directly or indirectly) from whom the trustee, or
5 one or more of the trustees, of the fund may or must acquire a
6 service.

7 *Investments in entities*

- 8 (3) A provision in the governing rules of a regulated superannuation
9 fund is void if it specifies an entity or entities (whether by name or
10 in any other way, directly or indirectly) in which one or more of
11 the assets of the fund may or must be invested.

12 *Financial products*

- 13 (4) A provision in the governing rules of a regulated superannuation
14 fund is void if it specifies (whether by name or by reference to an
15 entity) a financial product or financial products:
16 (a) in or through which one or more of the assets of the fund may
17 or must be invested; or
18 (b) in relation to which one or more assets of the fund may or
19 must be used to make payments.

20 *Exception*

- 21 (5) Subsections (2), (3) and (4) do not apply if the relevant person,
22 entity or financial product is specified in the law of the
23 Commonwealth or of a State or Territory, or is required to be
24 specified under such a law.

25 **69 At the end of Part 7**

26 Add:

27 **68C Voting by a director of a corporate trustee—governing rules**

- 28 (1) This section applies to a regulated superannuation fund, other than
29 a self managed superannuation fund, of which the trustee is a body
30 corporate.

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1 (2) A provision in the governing rules of the fund is void to the extent
2 that it purports to preclude a director of the trustee from voting on
3 a matter relating to the fund.

4 *Exception*

- 5 (3) Subsection (2) does not apply to a provision in the governing rules
6 of the fund to the extent that the provision:
- 7 (a) precludes a director of the trustee of the fund from voting on
8 a matter in which the director has a material personal interest;
9 or
 - 10 (b) otherwise relates to voting by a director of the trustee of the
11 fund on a matter in which the director has a material personal
12 interest; or
 - 13 (c) precludes a director of the trustee of the fund from voting
14 where there is a conflict of a kind described in paragraph
15 52(2)(d) or 52A(2)(d); or
 - 16 (d) otherwise relates to voting by a director of the trustee of the
17 fund where there is a conflict of a kind described in
18 paragraph 52(2)(d) or 52A(2)(d); or
 - 19 (e) precludes a director of the trustee of the fund from exercising
20 a casting vote; or
 - 21 (f) ensures compliance by the trustee of the fund, or a director of
22 the trustee of the fund, with a prudential standard that deals
23 with conflicts of interest or duty.

24 **68D Voting by an individual trustee—governing rules**

- 25 (1) This section applies to a regulated superannuation fund, other than
26 a self managed superannuation fund, of which the trustee, or each
27 of the trustees, is an individual.
- 28 (2) A provision in the governing rules in the fund is void to the extent
29 that it purports to preclude a trustee of the fund from voting on a
30 matter relating to the fund.

31 *Exception*

- 32 (3) Subsection (2) does not apply to a provision in the governing rules
33 of the fund to the extent that the provision:
-

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- 1 (a) precludes a trustee of the fund from voting on a matter in
2 which the trustee has a material personal interest; or
3 (b) otherwise relates to voting by a trustee of the fund on a
4 matter in which the trustee has a material personal interest; or
5 (c) precludes a trustee of the fund from voting where there is a
6 conflict of a kind described in paragraph 52(2)(d); or
7 (d) otherwise relates to voting by a trustee of the fund where
8 there is a conflict of a kind described in paragraph 52(2)(d);
9 or
10 (e) precludes a trustee of the fund from exercising a casting vote;
11 or
12 (f) ensures compliance by a trustee of the fund with a prudential
13 standard that deals with conflicts of interest or duty.

70 At the end of subsection 101(1)

14 Add:

- 15 ; and (c) if a person referred to in subsection (1A) makes a complaint
16 that relates to the payment of a death benefit:
17 (i) the person is given written reasons for a decision made
18 by the trustee in relation to the complaint when the
19 person is given notice of the decision; or
20 (ii) if no decision is made in relation to the complaint within
21 90 days after the complaint is made—the person may
22 request written reasons for the failure to make a decision
23 in relation to the complaint within that period; and
24 (d) if a person referred to in subsection (1A) makes a complaint
25 of another kind specified in that subsection in relation to the
26 person, the person may request written reasons for:
27 (i) a decision made by the trustee in relation to the
28 complaint; or
29 (ii) if no decision is made in relation to the complaint within
30 90 days after the complaint is made—the failure to
31 make a decision in relation to the complaint within that
32 period; and
33 (e) if a request is made in the circumstances set out in
34 subparagraph (c)(ii) or paragraph (d), the written reasons are
35 given to the person within 28 days after the request is made.
36

71 After sub-subparagraph 107(2)(a)(ii)(D)

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1 Insert:

2 (DA) the member representative no longer meeting
3 one or more of the criteria for fitness and
4 propriety relevant to the member representative
5 set out in the prudential standards; or

6 **72 After subparagraph 108(2)(a)(ii)**

7 Insert:

8 (ii) the additional independent trustee or additional
9 independent director no longer meeting one or more of
10 the criteria for fitness and propriety relevant to the
11 independent trustee or independent director set out in
12 the prudential standards; or

13 **73 After subsection 126H(6)**

14 Insert:

15 (6A) In deciding whether it is satisfied as mentioned in subsection (5),
16 the Court may also take into account any criteria for fitness and
17 propriety that are relevant to the trustee or responsible officer set
18 out in the prudential standards.

19 **74 Subparagraph 129(1)(a)(i)**

20 Omit “or the regulations”, substitute “, the regulations or the prudential
21 standards”.

22 **75 Paragraph 129(1)(b)**

23 Omit “or the regulations”, substitute “, the regulations, the prudential
24 standards”.

25 **76 Paragraph 130(1)(b)**

26 Omit “or the regulations”, substitute “, the regulations, the prudential
27 standards”.

28 **77 After paragraph 130A(b)**

29 Insert:

30 (ba) the prudential standards; or

31 **78 Section 130A**

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1 Omit “or the regulations”, substitute “, the regulations, the prudential
2 standards”.

3 **79 Subparagraphs 130C(1)(a)(i) and (ii)**

4 After “regulations”, insert “or the prudential standards”.

5 **80 Paragraph 130C(1)(b)**

6 Omit “or the regulations”, substitute “, the regulations, the prudential
7 standards”.

8 **81 Subsection 130D(3)**

9 Omit “approved auditor”, substitute “auditor”.

10 **82 Subparagraph 130D(4)(a)(i)**

11 Omit “or the regulations”, substitute “, the regulations or the prudential
12 standards”.

13 **83 Subparagraph 130D(4)(a)(iii)**

14 Omit “or the regulations”, substitute “, the regulations, the prudential
15 standards”.

16 **84 After paragraph 130D(4)(a)**

17 Insert:

18 (aa) the person has been or acted as the auditor or actuary of a
19 registrable superannuation entity, knowing that he or she did
20 not meet the relevant eligibility criteria set out in the
21 prudential standards; or

22 **85 Paragraph 130D(5)(a)**

23 After “regulations”, insert “or the prudential standards”.

24 **86 After subsection 130D(5)**

25 Insert:

26 (5A) In deciding whether it is satisfied as mentioned in paragraph (4)(b),
27 the Court may also take into account any criteria for fitness and
28 propriety that are relevant to the person as auditor or actuary set
29 out in the prudential standards.

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1 **87 Paragraph 130D(6)(a)**

2 Omit “and the regulations”, substitute “, the regulations and the
3 prudential standards”.

4 **88 Paragraphs 131AA(1)(a) and 131AA(2)(a)**

5 Omit “approved auditor”, substitute “auditor”.

6 **89 After paragraph 131AA(2)(b)**

7 Insert:

8 (ba) the person has been or acted as the auditor or actuary of a
9 registrable superannuation entity, knowing that he or she did
10 not meet the relevant eligibility criteria set out in the
11 prudential standards; or

12 **90 Paragraph 131AA(2)(c)**

13 After “regulations”, insert “, the prudential standards”.

14 **91 After subsection 131AA(2)**

15 Insert:

16 (2A) In deciding, for the purposes of paragraph (2)(b), whether a person
17 is a fit and proper person to hold an appointment, APRA may take
18 into account any criteria for fitness and propriety that are relevant
19 to the appointment set out in the prudential standards.

20 **92 Subsection 131A(1)**

21 Omit “an approved auditor (other than an approved SMSF auditor) or
22 an actuary” (first occurring), substitute “an RSE auditor or a
23 superannuation actuary”.

24 **93 Subparagraph 131A(1)(a)(i)**

25 Omit “or the regulations”, substitute “, the regulations or the prudential
26 standards”.

27 **94 Subparagraph 131A(1)(a)(iii)**

28 Omit “or the regulations”, substitute “, the regulations, the prudential
29 standards”.

30 **95 After paragraph 131A(1)(a)**

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1 Insert:

2 (aa) has been or acted as the auditor or actuary of a registrable
3 superannuation entity, knowing that he or she did not meet
4 the relevant eligibility criteria set out in the prudential
5 standards; or

6 **96 Paragraph 131A(1)(b)**

7 Omit “an approved auditor of a superannuation entity that is not a self
8 managed superannuation fund, or to be an actuary,”, substitute “an RSE
9 auditor or a superannuation actuary”.

10 **97 After subsection 131A(1)**

11 Insert:

12 (1A) In deciding whether it is satisfied as mentioned in paragraph (1)(b)
13 in relation to a person who is or has been an RSE auditor or an
14 RSE actuary, the Regulator may also take into account any criteria
15 for fitness and propriety that are relevant to the auditor or actuary
16 set out in the prudential standards.

17 **98 Subsection 131A(2)**

18 Omit “an approved auditor or an actuary”, substitute “an RSE auditor or
19 a superannuation actuary”.

20 **99 Subsection 131A(3)**

21 Omit “an approved auditor or actuary”, substitute “an RSE auditor or a
22 superannuation actuary”.

23 **100 Subsection 131A(4)**

24 Omit “an approved auditor or an actuary”, substitute “an RSE auditor or
25 a superannuation actuary”.

26 **101 Paragraphs 131B(1)(a) and (b)**

27 Omit “an actuary”, substitute “a superannuation actuary”.

28 **102 Paragraph 131B(2A)(a)**

29 Omit “an approved auditor of a kind other than an approved SMSF
30 auditor”, substitute “an RSE auditor”.

31 **103 Paragraph 131B(2A)(b)**

1 Omit “such an approved auditor”, substitute “an RSE auditor”.

2 **104 At the end of section 134**

3 Add:

4 (5) In deciding whether it is satisfied as mentioned in paragraph (4)(c)
5 in relation to a person who is or has been a trustee of a registrable
6 superannuation entity, the Regulator may also take into account
7 any criteria for fitness and propriety that are relevant to the trustee
8 set out in the prudential standards.

9 **105 At the end of section 135**

10 Add:

11 (3) If:

- 12 (a) a person (the *former trustee*) is suspended or removed as a
13 trustee of a superannuation entity; and
14 (b) a person is appointed under this Part to act as trustee of the
15 superannuation entity; and
16 (c) the acting trustee is required under the terms and conditions
17 of his or her appointment to give information to APRA; and
18 (d) the acting trustee gives the former trustee notice in writing of
19 the requirement;
20 the former trustee must do all things reasonably practicable to
21 assist the acting trustee to comply with the requirement.

22 (4) The former trustee commits an offence of strict liability if the
23 former trustee fails to comply with subsection (3).

24 Penalty for contravention of this subsection: 50 penalty units.

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

26 **106 After section 139**

27 Insert:

28 **139A Acting trustee authorised to offer a MySuper product**

29 (1) This section applies if:

- 30 (a) the trustee, or the trustees, of a regulated superannuation fund
31 is or are suspended or removed; and

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1 (b) before the suspension or removal, the RSE licensee of the
2 fund was authorised to offer a class of beneficial interest in
3 the fund as a MySuper product.

4 (2) The Regulator must not appoint a person to act as trustee of the
5 fund unless the person has made elections of the kind referred to in
6 sections 29SAA, 29SAB and 29SAC.

7 (3) The person appointed to act as trustee of the fund is taken to have
8 been authorised to offer that class of beneficial interest in the fund
9 as a MySuper product.

10 **107 Before section 140**

11 Insert:

12 **139B Acting trustee authorised to operate an eligible rollover fund**

13 (1) This section applies if the trustee, or the trustees, of an eligible
14 rollover fund is or are suspended or removed.

15 (2) The Regulator must not appoint a person to act as trustee of the
16 fund unless the person has made elections of the kind referred to in
17 sections 242B and 242C.

18 (3) The person appointed to act as trustee of the fund is taken to have
19 been authorised to operate the eligible rollover fund.

20 **108 After section 194**

21 Insert:

22 **194A Continuing contraventions of civil penalty provisions**

23 (1) If an act or thing is required under a civil penalty provision to be
24 done:

25 (a) within a particular period; or

26 (b) before a particular time;

27 then the obligation to do that act or thing continues until the act or
28 thing is done (even if the period has expired or the time has
29 passed).

30 (2) A person who contravenes a civil penalty provision that requires an
31 act or thing to be done:

- 1 (a) within a particular period; or
2 (b) before a particular time;
3 commits a separate contravention of that provision in respect of
4 each day during which the contravention occurs (including the day
5 the relevant civil penalty order is made or any later day).

6 **109 After Part 21**

7 Insert:

8 **Part 22—Infringement notices**

9 **Division 1—Overview**

10 **223 Simplified outline**

11 The following is a simplified outline of this Part:

12 This Part deals with the use of infringement notices if an
13 infringement officer reasonably believes that a provision has been
14 contravened.

15 A person can be given an infringement notice in relation to a
16 contravention of a provision that is subject to an infringement
17 notice under this Part. The provision may be an offence provision
18 or a civil penalty provision, or both.

19 A person who is given an infringement notice can choose to pay an
20 amount as an alternative to having court proceedings brought
21 against the person for a contravention of a provision subject to an
22 infringement notice under this Part. If the person does not choose
23 to pay the amount, proceedings can be brought against the person
24 in relation to the contravention.

25 **223A Provisions *subject to an infringement notice***

- 26 (1) An offence against one of the following provisions is *subject to an*
27 *infringement notice* under this Part:
28 (a) subsection 18(7B);
29 (b) subsection 29W(1);

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- 1 (c) subsection 29WA(3);
2 (d) subsection 29WB(3);
3 (e) subsection 35A(8);
4 (f) subsection 107(4);
5 (g) subsection 108(4);
6 (h) subsection 140(3);
7 (i) subsection 242M(1);
8 (j) subsection 260(3);
9 (k) subsection 262(2).
- 10 (2) An offence against one of the following provisions is *subject to an*
11 *infringement notice* under this Part, unless the superannuation
12 entity to which the offence relates is a self managed
13 superannuation fund:
14 (a) subsection 11C(2), (3) or (4);
15 (b) subsection 63(7) or (10);
16 (c) subsection 64(3A);
17 (d) subsection 71EA(5);
18 (e) subsection 103(3);
19 (f) subsection 104(2);
20 (g) subsection 105(2);
21 (h) subsection 122(2);
22 (i) subsection 124(2);
23 (j) subsection 141A(3) or (6);
24 (k) subsection 252A(3).
- 25 (3) The regulations may provide that:
26 (a) an offence against a provision of this Act not already
27 specified in this section, or a civil penalty provision in this
28 Act, is *subject to an infringement notice* under this Part; and
29 (b) an offence against the regulations, or a civil penalty provision
30 in the regulations, is *subject to an infringement notice* under
31 this Part.

223B *Infringement officer*

- 32
33 (1) A person is an *infringement officer* for the purposes of exercising
34 powers under this Part in relation to a contravention of a provision
35 subject to an infringement notice under this Part, if the person is
-

1 one of a class of persons determined by the Chair of APRA under
2 section 223C to be infringement officers in relation to a
3 contravention of the provision.

- 4 (2) A person who is an ***infringement officer*** for the purposes of
5 exercising powers mentioned in subsection (1) is also an
6 ***infringement officer*** for the purposes of:
7 (a) exercising other powers under this Part; or
8 (b) performing functions or duties under this Part;
9 that are incidental to the powers mentioned in subsection (1).

10 **223C Chair of APRA may determine *infringement officers***

- 11 (1) The Chair of APRA may by legislative instrument determine that
12 APRA staff members of a class specified in the determination are
13 to be infringement officers for the purposes of exercising powers
14 under this Part in relation to a contravention of a provision that is
15 subject to an infringement notice under this Part.
- 16 (2) The Chair of APRA must not specify a class of APRA staff
17 members in the determination unless the Chair is satisfied that
18 persons of that class have suitable training or experience to
19 properly exercise the powers of an infringement officer.
- 20 (3) An infringement officer must, in exercising powers as such,
21 comply with any directions of the Chair of APRA in relation to the
22 relevant provision.
- 23 (4) If a direction is given under subsection (3) in writing, the direction
24 is not a legislative instrument.

25 **223D Relevant chief executive**

- 26 (1) The Chair of APRA is the ***relevant chief executive*** for the
27 purposes of exercising powers under this Part in relation to the
28 contravention of a provision subject to an infringement notice
29 under this Part.
- 30 (2) The Chair of APRA is also the ***relevant chief executive*** for the
31 purposes of:
32 (a) exercising other powers under this Part; or
33 (b) performing functions or duties under this Part;

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- 1 that are incidental to the powers mentioned in subsection (1).
- 2 (3) The Chair of APRA may, in writing, delegate the powers and
- 3 functions of the relevant chief executive under this Part to:
- 4 (a) an APRA member (within the meaning of the *Australian*
- 5 *Prudential Regulation Authority Act 1998*); or
- 6 (b) an APRA staff member (within the meaning of the *Australian*
- 7 *Prudential Regulation Authority Act 1998*) who is an
- 8 executive general manager or equivalent.
- 9 (4) A person exercising powers or functions under a delegation under
- 10 subsection (3) must comply with any directions of the relevant
- 11 chief executive.

12 **Division 2—Infringement notices**

13 **224 When an infringement notice may be given**

- 14 (1) If an infringement officer has reasonable grounds to believe that a
- 15 person has contravened a provision subject to an infringement
- 16 notice under this Part, the infringement officer may give to the
- 17 person an infringement notice for the alleged contravention.
- 18 (2) The infringement notice must be given within 12 months after the
- 19 day on which the contravention is alleged to have taken place.
- 20 (3) A single infringement notice must relate only to a single
- 21 contravention of a single provision unless subsection (4) applies.
- 22 (4) An infringement officer may give a person a single infringement
- 23 notice relating to multiple contraventions of a single provision if:
- 24 (a) the provision requires the person to do a thing within a
- 25 particular period or before a particular time; and
- 26 (b) the person fails or refuses to do that thing within that period
- 27 or before that time; and
- 28 (c) the failure or refusal occurs on more than one day; and
- 29 (d) each contravention is constituted by the failure or refusal on
- 30 one of those days.

31 Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

32 For continuing contraventions of civil penalty provisions, see

33 section 194A of this Act.

1 **224A Matters to be included in an infringement notice**

2 (1) An infringement notice must:

- 3 (a) be identified by a unique number; and
- 4 (b) state the day on which it is given; and
- 5 (c) state the name of the person to whom the notice is given; and
- 6 (d) state the name and position of the person who gave the
- 7 notice, and that the person is an infringement officer for the
- 8 purposes of issuing the infringement notice; and
- 9 (e) give brief details of the alleged contravention, including:
- 10 (i) the provision that was allegedly contravened; and
- 11 (ii) the maximum penalty that a court could impose if the
- 12 provision were contravened; and
- 13 (iii) the time (if known) and day of, and the place of, the
- 14 alleged contravention; and
- 15 (f) state the amount that is payable under the notice; and
- 16 (g) give an explanation of how payment of the amount is to be
- 17 made; and
- 18 (h) state that, if the person to whom the notice is given pays the
- 19 amount within 28 days after the day the notice is given, then
- 20 (unless the notice is withdrawn):
- 21 (i) if the provision is a civil penalty provision and does not
- 22 also constitute an offence provision—proceedings
- 23 seeking a civil penalty order will not be brought in
- 24 relation to the alleged contravention; or
- 25 (ii) if the provision is a civil penalty provision that can also
- 26 constitute an offence provision—proceedings seeking a
- 27 civil penalty order will not be brought, and the person is
- 28 not liable to be prosecuted in a court, in relation to the
- 29 alleged contravention; or
- 30 (iii) if the provision is an offence provision—the person will
- 31 not be liable to be prosecuted in a court for the alleged
- 32 contravention; and
- 33 (i) state that payment of the amount is not an admission of guilt
- 34 or liability; and
- 35 (j) state that the person may apply to the relevant chief executive
- 36 to have the period in which to pay the amount extended; and
- 37 (k) state that the person may choose not to pay the amount and, if
- 38 the person does so:

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- 1 (i) if the provision is a civil penalty provision and does not
2 also constitute an offence provision—proceedings
3 seeking a civil penalty order may be brought in relation
4 to the alleged contravention; or
- 5 (ii) if the provision is a civil penalty provision that can also
6 constitute an offence provision—proceedings seeking a
7 civil penalty order may be brought, and the person may
8 be liable to be prosecuted in a court, in relation to the
9 alleged contravention; or
- 10 (iii) if the provision is an offence provision—the person may
11 be liable to be prosecuted in a court for the alleged
12 contravention; and
- 13 (l) set out how the notice can be withdrawn; and
- 14 (m) state that if the notice is withdrawn:
- 15 (i) if the provision is a civil penalty provision and does not
16 also constitute an offence provision—proceedings
17 seeking a civil penalty order may be brought in relation
18 to the alleged contravention; or
- 19 (ii) if the provision is a civil penalty provision that can also
20 constitute an offence provision—proceedings seeking a
21 civil penalty order may be brought, and the person may
22 be liable to be prosecuted in a court, in relation to the
23 alleged contravention; or
- 24 (iii) if the provision is an offence provision—the person may
25 be liable to be prosecuted in a court for the alleged
26 contravention; and
- 27 (n) state that the person may make written representations to the
28 relevant chief executive seeking the withdrawal of the notice.
- 29 (2) For the purposes of paragraph (1)(f), 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 **224B Extension of time to pay amount**

- 34 (1) A person to whom an infringement notice has been given may
35 apply to the relevant chief executive for an extension of the period
36 referred to in paragraph 224A(1)(h).

- 1 (2) If the application is made before the end of that period, the relevant
2 chief executive may, in writing, extend that period. The relevant
3 chief executive may do so before or after the end of that period.
- 4 (3) If the relevant chief executive extends that period, a reference in
5 this Part, or in a notice or other instrument under this Part, to the
6 period referred to in paragraph 224A(1)(h) is taken to be a
7 reference to that period so extended.
- 8 (4) If the relevant chief executive does not extend that period, a
9 reference in this Part, or in a notice or other instrument under this
10 Part, to the period referred to in paragraph 224A(1)(h) is taken to
11 be a reference to the period that ends on the later of the following
12 days:
13 (a) the day that is the last day of the period referred to in
14 paragraph 224A(1)(h);
15 (b) the day that is 7 days after the day the person was given
16 notice of the relevant chief executive's decision not to
17 extend.
- 18 (5) The relevant chief executive may extend the period more than once
19 under subsection (2).

20 **224C Withdrawal of an infringement notice**

21 *Representations seeking withdrawal of notice*

- 22 (1) A person to whom an infringement notice has been given may
23 make written representations to the relevant chief executive
24 seeking the withdrawal of the notice.

25 *Withdrawal of notice*

- 26 (2) The relevant chief executive may withdraw an infringement notice
27 given to a person (whether or not the person has made written
28 representations seeking the withdrawal).
- 29 (3) When deciding whether or not to withdraw an infringement notice
30 (the ***relevant infringement notice***), the relevant chief executive:
31 (a) must take into account any written representations seeking
32 the withdrawal that were given by the person to the relevant
33 chief executive; and
34 (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 a provision subject to an
3 infringement notice under this Part;
- 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 a
7 provision subject to an infringement notice under this
8 Part if the contravention is constituted by conduct that is
9 the same, or substantially the same, as the conduct
10 alleged to constitute the contravention in the relevant
11 infringement notice;
- 12 (iv) any other matter the relevant chief executive considers
13 relevant.

14 *Notice of withdrawal*

- 15 (4) Notice of the withdrawal of the infringement notice must be given
16 to the person. The withdrawal notice must state:
- 17 (a) the person's name and address; and
18 (b) the day the infringement notice was given; and
19 (c) the identifying number of the infringement notice; and
20 (d) that the infringement notice is withdrawn; and
21 (e) that:
- 22 (i) if the provision is a civil penalty provision and does not
23 also constitute an offence provision—proceedings
24 seeking a civil penalty order may be brought in relation
25 to the alleged contravention; or
- 26 (ii) if the provision is a civil penalty provision that can also
27 constitute an offence provision—proceedings seeking a
28 civil penalty order may be brought, and the person may
29 be liable to be prosecuted in a court, in relation to the
30 alleged contravention; or
- 31 (iii) if the provision is an offence provision—the person may
32 be liable to be prosecuted in a court for the alleged
33 contravention.

34 *Refund of amount if infringement notice withdrawn*

- 35 (5) If:
-

- 1 (a) the relevant chief executive withdraws the infringement
2 notice; and
3 (b) the person has already paid the amount stated in the notice;
4 the Commonwealth must refund to the person an amount equal to
5 the amount paid.

6 **224D Effect of payment of amount**

- 7 (1) If the person to whom an infringement notice for an alleged
8 contravention of a provision is given pays the amount stated in the
9 notice before the end of the period referred to in paragraph
10 224A(1)(h):
11 (a) any liability of the person for the alleged contravention is
12 discharged; and
13 (b) if the provision is a civil penalty provision and does not also
14 constitute an offence provision—proceedings seeking a civil
15 penalty order may not be brought in relation to the alleged
16 contravention; and
17 (c) if the provision is a civil penalty provision that can also
18 constitute an offence provision—proceedings seeking a civil
19 penalty order may not be brought, and the person may not be
20 prosecuted in a court, in relation to the alleged contravention;
21 and
22 (d) if the provision is an offence provision—the person may not
23 be prosecuted in a court for the alleged contravention; and
24 (e) the person is not regarded as having admitted guilt or liability
25 for the alleged contravention; and
26 (f) if the provision is an offence provision—the person is not
27 regarded as having been convicted of the alleged offence.
28 (2) Subsection (1) does not apply if the notice has been withdrawn.

29 **224E Effect of this Part**

- 30 This Part does not:
31 (a) require an infringement notice to be given to a person for an
32 alleged contravention of a provision subject to an
33 infringement notice under this Part; or

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

17 **110 Section 252B**

18 Repeal the section.

19 **111 Paragraph 323(1)(b)**

20 Omit "subsection 55(3)", substitute "subsections 29VP(3), 29VPA(4)
21 and 55(3)".

22 **112 Section 327 (paragraphs (aa) and (b) of the definition of** 23 ***modifiable provision***)

24 Repeal the paragraphs.

25 **113 Subsection 344(12)**

26 After "(dn)", insert "(doa), (dob)".

27 **114 Subsection 344(12)**

28 Omit "or (t)", substitute ", (t), (ua) or (ub)".

29 ***Superannuation Legislation Amendment (MySuper Core*** 30 ***Provisions) Act 2012***

31 **115 After item 11 of Schedule 1**

1 Insert:

2 **11A Enhanced trustee obligations—decisions made before**
3 **1 July 2013**

4 *Decision to give, or refuse to give, authority to offer a MySuper*
5 *product*

- 6 (1) Subitem (2) applies if, before 1 July 2013, APRA makes a decision
7 under section 29T of the SIS Act to give, or refuse to give, an RSE
8 licensee authority to offer a class of beneficial interest in a regulated
9 superannuation fund as a MySuper product.
- 10 (2) APRA’s decision is not invalid merely because the enhanced trustee
11 obligations do not commence until 1 July 2013, provided subitem (3) or
12 (4) has been complied with.
- 13 (3) If the decision is to give authority, APRA must be satisfied at the time it
14 makes the decision that it is likely that on and after 1 July 2013:
15 (a) where the RSE licensee is a body corporate—the RSE
16 licensee; or
17 (b) where the RSE licensee is made up of a group of individual
18 trustees—each of those individual trustees;
19 will comply with the enhanced trustee obligations for MySuper
20 products that will come into force on that day.
- 21 (4) If the decision is to refuse to give authority, APRA must be satisfied at
22 the time it makes the decision that it is not likely that on and after 1 July
23 2013:
24 (a) where the RSE licensee is a body corporate—the RSE
25 licensee; or
26 (b) where the RSE licensee is made up of a group of individual
27 trustees—each of those individual trustees;
28 will comply with the enhanced trustee obligations for MySuper
29 products that will come into force on that day.

30 **116 Subitem 12(3) of Schedule 1**

31 Omit “Section 29WA of the SIS Act (contributions in relation to which
32 no election made) does not apply”, substitute “Sections 29WA and
33 29WB of the SIS Act (contributions in relation to which no election
34 made) do not apply”.

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Part 2 Application and transitional provisions

1 **117 Paragraph 12(5)(b) of Schedule 1**

2 Omit “section 29WA of the SIS Act does not apply”, substitute
3 “sections 29WA and 29WB of the SIS Act do not apply”.

4 **118 Item 13 of Schedule 1**

5 Omit “Section 29WA of the SIS Act applies”, substitute
6 “Sections 29WA and 29WB of the SIS Act apply”.

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

8 **119 Subsection 14(6A)**

9 Repeal the subsection, substitute:

10 (6A) The Tribunal cannot deal with a complaint under this section about
11 a decision of a trustee relating to the payment of a disability benefit
12 because of total and permanent disability if the complaint is not
13 made within the following period:

14 (a) in the case of a person who, before the making of the
15 decision, permanently ceased particular employment because
16 of the physical or mental condition that gave rise to the claim
17 for disability benefit—4 years after the making of the
18 decision;

19 (b) in any other case—6 years after the making of the decision.

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

21 **120 Application of item 14**

22 The amendment made by item 14 applies in relation to:

23 (a) RSE licensees who apply to be authorised as an FHSA
24 provider on or after the day on which that item commences;
25 and

26 (b) RSE licensees that are authorised as FHSA providers,
27 whether before, on or after the day on which that item
28 commences.

29 **121 Application of item 70**

30 The amendment made by item 70 of this Schedule applies in relation to
31 a complaint if:

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- 1 (a) where a decision is made in relation to the complaint within
2 90 days after the complaint is made—the decision is made on
3 or after 1 July 2013; and
4 (b) where no decision is made in relation to the complaint within
5 90 days after the complaint is made—the 90 day period ends
6 on or after 1 July 2013.

7 **122 Application of continuing contraventions of civil penalty** 8 **provisions**

9 The amendment made by item 108 of this Schedule applies in relation
10 to an act or thing that is required under a civil penalty provision to be
11 done:

- 12 (a) within a particular period that begins after the
13 commencement of the item; or
14 (b) before a particular time that falls after the commencement of
15 the item.

16 **123 Application of infringement notice scheme**

- 17 (1) Part 22 of the *Superannuation Industry (Supervision) Act 1993*, inserted
18 by item 109 of this Schedule, applies to contraventions of provisions
19 subject to an infringement notice under that Part all of the physical
20 elements of which occur on or after 1 July 2013.
21 (2) The amendment made by item 110 of this Schedule applies to
22 contraventions of section 252A all of the physical elements of which
23 occur on or after 1 July 2013.

24 **124 Application of item 119**

25 The amendment made by item 119 of this Schedule applies in relation
26 to decisions made on or after 1 July 2013.
27