

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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

4 The Parliament of Australia enacts:

5 **1 Short title**

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

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with

No. , 2021 *Treasury Laws Amendment (Financial Reporting and Auditing* 1
Requirements for Registrable Superannuation Entities) Bill 2021

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

| 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 <i>Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020</i> . | |
| 4. Schedule 1, Part 2 | 1 July 2022. | 1 July 2022 |

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

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

10 3 Schedules

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12 repealed as set out in the applicable items in the Schedule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

2 *Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Bill 2021* No. , 2021

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 Part 1

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”.

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

1 **7 Section 9 (at the end of the definition of *director*)**

2 Add:

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

5 **8 Section 9 (note to the definition of *financial report*)**

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

7 **9 Section 9 (after paragraph (a) of the definition of *financial***
8 ***year*)**

9 Insert:

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

12 **10 Section 9 (definition of *half-year*)**

13 Repeal the definition, substitute:

14 ***half-year:***

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

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

19 **11 Section 9 (definition of *individual auditor*)**

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

22 **12 Section 9 (paragraph (b) of the definition of *non-audit***
23 ***services provider*)**

24 Omit “either”.

25 **13 Section 9 (subparagraph (b)(iii) of the definition of**
26 ***non-audit services provider*)**

27 Omit “and”, substitute “or”.

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 Part 1

1 **14 Section 9 (at the end of paragraph (b) of the definition of**
2 ***non-audit services provider*)**

3 Add:

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

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

13 **15 Section 9**

14 Insert:

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

17 **16 Section 9 (definition of *play a significant role*)**

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

20 **17 Section 9 (paragraph (a) of the definition of *play a***
21 ***significant role*)**

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

23 **18 Section 9 (subparagraph (a)(ii) of the definition of *play a***
24 ***significant role*)**

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

26 **19 Section 9 (at the end of the definition of *play a significant***
27 ***role*)**

28 Add:

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

31 (i) is a registered company auditor; or

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

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

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

4 Repeal the definition, substitute:

registrable superannuation entity:

- 6 (a) when used in a provision outside Chapter 2M or an
7 associated definition—has the same meaning as in the
8 *Superannuation Industry (Supervision) Act 1993*; and
9 (b) when used in Chapter 2M or an associated definition—means
10 a registrable superannuation entity (within the meaning of the
11 *Superannuation Industry (Supervision) Act 1993*), but does
12 not include the following:
13 (i) an exempt public sector superannuation scheme (within
14 the meaning of the *Superannuation Industry*
15 *(Supervision) Act 1993*);
16 (ii) an excluded approved deposit fund (within the meaning
17 of the *Superannuation Industry (Supervision) Act 1993*);
18 (iii) a small APRA fund (within the meaning of
19 section 1017BB).

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

- 22 (a) the definition of *audit-critical employee*;
23 (b) the definition of *audited body*;
24 (c) the definition of *consolidated entity*;
25 (d) the definition of *director*;
26 (e) the definition of *financial year*;
27 (f) the definition of *half-year*;
28 (g) the definition of *individual auditor*;
29 (h) the definition of *officer of a registrable superannuation*
30 *entity*;
31 (i) the definition of *play a significant role*;
32 (j) the definition of *RSE audit company*;
33 (k) the definition of *RSE audit firm*;
34

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 **Part 1**

- 1 (l) the definition of *RSE remuneration report*;
2 (m) the definition of *sub-fund*.

21 Section 9

4 Insert:

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

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

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

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

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

- 19 (a) the segment has separately identifiable assets and separately
20 identifiable beneficiaries;
21 (b) the interest of each beneficiary of the segment is determined
22 by reference only to the conditions governing that segment.

22 Subsection 285(1) (heading)

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

23 Subsection 285(1)

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

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

1 **24 Subsection 285(1)**

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

4 **25 Subsection 285(1) (table heading)**

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

7 **26 Subsection 285(1) (table item 2, column headed**
8 **“comments”)**

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

11 **27 Subsection 285(1) (table item 4, column headed**
12 **“sections”)**

13 After “s. 314”, insert “, 314AA”.

14 **28 Subsection 285(1) (table item 4, column headed**
15 **“comments”)**

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

18 **29 Subsection 285(1) (table item 4, column headed**
19 **“comments”)**

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

22 **30 After subsection 285(3)**

23 Insert:

24 *Application to registrable superannuation entities*

25 (3A) For the purposes of applying this Chapter to a registrable
26 superannuation entity, the RSE licensee for the entity is responsible
27 for the performance of obligations in respect of the entity (see
28 section 345AAA).

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 **Part 1**

1 **31 Subsection 286(1)**

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

3 **32 Subsection 289(1)**

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

5 **33 Subsection 289(2)**

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

7 **34 Subsection 289(3)**

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

9 **35 Subsection 290(1)**

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

11 **36 After paragraph 292(1)(d)**

12 Insert:

13 ; and (e) all registrable superannuation entities.

14 **37 At the end of section 292**

15 Add:

16 *Registrable superannuation entities*

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

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

23 **38 After paragraph 295(1)(b)**

24 Insert:

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

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

- 1 (i) the financial statements for the year for each of those
2 sub-funds; and
3 (ii) the notes to those financial statements; and

4 **39 Subsection 295(2)**

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

7 **40 Paragraphs 295(4)(c) and (ca)**

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

9 **41 Paragraph 297(a)**

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

11 **42 Subsection 298(1)**

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

13 **43 Paragraph 298(1AA)(b)**

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

15 **44 Paragraph 299(2)(a)**

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

17 **45 Subsection 299(3)**

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

20 **46 Subsection 300(1)**

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

23 **47 Paragraph 300(3)(b)**

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

25 **48 Subsection 300(11B)**

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

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 Part 1

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

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Part 1 Amendment of the Corporations Act 2001

- 1 auditor (or by another person or firm on the auditor's behalf)
2 is compatible with the general standard of independence for
3 auditors imposed by this Act;
- 4 (c) a statement of the directors' reasons for being satisfied that
5 the provision of those non-audit services, during the year, by
6 the auditor (or by another person or firm on the auditor's
7 behalf) did not compromise the auditor independence
8 requirements of this Act.
- 9 (5) The details and statements mentioned in subsection (4) must be
10 included in the directors' report under the heading "Non-audit
11 services".
- 12 (6) For the purposes of paragraph (4)(a), the details of amounts paid or
13 payable to an auditor for non-audit services provided, during the
14 year, by the auditor (or by another person or firm on the auditor's
15 behalf) are:
- 16 (a) the name of the auditor; and
17 (b) the dollar amount that:
- 18 (i) the registrable superannuation entity; or
19 (ii) the RSE licensee for the registrable superannuation
20 entity;
- 21 paid, or is liable to pay, for each of those non-audit services.
- 22 (7) The statements under paragraphs (4)(b) and (c) must be made in
23 accordance with advice provided by the registrable superannuation
24 entity's audit committee.
- 25 (8) For the purposes of subsection (7), a statement is taken to be made
26 in accordance with advice provided by the registrable
27 superannuation entity's audit committee only if:
- 28 (a) the statement is consistent with that advice and does not
29 contain any material omission of material included in that
30 advice; and
31 (b) the advice is endorsed by a resolution passed by the members
32 of the audit committee; and
33 (c) the advice is written advice signed by a member of the audit
34 committee on behalf of the audit committee and given to the
35 directors.
-

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 **Part 1**

1

Audit

2

(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.

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(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.

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50 Subsection 301(1)

12

After "registered scheme", insert ", registrable superannuation entity".

51 At the end of section 301

13

Add:

14

Registrable superannuation entities

15

(6) The following reports relating to:

16

(a) a registrable superannuation entity; and

17

(b) a financial year;

18

may be set out in the same document:

19

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

20

21

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

22

23

24

25

52 After section 302

26

Insert:

302A Registrable superannuation entity must prepare half-year financial report and directors' report

27

28

29

A registrable superannuation entity must:

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

- 1 (a) prepare a financial report and directors' report for each
2 half-year; and
3 (b) have the financial report audited or reviewed in accordance
4 with Division 3 and obtain an auditor's report; and
5 (c) lodge the financial report, the directors' report and the
6 auditor's report on the financial report with ASIC.
7 Note: See section 320 for the time for lodgment with ASIC.

53 After paragraph 303(1)(b)

8 Insert:

- 9 (ba) in the case of a registrable superannuation entity that had one
10 or more sub-funds during the half-year:
11 (i) the financial statements for the half-year for each of
12 those sub-funds; and
13 (ii) the notes to those financial statements; and
14

54 Paragraph 303(2)(a)

15 After "disclosing entity", insert "or registrable superannuation entity".
16

55 Paragraph 303(2)(b)

17 After "disclosing entity", insert "or registrable superannuation entity".
18

56 Paragraph 303(4)(c)

19 After "disclosing entity", insert "or registrable superannuation entity".
20

57 Paragraph 305(a)

21 After "disclosing entity", insert "or registrable superannuation entity".
22

58 Subsection 306(1)

23 After "disclosing entity", insert "or registrable superannuation entity".
24

59 Paragraph 306(1)(b)

25 After "disclosing entity", insert "or registrable superannuation entity".
26

60 Paragraphs 307(c) and (d)

27 After "registered scheme", insert ", registrable superannuation entity".
28

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 **Part 1**

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).

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

1 (2B) An offence based on subsection (2A) is an offence of strict
2 liability.

3 **63 After subsection 307B(5)**

4 Insert:

5 *Contravention by member of RSE audit firm etc.*

6 (5A) A person (the *defendant*) contravenes this subsection if:

- 7 (a) when an individual auditor of a registrable superannuation
8 entity was a member or employee of a firm, the individual
9 auditor conducted:
- 10 (i) an audit or review of the financial report of the
11 registrable superannuation entity for a financial year; or
12 (ii) an audit or review of the financial report of the
13 registrable superannuation entity for a half-year; and
- 14 (b) the firm fails, at a particular time, to retain all audit working
15 papers prepared by or for, or considered or used by, the
16 individual auditor in accordance with the requirements of the
17 auditing standards until:
- 18 (i) the end of 7 years after the date of the audit report
19 prepared in relation to the audit or review to which the
20 documents relate; or
21 (ii) an earlier date determined by ASIC for the audit
22 working papers under subsection (7A); and
- 23 (c) the defendant is a member of the firm at that time.

24 (5B) An offence based on subsection (5A) is an offence of strict
25 liability.

26 Note: Subsection (5C) provides a defence.

27 (5C) A member of a firm does not commit an offence at a particular
28 time because of a contravention of subsection (5A) if the member
29 either:

- 30 (a) does not know at that time of the circumstances that
31 constitute the contravention of subsection (5A); or
32 (b) knows of those circumstances at that time but takes all
33 reasonable steps to correct the contravention as soon as

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendment of the Corporations Act 2001 **Part 1**

1 possible after the member becomes aware of those
2 circumstances.

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

5 **64 After subsection 307B(7)**

6 Insert:

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

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

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

17 (7B) In deciding whether to make a determination under
18 subsection (7A), ASIC must have regard to:

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

21 (i) the auditor; or

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

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

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

28 (i) the conduct of the audit; or

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

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

32 (d) any other relevant matter.

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

1 **65 Subsection 307C(1)**

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

3 **66 Subparagraph 307C(5)(a)(i)**

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

5 **67 Paragraph 307C(5A)(a)**

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

7 **68 Paragraph 307C(5B)(a)**

8 Omit “or 324CG(2)”, substitute “, 324CFA(7), 324CG(2) or
9 324CGA(4)”.

10 **69 Paragraph 307C(5B)(b)**

11 Omit “or 324CG(4)”, substitute “, 324CFA(9), 324CG(4) or
12 324CGA(6)”.

13 **70 After subsection 308(3C)**

14 Insert:

15 (3D) If the directors’ report for the financial year includes an RSE
16 remuneration report, the auditor must also report to members on
17 whether the auditor is of the opinion that the remuneration report
18 complies with section 300C. If not of that opinion, the auditor’s
19 report must say why.

20 **71 Subsection 308(5)**

21 After “(3C)”, insert “, (3D)”.

22 **72 Section 310**

23 Before “The auditor”, insert “(1)”.

24 **73 Section 310**

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

26 **74 At the end of section 310**

27 Add:

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- 1 (2) The auditor:
2 (a) has a right of access at all reasonable times to the books of a
3 registrable superannuation entity; and
4 (b) may, by written notice, require an officer of a registrable
5 superannuation entity to:
6 (i) give the auditor information, explanations or other
7 assistance for the purposes of the audit or review; and
8 (ii) do so within 14 days after the notice is given.
9 A requirement under paragraph (b) must be a reasonable one.

10 **75 Subsection 311(1)**

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

13 **76 After subsection 311(1)**

14 Insert:

- 15 (1A) An individual auditor conducting an audit of a registrable
16 superannuation entity contravenes this subsection if:
17 (a) the auditor suspects on reasonable grounds that there are
18 circumstances that amount to a contravention of this Act; and
19 (b) the auditor does not notify ASIC in writing of those
20 circumstances as soon as practicable, and in any case within
21 28 days, after the auditor forms that suspicion.
- 22 (1B) An individual auditor commits an offence if the auditor
23 contravenes subsection (1A).
- 24 (1C) An individual auditor commits an offence of strict liability if the
25 auditor contravenes subsection (1A).

26 **77 After subsection 311(2)**

27 Insert:

28 *Contravention by member of RSE audit firm*

- 29 (2A) A person (the *defendant*) contravenes this subsection if:

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- 1 (a) a member or employee of an RSE audit firm is an individual
2 auditor of a registrable superannuation entity; and
3 (b) the individual auditor is engaged in the conduct of an audit of
4 the entity at a particular time; and
5 (c) the defendant is a member of the RSE audit firm at that time;
6 and
7 (d) the defendant suspects on reasonable grounds that there are
8 circumstances that amount to a contravention of this Act; and
9 (e) the defendant does not notify ASIC in writing of those
10 circumstances as soon as practicable, and in any case within
11 28 days, after the defendant forms that suspicion.

12 *Contravention by director of RSE audit company*

- 13 (2B) A person (the *defendant*) contravenes this subsection if:
14 (a) a director or employee of an RSE audit company is an
15 individual auditor of a registrable superannuation entity; and
16 (b) the individual auditor is engaged in the conduct of an audit of
17 the entity at a particular time; and
18 (c) the defendant is a director of the RSE audit company at that
19 time; and
20 (d) the defendant is either:
21 (i) a professional member of the audit team conducting the
22 audit; or
23 (ii) the review auditor for the audit; and
24 (e) the defendant suspects on reasonable grounds that there are
25 circumstances that amount to a contravention of this Act; and
26 (f) the defendant does not notify ASIC in writing of those
27 circumstances as soon as practicable, and in any case within
28 28 days, after the defendant forms that suspicion.

29 **78 Paragraph 312(1)(b)**

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

31 **79 At the end of section 312**

- 32 (3) An officer of a registrable superannuation entity must:
33 (a) allow the auditor access to the books of the entity; and
-

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

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

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

6 **80 After section 314**

7 Insert:

8 **314AA Annual financial reporting by registrable superannuation** 9 **entities to members**

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

12 (a) the financial report for the year;

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

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

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

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

20 **81 After subsection 315(3)**

21 Insert:

22 *Registrable superannuation entities*

23 (3AA) A registrable superannuation entity must report to members under
24 section 314AA within 3 months after the end of the financial year.

25 **82 Subsection 319(1)**

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

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1 **83 Subsection 319(1)**

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

4 **84 Paragraph 319(3)(a)**

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

6 **85 At the end of section 319**

7 Add:

8 *Registrable superannuation entities*

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

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

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

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

18 **86 Subsection 320(1)**

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

20 **87 At the end of section 320**

21 Add:

22 *Registrable superannuation entities*

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

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

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

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

5 **88 Subsection 321(1)**

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

7 **89 Subsection 322(1) (heading)**

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

10 **90 Subsection 322(1)**

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

12 **91 After subsection 322(2)**

13 Insert:

14 *Registrable superannuation entities must publish amended report*
15 *on website*

16 (2A) If:

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

19 (b) the report is amended after it is lodged with ASIC;
20 the entity must:

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

23 (i) a copy of the amended report;

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

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

26 **92 Subsection 322(3)**

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

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1 **93 Subsection 323(1)**

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

4 **94 Subsection 323A(2)**

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

6 **95 Subsection 323B(1)**

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

8 **96 Section 323C**

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

10 **97 After section 323D**

11 Insert:

12 **323DAAA Financial years and half-years for registrable**
13 **superannuation entities**

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

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

20 *Synchronisation of financial years where consolidated financial*
21 *statements are required*

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

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

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

4 98 Division 1 of Part 2M.4 (heading)

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

7 99 Section 324AA

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

9 100 At the end of section 324AA

10 Add:

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

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

21 101 Section 324AE

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

23 102 At the end of section 324AE

24 Add:

- 25 (2) If an individual auditor conducts an audit of a registrable
26 superannuation entity, the *professional members of the audit team*
27 are:
28 (a) any registered company auditor who participates in the
29 conduct of the audit; and
30 (b) any other person who participates in the conduct of the audit
31 and, in the course of doing so, exercises professional
32 judgment in relation to the application of or compliance with:

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- 1 (i) accounting standards; or
2 (ii) auditing standards; or
3 (iii) the provisions of this Act dealing with financial
4 reporting and the conduct of audits; and
5 (c) any other person who is in a position to directly influence the
6 outcome of the audit because of the role they play in the
7 design, planning, management, supervision or oversight of
8 the audit; and
9 (d) any person who provides, or takes part in providing, quality
10 control for the audit.

11 **103 At the end of section 324AF**

12 Add:

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

17 **104 Subparagraphs 324BA(a)(i), (ii) and (iii)**

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

20 **105 After Division 2 of Part 2M.4**

21 Insert:

22 **Division 2A—Eligibility requirements for auditors of** 23 **registrable superannuation entities**

24 **324BF Eligibility requirements for auditors of registrable** 25 **superannuation entities**

26 An individual contravenes this section if:

- 27 (a) the individual:
28 (i) consents to be appointed as auditor of a registrable
29 superannuation entity for the purposes of this Chapter;
30 or

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- 1 (ii) acts as auditor of a registrable superannuation entity for
2 the purposes of this Chapter; or
3 (iii) prepares a report required by this Act to be prepared by
4 an auditor of a registrable superannuation entity; and
5 (b) the person:
6 (i) does not meet the eligibility criteria for auditors of
7 registrable superannuation entities (within the meaning
8 of the *Superannuation Industry (Supervision) Act 1993*)
9 set out in the prudential standards (within the meaning
10 of that Act); or
11 (ii) has been disqualified from being, or acting as, an
12 auditor of a registrable superannuation entity (within the
13 meaning of the *Superannuation Industry (Supervision)*
14 *Act 1993*) under section 130D of that Act; or
15 (iii) is a member or employee of a firm that is disqualified
16 under section 130EA of the *Superannuation Industry*
17 *(Supervision) Act 1993*; or
18 (iv) is a director or employee of a company that is
19 disqualified under section 130EA of the *Superannuation*
20 *Industry (Supervision) Act 1993*.

106 Subsection 324CA(1A) (note 2)

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

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

23 Add:

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

108 After section 324CA

25 Insert:

26 **324CAA General requirements for auditor independence—RSE** 27 **audit company**

28 *Contravention by RSE audit company*

29 (1) An RSE audit company contravenes this subsection if:
30
31
32

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- 1 (a) a director or employee of the RSE audit company is an
2 individual auditor of a registrable superannuation entity; and
3 (b) the individual auditor engages in audit activity in relation to
4 the registrable superannuation entity at a particular time; and
5 (c) a conflict of interest situation exists in relation to the
6 registrable superannuation entity at that time; and
7 (d) at that time, the RSE audit company is aware that the conflict
8 of interest situation exists; and
9 (e) the RSE audit company does not, as soon as possible after it
10 becomes aware that the conflict of interest situation exists,
11 take all reasonable steps to ensure that the conflict of interest
12 situation ceases to exist.

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

14 *RSE audit company to notify ASIC*

- 15 (2) An RSE audit company contravenes this subsection if:
16 (a) a director or employee of the RSE audit company is an
17 individual auditor of a registrable superannuation entity; and
18 (b) the individual auditor engages in audit activity in relation to
19 the registrable superannuation entity; and
20 (c) a conflict of interest situation exists in relation to the
21 registrable superannuation entity while the individual auditor
22 is the auditor of the registrable superannuation entity; and
23 (d) on a particular day (the *start day*), the RSE audit company
24 becomes aware that the conflict of interest situation exists;
25 and
26 (e) at the end of the period of 7 days from the start day:
27 (i) the conflict of interest situation remains in existence;
28 and
29 (ii) the RSE audit company has not informed ASIC in
30 writing that the conflict of interest situation exists.

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

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

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

5 *Conflict of interest situation of which RSE audit company is not*
6 *aware*

7 (5) An RSE audit company contravenes this subsection if:
8 (a) a director or employee of the RSE audit company is an
9 individual auditor of a registrable superannuation entity; and
10 (b) the individual auditor engages in audit activity in relation to
11 the registrable superannuation entity at a particular time; and
12 (c) a conflict of interest situation exists in relation to the
13 registrable superannuation entity at that time; and
14 (d) at that time, the RSE audit company is not aware that the
15 conflict of interest situation exists; and
16 (e) the RSE audit company would have been aware of the
17 existence of the conflict of interest situation at that time if the
18 RSE audit company had in place a quality control system
19 reasonably capable of making the RSE audit company aware
20 of the existence of such a conflict of interest situation.

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

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

25 Note: Subsection (7) provides a defence.

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

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

3 *Relationship between obligations under this section and other*
4 *obligations*

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

- 7 (a) another provision of this Act; or
8 (b) a code of professional conduct.

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

11 **109 After section 324CB**

12 Insert:

13 **324CBA General requirements for auditor independence—member** 14 **of RSE audit firm**

15 *Contravention by member of RSE audit firm*

- 16 (1) A person (the *defendant*) contravenes this subsection if:
17 (a) a member or employee of an RSE audit firm is an individual
18 auditor of a registrable superannuation entity; and
19 (b) the individual auditor engages in audit activity in relation to
20 the registrable superannuation entity at a particular time; and
21 (c) a conflict of interest situation exists in relation to the
22 registrable superannuation entity at that time; and
23 (d) the defendant is a member of the RSE audit firm at that time;
24 and
25 (e) the defendant is or becomes aware of the circumstances
26 referred to in paragraphs (b) and (c); and
27 (f) the defendant does not, as soon as possible after the
28 defendant becomes aware of those circumstances, take
29 reasonable steps to ensure that the conflict of interest
30 situation ceases to exist.

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

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- 1
- 2 (2) A person (the *defendant*) contravenes this subsection if:
- 3 (a) a member or employee of an RSE audit firm is an individual
- 4 auditor of a registrable superannuation entity; and
- 5 (b) the individual auditor engages in audit activity in relation to
- 6 the registrable superannuation entity at a particular time; and
- 7 (c) a conflict of interest situation exists in relation to the
- 8 registrable superannuation entity while the individual auditor
- 9 is the auditor of the registrable superannuation entity; and
- 10 (d) the defendant is a member of the RSE audit firm at a time
- 11 when the conflict of interest situation exists; and
- 12 (e) on a particular day (the *start day*), the defendant becomes
- 13 aware of the circumstances referred to in paragraphs (b) and
- 14 (c); and
- 15 (f) at the end of the period of 7 days from the start day:
- 16 (i) the conflict of interest situation remains in existence;
- 17 and
- 18 (ii) ASIC has not been informed in writing by the
- 19 defendant, by another member of the RSE audit firm or
- 20 by someone else on behalf of the RSE audit firm that
- 21 the conflict of interest situation exists.

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

- 23 (3) A person is not excused from informing ASIC under subsection (2)
- 24 that a conflict of interest situation exists on the ground that the
- 25 information might tend to incriminate the person.
- 26 (4) However:
- 27 (a) the information; and
- 28 (b) the giving of the information;
- 29 are not admissible in evidence against the person in a criminal
- 30 proceeding, or any other proceeding for the recovery of a penalty,
- 31 other than proceedings for an offence based on the information
- 32 given being false or misleading.
- 33 (5) If, at general law, an individual would otherwise be able to claim
- 34 the privilege against self-exposure to a penalty (other than a

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1 penalty for an offence) in relation to informing ASIC under
2 subsection (2) that a conflict of interest situation exists, the
3 individual is not excused from informing ASIC under that
4 provision on that ground.

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

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

10 (7) A person contravenes this subsection if:
11 (a) a member or employee of an RSE audit firm is an individual
12 auditor of a registrable superannuation entity; and
13 (b) the individual auditor engages in audit activity in relation to
14 the registrable superannuation entity at a particular time; and
15 (c) a conflict of interest situation exists in relation to the
16 registrable superannuation entity at that time; and
17 (d) the person is a member of the RSE audit firm at that time;
18 and
19 (e) at that time, another member of the RSE audit firm is aware
20 that the conflict of interest situation exists; and
21 (f) the RSE audit firm does not, as soon as possible after the
22 member referred to in paragraph (e) becomes aware that the
23 conflict of interest situation exists, take all reasonable steps
24 to ensure that the conflict of interest situation ceases to exist.

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

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

29 Note: Subsection (11) provides a defence.

30 *Conflict of interest situation of which members are not aware*

31 (9) A person contravenes this subsection if:
32 (a) a member or employee of an RSE audit firm is an individual
33 auditor of a registrable superannuation entity; and

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- 1 (b) the individual auditor engages in audit activity in relation to
2 the registrable superannuation entity at a particular time; and
3 (c) a conflict of interest situation exists in relation to the
4 registrable superannuation entity at that time; and
5 (d) the person is a member of the RSE audit firm at that time;
6 and
7 (e) at that time, none of the members of the RSE audit firm are
8 aware that the conflict of interest situation exists; and
9 (f) a member of the RSE audit firm would have been aware of
10 the existence of the conflict of interest situation if the RSE
11 audit firm had in place a quality control system reasonably
12 capable of making the RSE audit firm aware of the existence
13 of such a conflict of interest situation.

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

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

18 Note: Subsection (11) provides a defence.

19 *Defence*

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

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

30 *Relationship between obligations under this section and other* 31 *obligations*

- 32 (12) The obligations imposed by this section are in addition to, and do
33 not derogate from, any obligation imposed by:
34 (a) another provision of this Act; or
-

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1 (b) a code of professional conduct.

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

4 **110 After section 324CC**

5 Insert:

6 **324CCA General requirements for auditor independence—director** 7 **of RSE audit company**

8 *Contravention by director of RSE audit company*

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

- 10 (a) a director or employee of an RSE audit company is an
11 individual auditor of a registrable superannuation entity; and
12 (b) the individual auditor engages in audit activity in relation to
13 the registrable superannuation entity at a particular time; and
14 (c) a conflict of interest situation exists in relation to the
15 registrable superannuation entity at that time; and
16 (d) the defendant is a director of the RSE audit company at that
17 time; and
18 (e) the defendant is or becomes aware of the circumstances
19 referred to in paragraphs (b) and (c); and
20 (f) the defendant does not, as soon as possible after the
21 defendant becomes aware of those circumstances, take
22 reasonable steps to ensure that the conflict of interest
23 situation ceases to exist.

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

25 *Director of RSE audit company to notify ASIC*

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

- 27 (a) a director or employee of an RSE audit company is an
28 individual auditor of a registrable superannuation entity; and
29 (b) the individual auditor engages in audit activity in relation to
30 the registrable superannuation entity; and

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-
- 1 (c) a conflict of interest situation exists in relation to the
2 registrable superannuation entity while the individual auditor
3 is the auditor of the registrable superannuation entity; and
4 (d) the defendant is a director of the RSE audit company at a
5 time when the conflict of interest situation exists; and
6 (e) on a particular day (the *start day*), the defendant becomes
7 aware of the circumstances referred to in paragraphs (b) and
8 (c); and
9 (f) at the end of the period of 7 days from the start day:
10 (i) the conflict of interest situation remains in existence;
11 and
12 (ii) ASIC has not been informed in writing by the
13 defendant, by another director of the RSE audit
14 company or by the RSE audit company that the conflict
15 of interest situation exists.

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

- 17 (3) A person is not excused from informing ASIC under subsection (2)
18 that a conflict of interest situation exists on the ground that the
19 information might tend to incriminate the person.
- 20 (4) However, if the person is an individual:
21 (a) the information; and
22 (b) the giving of the information;
23 are not admissible in evidence against the person in a criminal
24 proceeding, or any other proceeding for the recovery of a penalty,
25 other than proceedings for an offence based on the information
26 given being false or misleading.
- 27 (5) If, at general law, an individual would otherwise be able to claim
28 the privilege against self-exposure to a penalty (other than a
29 penalty for an offence) in relation to informing ASIC under
30 subsection (2) that a conflict of interest situation exists, the
31 individual is not excused from informing ASIC under that
32 provision on that ground.

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

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

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

- 6 (7) A person contravenes this subsection if:
7 (a) a director or employee of an RSE audit company is an
8 individual auditor of a registrable superannuation entity; and
9 (b) the individual auditor engages in audit activity in relation to
10 the registrable superannuation entity at a particular time; and
11 (c) a conflict of interest situation exists in relation to the
12 registrable superannuation entity at that time; and
13 (d) the person is a director of the RSE audit company at that
14 time; and
15 (e) at that time, another director of the RSE audit company is
16 aware that the conflict of interest situation exists; and
17 (f) the RSE audit company does not, as soon as possible after the
18 director referred to in paragraph (e) becomes aware that the
19 conflict of interest situation exists, take all reasonable steps
20 to ensure that the conflict of interest situation ceases to exist.

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

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

25 Note: Subsection (11) provides a defence.

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

- 28 (9) A person contravenes this subsection if:
29 (a) a director or employee of an RSE audit company is an
30 individual auditor of a registrable superannuation entity; and
31 (b) the individual auditor engages in audit activity in relation to
32 the registrable superannuation entity at a particular time; and

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- 1 (c) a conflict of interest situation exists in relation to the
2 registrable superannuation entity at that time; and
3 (d) the person is a director of the RSE audit company at that
4 time; and
5 (e) at that time, none of the directors of the RSE audit company
6 are aware that the conflict of interest situation exists; and
7 (f) a director of the RSE audit company would have been aware
8 of the existence of the conflict of interest situation if the RSE
9 audit company had in place a quality control system
10 reasonably capable of making the RSE audit company aware
11 of the existence of such a conflict of interest situation.

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

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

16 Note: Subsection (11) provides a defence.

17 *Defence*

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

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

29 *Relationship between obligations under this section and other* 30 *obligations*

- 31 (12) The obligations imposed by this section are in addition to, and do
32 not derogate from, any obligation imposed by:
33 (a) another provision of this Act; or
34 (b) a code of professional conduct.
-

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

3 **111 Subsection 324CD(1)**

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

6 **112 After paragraph 324CD(2)(c)**

7 Insert:

8 ; or (d) if:

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

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

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

15 (e) if:

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

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

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

23 **113 Subsection 324CD(2) (at the end of the table)**

24 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 <i>Superannuation Industry (Supervision) Act 1993</i>); or a current or former director of the registrable superannuation entity; or |
|---|-------------------------------------|--|

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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.

1 **114 Subsection 324CE(1A) (note)**

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

4 **115 Subsection 324CE(1A) (at the end of the note)**

5 Add:

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

7 **116 After section 324CF**

8 Insert:

9 **324CFA Auditor independence—specific requirements for RSE**
10 **audit firm**

11 *Contraventions by members of RSE audit firm*

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

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

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

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- 1 (c) a relevant item of the table in subsection 324CH(1) applies at
2 that time to a person or entity covered by subsection (10) of
3 this section; and
4 (d) the defendant is a member of the RSE audit firm at that time;
5 and
6 (e) the defendant is or becomes aware of the circumstances
7 referred to in paragraphs (b) and (c); and
8 (f) the defendant does not, as soon as possible after the
9 defendant becomes aware of those circumstances, take all
10 reasonable steps to ensure that the individual auditor does not
11 continue to engage in audit activity in those circumstances.

12 *Member of RSE audit firm to notify ASIC*

- 13 (2) A person (the *defendant*) contravenes this subsection if:
14 (a) a member or employee of an RSE audit firm is an individual
15 auditor of a registrable superannuation entity; and
16 (b) the individual auditor engages in audit activity in relation to
17 the registrable superannuation entity; and
18 (c) a relevant item of the table in subsection 324CH(1) applies to
19 a person or entity covered by subsection (10) of this section
20 while the individual auditor is the auditor of the registrable
21 superannuation entity; and
22 (d) the defendant is a member of the RSE audit firm at a time
23 when the circumstances referred to in paragraph (c) exist; and
24 (e) on a particular day (the *start day*), the defendant becomes
25 aware of the circumstances referred to in paragraphs (b) and
26 (c); and
27 (f) at the end of the period of 7 days from the start day:
28 (i) the circumstances referred to in paragraph (c) remain in
29 existence; and
30 (ii) ASIC has not been informed in writing of those
31 circumstances by the defendant, by another member of
32 the RSE audit firm or by someone else on behalf of the
33 RSE audit firm.

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-
- 1 (3) A person is not excused from informing ASIC under subsection (2)
2 that the circumstances referred to in paragraph (2)(c) exist on the
3 ground that the information might tend to incriminate the person.
- 4 (4) However:
5 (a) the information; and
6 (b) the giving of the information;
7 are not admissible in evidence against the person in a criminal
8 proceeding, or any other proceeding for the recovery of a penalty,
9 other than proceedings for an offence based on the information
10 given being false or misleading.
- 11 (5) If, at general law, an individual would otherwise be able to claim
12 the privilege against self-exposure to a penalty (other than a
13 penalty for an offence) in relation to informing ASIC under
14 subsection (2) that the circumstances referred to in paragraph (2)(c)
15 exist, the individual is not excused from informing ASIC under
16 that provision on that ground.
- 17 (6) If ASIC is given a notice under paragraph (2)(f), ASIC must, as
18 soon as practicable after the notice is received, give a copy of the
19 notice to the registrable superannuation entity.
- 20 *Contravention of independence requirements by members of RSE*
21 *audit firm*
- 22 (7) A person (the *defendant*) contravenes this subsection if:
23 (a) a member or employee of an RSE audit firm is an individual
24 auditor of a registrable superannuation entity; and
25 (b) the individual auditor engages in audit activity in relation to
26 the registrable superannuation entity at a particular time; and
27 (c) a relevant item of the table in subsection 324CH(1) applies at
28 that time to a person or entity covered by subsection (10) of
29 this section; and
30 (d) the defendant is a member of the RSE audit firm at that time.
- 31 (8) For the purposes of an offence based on subsection (7), strict
32 liability applies to the physical elements of the offence specified in
33 paragraphs (7)(a), (b) and (c).

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1 Note: Subsection (9) provides a defence.

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

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

12 *People and entities covered*

13 (10) The following table sets out:

- 14 (a) the persons and entities covered by this subsection in relation
15 to audit activity engaged in by a member or employee of an
16 RSE audit firm; and
17 (b) the items of the table in subsection 324CH(1) that are the
18 relevant items for each of those persons and entities.

19

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 | 1 to 6 |

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RSE audit firm

| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
|-------------|---|--|
| | conducting the audit of the registrable superannuation entity | 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 | 1 and 2 |

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RSE audit firm

| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
|-------------|-------------------------------------|--|
|-------------|-------------------------------------|--|

firm; and

(b) does not satisfy the independence test in subsection (12)

| | | |
|----|---------------|---------|
| 12 | a person who: | 1 and 2 |
|----|---------------|---------|

(a) is a former professional employee of the RSE audit firm; and

(b) does not satisfy the independence test in subsection (12)

1 *Maximum hours test*

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

4 (a) the number of hours for which the person provides services
5 (other than services related to the conduct of an audit) to the
6 registrable superannuation entity on behalf of the auditor
7 during the period to which the audit relates does not exceed
8 10 hours; and

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

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

18 *Independence test*

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

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- 1 (a) does not influence the operations or financial policies of the
2 accounting and audit practice conducted by the firm; and
3 (b) does not participate, or appear to participate, in the business
4 or professional activities of the accounting and audit practice
5 conducted by the firm; and
6 (c) does not have any rights against the firm, or the members of
7 the firm, in relation to the accounting and audit practice
8 conducted by the firm in relation to the termination of, or the
9 value of, the person's former partnership interest in the firm;
10 and
11 (d) has no financial arrangements with the firm in relation to the
12 accounting and audit practice conducted by the firm, other
13 than:
14 (i) an arrangement providing for regular payments of a
15 fixed pre-determined dollar amount which is not
16 dependent, directly or indirectly, on the revenues,
17 profits or earnings of the firm; or
18 (ii) an arrangement providing for regular payments of a
19 dollar amount where the method of calculating the
20 dollar amount is fixed and is not dependent, directly or
21 indirectly, on the revenues, profits or earnings of the
22 firm; and
23 (e) without limiting paragraph (d), has no financial arrangement
24 with the firm to receive a commission or similar payment in
25 relation to business generated by the person for the
26 accounting and audit practice conducted by the firm.
27 In a prosecution for an offence based on subsection (1) or (7), the
28 prosecution must prove that the person did not satisfy the
29 independence test in this subsection in relation to the firm.
30 (13) In applying subsection (12), disregard any rights that the person
31 has against the firm, or the members of the firm, by way of an
32 indemnity for, or contribution in relation to, liabilities incurred by
33 the person when the person was a member or employee of the firm.

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1 *Meaning of holding by firm in body corporate*

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

5 **117 After section 324CG**

6 Insert:

7 **324CGA Auditor independence—specific requirements for RSE**
8 **audit company**

9 *Specific independence requirements for RSE audit company*

- 10 (1) An RSE audit company contravenes this subsection if:
- 11 (a) a director or employee of the RSE audit company is an
12 individual auditor of a registrable superannuation entity; and
- 13 (b) the individual auditor engages in audit activity in relation to
14 the registrable superannuation entity at a particular time; and
- 15 (c) a relevant item of the table in subsection 324CH(1) applies at
16 that time to a person or entity covered by subsection (16) of
17 this section; and
- 18 (d) the RSE audit company is or becomes aware of the
19 circumstances referred to in paragraph (c); and
- 20 (e) the RSE audit company does not, as soon as possible after the
21 RSE audit company becomes aware of those circumstances,
22 take all reasonable steps to ensure that the individual auditor
23 does not continue to engage in audit activity in those
24 circumstances.

25 *RSE audit company to notify ASIC*

- 26 (2) An RSE audit company contravenes this subsection if:
- 27 (a) a director or employee of the RSE audit company is an
28 individual auditor of a registrable superannuation entity; and
- 29 (b) the individual auditor engages in audit activity in relation to
30 the registrable superannuation entity at a particular time; and

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- 1 (c) a relevant item of the table in subsection 324CH(1) applies to
2 a person or entity covered by subsection (16) of this section
3 while the individual auditor is the auditor of the registrable
4 superannuation entity; and
- 5 (d) on a particular day (the *start day*), the RSE audit company
6 becomes aware of the circumstances referred to in
7 paragraph (c); and
- 8 (e) at the end of the period of 7 days from the start day:
9 (i) those circumstances remain in existence; and
10 (ii) the RSE audit company has not informed ASIC in
11 writing of those circumstances.
- 12 (3) If the RSE audit company gives ASIC a notice under
13 paragraph (2)(e), ASIC must, as soon as practicable after the notice
14 has been received, give a copy of the notice to the registrable
15 superannuation entity.
- 16 *Strict liability contravention of specific independence requirements*
17 *by RSE audit company*
- 18 (4) An RSE audit company contravenes this subsection if:
19 (a) a director or employee of the RSE audit company is an
20 individual auditor of a registrable superannuation entity; and
21 (b) the individual auditor engages in audit activity in relation to
22 the registrable superannuation entity at a particular time; and
23 (c) a relevant item of the table in subsection 324CH(1) applies at
24 that time to a person or entity covered by subsection (16) of
25 this section.
- 26 (5) For the purposes of an offence based on subsection (4), strict
27 liability applies to the physical elements of the offence specified in
28 paragraph (4)(c).
- 29 Note: Subsection (6) provides a defence.
- 30 (6) An RSE audit company does not commit an offence because of a
31 contravention of subsection (4) in relation to audit activity engaged
32 in by a director or employee of an RSE audit company at a
33 particular time if the RSE audit company has reasonable grounds to
34 believe that the RSE audit company had in place at that time a

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1 quality control system that provided reasonable assurance (taking
2 into account the size and nature of the audit practice of the RSE
3 audit company) that the RSE audit company and the RSE audit
4 company's employees complied with the requirements of this
5 Subdivision.

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

8 *Contraventions by directors of RSE audit company*

- 9 (7) A person (the *defendant*) contravenes this subsection if:
- 10 (a) a director or employee of an RSE audit company is an
11 individual auditor of a registrable superannuation entity; and
 - 12 (b) the individual auditor engages in audit activity in relation to
13 the registrable superannuation entity at a particular time; and
 - 14 (c) a relevant item of the table in subsection 324CH(1) applies at
15 that time to a person or entity covered by subsection (16) of
16 this section; and
 - 17 (d) the defendant is a director of the RSE audit company at that
18 time; and
 - 19 (e) the defendant is or becomes aware of the circumstances
20 referred to in paragraphs (b) and (c); and
 - 21 (f) the defendant does not, as soon as possible after the
22 defendant becomes aware of those circumstances, take all
23 reasonable steps to ensure that the individual auditor does not
24 continue to engage in audit activity in those circumstances.

25 *Director of RSE audit company to notify ASIC*

- 26 (8) A person (the *defendant*) contravenes this subsection if:
- 27 (a) a director or employee of an RSE audit company is an
28 individual auditor of a registrable superannuation entity; and
 - 29 (b) the individual auditor engages in audit activity in relation to
30 the registrable superannuation entity; and
 - 31 (c) a relevant item of the table in subsection 324CH(1) applies to
32 a person or entity covered by subsection (16) of this section
33 while the individual auditor is the auditor of the registrable
34 superannuation entity; and

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- 1 (d) the defendant is a director of the RSE audit company at a
2 time when the circumstances referred to in paragraph (c)
3 exist; and
4 (e) on a particular day (the *start day*), the defendant becomes
5 aware of the circumstances referred to in paragraphs (b) and
6 (c); and
7 (f) at the end of the period of 7 days from the start day:
8 (i) the circumstances referred to in paragraph (c) remain in
9 existence; and
10 (ii) ASIC has not been informed in writing of those
11 circumstances by the defendant, by another director of
12 the company or by the RSE audit company.
- 13 (9) A person is not excused from informing ASIC under subsection (8)
14 that the circumstances referred to in paragraph (8)(c) exist on the
15 ground that the information might tend to incriminate the person.
- 16 (10) However, if the person is a natural person:
17 (a) the information; and
18 (b) the giving of the information;
19 are not admissible in evidence against the person in a criminal
20 proceeding, or any other proceeding for the recovery of a penalty,
21 other than proceedings for an offence based on the information
22 given being false or misleading.
- 23 (11) If, at general law, an individual would otherwise be able to claim
24 the privilege against self-exposure to a penalty (other than a
25 penalty for an offence) in relation to informing ASIC under
26 subsection (8) that the circumstances referred to in paragraph (8)(c)
27 exist, the individual is not excused from informing ASIC under
28 that provision on that ground.
- 29 Note: A body corporate is not entitled to claim the privilege against
30 self-exposure to a penalty.
- 31 (12) If ASIC is given a notice under paragraph (8)(f), ASIC must, as
32 soon as practicable after the notice is received, give a copy of the
33 notice to the registrable superannuation entity.

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1

| 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 | 10 to 12 |

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| RSE audit company | | |
|--------------------------|---|--|
| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
| | maximum hours test in subsection (17) | |
| 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 | 1 and 2 |

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RSE audit company

| Item | For this person or entity... | the relevant items of the table in subsection 324CH(1) are... |
|-------------|-------------------------------------|--|
|-------------|-------------------------------------|--|

independence test in subsection (18)

1 *Maximum hours test*

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

4 (a) the number of hours for which the person provides services
5 (other than services related to the conduct of an audit) to the
6 registrable superannuation entity on behalf of the auditor
7 during the period to which the audit relates does not exceed
8 10 hours; and

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

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

18 *Independence test*

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

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

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

27 (c) does not have any rights against the RSE audit company in
28 relation to the accounting and audit practice conducted by the

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- 1 RSE audit company in relation to the termination of the
2 person's former position as an officer of the RSE audit
3 company; and
4 (d) has no financial arrangements with the RSE audit company
5 in relation to the accounting and audit practice conducted by
6 the RSE audit company, other than:
7 (i) an arrangement providing for regular payments of a
8 fixed pre-determined dollar amount which is not
9 dependent, directly or indirectly, on the revenues,
10 profits or earnings of the RSE audit company; or
11 (ii) an arrangement providing for regular payments of a
12 dollar amount where the method of calculating the
13 dollar amount is fixed and is not dependent, directly or
14 indirectly, on the revenues, profits or earnings of the
15 RSE audit company; and
16 (e) without limiting paragraph (d), has no financial arrangement
17 with the RSE audit company to receive a commission or
18 similar payment in relation to business generated by the
19 person for the accounting and audit practice conducted by the
20 RSE audit company.
21 In a prosecution for an offence based on subsection (1), (4), (7) or
22 (13), the prosecution must prove that the person did not satisfy the
23 independence test in this subsection in relation to the RSE audit
24 company.
25 (19) In applying subsection (18), disregard any rights that the person
26 has against the RSE audit company by way of an indemnity for, or
27 contribution in relation to, liabilities incurred by the person when
28 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:

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1 *Applying table if audited body is registrable superannuation entity*

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

4 (a) references to the audited body in items 1 to 9, and items 15 to
5 19, in the table were references to the RSE licensee for the
6 registrable superannuation entity; and

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

9 (i) the registrable superannuation entity; or

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

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

17 **120 After section 324CI**

18 Insert:

19 **324CIA Special rule for former members of RSE audit firms and** 20 **former directors of RSE audit companies**

21 A person contravenes this section if:

22 (a) the person ceases to be:

23 (i) a member of a firm; or

24 (ii) a director of a company;

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

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

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

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

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

33 (d) either:

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- 1 (i) the person was the individual auditor of the registrable
2 superannuation entity; or
3 (ii) the person was a professional member of the audit team;
4 and
5 (e) within the period of 2 years starting on the date the report
6 under section 308 or 309 was made on the latest audit to
7 which paragraphs (b) and (d) apply, the person becomes, or
8 continues to be, an officer of the registrable superannuation
9 entity.

10 **121 After section 324CJ**

11 Insert:

12 **324CJA Special rule for former professional members of RSE audit**
13 **company**

14 A person contravenes this section if:

- 15 (a) the person who is not a director of a company ceases to be a
16 professional employee of the company at a particular time
17 (the *departure time*); and
18 (b) at any time before the departure time, an individual auditor
19 has engaged in an audit of a registrable superannuation
20 entity; and
21 (c) the individual auditor of the registrable superannuation entity
22 was a director or employee of the company; and
23 (d) either:
24 (i) the person was the individual auditor or the review
25 auditor of the registrable superannuation entity; or
26 (ii) the person was a professional member of the audit team;
27 and
28 (e) within the period of 2 years starting on the date the report
29 under section 308 or 309 was made on the latest audit to
30 which paragraphs (b) and (d) apply, the person becomes, or
31 continues to be, an officer of the registrable superannuation
32 entity.

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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

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- 1 (ii) an entity that the RSE licensee for the registrable
2 superannuation entity controls; or
3 (b) the person has, at any time within the immediately preceding
4 period of 12 months, been an officer or promoter of:
5 (i) a related body corporate of the RSE licensee for the
6 registrable superannuation entity; or
7 (ii) an entity that the RSE licensee for the registrable
8 superannuation entity controlled at that time.

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

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

17 **124 Paragraph 324CM(1)(a)**

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

20 **125 Paragraph 324CM(1)(c)**

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

22 **126 At the end of section 324CM**

23 Add:

24 *RSE audit firm*

- 25 (4) A member of an RSE audit firm (the *relevant member*)
26 contravenes this subsection if:
27 (a) a member or employee of the RSE audit firm is appointed
28 auditor of a registrable superannuation entity; and
29 (b) while the appointment continues, the relevant member brings
30 about a state of affairs; and
31 (c) a member or employee of the RSE audit firm cannot, while
32 that state of affairs continues, act as auditor of the registrable

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1 superannuation entity without a person contravening
2 Division 2 or 3.

3 *RSE audit company*

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

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

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

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

14 **127 Division 5 of Part 2M.4 (at the end of the heading)**

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

17 **128 Section 324DA (heading)**

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

20 **129 Subsection 324DA(1)**

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

23 **130 Subsection 324DA(1)**

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

26 **131 Subsection 324DA(2)**

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

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1 **132 Subsection 324DA(2)**

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

3 **133 Subsection 324DA(3)**

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

5 **134 Subsection 324DAA(1)**

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

8 **135 Subsection 324DAA(1)**

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

10 **136 Subsection 324DAA(3)**

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

12 **137 Subsection 324DAA(5)**

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

14 **138 Subsection 324DAB(1) (heading)**

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

16 **139 Subsection 324DAB(1)**

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

20 **140 Paragraph 324DAB(2)(c)**

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

22 **141 Subparagraph 324DAB(2)(d)(i)**

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

24 **142 At the end of section 324DAB**

25 Add:

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

5 **143 Section 324DAC**

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

8 **144 After paragraph 324DAC(a)**

9 Insert:

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

13 **145 Section 324DAC (note)**

14 After “300”, insert “or 300C”.

15 **146 Paragraph 324DB**

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

18 **147 At the end of Part 2M.4**

19 Add:

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

22 **Subdivision A—Appointment of registrable superannuation**
23 **entity auditors**

24 **331AF Registrable superannuation entity auditor (initial**
25 **appointment of auditor)**

- 26 (1) If a registrable superannuation entity is registered under
27 section 29M of the *Superannuation Industry (Supervision) Act*
28 *1993* after the commencement of this section, the RSE licensee
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1 must appoint an auditor of the entity for the purposes of this
2 Chapter within 1 month after the day on which the entity is
3 registered under that section.

4 (2) If:

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

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

12 then:

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

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

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

19 **331AG Registrable superannuation entity auditor (appointment to**
20 **fill vacancy)**

21 (1) If a vacancy occurs in the office of auditor of a registrable
22 superannuation entity, the RSE licensee for the entity must, within
23 1 month after the vacancy occurs, appoint an auditor to fill the
24 vacancy.

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

27 **331AH Registrable superannuation entity auditor (duration of**
28 **appointment)**

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

31 (a) dies; or

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- 1 (b) is removed, or resigns, from office in accordance with
2 section 331AK; or
3 (c) ceases to be capable of acting as an auditor because of
4 Division 2, 2A or 5 of this Part; or
5 (d) ceases to be auditor under subsection (2) or (3).
- 6 (2) An individual auditor ceases to be the auditor of a registrable
7 superannuation entity for the purposes of this Chapter if the
8 individual auditor ceases to be the auditor of the entity for the
9 purposes of the RSE licensee law.
- 10 (3) An individual auditor ceases to be the auditor of a registrable
11 superannuation entity for the purposes of this Chapter if:
12 (a) on a particular day (the *start day*), the individual auditor:
13 (i) informs ASIC of a conflict of interest situation in
14 relation to the entity under subsection 324CA(1A); or
15 (ii) informs ASIC of particular circumstances in relation to
16 the entity under subsection 324CE(1A); and
17 (b) the individual auditor does not give ASIC a notice, before the
18 notification day (see subsection (4)), that that conflict of
19 interest situation has, or those circumstances have, ceased to
20 exist before the end of the period (the *remedial period*) of 21
21 days, or such longer period as ASIC approves in writing,
22 from the start day.
- 23 (4) The *notification day* is:
24 (a) the last day of the remedial period; or
25 (b) such later day as ASIC approves in writing (whether before
26 or after the remedial period ends).

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

- 27
28
- 29 (1) ASIC may appoint an auditor of a registrable superannuation entity
30 for the purposes of this Chapter if:
31 (a) the RSE licensee for the entity does not appoint an auditor
32 when required by this Act to do so; and
33 (b) a member of the entity applies to ASIC in writing for the
34 appointment of an auditor under this section.
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- 1 (2) ASIC may only appoint an individual as auditor under
2 subsection (1) if the individual consents to being appointed.
- 3 (3) If ASIC appoints an individual as auditor under subsection (1),
4 ASIC must:
- 5 (a) notify APRA of the appointment; and
6 (b) do so as soon as practicable after making the appointment.

7 **Subdivision B—Removal and resignation of registrable**
8 **superannuation entity auditors**

9 **331AK Removal and resignation of auditors**

- 10 (1) The RSE licensee for a registrable superannuation entity may, with
11 ASIC's consent, remove the auditor of the entity from office.
- 12 (2) An auditor of a registrable superannuation entity may, by notice in
13 writing given to the RSE licensee for the entity, resign as auditor of
14 the entity if:
- 15 (a) the auditor:
- 16 (i) has, by notice in writing given to ASIC, applied for
17 consent to the resignation and stated the reasons for the
18 application; and
- 19 (ii) has, at or about the same time as giving the notice to
20 ASIC, given the registrable superannuation entity notice
21 in writing of the application to ASIC; and
- 22 (b) ASIC has given its consent.
- 23 (3) As soon as practicable after ASIC receives a notice from an auditor
24 under subsection (2), ASIC must notify the auditor, and the
25 registrable superannuation entity, whether it consents to the
26 resignation.
- 27 (4) A statement made by an auditor in an application to ASIC under
28 subsection (2) or in answer to an inquiry by ASIC relating to the
29 reasons for the application:
- 30 (a) is not admissible in evidence in any civil or criminal
31 proceedings against the auditor; and

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

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

6 (5) The resignation of an auditor takes effect:

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

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

11 (c) on the day (if any) fixed by ASIC for the purpose;
12 whichever occurs last.

13 (6) Within 14 days after:

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

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

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

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

22 (a) notify APRA of the consent; and

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

24 **Subdivision C—Fees and expenses of auditors**

25 **331AL Fees and expenses of auditors**

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

29 **148 At the end of subsection 332(1)**

30 Add:

31 ; or (d) an RSE audit firm; or

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1 (e) an RSE audit company.

2 **149 After paragraph 332A(1)(b)**

3 Insert:

4 (ba) registrable superannuation entities;

5 **150 At the end of section 332A**

6 Add:

7 *Deemed audits*

8 (5) If:

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

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

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

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

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

18 (6) If:

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

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

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

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

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

28 **151 At the end of subsection 332C(3)**

29 Add:

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

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- 1 (i) in the firm name; and
2 (ii) in the member's own name; and
3 (g) if the auditor is an RSE audit company:
4 (i) authorised by a resolution of the directors; and
5 (ii) signed by a director.

152 At the end of subsection 332D(3)

- 6 Add:
7
8 ; and (f) if the auditor is an RSE audit firm—signed by a member of
9 the firm who is a registered company auditor both:
10 (i) in the firm name; and
11 (ii) in the member's own name; and
12 (g) if the auditor is an RSE audit company:
13 (i) authorised by a resolution of the directors; and
14 (ii) signed by a director.

153 Section 332G (heading)

15 Omit “audit”.

154 Subsection 332G(1)

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

155 Subsection 332G(3)

17 Omit “audit”.

156 Section 340 (heading)

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

157 Subsection 340(1)

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

158 Section 341 (heading)

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

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1 **159 Subsection 341(1)**

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

4 **160 Section 342 (heading)**

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

7 **161 Section 342AA (heading)**

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

9 **162 Section 342AA (heading)**

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

11 **163 Paragraph 342AA(1)(a)**

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

13 **164 At the end of paragraph 342AA(1)(b)**

14 Add:

- 15 ; or (iv) a member of an RSE audit firm; or
16 (v) a director of an RSE audit company; or
17 (vi) a professional employee of an RSE audit company.

18 **165 Subsection 342AB(1)**

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

21 **166 Paragraph 342AB(1)(a)**

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

23 **167 At the end of paragraph 342AB(1)(b)**

24 Add:

- 25 ; or (iv) members of RSE audit firms; or
26 (v) directors of RSE audit companies; or
27 (vi) professional employees of RSE audit companies.

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1 **168 Paragraph 342A(2)(b)**

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

5 **169 Subsection 342A(4)**

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

9 **170 After subsection 342A(5)**

10 Insert:

11 (5A) If:

- 12 (a) the application is made by a registered company auditor in
13 relation to the audit of a registrable superannuation entity or a
14 class of registrable superannuation entities; and
15 (b) the registered company auditor is a member or employee of
16 an RSE audit firm;
17 the application must include the RSE audit firm’s written consent
18 to the application.

19 (5B) If:

- 20 (a) the application is made by a registered company auditor in
21 relation to the audit of a registrable superannuation entity or a
22 class of registrable superannuation entities; and
23 (b) the registered company auditor is a director or employee of
24 an RSE audit company;
25 the application must include the RSE audit company’s written
26 consent to the application.

27 (5C) Before making a declaration in relation to the audit of a registrable
28 superannuation entity or a class of registrable superannuation
29 entities, ASIC must consult APRA.

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1 **171 Paragraph 342A(6)(b)**

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

5 **172 At the end of section 342A**

6 Add:

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

- 10 (a) notify APRA of the declaration; and
11 (b) do so as soon as practicable after making the declaration.

12 **173 Section 342B (heading)**

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

15 **174 Subsection 342B(1)**

16 Repeal the subsection, substitute:

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

- 21 (a) the company; or
22 (b) the responsible entity for the registered scheme; or
23 (c) the registrable superannuation entity;
24 written notice of the declaration.

25 **175 Subsection 342B(2)**

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

28 **176 Subsection 344(1)**

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

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1 **177 At the end of Chapter 2M**

2 Add:

3 **Part 2M.8—Additional provisions relating to**
4 **registrable superannuation entities**
5

6 **345AAA Obligations of registrable superannuation entities**

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

10 **345AAB Notices etc. given to RSE licensees**

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

15 **345AAC Directors of registrable superannuation entities**

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

- 18 (a) if the RSE licensee for the entity is a constitutional
19 corporation or a body corporate—a director of the
20 constitutional corporation or body corporate; or
21 (b) if the RSE licensee for the entity is a group of individual
22 trustees—each of those trustees.

23 (2) For the purposes of this section, *constitutional corporation* has the
24 same meaning as in the *Superannuation Industry (Supervision) Act*
25 *1993*.

26 **345AAD Officers of registrable superannuation entities**

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

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Part 1 Amendment of the Corporations Act 2001

- 1 (a) if the RSE licensee for the entity is a constitutional
2 corporation or a body corporate—an officer of the
3 constitutional corporation or body corporate; or
4 (b) if the RSE licensee for the entity is a group of individual
5 trustees:
6 (i) each of those trustees; or
7 (ii) a person who makes, or participates in making,
8 decisions that affect the whole, or a substantial part, of
9 the business of the entity; or
10 (iii) a person who has the capacity to affect significantly the
11 entity's financial standing.
- 12 (2) For the purposes of this section, *constitutional corporation* has the
13 same meaning as in the *Superannuation Industry (Supervision) Act*
14 *1993*.

15 **178 After subsection 1017C(3)**

16 Insert:

17 *Reports prepared by a registrable superannuation entity etc.*

- 18 (3AA) If the financial product is a superannuation product that relates to a
19 registrable superannuation entity (within the meaning of
20 Chapter 2M):
21 (a) the issuer must, on request in writing by a person who is a
22 concerned person, give the person:
23 (i) a copy of the financial report of the entity for a specified
24 financial year; and
25 (ii) a copy of the directors' report of the entity for a
26 specified financial year; and
27 (iii) a copy of the auditor's report on that financial report;
28 and
29 (b) the issuer must, on request in writing by a person who is a
30 concerned person, give the person:
31 (i) a copy of the financial report of the entity for a specified
32 half year; and
33 (ii) a copy of the directors' report of the entity for a
34 specified half year; and

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Amendment of the Corporations Act 2001 **Part 1**

1 (iii) a copy of the auditor's report on that financial report.
2 Each copy must be given in accordance with the other
3 requirements of this section.

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

6 **179 Subsections 1017C(4) and (7)**

7 After "this section", insert "(other than subsection (3AA))".

8 **180 At the end of section 1311C**

9 Add:

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

- 12 (a) subsection 307B(2A);
- 13 (b) subsection 324CAA(1);
- 14 (c) subsection 324CAA(2);
- 15 (d) subsection 324CAA(5);
- 16 (e) subsection 324CGA(1);
- 17 (f) subsection 324CGA(2);
- 18 (g) subsection 324CGA(4).

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

20 **181 In the appropriate position in Chapter 10**

21 Insert:

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 1 Amendment of the Corporations Act 2001

1 **Part 10.58—Application and transitional provisions**
2 **relating to Schedule 1 to the Treasury Laws**
3 **Amendment (Financial Reporting and**
4 **Auditing Requirements for Registrable**
5 **Superannuation Entities) Act 2021**
6

7 **1701 Financial reporting and auditing requirements for registrable**
8 **superannuation entities**

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

- 13 (a) a financial report for a financial year; or
14 (b) a directors' report for a financial year; or
15 (c) a financial report for a half year in a financial year; or
16 (d) an audit or review of a financial report for a financial year; or
17 (e) an audit or review of a financial report for a half year in a
18 financial year;

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

21 **182 In the appropriate position in Schedule 3**

22 Insert:

Subsection 307B(2A) 250 penalty units

23 **183 In the appropriate position in Schedule 3**

24 Insert:

Subsection 307B(5A) 50 penalty units

25 **184 Schedule 3 (table item dealing with Subsections 308(1),**
26 **(2), (3), (3AA), (3AB), (3A), (3C) and (4), column headed**
27 **“Provision”)**

28 After “(3C)” insert “, (3D)”.

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Amendment of the Corporations Act 2001 Part 1

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

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

4 **186 In the appropriate position in Schedule 3**

5 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 |

6 **187 Schedule 3 (table item dealing with Subsection 312(1),**
7 **column headed “Provision”)**

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

9 **188 In the appropriate position in Schedule 3**

10 Insert:

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

11 **189 Schedule 3 (table item dealing with Subsections 322(1),**
12 **(1A) and (2), column headed “Provision”)**

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

14 **190 In the appropriate position in Schedule 3**

15 Insert:

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

16 **191 In the appropriate position in Schedule 3**

17 Insert:

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

18 **192 In the appropriate position in Schedule 3**

19 Insert:

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Subsection 324CAA(1) 300 penalty units

Subsections 324CAA(2) and (5) 150 penalty units

1 **193 In the appropriate position in Schedule 3**

2 Insert:

Subsection 324CBA(1) 6 months imprisonment

Subsections 324CBA(2), (7) and (9) 30 penalty units

3 **194 In the appropriate position in Schedule 3**

4 Insert:

Subsection 324CCA(1) 6 months imprisonment

Subsections 324CCA(2), (7) and (9) 30 penalty units

5 **195 In the appropriate position in Schedule 3**

6 Insert:

Subsection 324CFA(1) 6 months imprisonment

Subsections 324CFA(2) and (7) 30 penalty units

7 **196 In the appropriate position in Schedule 3**

8 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

9 **197 In the appropriate position in Schedule 3**

10 Insert:

Section 324CIA 6 months imprisonment

11 **198 In the appropriate position in Schedule 3**

12 Insert:

Section 324CJA 6 months imprisonment

13 **199 In the appropriate position in Schedule 3**

14 Insert:

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Schedule 1

Amendment of the Corporations Act 2001 Part 1

Section 324CKA 6 months imprisonment

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

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

5 **201 In the appropriate position in Schedule 3**

6 Insert:

Subsections 331AF(1) and (3) 6 months imprisonment

Subsections 331AG(1) and (2) 6 months imprisonment

7 **202 In the appropriate position in Schedule 3**

8 Insert:

Subsection 1017C(3AA) 2 years imprisonment

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

13 *Corporations Act 2001*

14 **203 Paragraph 302A(c)**

15 Omit “ASIC”, substitute “the Registrar”.

16 **204 Section 302A (note)**

17 Omit “ASIC”, substitute “the Registrar”.

18 **205 Paragraph 322(2A)(b)**

19 Omit “ASIC”, substitute “the Registrar”.

20 **206 Subsection 331AK(6)**

21 Omit “ASIC”, substitute “the Registrar”.

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 **Part 2—Amendments of other Acts**

2 *Australian Securities and Investments Commission Act 2001*

3 **207 Subparagraph 127(2D)(b)(i)**

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

5 **208 Paragraph 127(2D)(c)**

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

8 **209 Subsection 127(2D)**

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

10 **210 Subsection 127(2F)**

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

12 **211 Subsection 127(2G)**

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

14 **212 Subsection 127(9)**

15 Insert:

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

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

19 *Superannuation Industry (Supervision) Act 1993*

20 **213 Subsection 6(1) (table item 40, column headed
21 “Provisions”)**

22 Omit “43”, substitute “43A”.

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Schedule 1

Amendments of other Acts Part 2

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

2 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 |
|-----|---------------------------|---|---|

3 **215 Subsection 10(1)**

4 Insert:

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

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

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

12 **216 Paragraph 29D(1)(a)**

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

15 **217 Paragraph 29E(1)(a)**

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

18 **218 Paragraph 29JA(1A)(c)**

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

21 **219 Paragraph 29P(2)(c)**

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

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 **220 After paragraph 29P(3)(a)**

2 Insert:

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

- 6 (i) the financial report for the year of income of the entity;
7 (ii) the directors' report for the year of income of the entity;
8 (iii) the auditor's report on the financial report for the year
9 of income of the entity; and

10 **221 Subsection 29PA(3)**

11 Omit "has been an auditor", substitute "is, or has been, an RSE
12 auditor".

13 **222 Sections 29PD (heading)**

14 Omit "auditor", substitute "RSE auditor".

15 **223 Subsection 29PD(1)**

16 Omit "has been an auditor", substitute "is, or has been, an RSE
17 auditor".

18 **224 Subsections 29PD(2) and (3)**

19 Omit "auditor" (wherever occurring), substitute "RSE auditor".

20 **225 Section 29QB**

21 Repeal the section.

22 **226 Subparagraph 35A(1)(b)(ii)**

23 After "the RSE licensee law", insert "or Chapter 2M of the
24 *Corporations Act 2001*".

25 **227 Paragraph 35A(1)(c)**

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

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

1 **228 After subsection 35A(1)**

2 Insert:

3 (1A) If accounting records of an RSE licensee or a registrable
4 superannuation entity are kept in accordance with subsection (1),
5 each trustee of the entity must ensure that the records are retained
6 for at least 7 years after the end of the year of income to which the
7 transactions relate.

8 **229 Paragraph 35A(2)(a)**

9 Repeal the paragraph.

10 **230 Subsection 35A(6)**

11 Repeal the subsection, substitute:

12 *Offences*

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

15 Penalty: Imprisonment for 2 years.

16 **231 Subsection 35A(7)**

17 After “(1)”, insert “, (1A)”.

18 **232 Subsection 35A(7) (penalty)**

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

20 **233 Subsection 35AB(3) (penalty)**

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

22 **234 At the end of subsection 35AC(1)**

23 Add:

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

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 **235 At the end of subsection 35AC(2)**

2 Add:

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

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

7 **236 At the end of subsection 35AC(6)**

8 Add:

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

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

13 **237 At the end of section 35AC**

14 Add:

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

20 (8) If:

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

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

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

29 **238 Section 126L (heading)**

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

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

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

EXPOSURE DRAFT

Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

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

2 *Section does not apply if the first person has a belief that the*
3 *opinion is not relevant to the performance of audit functions*

4 (2) This section does not apply if the first person has an honest belief
5 that the opinion is not relevant to the performance of those
6 functions.

7 *Trustee and Regulator to be told about the matter*

8 (3) The first person must, immediately after the first person forms the
9 opinion mentioned in paragraph (1)(b):
10 (a) tell a trustee of the entity about the matter in writing; and
11 (b) if the contravention about which the first person has formed
12 the opinion mentioned in paragraph (1)(b) is of such a nature
13 that it may affect the interests of members or beneficiaries of
14 the entity—tell the Regulator about the matter in writing.

15 *No civil liability for telling about a matter*

16 (4) The first person is not liable in a civil action or civil proceeding in
17 relation to telling the Regulator, or a trustee of the entity, about a
18 matter as required by this section.

19 *Offences*

20 (5) A person commits an offence if the person contravenes
21 subsection (3).

22 Penalty: 50 penalty units.

23 (6) A person commits an offence if the person contravenes
24 subsection (3).

25 Penalty: 25 penalty units.

26 (7) An offence against subsection (6) is an offence of strict liability.

27 **242 After section 130**

28 Insert:

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

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.

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 (5) A person commits an offence if the person contravenes
2 subsection (2).

3 Penalty: 25 penalty units.

4 (6) An offence against subsection (5) is an offence of strict liability.

5 *When financial position is unsatisfactory*

6 (7) For the purposes of this section, the financial position of an entity
7 is taken to be unsatisfactory if, and only if, under the regulations,
8 the financial position of the entity is treated as unsatisfactory.

9 **243 After section 130A**

10 Insert:

11 **130AB RSE audit company or RSE audit firm may give information** 12 **to the Regulator**

13 An RSE audit company, or an RSE audit firm, for a registrable
14 superannuation entity may give to the Regulator information about
15 the entity or a trustee of the entity obtained in the course of, or in
16 connection with, the performance by a person of audit functions
17 under:

- 18 (a) this Act; or
19 (b) the regulations; or
20 (c) the prudential standards; or
21 (d) the *Financial Sector (Collection of Data) Act 2001*; or
22 (e) the *Corporations Act 2001*;

23 if:

- 24 (f) the person is:
25 (i) a director or employee of the RSE audit company; or
26 (ii) a member or employee of the RSE audit firm; and
27 (g) the RSE audit company or RSE audit firm considers that
28 giving the information will assist the Regulator in performing
29 its functions under this Act, the regulations, the prudential
30 standards or the *Financial Sector (Collection of Data) Act*
31 *2001*.

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

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:

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

- 1 (i) an attempt, in relation to an audit of the entity, by any
2 person to unduly influence, coerce, manipulate or
3 mislead the auditor conducting the audit; or
4 (ii) an attempt by any person to otherwise interfere with the
5 proper conduct of an audit of the entity; and
6 (b) the auditor is or was a member or employee of the RSE audit
7 firm;
8 the member must:
9 (c) notify the Regulator in writing of those circumstances; and
10 (d) do so as soon as practicable, and in any case within 28 days,
11 after the member becomes aware of those circumstances.

12 (2) A person commits an offence if the person contravenes
13 subsection (1).

14 Penalty: Imprisonment for 12 months or 50 penalty units, or both.

15 *Director of RSE audit company*

16 (3) If:

- 17 (a) a director of an RSE audit company for a registrable
18 superannuation entity is aware of circumstances that amount
19 to:
20 (i) an attempt, in relation to an audit of the entity, by any
21 person to unduly influence, coerce, manipulate or
22 mislead the auditor conducting the audit; or
23 (ii) an attempt by any person to otherwise interfere with the
24 proper conduct of an audit of the entity; and
25 (b) the auditor is or was a director or employee of the RSE audit
26 company;
27 the director must:
28 (c) notify the Regulator in writing of those circumstances; and
29 (d) do so as soon as practicable, and in any case within 28 days,
30 after the director becomes aware of those circumstances.

31 (4) A person commits an offence if the person contravenes
32 subsection (3).

33 Penalty 50 penalty units.

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

Notification to ASIC

- 1
- 2 (5) If the Regulator receives a notification under subsection (1) or (3)
- 3 that relates wholly or partly to an audit conducted in fulfilment of a
- 4 requirement imposed by a provision of Chapter 2M of the
- 5 *Corporations Act 2001*, the Regulator must:
- 6 (a) give a copy of the notification to ASIC; and
- 7 (b) do so as soon as practicable after receiving the notification.

Meaning of audit

- 8
- 9 (6) For the purposes of this section, **audit** means:
- 10 (a) an audit conducted in fulfilment of a requirement imposed by
- 11 a provision of the RSE licensee law; or
- 12 (b) an audit conducted in fulfilment of a requirement imposed by
- 13 a provision of Chapter 2M of the *Corporations Act 2001*.

247 After section 130BB

14

15 Insert:

130BBA Giving false or misleading information to RSE audit company or RSE audit firm

16

17 *Offence—person knows the information is false or misleading etc.*

- 18
- 19 (1) A person commits an offence if:
- 20 (a) the person is:
- 21 (i) the trustee of a registrable superannuation entity; or
- 22 (ii) a responsible officer of the trustee of a registrable
- 23 superannuation entity; or
- 24 (iii) an employee of the trustee of a registrable
- 25 superannuation entity; and
- 26 (b) the person gives information, or allows information to be
- 27 given, to an RSE audit company or an RSE audit firm; and
- 28 (c) a director or employee of the RSE audit company, or a
- 29 member or employee of the RSE audit firm, is an individual
- 30 auditor of the entity; and
- 31 (d) the information relates to the affairs of the entity; and

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Part 2 Amendments of other Acts

- 1 (e) the person knows that the information:
2 (i) is false or misleading in a material particular; or
3 (ii) is missing something that makes the information
4 misleading in a material respect.
- 5 Penalty: Imprisonment for 5 years or 200 penalty units, or both.
- 6 *Offence—person fails to ensure the information is not false or*
7 *misleading etc.*
- 8 (2) A person commits an offence if:
9 (a) the person is:
10 (i) the trustee of a registrable superannuation entity; or
11 (ii) a responsible officer of the trustee of a registrable
12 superannuation entity; or
13 (iii) an employee of the trustee of a registrable
14 superannuation entity; and
15 (b) the person gives information, or allows information to be
16 given, to an RSE audit company or an RSE audit firm; and
17 (c) a director or employee of the RSE audit company, or a
18 member or employee of the RSE audit firm, is an individual
19 auditor of the entity; and
20 (d) the information relates to the affairs of the entity; and
21 (e) the information:
22 (i) is false or misleading in a material particular; or
23 (ii) is missing something that makes the information
24 misleading in a material respect; and
25 (f) the person did not take reasonable steps to ensure that the
26 information:
27 (i) was not false or misleading in a material particular; or
28 (ii) was not missing something that makes the information
29 misleading in a material respect.
- 30 Penalty: Imprisonment for 2 years or 100 penalty units, or both.
-

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

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

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 *Financial Sector (Collection of Data) Act 2001* in relation to
2 the entity; and

- 3 (d) the other person is:
- 4 (i) a director or employee of the RSE audit company; or
 - 5 (ii) a member or employee of the RSE audit firm.

6 *Trustee and Regulator to be told about the matter*

- 7 (2) The director or member must, as soon as practicable after the
8 director or member forms the opinion mentioned in
9 paragraph (1)(b):
- 10 (a) tell a trustee of the fund about the matter in writing; and
 - 11 (b) if the contravention about which the director or member has
12 formed the opinion mentioned in paragraph (1)(b) is of such
13 a nature that it may affect the interests of members or
14 beneficiaries of the fund—tell the Regulator about the matter
15 in writing.

16 *No civil liability for telling about a matter*

- 17 (3) A person is not liable in a civil action or civil proceeding in
18 relation to telling the Regulator, or a trustee of the entity, about a
19 matter as required by this section.

20 *Offences*

- 21 (4) A person commits an offence if the person contravenes
22 subsection (2).

23 Penalty: 50 penalty units.

- 24 (5) A person commits an offence if the person contravenes
25 subsection (2).

26 Penalty: 25 penalty units.

- 27 (6) An offence against subsection (5) is an offence of strict liability.

28 **249 Section 130D (at the end of the heading)**

29 Add “—**auditor or actuary**”.

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts Part 2

1 **250 Subsection 130D(1)**

2 After “APRA”, insert “or ASIC”.

3 **251 Subsection 130E(1)**

4 After “APRA”, insert “or ASIC”.

5 **252 After section 130E**

6 Insert:

7 **130EA Court power of disqualification—RSE audit firm or RSE**
8 **audit company**

- 9 (1) On application by ASIC, the Federal Court of Australia may, by
10 order:
- 11 (a) disqualify a firm from being an RSE audit firm; or
 - 12 (b) disqualify a company from being an RSE audit company;
13 for a period that the Court considers appropriate, if the Court is
14 satisfied:
 - 15 (c) as mentioned in subsection (2); and
 - 16 (d) that the disqualification is justified.

17 Note: For offences relating to firms or companies disqualified under this
18 section, see section 131CA.

- 19 (2) The Court may disqualify a firm or company, in accordance with
20 subsection (1), if the Court is satisfied that:
- 21 (a) the firm or company has failed to put in place appropriate
22 processes and systems to enable it to carry out or perform
23 adequately and properly:
 - 24 (i) its duties as an RSE audit firm or RSE audit company
25 under this Act, the regulations or Chapter 2M of the
26 *Corporations Act 2001*; or
 - 27 (ii) any duties required by a law of the Commonwealth, a
28 State or a Territory to be carried out or performed by an
29 RSE audit firm or RSE audit company; or
 - 30 (iii) any functions that an RSE audit firm or RSE audit
31 company is entitled to perform in relation to this Act,

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

- 1 the regulations, the prudential standards or the *Financial*
2 *Sector (Collection of Data) Act 2001*; or
- 3 (b) the firm or company has failed to put in place appropriate
4 processes and systems to enable an RSE auditor who is:
- 5 (i) in the case of a firm—a member or employee of the
6 firm; or
- 7 (ii) in the case of a company—a director or employee of the
8 company;
- 9 to carry out or perform adequately and properly:
- 10 (iii) the duties of an RSE auditor under this Act, the
11 regulations or Chapter 2M of the *Corporations Act*
12 *2001*; or
- 13 (iv) any duties required by a law of the Commonwealth, a
14 State or a Territory to be carried out or performed by an
15 auditor; or
- 16 (v) any functions that an RSE auditor is entitled to perform
17 in relation to this Act, the regulations, the prudential
18 standards or the *Financial Sector (Collection of Data)*
19 *Act 2001*; or
- 20 (c) the firm or company has failed to take reasonable steps to
21 ensure that each RSE auditor who is:
- 22 (i) in the case of a firm—a member or employee of the
23 firm; or
- 24 (ii) in the case of a company—a director or employee of the
25 company;
- 26 meets the relevant eligibility criteria set out in the prudential
27 standards; or
- 28 (d) the firm or company has failed to take reasonable steps to
29 ensure that each RSE auditor who is:
- 30 (i) in the case of a firm—a member or employee of the
31 firm; or
- 32 (ii) in the case of a company—a director or employee of the
33 company;
- 34 is a fit and proper person to be an RSE auditor.
- 35 (3) In deciding whether it is satisfied as mentioned in subsection (2),
36 the Court may take into account:
-

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Financial reporting and auditing requirements for registrable superannuation entities

Schedule 1

Amendments of other Acts **Part 2**

- 1 (a) any matters specified in the regulations for the purposes of
2 this paragraph; and
3 (b) any other matters the Court considers relevant.
- 4 (4) In deciding whether the disqualification is justified as mentioned in
5 paragraph (1)(d), the Court may have regard to:
6 (a) the conduct of the firm or company in relation to its duties
7 under this Act and the regulations; and
8 (b) any other matters the Court considers relevant.
- 9 (5) As soon as practicable after the Court:
10 (a) disqualifies a firm from being an RSE audit firm under this
11 section; or
12 (b) disqualifies a company from being an RSE audit company
13 under this section;
14 ASIC must cause particulars of the disqualification to which the
15 notice relates to be published in the Gazette.

16 **130EB Court power to revoke or vary a disqualification etc.**

- 17 (1) A firm or company that is disqualified under section 130EA, or
18 ASIC, may apply to the Federal Court of Australia for a variation
19 or a revocation of an order made under section 130EA.
- 20 (2) At least 21 days before commencing the proceedings, written
21 notice of the application must be lodged:
22 (a) if the firm or company that is disqualified makes the
23 application—by the person with ASIC; or
24 (b) if ASIC makes the application—by ASIC with the firm or
25 company that is disqualified.

26 **253 After paragraph 131AA(2)(a)**

27 Insert:

- 28 (aa) in the case of an appointment as an RSE auditor:
29 (i) the person is a member or employee of a firm that is
30 disqualified under section 130EA; or
31 (ii) the person is a director or employee of a company that
32 is disqualified under section 130EA; or

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Part 2 Amendments of other Acts

1 **254 After subsection 131AA(6)**

2 Insert:

- 3 (6A) If APRA directs a trustee or trustees to end a person's appointment
4 as an auditor of a registrable superannuation entity, APRA must:
5 (a) notify ASIC of the direction; and
6 (b) do so as soon as practicable after giving the direction.

7 **255 After section 131B**

8 Insert:

9 **131BA Misleading representations by disqualified firm or company**

- 10 (1) A person commits an offence if:
11 (a) the person is a firm; and
12 (b) the firm is disqualified under section 130EA; and
13 (c) the firm represents that a member or employee of the firm is
14 eligible to be an RSE auditor.

15 Penalty: 50 penalty units.

- 16 (2) A person commits an offence if:
17 (a) the person is a company; and
18 (b) the company is disqualified under section 130EA; and
19 (c) the company represents that a director or employee of the
20 company is eligible to be an RSE auditor.

21 Penalty: 250 penalty units.

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

23 Note: See also sections 131CB and 131CC.

24 **256 At the end of Division 4 of Part 16**

25 Add:

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Schedule 1

Amendments of other Acts Part 2

1 **131CA Members or employees of disqualified firms, and directors**
2 **or employees of disqualified companies, not to be RSE**
3 **auditors**

4 (1) A person commits an offence if:

- 5 (a) the person is, or acts as, an RSE auditor; and
- 6 (b) the person is a member or employee of a firm; and
- 7 (c) the firm is disqualified under section 130EA; and
- 8 (d) the person knows that the firm is so disqualified.

9 Penalty: Imprisonment for 2 years.

10 (2) A person commits an offence if:

- 11 (a) the person is, or acts as, an RSE auditor; and
- 12 (b) the person is a director or employee of a company; and
- 13 (c) the company is disqualified under section 130EA; and
- 14 (d) the person knows that the company is so disqualified.

15 Penalty: Imprisonment for 2 years.

16 (3) A person commits an offence if:

- 17 (a) the person is, or acts as, an RSE auditor; and
- 18 (b) the person is a member or employee of a firm; and
- 19 (c) the firm is disqualified under section 130EA.

20 Penalty: 60 penalty units.

21 (4) A person commits an offence if:

- 22 (a) the person is, or acts as, an RSE auditor; and
- 23 (b) the person is a director or employee of a company; and
- 24 (c) the company is disqualified under section 130EA.

25 Penalty: 60 penalty units.

26 (5) Subsections (3) and (4) are offences of strict liability.

27 **257 At the end of Part 16**

28 Add:

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Schedule 1 Financial reporting and auditing requirements for registrable superannuation entities

Part 2 Amendments of other Acts

1 **Division 5—Special provisions relating to firms and**
2 **companies**

3 **131CB Offences by members of a firm**

4 (1) Section 131BA applies to a firm as if it were a person, but with the
5 changes set out in this section.

6 (2) An offence based on section 131BA that would otherwise be
7 committed by the firm is taken to have been committed by each
8 member of the firm.

9 (3) A member of the firm does not commit an offence because of
10 subsection (2) if the member:

11 (a) does not know of the circumstances that constitute the
12 contravention of the provision concerned; or

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

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

18 **131CC Criminal liability of a firm or company**

19 (1) For the purposes of criminal proceedings under section 131BA
20 against a firm, an act or omission by an individual who is:

21 (a) a member of the firm; or

22 (b) an employee or agent of the firm;

23 acting within the actual or apparent scope of the individual's
24 employment, or within the individual's actual or apparent
25 authority, is also to be attributed to the firm.

26 (2) For the purposes of criminal proceedings under section 131BA
27 against a company, an act or omission by an individual who is:

28 (a) an officer of the company; or

29 (b) an employee or agent of the company;

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1 acting within the actual or apparent scope of the individual's
2 employment, or within the individual's actual or apparent
3 authority, is also to be attributed to the company.

4 **258 At the end of paragraph 131D(1)(a)**

5 Add:

6 (v) Chapter 2M of the *Corporations Act 2001*; or

7 **259 At the end of section 131D**

8 Add:

9 (6) If APRA gives a direction under paragraph (2)(e), APRA must:

10 (a) notify ASIC of the direction; and

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

12 **260 Subsection 131FB(2)**

13 After "130A", insert "or 130AB".

14 **261 Subsection 336F(3)**

15 Omit "or 130" (first occurring), substitute ", 129A, 130 or 130AA".

16 **262 Subsection 336F(3) (note 1)**

17 Omit "or 130", substitute ", 129A, 130 or 130AA".

18 **263 Application—retention of accounting records**

19 (1) Subsection 35A(1A) of the *Superannuation Industry (Supervision) Act*
20 *1993* (as amended by this Part) applies in relation to accounting records
21 that relate to a year of income beginning on or after 1 July 2022.

22 (1) Despite the repeal of paragraph 35A(2)(a) of the *Superannuation*
23 *Industry (Supervision) Act 1993* by this Part, that paragraph continues to
24 apply, in relation to accounting records that relate to a year of income
25 beginning before 1 July 2022, as if that repeal had not happened.