2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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| **EXPOSURE DRAFT** |

Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Bill 2021

No. , 2021

(Treasury)

A Bill for an Act to amend the law in relation to registrable superannuation entities, and for other purposes

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A Bill for an Act to amend the law in relation to registrable superannuation entities, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Act 2021*.

2 Commencement

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

| 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 this Act receives the Royal Assent. |  |
| 2. Schedule 1, Part 1, Division 1 | 1 July 2022. | 1 July 2022 |
| 3. Schedule 1, Part 1, Division 2 | The later of:  (a) immediately after the commencement of the provisions covered by table item 2; and  (b) the commencement of item 609 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*. |  |
| 4. Schedule 1, Part 2 | 1 July 2022. | 1 July 2022 |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Financial reporting and auditing requirements for registrable superannuation entities

Part 1—Amendment of the Corporations Act 2001

Division 1—General amendments

Corporations Act 2001

1 Section 9 (definition of *audit‑critical employee*)

After “a company,”, insert “a registrable superannuation entity,”.

2 Section 9 (paragraph (a) of the definition of *audit‑critical employee*)

After “company”, insert “, of the RSE licensee for the registrable superannuation entity,”.

3 Section 9 (definition of *audited body*)

Omit “or registered scheme” (wherever occurring), substitute “, registered scheme or registrable superannuation entity”.

4 Section 9

Insert:

***auditor for the purposes of the RSE licensee law*** means an auditor appointed in fulfilment of a requirement imposed by a provision of the RSE licensee law.

5 Section 9 (definition of *consolidated entity*)

After “registered scheme”, insert “, registrable superannuation entity”.

6 Section 9 (note to the definition of *director*)

Omit “Note”, substitute “Note 1”.

7 Section 9 (at the end of the definition of *director*)

Add:

Note 2: For directors of registrable superannuation entities, see section 345AAC.

8 Section 9 (note to the definition of *financial report*)

Omit “section 302 deals”, substitute “sections 302 and 302A deal”.

9 Section 9 (after paragraph (a) of the definition of *financial year*)

Insert:

(aa) for a registrable superannuation entity—the meaning given by section 323DAAA;

10 Section 9 (definition of *half‑year*)

Repeal the definition, substitute:

***half‑year***:

(a) in relation to a company, registered scheme or disclosing entity—has the meaning given by subsection 323D(5); and

(b) in relation to a registrable superannuation entity—has the meaning given by subsection 323DAAA(2).

11 Section 9 (definition of *individual auditor*)

Omit “or registered scheme”, substitute “, registered scheme or registrable superannuation entity”.

12 Section 9 (paragraph (b) of the definition of *non‑audit services provider*)

Omit “either”.

13 Section 9 (subparagraph (b)(iii) of the definition of *non‑audit services provider*)

Omit “and”, substitute “or”.

14 Section 9 (at the end of paragraph (b) of the definition of *non‑audit services provider*)

Add:

(iv) if the auditor is a member or employee of an RSE audit firm—a member of the RSE audit firm or senior manager of the RSE audit firm (or of an entity acting for, or on behalf of, the RSE audit firm); or

(v) if the auditor is a director or employee of an RSE audit company—a director of the RSE audit company or senior manager of the RSE audit company (or of an entity acting for, or on behalf of, the RSE audit company); and

15 Section 9

Insert:

***officer*** of a registrable superannuation entity has the meaning given by section 345AAD.

16 Section 9 (definition of *play a significant role*)

Omit “or a registered scheme”, substitute “, a registered scheme or a registrable superannuation entity”.

17 Section 9 (paragraph (a) of the definition of *play a significant role*)

Omit “or scheme” (wherever occurring), substitute “, scheme or entity”.

18 Section 9 (subparagraph (a)(ii) of the definition of *play a significant role*)

Omit “or the scheme”, substitute “, scheme or entity”.

19 Section 9 (at the end of the definition of *play a significant role*)

Add:

; or (c) in the case of an audit of a registrable superannuation entity—the person:

(i) is a registered company auditor; or

(ii) acts as a review auditor, in relation to an audit of the entity for that financial year or for a half‑year falling within that financial year.

20 Section 9 (definition of *registrable superannuation entity)*

Repeal the definition, substitute:

***registrable superannuation entity***:

(a) when used in a provision outside Chapter 2M or an associated definition—has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and

(b) when used in Chapter 2M or an associated definition—means a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), but does not include the following:

(i) an exempt public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(ii) an excluded approved deposit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) a small APRA fund (within the meaning of section 1017BB).

For the purposes of this definition, each of the following is an ***associated definition***:

(a) the definition of ***audit‑critical employee***;

(b) the definition of ***audited body***;

(c) the definition of ***consolidated entity***;

(d) the definition of ***director***;

(e) the definition of ***financial year***;

(f) the definition of ***half‑year***;

(g) the definition of ***individual auditor***;

(h) the definition of ***officer of a registrable superannuation entity***;

(i) the definition of ***play a significant role***;

(j) the definition of ***RSE audit company***;

(k) the definition of ***RSE audit firm***;

(l) the definition of ***RSE remuneration report***;

(m) the definition of ***sub‑fund***.

21 Section 9

Insert:

***RSE audit company*** for a registrable superannuation entity means a company, where an individual auditor of the entity is a director or employee of the company.

***RSE audit firm*** for a registrable superannuation entity means a firm, where an individual auditor of the entity is a member or employee of the firm.

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

***RSE remuneration report*** means the section of the directors’ report for a financial year for a registrable superannuation entity that is included under subsection 300C(1).

***sub‑fund*** of a registrable superannuation entity, when used in Chapter 2M, means a segment of the registrable superannuation entity that has the following characteristics:

(a) the segment has separately identifiable assets and separately identifiable beneficiaries;

(b) the interest of each beneficiary of the segment is determined by reference only to the conditions governing that segment.

22 Subsection 285(1) (heading)

After “*registered schemes*”, insert “*, registrable superannuation entities*”.

23 Subsection 285(1)

After “registered schemes”, insert “, registrable superannuation entities”.

24 Subsection 285(1)

After “disclosing entities” (second occurring), insert “and registrable superannuation entities”.

25 Subsection 285(1) (table heading)

After “**registered schemes**”, insert “**, registrable superannuation entities**”.

26 Subsection 285(1) (table item 2, column headed “comments”)

After “(section 300A)”, insert “and registrable superannuation entities (section 300C)”.

27 Subsection 285(1) (table item 4, column headed “sections”)

After “s. 314”, insert “, 314AA”.

28 Subsection 285(1) (table item 4, column headed “comments”)

After “company limited by guarantee”, insert “or a registrable superannuation entity”.

29 Subsection 285(1) (table item 4, column headed “comments”)

Before “For deadline”, insert “For registrable superannuation entities, see section 314AA.”.

30 After subsection 285(3)

Insert:

Application to registrable superannuation entities

(3A) For the purposes of applying this Chapter to a registrable superannuation entity, the RSE licensee for the entity is responsible for the performance of obligations in respect of the entity (see section 345AAA).

31 Subsection 286(1)

After “registered scheme”, insert “, registrable superannuation entity”.

32 Subsection 289(1)

After “registered scheme”, insert “, registrable superannuation entity”.

33 Subsection 289(2)

After “registered scheme”, insert “, registrable superannuation entity”.

34 Subsection 289(3)

After “registered scheme”, insert “, registrable superannuation entity”.

35 Subsection 290(1)

After “registered scheme”, insert “, registrable superannuation entity”.

36 After paragraph 292(1)(d)

Insert:

; and (e) all registrable superannuation entities.

37 At the end of section 292

Add:

Registrable superannuation entities

(4) The regulations may provide that a financial report prepared by a registrable superannuation entity must comply with prescribed requirements.

(5) The regulations may provide that a directors’ report prepared by a registrable superannuation entity must comply with prescribed requirements.

38 After paragraph 295(1)(b)

Insert:

(ba) in the case of a registrable superannuation entity that had one or more sub‑funds during the whole or a part of the year:

(i) the financial statements for the year for each of those sub‑funds; and

(ii) the notes to those financial statements; and

39 Subsection 295(2)

After “registered scheme” (wherever occurring), insert “, registrable superannuation entity”.

40 Paragraphs 295(4)(c) and (ca)

After “registered scheme”, insert “, registrable superannuation entity”.

41 Paragraph 297(a)

After “registered scheme”, insert “, registrable superannuation entity”.

42 Subsection 298(1)

After “registered scheme”, insert “, registrable superannuation entity”.

43 Paragraph 298(1AA)(b)

Omit “and 300A”, substitute “, 300A and 300C”.

44 Paragraph 299(2)(a)

After “registered scheme”, insert “, registrable superannuation entity”.

45 Subsection 299(3)

After “registered scheme” (wherever occurring), insert “, registrable superannuation entity”.

46 Subsection 300(1)

After “year must”, insert “(in the case of a company, registered scheme or disclosing entity)”.

47 Paragraph 300(3)(b)

After “registered scheme”, insert “, registrable superannuation entity”.

48 Subsection 300(11B)

After “registered scheme”, insert “, registrable superannuation entity”.

49 After section 300B

Insert:

300C Annual directors’ report—registrable superannuation entities

Remuneration

(1) The directors’ report for a financial year for a registrable superannuation entity must also include (in a separate and clearly identified section of the report):

(a) the prescribed details in relation to the remuneration of each member of the key management personnel for the registrable superannuation entity; and

(b) such other matters (if any) relating to such remuneration as are prescribed by the regulations.

(2) The material referred to in subsection (1) must be included in the directors’ report under the heading “Remuneration report”.

(3) Without limiting paragraph (1)(a), the regulations may:

(a) provide that the value of an element of remuneration is to be determined, for the purposes of this section, in a particular way or by reference to a particular standard; and

(b) provide that details to be given of an element of remuneration must relate to the remuneration provided in:

(i) the financial year to which the directors’ report relates; and

(ii) the earlier financial years specified in the regulations.

Non‑audit services and auditor independence

(4) The directors’ report for a registrable superannuation entity for a financial year must also include the following in relation to each auditor:

(a) details of the amounts paid or payable to the auditor for non‑audit services provided, during the year, by the auditor (or by another person or firm on the auditor’s behalf);

(b) a statement whether the directors are satisfied that the provision of non‑audit services, during the year, by the auditor (or by another person or firm on the auditor’s behalf) is compatible with the general standard of independence for auditors imposed by this Act;

(c) a statement of the directors’ reasons for being satisfied that the provision of those non‑audit services, during the year, by the auditor (or by another person or firm on the auditor’s behalf) did not compromise the auditor independence requirements of this Act.

(5) The details and statements mentioned in subsection (4) must be included in the directors’ report under the heading “Non‑audit services”.

(6) For the purposes of paragraph (4)(a), the details of amounts paid or payable to an auditor for non‑audit services provided, during the year, by the auditor (or by another person or firm on the auditor’s behalf) are:

(a) the name of the auditor; and

(b) the dollar amount that:

(i) the registrable superannuation entity; or

(ii) the RSE licensee for the registrable superannuation entity;

paid, or is liable to pay, for each of those non‑audit services.

(7) The statements under paragraphs (4)(b) and (c) must be made in accordance with advice provided by the registrable superannuation entity’s audit committee.

(8) For the purposes of subsection (7), a statement is taken to be made in accordance with advice provided by the registrable superannuation entity’s audit committee only if:

(a) the statement is consistent with that advice and does not contain any material omission of material included in that advice; and

(b) the advice is endorsed by a resolution passed by the members of the audit committee; and

(c) the advice is written advice signed by a member of the audit committee on behalf of the audit committee and given to the directors.

Audit

(9) If an individual plays a significant role in the audit of a registrable superannuation entity for a financial year in reliance on an approval granted under section 324DAA, the directors’ report for the entity for the financial year must also include details of, and reasons for, the approval.

(10) If a registered company auditor plays a significant role in the audit of a registrable superannuation entity for a financial year in reliance on a declaration made under section 342A, the directors’ report for the entity for the financial year must also include details of the declaration.

50 Subsection 301(1)

After “registered scheme”, insert “, registrable superannuation entity”.

51 At the end of section 301

Add:

Registrable superannuation entities

(6) The following reports relating to:

(a) a registrable superannuation entity; and

(b) a financial year;

may be set out in the same document:

(c) an auditor’s report obtained by the entity under subsection (1);

(d) an auditor’s report provided in relation to the entity under a provision of the RSE licensee law.

52 After section 302

Insert:

302A Registrable superannuation entity must prepare half‑year financial report and directors’ report

A registrable superannuation entity must:

(a) prepare a financial report and directors’ report for each half‑year; and

(b) have the financial report audited or reviewed in accordance with Division 3 and obtain an auditor’s report; and

(c) lodge the financial report, the directors’ report and the auditor’s report on the financial report with ASIC.

Note: See section 320 for the time for lodgment with ASIC.

53 After paragraph 303(1)(b)

Insert:

(ba) in the case of a registrable superannuation entity that had one or more sub‑funds during the half‑year:

(i) the financial statements for the half‑year for each of those sub‑funds; and

(ii) the notes to those financial statements; and

54 Paragraph 303(2)(a)

After “disclosing entity”, insert “or registrable superannuation entity”.

55 Paragraph 303(2)(b)

After “disclosing entity”, insert “or registrable superannuation entity”.

56 Paragraph 303(4)(c)

After “disclosing entity”, insert “or registrable superannuation entity”.

57 Paragraph 305(a)

After “disclosing entity”, insert “or registrable superannuation entity”.

58 Subsection 306(1)

After “disclosing entity”, insert “or registrable superannuation entity”.

59 Paragraph 306(1)(b)

After “disclosing entity”, insert “or registrable superannuation entity”.

60 Paragraphs 307(c) and (d)

After “registered scheme”, insert “, registrable superannuation entity”.

61 After subsection 307B(1)

Insert:

(1A) Subsection (1) does not require an individual auditor of a registrable superannuation entity to retain audit working papers if:

(a) when the individual auditor conducted the audit or review to which the audit working papers relate, the individual auditor was:

(i) a director or employee of an RSE audit company; or

(ii) a member or employee of an RSE audit firm; and

(b) the individual auditor has ceased to be:

(i) a director or employee of the RSE audit company; or

(ii) a member or employee of the RSE audit firm.

62 After subsection 307B(2)

Insert:

Contravention by RSE audit company etc.

(2A) A company contravenes this subsection if:

(a) when an individual auditor of a registrable superannuation entity was a director or employee of the company, the individual auditor conducted:

(i) an audit or review of the financial report of the entity for a financial year; or

(ii) an audit or review of the financial report of the entity for a half‑year; and

(b) the company does not retain all audit working papers prepared by or for, or considered or used by, the individual auditor in accordance with the requirements of the auditing standards until:

(i) the end of 7 years after the date of the audit report prepared in relation to the audit or review to which the audit working papers relate; or

(ii) an earlier date determined for the audit working papers by ASIC under subsection (7A).

(2B) An offence based on subsection (2A) is an offence of strict liability.

63 After subsection 307B(5)

Insert:

Contravention by member of RSE audit firm etc.

(5A) A person (the ***defendant***) contravenes this subsection if:

(a) when an individual auditor of a registrable superannuation entity was a member or employee of a firm, the individual auditor conducted:

(i) an audit or review of the financial report of the registrable superannuation entity for a financial year; or

(ii) an audit or review of the financial report of the registrable superannuation entity for a half‑year; and

(b) the firm fails, at a particular time, to retain all audit working papers prepared by or for, or considered or used by, the individual auditor in accordance with the requirements of the auditing standards until:

(i) the end of 7 years after the date of the audit report prepared in relation to the audit or review to which the documents relate; or

(ii) an earlier date determined by ASIC for the audit working papers under subsection (7A); and

(c) the defendant is a member of the firm at that time.

(5B) An offence based on subsection (5A) is an offence of strict liability.

Note: Subsection (5C) provides a defence.

(5C) A member of a firm does not commit an offence at a particular time because of a contravention of subsection (5A) if the member either:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (5A); or

(b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

64 After subsection 307B(7)

Insert:

(7A) ASIC may, on application by a person, determine, in writing, an earlier date for the audit working papers for the purposes of paragraphs (2A)(b) or (5A)(b) if:

(a) in the case of paragraph (2A)(b)—the relevant company is wound up; or

(b) in the case of paragraph (5A)(b)—the relevant firm is dissolved (otherwise than simply as part of a reconstitution of the firm because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or members).

(7B) In deciding whether to make a determination under subsection (7A), ASIC must have regard to:

(a) whether ASIC is inquiring into or investigating any matters in respect of:

(i) the auditor; or

(ii) the registrable superannuation entity for the audit to which the documents relate; and

(b) whether the professional accounting bodies have any investigations or disciplinary action pending in relation to the auditor; and

(c) whether civil or criminal proceedings in relation to:

(i) the conduct of the audit; or

(ii) the contents of the financial report to which the audit working papers relate;

have been, or are about to be, commenced; and

(d) any other relevant matter.

65 Subsection 307C(1)

After “registered scheme”, insert “, registrable superannuation entity”.

66 Subparagraph 307C(5)(a)(i)

After “registered scheme”, insert “, registrable superannuation entity”.

67 Paragraph 307C(5A)(a)

After “registered scheme”, insert “, registrable superannuation entity”.

68 Paragraph 307C(5B)(a)

Omit “or 324CG(2)”, substitute “, 324CFA(7), 324CG(2) or 324CGA(4)”.

69 Paragraph 307C(5B)(b)

Omit “or 324CG(4)”, substitute “, 324CFA(9), 324CG(4) or 324CGA(6)”.

70 After subsection 308(3C)

Insert:

(3D) If the directors’ report for the financial year includes an RSE remuneration report, the auditor must also report to members on whether the auditor is of the opinion that the remuneration report complies with section 300C. If not of that opinion, the auditor’s report must say why.

71 Subsection 308(5)

After “(3C)”, insert “, (3D)”.

72 Section 310

Before “The auditor”, insert “(1)”.

73 Section 310

Omit “A request”, substitute “A requirement”.

74 At the end of section 310

Add:

(2) The auditor:

(a) has a right of access at all reasonable times to the books of a registrable superannuation entity; and

(b) may, by written notice, require an officer of a registrable superannuation entity to:

(i) give the auditor information, explanations or other assistance for the purposes of the audit or review; and

(ii) do so within 14 days after the notice is given.

A requirement under paragraph (b) must be a reasonable one.

75 Subsection 311(1)

After “an audit”, insert “(other than an audit of a registrable superannuation entity)”.

76 After subsection 311(1)

Insert:

(1A) An individual auditor conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the auditor suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(b) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor forms that suspicion.

(1B) An individual auditor commits an offence if the auditor contravenes subsection (1A).

(1C) An individual auditor commits an offence of strict liability if the auditor contravenes subsection (1A).

77 After subsection 311(2)

Insert:

Contravention by member of RSE audit firm

(2A) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor is engaged in the conduct of an audit of the entity at a particular time; and

(c) the defendant is a member of the RSE audit firm at that time; and

(d) the defendant suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(e) the defendant does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the defendant forms that suspicion.

Contravention by director of RSE audit company

(2B) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor is engaged in the conduct of an audit of the entity at a particular time; and

(c) the defendant is a director of the RSE audit company at that time; and

(d) the defendant is either:

(i) a professional member of the audit team conducting the audit; or

(ii) the review auditor for the audit; and

(e) the defendant suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(f) the defendant does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the defendant forms that suspicion.

78 Paragraph 312(1)(b)

Omit “section 310”, substitute “subsection 310(1)”.

79 At the end of section 312

(3) An officer of a registrable superannuation entity must:

(a) allow the auditor access to the books of the entity; and

(b) give the auditor any information, explanation or assistance required under subsection 310(2).

Note: Books include registers and documents generally (not only the accounting “books”): see the definition of ***books*** in section 9.

(4) An offence based on subsection (3) is an offence of strict liability.

80 After section 314

Insert:

314AA Annual financial reporting by registrable superannuation entities to members

(1) A registrable superannuation entity must report to members for a financial year by providing all of the following reports:

(a) the financial report for the year;

(b) the directors’ report for the year (see sections 298, 299 and 300C);

(c) the auditor’s report on the financial report.

(2) A registrable superannuation entity must provide the reports for a financial year by making a copy of the reports publicly available on the entity’s website in accordance with the regulations.

(3) An offence based on subsection (1) is an offence of strict liability.

81 After subsection 315(3)

Insert:

Registrable superannuation entities

(3AA) A registrable superannuation entity must report to members under section 314AA within 3 months after the end of the financial year.

82 Subsection 319(1)

After “registered scheme”, insert “, registrable superannuation entity”.

83 Subsection 319(1)

Omit “This”, substitute “In the case of a company, registered scheme or disclosing entity, this”.

84 Paragraph 319(3)(a)

After “registered scheme”, insert “, registrable superannuation entity”.

85 At the end of section 319

Add:

Registrable superannuation entities

(4) The regulations may require that the lodgment of a report by a registrable superannuation entity under subsection (1) must be in a prescribed manner.

(5) A manner prescribed for the purposes of subsection (4) may involve electronic communication.

(6) Subsection (5) does not limit subsection (4).

(7) Section 352 does not apply to the lodgment of a report if regulations are in force under subsection (4) of this section in relation to the lodgment of the report.

86 Subsection 320(1)

After “disclosing entity”, insert “or registrable superannuation entity”.

87 At the end of section 320

Add:

Registrable superannuation entities

(3) The regulations may require that the lodgment of a report by a registrable superannuation entity under subsection (1) must be in a prescribed manner.

(4) A manner prescribed for the purposes of subsection (3) may involve electronic communication.

(5) Subsection (4) does not limit subsection (3).

(6) Section 352 does not apply to the lodgment of a report if regulations are in force under subsection (3) of this section in relation to the lodgment of the report.

88 Subsection 321(1)

After “registered scheme”, insert “, registrable superannuation entity”.

89 Subsection 322(1) (heading)

After “*registered schemes*”, insert “*, registrable superannuation entities*”.

90 Subsection 322(1)

After “registered scheme”, insert “, registrable superannuation entity”.

91 After subsection 322(2)

Insert:

Registrable superannuation entities must publish amended report on website

(2A) If:

(a) a financial report or directors’ report for a financial year relates to a registrable superannuation entity; and

(b) the report is amended after it is lodged with ASIC;

the entity must:

(c) make both of the following publicly available on the entity’s website in accordance with the regulations:

(i) a copy of the amended report;

(ii) a description of the nature of the amendment; and

(d) do so within 14 days after the amendment.

92 Subsection 322(3)

Omit “or (2)”, substitute “, (2) or (2A)”.

93 Subsection 323(1)

After “registered scheme” (wherever occurring), insert “, registrable superannuation entity”.

94 Subsection 323A(2)

After “registered scheme”, insert “, registrable superannuation entity”.

95 Subsection 323B(1)

After “registered scheme”, insert “, registrable superannuation entity”.

96 Section 323C

After “registered scheme”, insert “, registrable superannuation entity”.

97 After section 323D

Insert:

323DAAA Financial years and half‑years for registrable superannuation entities

(1) The financial year for a registrable superannuation entity is the entity’s year of income (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

(2) A half‑year for a registrable superannuation entity is the first 6 months of a financial year. The directors may determine that the half‑year is to be shorter or longer (but not by more than 7 days).

Synchronisation of financial years where consolidated financial statements are required

(3) A registrable superannuation entity that has to prepare consolidated financial statements must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years. It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

(4) An offence based on subsection (3) is an offence of strict liability.

(5) To facilitate this synchronisation, the financial year for a controlled entity may be extended or shortened. The extended financial year cannot be longer than 18 months.

98 Division 1 of Part 2M.4 (heading)

Omit “**or registered scheme**”, substitute “**, registered scheme or registrable superannuation entity**”.

99 Section 324AA

Before “Subject to this Part”, insert “(1)”.

100 At the end of section 324AA

Add:

(2) Subject to this Part, an individual may be appointed as auditor for a registrable superannuation entity for the purposes of this Chapter. The entity may only have one auditor.

Note: In addition to audit requirements under this Chapter, a registrable superannuation entity has audit requirements under the RSE licensee law. Subsection 35AC(7) of the *Superannuation Industry (Supervision) Act 1993* provides that the RSE licensee for a registrable superannuation entity must ensure that the auditor of the entity for the purposes of the RSE licensee law is the individual who is the auditor of the entity for the purposes of this Chapter.

101 Section 324AE

Before “If an individual auditor”, insert “(1)”.

102 At the end of section 324AE

Add:

(2) If an individual auditor conducts an audit of a registrable superannuation entity, the ***professional members of the audit team*** are:

(a) any registered company auditor who participates in the conduct of the audit; and

(b) any other person who participates in the conduct of the audit and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:

(i) accounting standards; or

(ii) auditing standards; or

(iii) the provisions of this Act dealing with financial reporting and the conduct of audits; and

(c) any other person who is in a position to directly influence the outcome of the audit because of the role they play in the design, planning, management, supervision or oversight of the audit; and

(d) any person who provides, or takes part in providing, quality control for the audit.

103 At the end of section 324AF

Add:

(3) If an individual auditor conducts an audit of a registrable superannuation entity, the ***review auditor*** for the audit is the registered company auditor (if any) who is primarily responsible to the individual auditor for reviewing the conduct of the audit.

104 Subparagraphs 324BA(a)(i), (ii) and (iii)

Omit “or registered scheme”, substitute “, registered scheme or registrable superannuation entity”.

105 After Division 2 of Part 2M.4

Insert:

Division 2A—Eligibility requirements for auditors of registrable superannuation entities

324BF Eligibility requirements for auditors of registrable superannuation entities

An individual contravenes this section if:

(a) the individual:

(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and

(b) the person:

(i) does not meet the eligibility criteria for auditors of registrable superannuation entities (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) set out in the prudential standards (within the meaning of that Act); or

(ii) has been disqualified from being, or acting as, an auditor of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) under section 130D of that Act; or

(iii) is a member or employee of a firm that is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*; or

(iv) is a director or employee of a company that is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*.

106 Subsection 324CA(1A) (note 2)

Omit “or a registered scheme”, substitute “, a registered scheme or a registrable superannuation entity”.

107 Subsection 324CA(1A) (at the end of note 2)

Add:

; or (d) subsection 331AH(3) (registrable superannuation entity).

108 After section 324CA

Insert:

324CAA General requirements for auditor independence—RSE audit company

Contravention by RSE audit company

(1) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) at that time, the RSE audit company is aware that the conflict of interest situation exists; and

(e) the RSE audit company does not, as soon as possible after it becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***,see section 324CD.

RSE audit company to notify ASIC

(2) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity while the individual auditor is the auditor of the registrable superannuation entity; and

(d) on a particular day (the ***start day***), the RSE audit company becomes aware that the conflict of interest situation exists; and

(e) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) the RSE audit company has not informed ASIC in writing that the conflict of interest situation exists.

Note: For ***conflict of interest situation***,see section 324CD.

(3) An RSE audit company is not excused from informing ASIC under subsection (2) that a conflict of interest situation exists on the ground that the information might tend to incriminate the company.

(4) If an RSE audit company gives ASIC a notice under paragraph (2)(e), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the registrable superannuation entity concerned.

Conflict of interest situation of which RSE audit company is not aware

(5) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) at that time, the RSE audit company is not aware that the conflict of interest situation exists; and

(e) the RSE audit company would have been aware of the existence of the conflict of interest situation at that time if the RSE audit company had in place a quality control system reasonably capable of making the RSE audit company aware of the existence of such a conflict of interest situation.

Note: For ***conflict of interest situation***, see section 324CD.

(6) For the purposes of an offence based on subsection (5), strict liability applies to the physical element of the offence specified in paragraph (5)(c).

Note: Subsection (7) provides a defence.

(7) An RSE audit company does not commit an offence because of a contravention of subsection (5) in relation to audit activity engaged in by a director or employee of the RSE audit company at a particular time if the RSE audit company has reasonable grounds to believe that the RSE audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit company) that the RSE audit company and the RSE audit company’s directors and employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(8) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

109 After section 324CB

Insert:

324CBA General requirements for auditor independence—member of RSE audit firm

Contravention by member of RSE audit firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the defendant is a member of the RSE audit firm at that time; and

(e) the defendant is or becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

Member of RSE audit firm to notify ASIC

(2) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity while the individual auditor is the auditor of the registrable superannuation entity; and

(d) the defendant is a member of the RSE audit firm at a time when the conflict of interest situation exists; and

(e) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) ASIC has not been informed in writing by the defendant, by another member of the RSE audit firm or by someone else on behalf of the RSE audit firm that the conflict of interest situation exists.

Note: For ***conflict of interest situation***, see section 324CD.

(3) A person is not excused from informing ASIC under subsection (2) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person.

(4) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(5) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to informing ASIC under subsection (2) that a conflict of interest situation exists, the individual is not excused from informing ASIC under that provision on that ground.

(6) If ASIC is given a notice under paragraph (2)(f), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the registrable superannuation entity.

Conflict of interest situation of which another member of RSE audit firm is aware

(7) A person contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the person is a member of the RSE audit firm at that time; and

(e) at that time, another member of the RSE audit firm is aware that the conflict of interest situation exists; and

(f) the RSE audit firm does not, as soon as possible after the member referred to in paragraph (e) becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

(8) For the purposes of an offence based on subsection (7), strict liability applies to the physical elements of the offence specified in paragraphs (7)(a), (b), (c), (e) and (f).

Note: Subsection (11) provides a defence.

Conflict of interest situation of which members are not aware

(9) A person contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the person is a member of the RSE audit firm at that time; and

(e) at that time, none of the members of the RSE audit firm are aware that the conflict of interest situation exists; and

(f) a member of the RSE audit firm would have been aware of the existence of the conflict of interest situation if the RSE audit firm had in place a quality control system reasonably capable of making the RSE audit firm aware of the existence of such a conflict of interest situation.

Note: For ***conflict of interest situation***, see section 324CD.

(10) For the purposes of an offence based on subsection (9), strict liability applies to the physical elements of the offence specified in paragraphs (9)(a), (b), (c), (e) and (f).

Note: Subsection (11) provides a defence.

Defence

(11) A person does not commit an offence because of a contravention of subsection (7) or (9) in relation to audit activity engaged in by a member or employee of an RSE audit firm at a particular time if the person has reasonable grounds to believe that the RSE audit firm had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit firm) that the RSE audit firm and its employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(12) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

110 After section 324CC

Insert:

324CCA General requirements for auditor independence—director of RSE audit company

Contravention by director of RSE audit company

(1) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the defendant is a director of the RSE audit company at that time; and

(e) the defendant is or becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***,see section 324CD.

Director of RSE audit company to notify ASIC

(2) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity while the individual auditor is the auditor of the registrable superannuation entity; and

(d) the defendant is a director of the RSE audit company at a time when the conflict of interest situation exists; and

(e) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) ASIC has not been informed in writing by the defendant, by another director of the RSE audit company or by the RSE audit company that the conflict of interest situation exists.

Note: For ***conflict of interest situation***,see section 324CD.

(3) A person is not excused from informing ASIC under subsection (2) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person.

(4) However, if the person is an individual:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(5) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to informing ASIC under subsection (2) that a conflict of interest situation exists, the individual is not excused from informing ASIC under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

(6) If ASIC is given a notice under paragraph (2)(f), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the registrable superannuation entity.

Conflict of interest situation of which another director of RSE audit company is aware

(7) A person contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the person is a director of the RSE audit company at that time; and

(e) at that time, another director of the RSE audit company is aware that the conflict of interest situation exists; and

(f) the RSE audit company does not, as soon as possible after the director referred to in paragraph (e) becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

(8) For the purposes of an offence based on subsection (7), strict liability applies to the physical elements of the offence specified in paragraphs (7)(a), (b), (c), (e) and (f).

Note: Subsection (11) provides a defence.

Conflict of interest situation of which directors of RSE audit company are not aware

(9) A person contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a conflict of interest situation exists in relation to the registrable superannuation entity at that time; and

(d) the person is a director of the RSE audit company at that time; and

(e) at that time, none of the directors of the RSE audit company are aware that the conflict of interest situation exists; and

(f) a director of the RSE audit company would have been aware of the existence of the conflict of interest situation if the RSE audit company had in place a quality control system reasonably capable of making the RSE audit company aware of the existence of such a conflict of interest situation.

Note: For ***conflict of interest situation***, see section 324CD.

(10) For the purposes of an offence based on subsection (9), strict liability applies to the physical elements of the offence specified in paragraphs (9)(a), (b), (c) and (e).

Note: Subsection (11) provides a defence.

Defence

(11) A person does not commit an offence because of a contravention of subsection (7) or (9) in relation to audit activity engaged in by an RSE audit company at a particular time if the person has reasonable grounds to believe that the RSE audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit company) that the RSE audit company and its employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(12) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

111 Subsection 324CD(1)

Omit “sections 324CA, 324CB and 324CC”, substitute “this Subdivision”.

112 After paragraph 324CD(2)(c)

Insert:

; or (d) if:

(i) the audited body is a registrable superannuation entity; and

(ii) a member or employee of an RSE audit firm engages in audit activity in relation to the entity;

the RSE audit firm or any current or former member of the RSE audit firm; or

(e) if:

(i) the audited body is a registrable superannuation entity; and

(ii) a director or employee of an RSE audit company engages in audit activity in relation to the entity;

the RSE audit company, any current or former director of the RSE audit company or any person currently or formerly involved in the management of the RSE audit company;

113 Subsection 324CD(2) (at the end of the table)

Add:

|  |  |  |
| --- | --- | --- |
| 4 | a registrable superannuation entity | the RSE licensee for the registrable superannuation entity, if the RSE licensee is a body corporate or a constitutional corporation (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or  a current or former director of the registrable superannuation entity; or  a person currently or formerly involved in the management of the registrable superannuation entity; or  a person currently or formerly involved in the management of the RSE licensee for the registrable superannuation entity; or  a connected entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the RSE licensee for the registrable superannuation entity. |

114 Subsection 324CE(1A) (note)

Omit “or a registered scheme”, substitute “, a registered scheme or a registrable superannuation entity”.

115 Subsection 324CE(1A) (at the end of the note)

Add:

; or (d) subsection 331AH(3) (registrable superannuation entity).

116 After section 324CF

Insert:

324CFA Auditor independence—specific requirements for RSE audit firm

Contraventions by members of RSE audit firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (10) of this section; and

(d) the defendant is a member of the RSE audit firm at that time; and

(e) the defendant is or becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take all reasonable steps to ensure that the individual auditor does not continue to engage in audit activity in those circumstances.

Member of RSE audit firm to notify ASIC

(2) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity; and

(c) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (10) of this section while the individual auditor is the auditor of the registrable superannuation entity; and

(d) the defendant is a member of the RSE audit firm at a time when the circumstances referred to in paragraph (c) exist; and

(e) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (c) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another member of the RSE audit firm or by someone else on behalf of the RSE audit firm.

(3) A person is not excused from informing ASIC under subsection (2) that the circumstances referred to in paragraph (2)(c) exist on the ground that the information might tend to incriminate the person.

(4) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(5) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to informing ASIC under subsection (2) that the circumstances referred to in paragraph (2)(c) exist, the individual is not excused from informing ASIC under that provision on that ground.

(6) If ASIC is given a notice under paragraph (2)(f), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the registrable superannuation entity.

Contravention of independence requirements by members of RSE audit firm

(7) A person (the ***defendant***) contravenes this subsection if:

(a) a member or employee of an RSE audit firm is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (10) of this section; and

(d) the defendant is a member of the RSE audit firm at that time.

(8) For the purposes of an offence based on subsection (7), strict liability applies to the physical elements of the offence specified in paragraphs (7)(a), (b) and (c).

Note: Subsection (9) provides a defence.

(9) A person does not commit an offence because of a contravention of subsection (7) in relation to audit activity engaged in by a member or employee of an RSE audit firm at a particular time if the person has reasonable grounds to believe that the RSE audit firm had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit firm) that the RSE audit firm and its employees complied with the requirements of this Subdivision.

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

People and entities covered

(10) The following table sets out:

(a) the persons and entities covered by this subsection in relation to audit activity engaged in by a member or employee of an RSE audit firm; and

(b) the items of the table in subsection 324CH(1) that are the relevant items for each of those persons and entities.

| RSE audit firm | | |
| --- | --- | --- |
| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
| 1 | the RSE audit firm | 4  7  10 to 19 |
| 2 | a service company or trust acting for, or on behalf of, the RSE audit firm, or another entity performing a similar function | 4  7  10 to 19 |
| 3 | a member of the RSE audit firm | 1 to 7  9  15 |
| 4 | a professional member of the audit team conducting the audit of the registrable superannuation entity | 1 to 6  8 to 19 |
| 5 | an immediate family member of a professional member of the audit team conducting the audit of the registrable superannuation entity | 1 and 2  10 to 19 |
| 6 | a person who:  (a) is a non‑audit services provider; and  (b) does not satisfy the maximum hours test in subsection (11) | 10 to 12 |
| 7 | an immediate family member of a person who:  (a) is a non‑audit services provider; and  (b) does not satisfy the maximum hours test in subsection (11) | 10 to 12 |
| 8 | an entity that the RSE audit firm (or a service company or trust acting for, or on behalf of, the RSE audit firm, or another entity performing a similar function) controls | 15 |
| 9 | a body corporate in which the RSE audit firm (or a service company or trust acting for, or on behalf of, the RSE audit firm, or another entity performing a similar function) has a substantial holding | 15 |
| 10 | an entity that a member of the RSE audit firm controls or a body corporate in which a member of the RSE audit firm has a substantial holding | 15 |
| 11 | a person who:  (a) is a former member of the RSE audit firm; and  (b) does not satisfy the independence test in subsection (12) | 1 and 2 |
| 12 | a person who:  (a) is a former professional employee of the RSE audit firm; and  (b) does not satisfy the independence test in subsection (12) | 1 and 2 |

Maximum hours test

(11) A non‑audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the registrable superannuation entity on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

(b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the registrable superannuation entity on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1) or (7), the prosecution must prove that the non‑audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(12) A person satisfies the independence test in this subsection in relation to a firm if the person:

(a) does not influence the operations or financial policies of the accounting and audit practice conducted by the firm; and

(b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the firm; and

(c) does not have any rights against the firm, or the members of the firm, in relation to the accounting and audit practice conducted by the firm in relation to the termination of, or the value of, the person’s former partnership interest in the firm; and

(d) has no financial arrangements with the firm in relation to the accounting and audit practice conducted by the firm, other than:

(i) an arrangement providing for regular payments of a fixed pre‑determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; and

(e) without limiting paragraph (d), has no financial arrangement with the firm to receive a commission or similar payment in relation to business generated by the person for the accounting and audit practice conducted by the firm.

In a prosecution for an offence based on subsection (1) or (7), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the firm.

(13) In applying subsection (12), disregard any rights that the person has against the firm, or the members of the firm, by way of an indemnity for, or contribution in relation to, liabilities incurred by the person when the person was a member or employee of the firm.

Meaning of holding by firm in body corporate

(14) For the purposes of item 9 in the table in subsection (10), a firm is taken to have a holding in a body corporate if the holding is one of the firm’s partnership assets.

117 After section 324CG

Insert:

324CGA Auditor independence—specific requirements for RSE audit company

Specific independence requirements for RSE audit company

(1) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (16) of this section; and

(d) the RSE audit company is or becomes aware of the circumstances referred to in paragraph (c); and

(e) the RSE audit company does not, as soon as possible after the RSE audit company becomes aware of those circumstances, take all reasonable steps to ensure that the individual auditor does not continue to engage in audit activity in those circumstances.

RSE audit company to notify ASIC

(2) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (16) of this section while the individual auditor is the auditor of the registrable superannuation entity; and

(d) on a particular day (the ***start day***), the RSE audit company becomes aware of the circumstances referred to in paragraph (c); and

(e) at the end of the period of 7 days from the start day:

(i) those circumstances remain in existence; and

(ii) the RSE audit company has not informed ASIC in writing of those circumstances.

(3) If the RSE audit company gives ASIC a notice under paragraph (2)(e), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the registrable superannuation entity.

Strict liability contravention of specific independence requirements by RSE audit company

(4) An RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (16) of this section.

(5) For the purposes of an offence based on subsection (4), strict liability applies to the physical elements of the offence specified in paragraph (4)(c).

Note: Subsection (6) provides a defence.

(6) An RSE audit company does not commit an offence because of a contravention of subsection (4) in relation to audit activity engaged in by a director or employee of an RSE audit company at a particular time if the RSE audit company has reasonable grounds to believe that the RSE audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit company) that the RSE audit company and the RSE audit company’s employees complied with the requirements of this Subdivision.

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

Contraventions by directors of RSE audit company

(7) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (16) of this section; and

(d) the defendant is a director of the RSE audit company at that time; and

(e) the defendant is or becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take all reasonable steps to ensure that the individual auditor does not continue to engage in audit activity in those circumstances.

Director of RSE audit company to notify ASIC

(8) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity; and

(c) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (16) of this section while the individual auditor is the auditor of the registrable superannuation entity; and

(d) the defendant is a director of the RSE audit company at a time when the circumstances referred to in paragraph (c) exist; and

(e) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (b) and (c); and

(f) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (c) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another director of the company or by the RSE audit company.

(9) A person is not excused from informing ASIC under subsection (8) that the circumstances referred to in paragraph (8)(c) exist on the ground that the information might tend to incriminate the person.

(10) However, if the person is a natural person:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(11) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to informing ASIC under subsection (8) that the circumstances referred to in paragraph (8)(c) exist, the individual is not excused from informing ASIC under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

(12) If ASIC is given a notice under paragraph (8)(f), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the registrable superannuation entity.

Strict liability contravention of specific independence requirements by director of RSE audit company

(13) A person (the ***defendant***) contravenes this subsection if:

(a) a director or employee of an RSE audit company is an individual auditor of a registrable superannuation entity; and

(b) the individual auditor engages in audit activity in relation to the registrable superannuation entity at a particular time; and

(c) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (16) of this section; and

(d) the defendant is a director of the RSE audit company at that time.

(14) For the purposes of an offence based on subsection (13), strict liability applies to the physical elements of the offence specified in paragraphs (13)(a), (b) and (c).

Note: Subsection (15) provides a defence.

(15) A person does not commit an offence because of a contravention of subsection (13) in relation to audit activity engaged in by a director or employee of an RSE audit company at a particular time if the person has reasonable grounds to believe that the RSE audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the RSE audit company) that the RSE audit company and its employees complied with the requirements of this Subdivision.

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

People and entities covered

(16) The following table sets out:

(a) the persons and entities covered by this subsection in relation to audit activity engaged in by a director or employee of an RSE audit company; and

(b) the items of the table in subsection 324CH(1) that are the relevant items for each of those persons and entities.

| RSE audit company | | |
| --- | --- | --- |
| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
| 1 | the RSE audit company | 4  7  10 to 19 |
| 2 | a service company or trust acting for, or on behalf of, the RSE audit company, or another entity performing a similar function | 4  7  10 to 19 |
| 3 | a director or senior manager of the RSE audit company | 1 to 7  9  15 |
| 4 | a professional member of the audit team conducting the audit of the registrable superannuation entity | 1 to 6  8 to 19 |
| 5 | an immediate family member of a professional member of the audit team conducting the audit of the registrable superannuation entity | 1 and 2  10 to 19 |
| 6 | a person who:  (a) is a non‑audit services provider; and  (b) does not satisfy the maximum hours test in subsection (17) | 10 to 12 |
| 7 | an immediate family member of a person who:  (a) is a non‑audit services provider; and  (b) does not satisfy the maximum hours test in subsection (17) | 10 to 12 |
| 8 | an entity that the RSE audit company (or a service company or trust acting for, or on behalf of, the RSE audit company, or another entity performing a similar function) controls | 15 |
| 9 | a body corporate in which the RSE audit company (or a service company or trust acting for, or on behalf of, the RSE audit company, or another entity performing a similar function) has a substantial holding | 15 |
| 10 | an entity that an officer of the RSE audit company controls or a body corporate in which an officer of the RSE audit company has a substantial holding | 16 |
| 11 | a person who:  (a) is a former officer of the RSE audit company; and  (b) does not satisfy the independence test in subsection (18) | 1 and 2 |
| 12 | a person who:  (a) is a former professional employee of the RSE audit company; and  (b) does not satisfy the independence test in subsection (18) | 1 and 2 |

Maximum hours test

(17) A non‑audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the registrable superannuation entity on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

(b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the registrable superannuation entity on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1), (4), (7) or (13), the prosecution must prove that the non‑audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(18) A person satisfies the independence test in this subsection in relation to an RSE audit company if the person:

(a) does not influence the operations or financial policies of the accounting and audit practice conducted by the RSE audit company; and

(b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the RSE audit company; and

(c) does not have any rights against the RSE audit company in relation to the accounting and audit practice conducted by the RSE audit company in relation to the termination of the person’s former position as an officer of the RSE audit company; and

(d) has no financial arrangements with the RSE audit company in relation to the accounting and audit practice conducted by the RSE audit company, other than:

(i) an arrangement providing for regular payments of a fixed pre‑determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the RSE audit company; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the RSE audit company; and

(e) without limiting paragraph (d), has no financial arrangement with the RSE audit company to receive a commission or similar payment in relation to business generated by the person for the accounting and audit practice conducted by the RSE audit company.

In a prosecution for an offence based on subsection (1), (4), (7) or (13), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the RSE audit company.

(19) In applying subsection (18), disregard any rights that the person has against the RSE audit company by way of an indemnity for, or contribution in relation to, liabilities incurred by the person when the person was an officer or employee of the RSE audit company.

118 Subsection 324CH(1)

Omit “sections 324CE, 324CF and 324CG”, substitute “this Subdivision”.

119 After subsection 324CH(2)

Insert:

Applying table if audited body is registrable superannuation entity

(2A) If the audited body is a registrable superannuation entity, apply the table in subsection (1) as if:

(a) references to the audited body in items 1 to 9, and items 15 to 19, in the table were references to the RSE licensee for the registrable superannuation entity; and

(b) references to an interest in the audited body in items 10 to 12 in the table were references to an interest in either:

(i) the registrable superannuation entity; or

(ii) the RSE licensee for the registrable superannuation entity; and

(c) references to an investment in an entity that has a controlling interest in the audited body in items 13 and 14 of the table were references to an investment in an entity that has a controlling interest in the RSE licensee for the registrable superannuation entity.

120 After section 324CI

Insert:

324CIA Special rule for former members of RSE audit firms and former directors of RSE audit companies

A person contravenes this section if:

(a) the person ceases to be:

(i) a member of a firm; or

(ii) a director of a company;

at a particular time (the ***departure time***); and

(b) at any time before the departure time, an individual auditor has engaged in an audit of a registrable superannuation entity; and

(c) the individual auditor of the registrable superannuation entity was:

(i) a member or employee of the firm; or

(ii) a director or employee of the company; and

(d) either:

(i) the person was the individual auditor of the registrable superannuation entity; or

(ii) the person was a professional member of the audit team; and

(e) within the period of 2 years starting on the date the report under section 308 or 309 was made on the latest audit to which paragraphs (b) and (d) apply, the person becomes, or continues to be, an officer of the registrable superannuation entity.

121 After section 324CJ

Insert:

324CJA Special rule for former professional members of RSE audit company

A person contravenes this section if:

(a) the person who is not a director of a company ceases to be a professional employee of the company at a particular time (the ***departure time***); and

(b) at any time before the departure time, an individual auditor has engaged in an audit of a registrable superannuation entity; and

(c) the individual auditor of the registrable superannuation entity was a director or employee of the company; and

(d) either:

(i) the person was the individual auditor or the review auditor of the registrable superannuation entity; or

(ii) the person was a professional member of the audit team; and

(e) within the period of 2 years starting on the date the report under section 308 or 309 was made on the latest audit to which paragraphs (b) and (d) apply, the person becomes, or continues to be, an officer of the registrable superannuation entity.

122 At the end of Subdivision B of Division 3 of Part 2M.4

Add:

324CKA Special rule for multiple former RSE audit firm members and multiple former RSE audit company directors

A person contravenes this section if:

(a) a member or employee of an RSE audit firm, or a director or employee of an RSE audit company, is an individual auditor of a registrable superannuation entity; and

(b) the person has at any time been a member of the RSE audit firm or a director of the RSE audit company; and

(c) the person becomes an officer of the registrable superannuation entity within a period of 5 years after the person ceased (or last ceased) to be a member of the RSE audit firm or a director of the RSE audit company (as the case may be); and

(d) at the time when paragraph (c) is satisfied, another person who is or who also has at any time been a member of the RSE audit firm, or a director of the RSE audit company, at a time when:

(i) a member or employee of the RSE audit firm; or

(ii) a director or employee of the RSE audit company;

undertook an audit of the registrable superannuation entity is also an officer of the registrable superannuation entity.

123 At the end of Subdivision C of Division 3 of Part 2M.4

Add:

324CLA Extended meaning of officer of a registrable superannuation entity

(1) For the purposes of this Division, a person is taken to be an officer of a registrable superannuation entity if:

(a) the person is an officer of:

(i) a related body corporate of the RSE licensee for the registrable superannuation entity; or

(ii) an entity that the RSE licensee for the registrable superannuation entity controls; or

(b) the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of:

(i) a related body corporate of the RSE licensee for the registrable superannuation entity; or

(ii) an entity that the RSE licensee for the registrable superannuation entity controlled at that time.

Note: ***Officer*** of a registrable superannuation entity is defined in section 345AAD. This subsection extends the meaning of that expression for the purposes of this Division.

(2) Paragraph (1)(b) does not apply if ASIC directs that it does not apply in relation to the person in relation to the RSE licensee for the registrable superannuation entity. ASIC may give the direction only if ASIC thinks that it is appropriate to do so in the circumstances of the case.

124 Paragraph 324CM(1)(a)

Omit “or registered scheme”, substitute “, registered scheme or registrable superannuation entity”.

125 Paragraph 324CM(1)(c)

Omit “or scheme”, substitute “, scheme or entity”.

126 At the end of section 324CM

Add:

RSE audit firm

(4) A member of an RSE audit firm (the ***relevant member***) contravenes this subsection if:

(a) a member or employee of the RSE audit firm is appointed auditor of a registrable superannuation entity; and

(b) while the appointment continues, the relevant member brings about a state of affairs; and

(c) a member or employee of the RSE audit firm cannot, while that state of affairs continues, act as auditor of the registrable superannuation entity without a person contravening Division 2 or 3.

RSE audit company

(5) A person who is a director of an RSE audit company contravenes this subsection if:

(a) a director or employee of the RSE audit company is appointed auditor of a registrable superannuation entity; and

(b) while the appointment continues, the person brings about a state of affairs; and

(c) a director or employee of the RSE audit company cannot, while that state of affairs continues, act as auditor of the registrable superannuation entity without contravening Division 2 or 3.

127 Division 5 of Part 2M.4 (at the end of the heading)

Add “**, listed registered schemes and registrable superannuation entities**”.

128 Section 324DA (heading)

Omit “**or listed registered scheme**”, substitute “**, listed registered scheme or registrable superannuation entity**”.

129 Subsection 324DA(1)

Omit “or listed registered scheme”, substitute “, listed registered scheme or registrable superannuation entity”.

130 Subsection 324DA(1)

Omit “or the scheme” (wherever occurring), substitute “, the scheme or the entity”.

131 Subsection 324DA(2)

Omit “or listed registered scheme”, substitute “, listed registered scheme or registrable superannuation entity”.

132 Subsection 324DA(2)

Omit “or scheme”, substitute “, the scheme or the entity”.

133 Subsection 324DA(3)

Omit “or scheme” (wherever occurring), substitute “, scheme or entity”.

134 Subsection 324DAA(1)

Omit “or of a listed registered scheme”, substitute “or of a listed registered scheme or registrable superannuation entity”.

135 Subsection 324DAA(1)

Omit “or scheme”, substitute “, scheme or entity”.

136 Subsection 324DAA(3)

Omit “or scheme”, substitute “, scheme or entity”.

137 Subsection 324DAA(5)

Omit “or scheme”, substitute “, scheme or entity”.

138 Subsection 324DAB(1) (heading)

Omit “*or scheme*”, substitute “*, scheme or entity*”.

139 Subsection 324DAB(1)

Omit “or the responsible entity of a listed registered scheme”, substitute “the responsible entity of a listed registered scheme, or the RSE licensee for a registrable superannuation entity”.

140 Paragraph 324DAB(2)(c)

Omit “or scheme”, substitute “, scheme or entity”.

141 Subparagraph 324DAB(2)(d)(i)

Omit “or scheme”, substitute “, scheme or entity”.

142 At the end of section 324DAB

Add:

(5) The directors of a registrable superannuation entity must not grant an approval under section 324DAA unless the individual to whom the approval relates agrees, in writing, to the approval being granted.

143 Section 324DAC

Omit “or of a listed registered scheme”, substitute “or of a listed registered scheme or registrable superannuation entity”.

144 After paragraph 324DAC(a)

Insert:

(aa) if the approval was granted by the directors of a registrable superannuation entity—give a copy of the resolution to APRA; and

145 Section 324DAC (note)

After “300”, insert “or 300C”.

146 Paragraph 324DB

Omit “or listed registered scheme”, substitute “, listed registered scheme or registrable superannuation entity”.

147 At the end of Part 2M.4

Add:

Division 8—Appointment, removal and fees of auditors of registrable superannuation entities

Subdivision A—Appointment of registrable superannuation entity auditors

331AF Registrable superannuation entity auditor (initial appointment of auditor)

(1) If a registrable superannuation entity is registered under section 29M of the *Superannuation Industry (Supervision) Act 1993* after the commencement of this section, the RSE licensee must appoint an auditor of the entity for the purposes of this Chapter within 1 month after the day on which the entity is registered under that section.

(2) If:

(a) a registrable superannuation entity was registered under section 29M of the *Superannuation Industry (Supervision) Act 1993* immediately before the commencement of this section; and

(b) immediately before the commencement of this section, an individual held an appointment as an auditor of the entity for the purposes of the RSE licensee law;

then:

(c) the RSE licensee is taken to have appointed the individual as an auditor of the entity for the purposes of this Chapter; and

(d) that appointment takes effect at the commencement of this section.

(3) A director of the registrable superannuation entity must take all reasonable steps to secure compliance with subsection (1).

331AG Registrable superannuation entity auditor (appointment to fill vacancy)

(1) If a vacancy occurs in the office of auditor of a registrable superannuation entity, the RSE licensee for the entity must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy.

(2) A director of the registrable superannuation entity must take all reasonable steps to secure compliance with subsection (1).

331AH Registrable superannuation entity auditor (duration of appointment)

(1) An auditor of a registrable superannuation entity holds office until the auditor:

(a) dies; or

(b) is removed, or resigns, from office in accordance with section 331AK; or

(c) ceases to be capable of acting as an auditor because of Division 2, 2A or 5 of this Part; or

(d) ceases to be auditor under subsection (2) or (3).

(2) An individual auditor ceases to be the auditor of a registrable superannuation entity for the purposes of this Chapter if the individual auditor ceases to be the auditor of the entity for the purposes of the RSE licensee law.

(3) An individual auditor ceases to be the auditor of a registrable superannuation entity for the purposes of this Chapter if:

(a) on a particular day (the ***start day***), the individual auditor:

(i) informs ASIC of a conflict of interest situation in relation to the entity under subsection 324CA(1A); or

(ii) informs ASIC of particular circumstances in relation to the entity under subsection 324CE(1A); and

(b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (4)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days, or such longer period as ASIC approves in writing, from the start day.

(4) The ***notification day*** is:

(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).

331AJ ASIC’s power to appoint auditor of a registrable superannuation entity

(1) ASIC may appoint an auditor of a registrable superannuation entity for the purposes of this Chapter if:

(a) the RSE licensee for the entity does not appoint an auditor when required by this Act to do so; and

(b) a member of the entity applies to ASIC in writing for the appointment of an auditor under this section.

(2) ASIC may only appoint an individual as auditor under subsection (1) if the individual consents to being appointed.

(3) If ASIC appoints an individual as auditor under subsection (1), ASIC must:

(a) notify APRA of the appointment; and

(b) do so as soon as practicable after making the appointment.

Subdivision B—Removal and resignation of registrable superannuation entity auditors

331AK Removal and resignation of auditors

(1) The RSE licensee for a registrable superannuation entity may, with ASIC’s consent, remove the auditor of the entity from office.

(2) An auditor of a registrable superannuation entity may, by notice in writing given to the RSE licensee for the entity, resign as auditor of the entity if:

(a) the auditor:

(i) has, by notice in writing given to ASIC, applied for consent to the resignation and stated the reasons for the application; and

(ii) has, at or about the same time as giving the notice to ASIC, given the registrable superannuation entity notice in writing of the application to ASIC; and

(b) ASIC has given its consent.

(3) As soon as practicable after ASIC receives a notice from an auditor under subsection (2), ASIC must notify the auditor, and the registrable superannuation entity, whether it consents to the resignation.

(4) A statement made by an auditor in an application to ASIC under subsection (2) or in answer to an inquiry by ASIC relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) must not be made the ground of a prosecution, action or suit against the auditor.

A certificate by ASIC that the statement was made in the application or in answer to the inquiry by ASIC is prima facie evidence that the statement was so made.

(5) The resignation of an auditor takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which ASIC gives its consent to the resignation; or

(c) on the day (if any) fixed by ASIC for the purpose;

whichever occurs last.

(6) Within 14 days after:

(a) the removal from office of an auditor of a registrable superannuation entity; or

(b) the receipt of a notice of resignation from an auditor of a registrable superannuation entity;

the entity must lodge with ASIC a notice of the removal or resignation in the prescribed form.

(7) If ASIC consents to the removal or the resignation of an auditor of a registrable superannuation entity, ASIC must:

(a) notify APRA of the consent; and

(b) do so as soon as practicable after giving the consent.

Subdivision C—Fees and expenses of auditors

331AL Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a registrable superannuation entity are payable by the RSE licensee for the entity.

148 At the end of subsection 332(1)

Add:

; or (d) an RSE audit firm; or

(e) an RSE audit company.

149 After paragraph 332A(1)(b)

Insert:

(ba) registrable superannuation entities;

150 At the end of section 332A

Add:

Deemed audits

(5) If:

(a) a firm is the RSE audit firm for a registrable superannuation entity; and

(b) an individual auditor is the auditor of the registrable superannuation entity; and

(c) the individual auditor is a member or employee of the RSE audit firm; and

(d) the individual auditor conducted an audit of the registrable superannuation entity;

this Part has effect as if the firm had conducted the audit.

(6) If:

(a) a company is the RSE audit company for a registrable superannuation entity; and

(b) an individual auditor is the auditor of the registrable superannuation entity; and

(c) the individual auditor is a director or employee of the RSE audit company; and

(d) the individual auditor conducted an audit of the registrable superannuation entity;

this Part has effect as if the company had conducted the audit.

151 At the end of subsection 332C(3)

Add:

; and (f) if the auditor is an RSE audit firm—signed by a member of the firm who is a registered company auditor both:

(i) in the firm name; and

(ii) in the member’s own name; and

(g) if the auditor is an RSE audit company:

(i) authorised by a resolution of the directors; and

(ii) signed by a director.

152 At the end of subsection 332D(3)

Add:

; and (f) if the auditor is an RSE audit firm—signed by a member of the firm who is a registered company auditor both:

(i) in the firm name; and

(ii) in the member’s own name; and

(g) if the auditor is an RSE audit company:

(i) authorised by a resolution of the directors; and

(ii) signed by a director.

153 Section 332G (heading)

Omit “**audit**”.

154 Subsection 332G(1)

After “audit firm”, insert “, or an RSE audit firm,”.

155 Subsection 332G(3)

Omit “audit”.

156 Section 340 (heading)

After “**registered schemes**”, insert “**, registrable superannuation entities**”.

157 Subsection 340(1)

After “registered scheme”, insert “, registrable superannuation entity”.

158 Section 341 (heading)

After “**registered schemes**”, insert “**, registrable superannuation entities**”.

159 Subsection 341(1)

After “registered schemes” (wherever occurring), insert “, registrable superannuation entities”.

160 Section 342 (heading)

After “**registered schemes,**”, insert “**, registrable superannuation entities**”.

161 Section 342AA (heading)

After “**audit firms**”, insert “**and RSE audit firms**”.

162 Section 342AA (heading)

After “**audit companies**”, insert “**and RSE audit companies**”.

163 Paragraph 342AA(1)(a)

Omit “the firm”, substitute “an audit firm, or an RSE audit firm,”.

164 At the end of paragraph 342AA(1)(b)

Add:

; or (iv) a member of an RSE audit firm; or

(v) a director of an RSE audit company; or

(vi) a professional employee of an RSE audit company.

165 Subsection 342AB(1)

Omit “or audit companies” (first occurring), substitute “, audit companies, RSE audit firms or RSE audit companies”.

166 Paragraph 342AB(1)(a)

Omit “firms”, substitute “audit firms, or RSE audit firms,”.

167 At the end of paragraph 342AB(1)(b)

Add:

; or (iv) members of RSE audit firms; or

(v) directors of RSE audit companies; or

(vi) professional employees of RSE audit companies.

168 Paragraph 342A(2)(b)

Before “a firm or company”, insert “except in the case of the audit of a registrable superannuation entity or a class of registrable superannuation entities—”.

169 Subsection 342A(4)

After “a firm or company”, insert “(other than audit activities that relate to a registrable superannuation entity or a class of registrable superannuation entities)”.

170 After subsection 342A(5)

Insert:

(5A) If:

(a) the application is made by a registered company auditor in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities; and

(b) the registered company auditor is a member or employee of an RSE audit firm;

the application must include the RSE audit firm’s written consent to the application.

(5B) If:

(a) the application is made by a registered company auditor in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities; and

(b) the registered company auditor is a director or employee of an RSE audit company;

the application must include the RSE audit company’s written consent to the application.

(5C) Before making a declaration in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities, ASIC must consult APRA.

171 Paragraph 342A(6)(b)

Before “a firm or company”, insert “except in the case of the audit of a registrable superannuation entity or a class of registrable superannuation entities—”.

172 At the end of section 342A

Add:

(9) If ASIC makes a declaration in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities, ASIC must:

(a) notify APRA of the declaration; and

(b) do so as soon as practicable after making the declaration.

173 Section 342B (heading)

Omit “**or registered scheme**”, substitute “**, registered scheme or registrable superannuation entity**”.

174 Subsection 342B(1)

Repeal the subsection, substitute:

(1) If a registered company auditor plays a significant role in the audit of a company, registered scheme or registrable superannuation entity in reliance on a declaration by ASIC under section 342A, the auditor must give:

(a) the company; or

(b) the responsible entity for the registered scheme; or

(c) the registrable superannuation entity;

written notice of the declaration.

175 Subsection 342B(2)

Omit “or registered scheme”, substitute “, registered scheme or registrable superannuation entity”.

176 Subsection 344(1)

After “registered scheme”, insert “, registrable superannuation entity”.

177 At the end of Chapter 2M

Add:

Part 2M.8—Additional provisions relating to registrable superannuation entities

345AAA Obligations of registrable superannuation entities

An obligation imposed on a registrable superannuation entity by a provision of this Chapter is to be discharged by the RSE licensee for the entity.

345AAB Notices etc. given to RSE licensees

For the purposes of this Chapter, if a notice, direction or other document is given to the RSE licensee for a registrable superannuation entity, the notice, direction or other document is taken to be given to the entity.

345AAC Directors of registrable superannuation entities

(1) For the purposes of this Chapter, ***director*** of a registrable superannuation entity means:

(a) if the RSE licensee for the entity is a constitutional corporation or a body corporate—a director of the constitutional corporation or body corporate; or

(b) if the RSE licensee for the entity is a group of individual trustees—each of those trustees.

(2) For the purposes of this section, ***constitutional corporation*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

345AAD Officers of registrable superannuation entities

(1) For the purposes of this Chapter, ***officer*** of a registrable superannuation entity means:

(a) if the RSE licensee for the entity is a constitutional corporation or a body corporate—an officer of the constitutional corporation or body corporate; or

(b) if the RSE licensee for the entity is a group of individual trustees:

(i) each of those trustees; or

(ii) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or

(iii) a person who has the capacity to affect significantly the entity’s financial standing.

(2) For the purposes of this section, ***constitutional corporation*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

178 After subsection 1017C(3)

Insert:

Reports prepared by a registrable superannuation entity etc.

(3AA) If the financial product is a superannuation product that relates to a registrable superannuation entity (within the meaning of Chapter 2M):

(a) the issuer must, on request in writing by a person who is a concerned person, give the person:

(i) a copy of the financial report of the entity for a specified financial year; and

(ii) a copy of the directors’ report of the entity for a specified financial year; and

(iii) a copy of the auditor’s report on that financial report; and

(b) the issuer must, on request in writing by a person who is a concerned person, give the person:

(i) a copy of the financial report of the entity for a specified half year; and

(ii) a copy of the directors’ report of the entity for a specified half year; and

(iii) a copy of the auditor’s report on that financial report.

Each copy must be given in accordance with the other requirements of this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

179 Subsections 1017C(4) and (7)

After “this section”, insert “(other than subsection (3AA))”.

180 At the end of section 1311C

Add:

(5) This section does not apply to an offence based on any of the following provisions:

(a) subsection 307B(2A);

(b) subsection 324CAA(1);

(c) subsection 324CAA(2);

(d) subsection 324CAA(5);

(e) subsection 324CGA(1);

(f) subsection 324CGA(2);

(g) subsection 324CGA(4).

Note: See section 4B of the *Crimes Act 1914*.

181 In the appropriate position in Chapter 10

Insert:

Part 10.58—Application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Act 2021

1701 Financial reporting and auditing requirements for registrable superannuation entities

The amendments of this Act made by Division 1 of Part 1 of Schedule 1 to the *Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Act 2021* so far as they relate to:

(a) a financial report for a financial year; or

(b) a directors’ report for a financial year; or

(c) a financial report for a half year in a financial year; or

(d) an audit or review of a financial report for a financial year; or

(e) an audit or review of a financial report for a half year in a financial year;

apply in relation to the report, audit or review if the financial year begins on or after 1 July 2022.

182 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 307B(2A) | 250 penalty units |

183 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 307B(5A) | 50 penalty units |

184 Schedule 3 (table item dealing with Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4), column headed “Provision”)

After “(3C)” insert “, (3D)”.

185 Schedule 3 (table item dealing with Subsections 311(1), (2) and (3), column headed “Provision”)

Omit “Subsections 311(1), (2) and (3)”, substitute “Subsection 311(1)”.

186 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 311(1B) | 50 penalty units |
| Subsection 311(1C) | 25 penalty units |
| Subsection 311(2) | 1 year imprisonment |
| Subsection 311(2A) | 50 penalty units |
| Subsection 311(2B) | 50 penalty units |
| Subsection 311(3) | 1 year imprisonment |

187 Schedule 3 (table item dealing with Subsection 312(1), column headed “Provision”)

Omit “Subsection 312(1)”, substitute “Subsections 312(1) and (3)”.

188 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 314AA(1) | 30 penalty units |

189 Schedule 3 (table item dealing with Subsections 322(1), (1A) and (2), column headed “Provision”)

Omit “and (2)”, substitute “(2) and (2A)”.

190 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 323DAAA(3) | 30 penalty units |

191 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Section 324BF | 6 months imprisonment |

192 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 324CAA(1) | 300 penalty units |
| Subsections 324CAA(2) and (5) | 150 penalty units |

193 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 324CBA(1) | 6 months imprisonment |
| Subsections 324CBA(2), (7) and (9) | 30 penalty units |

194 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 324CCA(1) | 6 months imprisonment |
| Subsections 324CCA(2), (7) and (9) | 30 penalty units |

195 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 324CFA(1) | 6 months imprisonment |
| Subsections 324CFA(2) and (7) | 30 penalty units |

196 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 324CGA(1) | 300 penalty units |
| Subsections 324CGA(2) and (4) | 150 penalty units |
| Subsection 324CGA(7) | 6 months imprisonment |
| Subsections 324CGA(8) and (13) | 30 penalty units |

197 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Section 324CIA | 6 months imprisonment |

198 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Section 324CJA | 6 months imprisonment |

199 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Section 324CKA | 6 months imprisonment |

200 Schedule 3 (table item dealing with Subsections 324CM(1), (2) and (3), column headed “Provision”)

Omit “and (3)”, substitute “, (3), (4) and (5)”.

201 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsections 331AF(1) and (3) | 6 months imprisonment |
| Subsections 331AG(1) and (2) | 6 months imprisonment |

202 In the appropriate position in Schedule 3

Insert:

|  |  |
| --- | --- |
| Subsection 1017C(3AA) | 2 years imprisonment |

Division 2—Amendments contingent on the commencement of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020

Corporations Act 2001

203 Paragraph 302A(c)

Omit “ASIC”, substitute “the Registrar”.

204 Section 302A (note)

Omit “ASIC”, substitute “the Registrar”.

205 Paragraph 322(2A)(b)

Omit “ASIC”, substitute “the Registrar”.

206 Subsection 331AK(6)

Omit “ASIC”, substitute “the Registrar”.

Part 2—Amendments of other Acts

Australian Securities and Investments Commission Act 2001

207 Subparagraph 127(2D)(b)(i)

After “registered scheme”, insert “, registrable superannuation entity”.

208 Paragraph 127(2D)(c)

After “registered scheme”, insert “, to the RSE licensee for the registrable superannuation entity”.

209 Subsection 127(2D)

After “responsible entity” (last occurring), insert “, RSE licensee”.

210 Subsection 127(2F)

After “registered scheme”, insert “, registrable superannuation entity”.

211 Subsection 127(2G)

After “responsible entity” (wherever occurring), insert “, RSE licensee”.

212 Subsection 127(9)

Insert:

***registrable superannuation entity*** has the same meaning as in Chapter 2M of the *Corporations Act 2001.*

***RSE licensee*** has the same meaning as in the SIS Act.

Superannuation Industry (Supervision) Act 1993

213 Subsection 6(1) (table item 40, column headed “Provisions”)

Omit “43”, substitute “43A”.

214 Subsection 6(1) (after table item 43)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 43A | Sections 130D and 130E | disqualifying and removing actuaries and auditors | (a) both APRA and ASIC, to the extent the provisions relate to auditors; and  (b) APRA, to the extent the provisions relate to actuaries |

215 Subsection 10(1)

Insert:

***individual auditor*** means an auditor who is an individual.

***RSE audit company*** for a registrable superannuation entity means a company, where an individual auditor of the entity is a director or employee of the company.

***RSE audit firm*** for a registrable superannuation entity means a firm, where an individual auditor of the entity is a member or employee of the firm.

216 Paragraph 29D(1)(a)

After “the RSE licensee law”, insert “or Chapter 2M of the *Corporations Act 2001*”.

217 Paragraph 29E(1)(a)

After “the RSE licensee law”, insert “and Chapter 2M of the *Corporations Act 2001*”.

218 Paragraph 29JA(1A)(c)

After “the RSE licensee law”, insert “or Chapter 2M of the *Corporations Act 2001*”.

219 Paragraph 29P(2)(c)

Omit “has been an auditor”, substitute “is, or has been, an RSE auditor”.

220 After paragraph 29P(3)(a)

Insert:

(aa) include in the notice links to each of the following reports that are publicly available on the registrable superannuation entity’s website:

(i) the financial report for the year of income of the entity;

(ii) the directors’ report for the year of income of the entity;

(iii) the auditor’s report on the financial report for the year of income of the entity; and

221 Subsection 29PA(3)

Omit “has been an auditor”, substitute “is, or has been, an RSE auditor”.

222 Sections 29PD (heading)

Omit “**auditor**”, substitute “**RSE auditor**”.

223 Subsection 29PD(1)

Omit “has been an auditor”, substitute “is, or has been, an RSE auditor”.

224 Subsections 29PD(2) and (3)

Omit “auditor” (wherever occurring), substitute “RSE auditor”.

225 Section 29QB

Repeal the section.

226 Subparagraph 35A(1)(b)(ii)

After “the RSE licensee law”, insert “or Chapter 2M of the *Corporations Act 2001*”.

227 Paragraph 35A(1)(c)

After “the RSE licensee law”, insert “and Chapter 2M of the *Corporations Act 2001* (if applicable)”.

228 After subsection 35A(1)

Insert:

(1A) If accounting records of an RSE licensee or a registrable superannuation entity are kept in accordance with subsection (1), each trustee of the entity must ensure that the records are retained for at least 7 years after the end of the year of income to which the transactions relate.

229 Paragraph 35A(2)(a)

Repeal the paragraph.

230 Subsection 35A(6)

Repeal the subsection, substitute:

Offences

(6) A trustee commits an offence if the trustee contravenes subsection (1) or (1A).

Penalty: Imprisonment for 2 years.

231 Subsection 35A(7)

After “(1)”, insert “, (1A)”.

232 Subsection 35A(7) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

233 Subsection 35AB(3) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

234 At the end of subsection 35AC(1)

Add:

Note: In addition to audit requirements under the RSE licensee law, a registrable superannuation entity may have audit requirements under Chapter 2M of the *Corporations Act 2001*. Subsection (7) sets out a rule that is applicable in such a case.

235 At the end of subsection 35AC(2)

Add:

; and (c) is not a member or employee of a firm that is disqualified under section 130EA; and

(d) is not a director or employee of a company that is disqualified under section 130EA.

236 At the end of subsection 35AC(6)

Add:

; or (c) is a member or employee of a firm that is disqualified under section 130EA; or

(d) is a director or employee of a company that is disqualified under section 130EA.

237 At the end of section 35AC

Add:

(7) If the registrable superannuation entity is a registrable superannuation entity within the meaning of Chapter 2M of the *Corporations Act 2001*, the RSE licensee for the entity must ensure that the appointed auditor of the entity is the individual who is the auditor of the entity for the purposes of that Chapter.

(8) If:

(a) the registrable superannuation entity is a registrable superannuation entity within the meaning of Chapter 2M of the *Corporations Act 2001*; and

(b) an individual ceases to be the auditor of the entity for the purposes of that Chapter;

then, for the purposes of the RSE licensee law, the appointment of the individual as the auditor of the entity ends at the time of the cessation.

238 Section 126L (heading)

Omit “**or 130D**”, substitute “**, 130D or 130EA**”.

239 Subsections 126L(1) and (3)

After “or 130D”, insert “or tend to make a firm or company liable to disqualification under section 130EA”.

240 Subsection 126L(4)

After “or 130D”, insert “or a proceeding under section 130EA”.

241 After section 129

Insert:

129A Obligations of directors of RSE audit companies and members of RSE audit firms—compliance

Scope

(1) This section applies to a person (the ***first person***) if:

(a) the first person is a director of an RSE audit company, or a member of an RSE audit firm, for a registrable superannuation entity; and

(b) the first person forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:

(i) this Act, the regulations or the prudential standards;

(ii) the *Financial Sector (Collection of Data) Act 2001*;

(iii) a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

(c) the first person formed the opinion in connection with the performance by another person of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the other person is:

(i) a director or employee of the RSE audit company; or

(ii) a member or employee of the RSE audit firm.

Section does not apply if the first person has a belief that the opinion is not relevant to the performance of audit functions

(2) This section does not apply if the first person has an honest belief that the opinion is not relevant to the performance of those functions.

Trustee and Regulator to be told about the matter

(3) The first person must, immediately after the first person forms the opinion mentioned in paragraph (1)(b):

(a) tell a trustee of the entity about the matter in writing; and

(b) if the contravention about which the first person has formed the opinion mentioned in paragraph (1)(b) is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

No civil liability for telling about a matter

(4) The first person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

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

Penalty: 50 penalty units.

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

Penalty: 25 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

242 After section 130

Insert:

130AA Obligations of directors of RSE audit companies and members of RSE audit firms—solvency

Scope

(1) This section applies to a person (the ***first person***) if:

(a) the first person is a director of an RSE audit company, or a member of an RSE audit firm, for a registrable superannuation entity; and

(b) the first person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(c) the first person formed the opinion in connection with the performance by another person of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the other person is:

(i) a director or employee of the RSE audit company; or

(ii) a member or employee of the RSE audit firm.

Regulator and trustee to be told about the financial position

(2) The first person must, immediately after the first person formed the opinion mentioned in paragraph (1)(b), tell the Regulator, and a trustee of the entity, about the matter in writing.

No civil liability for telling about a matter

(3) The first person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

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

Penalty: 50 penalty units.

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

Penalty: 25 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

When financial position is unsatisfactory

(7) For the purposes of this section, the financial position of an entity is taken to be unsatisfactory if, and only if, under the regulations, the financial position of the entity is treated as unsatisfactory.

243 After section 130A

Insert:

130AB RSE audit company or RSE audit firm may give information to the Regulator

An RSE audit company, or an RSE audit firm, for a registrable superannuation entity may give to the Regulator information about the entity or a trustee of the entity obtained in the course of, or in connection with, the performance by a person of audit functions under:

(a) this Act; or

(b) the regulations; or

(c) the prudential standards; or

(d) the *Financial Sector (Collection of Data) Act 2001*; or

(e) the *Corporations Act 2001*;

if:

(f) the person is:

(i) a director or employee of the RSE audit company; or

(ii) a member or employee of the RSE audit firm; and

(g) the RSE audit company or RSE audit firm considers that giving the information will assist the Regulator in performing its functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*.

244 Subsection 130B(1)

Omit “or 130”, substitute “, 129A, 130 or 130AA”.

245 At the end of section 130BA

Add:

(3) If the Regulator receives a notification under subsection (1) that relates wholly or partly to an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:

(a) give a copy of the notification to ASIC; and

(b) do so as soon as practicable after receiving the notification.

(4) For the purposes of this section, ***audit*** means:

(a) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or

(b) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*; or

(c) an audit of a self managed superannuation fund.

246 After section 130BA

Insert:

130BAA Member of RSE audit firm or director of RSE audit company must notify the Regulator of attempts to unduly influence etc. the auditor of a registrable superannuation entity etc.

Member of RSE audit firm

(1) If:

(a) a member of an RSE audit firm for a registrable superannuation entity is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the auditor conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of an audit of the entity; and

(b) the auditor is or was a member or employee of the RSE audit firm;

the member must:

(c) notify the Regulator in writing of those circumstances; and

(d) do so as soon as practicable, and in any case within 28 days, after the member becomes aware of those circumstances.

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

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

Director of RSE audit company

(3) If:

(a) a director of an RSE audit company for a registrable superannuation entity is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the auditor conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of an audit of the entity; and

(b) the auditor is or was a director or employee of the RSE audit company;

the director must:

(c) notify the Regulator in writing of those circumstances; and

(d) do so as soon as practicable, and in any case within 28 days, after the director becomes aware of those circumstances.

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

Penalty 50 penalty units.

Notification to ASIC

(5) If the Regulator receives a notification under subsection (1) or (3) that relates wholly or partly to an audit conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:

(a) give a copy of the notification to ASIC; and

(b) do so as soon as practicable after receiving the notification.

Meaning of audit

(6) For the purposes of this section, ***audit*** means:

(a) an audit conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or

(b) an audit conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*.

247 After section 130BB

Insert:

130BBA Giving false or misleading information to RSE audit company or RSE audit firm

Offence—person knows the information is false or misleading etc.

(1) A person commits an offence if:

(a) the person is:

(i) the trustee of a registrable superannuation entity; or

(ii) a responsible officer of the trustee of a registrable superannuation entity; or

(iii) an employee of the trustee of a registrable superannuation entity; and

(b) the person gives information, or allows information to be given, to an RSE audit company or an RSE audit firm; and

(c) a director or employee of the RSE audit company, or a member or employee of the RSE audit firm, is an individual auditor of the entity; and

(d) the information relates to the affairs of the entity; and

(e) the person knows that the information:

(i) is false or misleading in a material particular; or

(ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

Offence—person fails to ensure the information is not false or misleading etc.

(2) A person commits an offence if:

(a) the person is:

(i) the trustee of a registrable superannuation entity; or

(ii) a responsible officer of the trustee of a registrable superannuation entity; or

(iii) an employee of the trustee of a registrable superannuation entity; and

(b) the person gives information, or allows information to be given, to an RSE audit company or an RSE audit firm; and

(c) a director or employee of the RSE audit company, or a member or employee of the RSE audit firm, is an individual auditor of the entity; and

(d) the information relates to the affairs of the entity; and

(e) the information:

(i) is false or misleading in a material particular; or

(ii) is missing something that makes the information misleading in a material respect; and

(f) the person did not take reasonable steps to ensure that the information:

(i) was not false or misleading in a material particular; or

(ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

Determining whether information is false or misleading

(3) If information is given to an RSE audit company or RSE audit firm in response to a question asked by:

(a) a director or employee of the RSE audit company; or

(b) a member or employee of the RSE audit firm;

the information and the question must be considered together in determining whether the information is false or misleading.

248 At the end of Division 2 of Part 16

Add:

130CA Directors of RSE audit companies and members of RSE audit firms—failure to implement actuarial recommendations

Scope

(1) This section applies to a director of an RSE audit company, or a member of an RSE audit firm, for a registrable superannuation entity if:

(a) the entity is a defined benefit fund; and

(b) the director or member forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer‑sponsor that a trustee of the fund, or an employer‑sponsor of the fund, was required to implement and that was contained in:

(i) a report of an actuary obtained under the regulations or the prudential standards; or

(ii) a report of an actuary obtained in accordance with a requirement under the regulations or the prudential standards; or

(iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and

(c) the director or member formed the opinion in connection with the performance by another person of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the other person is:

(i) a director or employee of the RSE audit company; or

(ii) a member or employee of the RSE audit firm.

Trustee and Regulator to be told about the matter

(2) The director or member must, as soon as practicable after the director or member forms the opinion mentioned in paragraph (1)(b):

(a) tell a trustee of the fund about the matter in writing; and

(b) if the contravention about which the director or member has formed the opinion mentioned in paragraph (1)(b) is of such a nature that it may affect the interests of members or beneficiaries of the fund—tell the Regulator about the matter in writing.

No civil liability for telling about a matter

(3) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

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

Penalty: 50 penalty units.

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

Penalty: 25 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

249 Section 130D (at the end of the heading)

Add “**—auditor or actuary**”.

250 Subsection 130D(1)

After “APRA”, insert “or ASIC”.

251 Subsection 130E(1)

After “APRA”, insert “or ASIC”.

252 After section 130E

Insert:

130EA Court power of disqualification—RSE audit firm or RSE audit company

(1) On application by ASIC, the Federal Court of Australia may, by order:

(a) disqualify a firm from being an RSE audit firm; or

(b) disqualify a company from being an RSE audit company;

for a period that the Court considers appropriate, if the Court is satisfied:

(c) as mentioned in subsection (2); and

(d) that the disqualification is justified.

Note: For offences relating to firms or companies disqualified under this section, see section 131CA.

(2) The Court may disqualify a firm or company, in accordance with subsection (1), if the Court is satisfied that:

(a) the firm or company has failed to put in place appropriate processes and systems to enable it to carry out or perform adequately and properly:

(i) its duties as an RSE audit firm or RSE audit company under this Act, the regulations or Chapter 2M of the *Corporations Act 2001*; or

(ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an RSE audit firm or RSE audit company; or

(iii) any functions that an RSE audit firm or RSE audit company is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the firm or company has failed to put in place appropriate processes and systems to enable an RSE auditor who is:

(i) in the case of a firm—a member or employee of the firm; or

(ii) in the case of a company—a director or employee of the company;

to carry out or perform adequately and properly:

(iii) the duties of an RSE auditor under this Act, the regulations or Chapter 2M of the *Corporations Act 2001*; or

(iv) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or

(v) any functions that an RSE auditor is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or

(c) the firm or company has failed to take reasonable steps to ensure that each RSE auditor who is:

(i) in the case of a firm—a member or employee of the firm; or

(ii) in the case of a company—a director or employee of the company;

meets the relevant eligibility criteria set out in the prudential standards; or

(d) the firm or company has failed to take reasonable steps to ensure that each RSE auditor who is:

(i) in the case of a firm—a member or employee of the firm; or

(ii) in the case of a company—a director or employee of the company;

is a fit and proper person to be an RSE auditor.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

(b) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(d), the Court may have regard to:

(a) the conduct of the firm or company in relation to its duties under this Act and the regulations; and

(b) any other matters the Court considers relevant.

(5) As soon as practicable after the Court:

(a) disqualifies a firm from being an RSE audit firm under this section; or

(b) disqualifies a company from being an RSE audit company under this section;

ASIC must cause particulars of the disqualification to which the notice relates to be published in the Gazette.

130EB Court power to revoke or vary a disqualification etc.

(1) A firm or company that is disqualified under section 130EA, or ASIC, may apply to the Federal Court of Australia for a variation or a revocation of an order made under section 130EA.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the firm or company that is disqualified makes the application—by the person with ASIC; or

(b) if ASIC makes the application—by ASIC with the firm or company that is disqualified.

253 After paragraph 131AA(2)(a)

Insert:

(aa) in the case of an appointment as an RSE auditor:

(i) the person is a member or employee of a firm that is disqualified under section 130EA; or

(ii) the person is a director or employee of a company that is disqualified under section 130EA; or

254 After subsection 131AA(6)

Insert:

(6A) If APRA directs a trustee or trustees to end a person’s appointment as an auditor of a registrable superannuation entity, APRA must:

(a) notify ASIC of the direction; and

(b) do so as soon as practicable after giving the direction.

255 After section 131B

Insert:

131BA Misleading representations by disqualified firm or company

(1) A person commits an offence if:

(a) the person is a firm; and

(b) the firm is disqualified under section 130EA; and

(c) the firm represents that a member or employee of the firm is eligible to be an RSE auditor.

Penalty: 50 penalty units*.*

(2) A person commits an offence if:

(a) the person is a company; and

(b) the company is disqualified under section 130EA; and

(c) the company represents that a director or employee of the company is eligible to be an RSE auditor.

Penalty: 250 penalty units*.*

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

Note: See also sections 131CB and 131CC.

256 At the end of Division 4 of Part 16

Add:

131CA Members or employees of disqualified firms, and directors or employees of disqualified companies, not to be RSE auditors

(1) A person commits an offence if:

(a) the person is, or acts as, an RSE auditor; and

(b) the person is a member or employee of a firm; and

(c) the firm is disqualified under section 130EA; and

(d) the person knows that the firm is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is, or acts as, an RSE auditor; and

(b) the person is a director or employee of a company; and

(c) the company is disqualified under section 130EA; and

(d) the person knows that the company is so disqualified.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:

(a) the person is, or acts as, an RSE auditor; and

(b) the person is a member or employee of a firm; and

(c) the firm is disqualified under section 130EA.

Penalty: 60 penalty units.

(4) A person commits an offence if:

(a) the person is, or acts as, an RSE auditor; and

(b) the person is a director or employee of a company; and

(c) the company is disqualified under section 130EA.

Penalty: 60 penalty units.

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

257 At the end of Part 16

Add:

Division 5—Special provisions relating to firms and companies

131CB Offences by members of a firm

(1) Section 131BA applies to a firm as if it were a person, but with the changes set out in this section.

(2) An offence based on section 131BA that would otherwise be committed by the firm is taken to have been committed by each member of the firm.

(3) A member of the firm does not commit an offence because of subsection (2) if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

131CC Criminal liability of a firm or company

(1) For the purposes of criminal proceedings under section 131BA against a firm, an act or omission by an individual who is:

(a) a member of the firm; or

(b) an employee or agent of the firm;

acting within the actual or apparent scope of the individual’s employment, or within the individual’s actual or apparent authority, is also to be attributed to the firm.

(2) For the purposes of criminal proceedings under section 131BA against a company, an act or omission by an individual who is:

(a) an officer of the company; or

(b) an employee or agent of the company;

acting within the actual or apparent scope of the individual’s employment, or within the individual’s actual or apparent authority, is also to be attributed to the company.

258 At the end of paragraph 131D(1)(a)

Add:

(v) Chapter 2M of the *Corporations Act 2001*; or

259 At the end of section 131D

Add:

(6) If APRA gives a direction under paragraph (2)(e), APRA must:

(a) notify ASIC of the direction; and

(b) do so as soon as practicable after giving the direction.

260 Subsection 131FB(2)

After “130A”, insert “or 130AB”.

261 Subsection 336F(3)

Omit “or 130” (first occurring), substitute “, 129A, 130 or 130AA”.

262 Subsection 336F(3) (note 1)

Omit “or 130”, substitute “, 129A, 130 or 130AA”.

263 Application—retention of accounting records

(1) Subsection 35A(1A) of the *Superannuation Industry (Supervision) Act 1993* (as amended by this Part) applies in relation to accounting records that relate to a year of income beginning on or after 1 July 2022.

(1) Despite the repeal of paragraph 35A(2)(a) of the *Superannuation Industry (Supervision) Act 1993* by this Part, that paragraph continues to apply, in relation to accounting records that relate to a year of income beginning before 1 July 2022, as if that repeal had not happened.