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TREASURY LAWS AMENDMENT (FINANCIAL REPORTING AND AUDITING  
REQUIREMENTS FOR REGISTRABLE SUPERANNUATION ENTITIES)  
BILL 2021

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# Glossary

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The following abbreviations and acronyms are used throughout this document.

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	<i>Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Bill 2021</i>
Corporations Act	<i>Corporations Act 2001</i>
Guide to Framing Commonwealth Offences	The Attorney-General's Department's A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011 edition.
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
RSE audit company	Registrable superannuation entity audit company
RSE audit firm	Registrable superannuation entity audit firm
RSE auditor	Registrable superannuation entity auditor
RSE licensee	Registrable superannuation entity licensee
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>



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# **Chapter 1**

## ***Financial reporting and auditing requirements for registrable superannuation entities***

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### **Outline of chapter**

1.1 The Bill amends the Corporations Act, SIS Act and the ASIC Act to extend and adapt the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities.

1.2 Registrable superannuation entities include regulated superannuation funds, approved deposit funds and pooled superannuation trusts, but do not include self-managed superannuation funds.

1.3 The financial reporting requirements require the RSE licensee for a registrable superannuation entity to:

- prepare and lodge financial reports for an entity for each financial year and half-year with ASIC;
- make publicly available the financial and directors' reports for an entity for a financial year and the associated auditor's report on the entity's website;
- include details on how to access the financial and directors' reports for an entity for a financial year and the relevant auditor's report with the notice to the annual members' meeting; and
- provide financial reports for a financial year and half-year to members upon request.

1.4 The auditing requirements require the RSE licensee for a registrable superannuation entity to appoint an individual auditor to conduct an audit or review of the entity and for the auditor to:

- prepare an auditor's report for an audit or review of an entity's financial report for a financial year and half-year;
- report suspected contraventions to the Regulator;
- meet auditor independence and rotation requirements; and
- prepare, lodge and publish auditor transparency reports, if required.

1.5 The purpose of these amendments is to impose financial reporting obligations on registrable superannuation entities that are consistent with those that currently apply to public companies and registered schemes. This builds on other measures in recent years, including the Government's Your Future, Your Super package to improve the compliance and transparency of the sector.

## Context of amendments

1.6 Prior to the amendments in the Bill, superannuation funds were subject to less stringent financial reporting obligations than public companies and registered schemes. In particular there was no direct requirement for registrable superannuation entities to prepare and lodge financial reports or make them publicly available to members. While funds were required to provide financial information and data to APRA, this information was not subject to monitoring and enforcement action by ASIC to ensure compliance with the relevant accounting and auditing standards.

1.7 Superannuation is important to the Australian economy and to ensure that Australian's have sufficient financial resources in their retirement. As at 31 March 2021, superannuation funds with more than four members had a combined value of \$2.1 trillion, almost the same value as all listed companies in Australia (\$2.3 trillion). Superannuation funds with more than four members also collectively own around 20 per cent or \$466.8 billion of all shares in the Australian Stock Exchange. Given the importance of superannuation and the need for trust and transparency in the sector, the Bill requires these entities to prepare financial reports in accordance with Australian Accounting Standards and for these reports to be lodged on the public record with ASIC.

1.8 Requiring registrable superannuation entities to lodge financial reports with ASIC will increase the transparency of financial information and enable stronger enforcement action to be taken to promote compliance with the financial reporting requirements.

1.9 The Bill complements and leverages the recent changes to ASIC and APRA's roles in the regulation of superannuation made by the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*, which came into force on 1 January 2021, by providing for:

- ASIC to perform the role of 'conduct regulator' by extending and adapting the financial reporting and auditing requirements of Chapter 2M of the Corporations Act to apply to registrable superannuation entities; and
- APRA continuing to perform the role of 'prudential regulator' by being responsible for the establishment and

enforcement of prudential standards and practices required to ensure a stable, efficient and competitive financial system.

## Summary of new law

1.10 The Bill amends the Corporations Act, ASIC Act and the SIS Act to extend and adapt the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities.

1.11 The financial reporting requirements in the Bill require RSE licensees for registrable superannuation entities to do all of the following:

- keep relevant records for the preparation of correct financial reports;
- prepare financial reports for each financial year and half-year, which includes directors' reports and financial statements for the entity and each sub-fund;
- have these financial reports audited or reviewed and obtain a copy of the auditor's report;
- lodge the financial and directors' reports and auditor's reports for each financial year and half-year with ASIC;
- make the financial report, directors' report and auditor's report for a financial year publicly available on the entity's website;
- include details of how to access an entity's financial report for a financial year and relevant auditor's report with the notice to the annual members' meeting; and
- provide financial reports for a financial year and half-year to members upon request.

1.12 The auditing requirements continue to provide that the RSE licensee for a registrable superannuation entity must appoint an individual auditor (RSE auditor) to conduct an audit or review of an entity. Specifically, the auditing requirements require:

- the RSE licensee to appoint an auditor of the registrable superannuation entity within one month of the entity being registered as a registrable superannuation entity – transitional provisions apply for entities already registered prior to the date the requirements in the Bill commence;
- the auditor of the entity must:



- meet the eligibility requirements to be appointed as the auditor of a registrable superannuation entity, including the requirement to be a fit and proper person;
- prepare an auditor’s report for an audit or review of a financial report for a financial year and half-year that complies with the auditing standards and provides a true and fair view of the entity’s financial position and performance;
- report suspected contraventions and attempts to interfere with the proper conduct of an audit (these reporting requirements also apply to members of an RSE audit firm and directors of an RSE audit company);
- comply with auditor independence and conflict of interest requirements (these obligations also apply to members of an RSE audit firm, RSE audit companies and directors of an RSE audit company);
- comply with auditor rotation requirements; and
- prepare, lodge and publish auditor transparency reports, if required (this obligation also applies to RSE audit firms and RSE audit companies that conduct ten or more audits of specified entities in a transparency reporting period).

1.13 Where the individual auditor appointed to audit a registrable superannuation entity (RSE auditor) is either an employee or member of an audit firm, or an employee or director of an audit company then the audit firm (RSE audit firm) and the members of the RSE audit firm or alternatively the audit company (RSE audit company) and the directors of the RSE audit company are also be subject to certain obligations.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<b><i>Record-keeping</i></b>	
For a year of income beginning on or after 1 July 2022, registrable superannuation entities must keep financial and accounting records for seven years.	Trustees of a registrable superannuation entities are required to keep a accounting records for five years.
<b><i>Financial reporting</i></b>	
In addition to existing requirements, the RSE licensee for a registrable superannuation entity must prepare	Registrable superannuation entities are required to provide APRA with specified information on the entity’s

<i>New law</i>	<i>Current law</i>
and lodge financial reports for each financial year and half-year with ASIC. Financial reports comprise of financial statements and notes for the entity and for each sub-fund, a directors' declaration and a directors' report.	business operations for each year of income and each quarter, in accordance with superannuation reporting standards made under the <i>Financial Sector (Collection of Data) Act 2001</i> .
<b><i>Appointment of auditors</i></b>	
<p>An RSE licensee must appoint an individual auditor (RSE auditor) to conduct an audit of a registrable superannuation entity. The auditor must comply with duties and obligations under both the Corporations Act and SIS Act.</p> <p>Where the individual auditor is a member or employee of an audit firm, the RSE audit firm has obligations in respect of an audit of the entity (e.g. reporting suspected contraventions).</p> <p>Where the individual is an employee or director of an audit company, the RSE audit company has obligations in respect of the audit of the entity.</p>	<p>An RSE licensee must appoint an individual to conduct an audit of a registrable superannuation entity (RSE auditor) under the SIS Act. Audit companies and audit firms are not recognised and have no role or obligations in respect of the audit of a registrable superannuation entity.</p>
<b><i>Auditor reporting obligations</i></b>	
<p>In addition to existing reporting requirements, where the individual auditor (RSE auditor) is a member or employee of an RSE audit firm or a director or employee of an RSE audit company, members of an RSE audit firm and directors of an RSE audit company are also under an obligation to report contraventions of the SIS Act, the <i>Superannuation Industry (Supervision) Regulations 1994</i>, prudential standards and the <i>Financial Sector (Collection of Data) Act 2001</i> to APRA.</p> <p>Individual auditors, members of an RSE audit firm and directors of an RSE audit company must also report suspected contraventions of the Corporations Act to ASIC.</p>	<p>RSE auditors have an obligation to report suspected contraventions of the SIS Act, the <i>Superannuation Industry (Supervision) Regulations 1994</i>, prudential standards and the <i>Financial Sector (Collection of Data) Act 2001</i> to APRA.</p>

<i>New law</i>	<i>Current law</i>
<b><i>Auditor independence requirements</i></b>	
Individual auditors (RSE auditors), members of an RSE audit firm, RSE audit companies and directors of an RSE audit company are subject to auditor independence requirements under the Corporations Act.	The auditor of a registrable superannuation entity (RSE auditor) is subject to auditor independence requirements in the prudential standards, which are substantially consistent with the auditor independence requirements in the Corporations Act.
<b><i>Auditor rotation requirements</i></b>	
Individual auditors (RSE auditors) may not play a significant role in the audit of a registrable superannuation entity for more than five (out of seven) successive years. The directors of a registrable superannuation entity or ASIC may grant an approval to extend this period for up to an additional two successive years. Before ASIC may grant an approval, it must consult with APRA. If approved, notification of this approval (by directors or ASIC) must also be provided to APRA.	The prudential standards provide that the auditor of registrable superannuation entity (RSE auditor) may not play a significant role in the audit of a registrable superannuation entity for more than five (out of seven) successive years unless an exemption is granted by APRA.
<b><i>Auditor transparency reporting</i></b>	
An individual auditor (RSE auditor), RSE audit firm or RSE audit company may be required to prepare, lodge and publish an auditor transparency report if the auditor/entity conducts ten or more audits of specified types of entities, including registrable superannuation entities, during the transparency reporting year.	No equivalent.

## Detailed explanation of new law

1.14 The Bill amends the Corporations Act, SIS Act and ASIC Act to extend and adapt the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities.

1.15 The purpose of these amendments is to:

- improve the quality and transparency of financial reports prepared for registrable superannuation entities;
- improve public access to, and facilitate industry analysis and scrutiny of, financial reports prepared for registrable superannuation entities;
- increase the accountability of RSE licensees in the preparation of financial reports;
- ensure registrable superannuation entities are subject to financial reporting and auditing requirements that are consistent with the requirements that currently apply to companies and registered schemes; and
- strengthen enforcement and monitoring of an entity's compliance with their duties and obligations in relation to financial reporting.

### Registrable superannuation entities

1.16 The Bill repeals the existing definition of 'registrable superannuation entity' in section 9 of the Corporations Act and replaces it with a new definition, which provides that:

- when used outside of Chapter 2M of the Corporations Act, it has the same meaning as in section 10 of the SIS Act;
- when used in Chapter 2M of the Corporations Act, it has the same meaning as in the SIS Act but does not include:
  - an exempt public sector superannuation scheme, as defined in section 10 of the SIS Act;
  - an excluded approved deposit fund, which is defined in section 10 of the SIS Act, as an approved deposit fund with only one beneficiary; or
  - a small APRA fund, which is defined in section 1017BB of the Corporations Act as a regulated superannuation fund with no more than six members (this definition was amended recently by the *Treasury Laws Amendment (Self*

*Managed Superannuation Funds) Act 2021, which received Royal Assent on 22 June 2021).*

*[Item 20, section 9 of the Corporations Act]*

1.17 Section 10 of the SIS Act defines a ‘registrable superannuation entity’ as a regulated superannuation fund, an approved deposit fund or a pooled superannuation trust but does not include a self-managed superannuation fund.

1.18 For the purposes of Chapter 2M of the Corporations Act, an exempt public sector superannuation scheme is explicitly excluded from the definition of ‘registrable superannuation entity’, to avoid any ambiguity or uncertainty.

1.19 The definition of ‘registrable superannuation entity’ for the purposes of Chapter 2M of the Corporations Act is narrower than the definition of ‘registrable superannuation entity’ in the SIS Act. This means that some entities currently regulated under the SIS Act are not also required to comply with the financial reporting and auditing obligations in Chapter 2M of the Corporations Act.

1.20 For the purposes of Chapter 2M of the Corporations Act, an obligation imposed on a registrable superannuation entity is required to be discharged by the RSE licensee for the entity. *[Items 30 and 177, section 285 and 345AAA of the Corporations Act]*

1.21 Similarly, if a notice, direction or other document is given to an RSE licensee for a registrable superannuation entity under Chapter 2M of the Corporations Act, that notice, direction or document is taken to have been given to the registrable superannuation entity. *[Item 177, section 345AAB of the Corporations Act]*

1.22 ‘RSE licensee’ is defined in section 10 of the SIS Act as a constitutional corporation, body corporate, or group of individual trustees, that holds a registrable superannuation entity licence granted under section 29D of the SIS Act.

1.23 The Bill amends requirements for RSE licences by requiring RSE licensees to comply with the requirements of the RSE licensee law and Chapter 2M of the Corporations Act. Specifically, the Bill provides that:

- in granting an RSE licence, APRA must have no reason to believe that the body corporate or group of individual trustees would fail to comply with the RSE licensee law or Chapter 2M of the Corporations Act if the RSE licence was granted;
- RSE licensees are required to comply with the RSE licensee law and Chapter 2M of the Corporations Act, as a condition imposed on all RSE licences granted by APRA.

- If the RSE licensee is a group of individual trustees, this obligation is imposed on each of those trustees.
- A breach of a licence condition could result in APRA giving the RSE licensee a direction under section 131D of the SIS Act.
- an RSE licensee must notify APRA that the licensee has breached, or will breach a condition, imposed on its RSE licence and the breach is, or will be, significant. In determining whether a breach is significant, the RSE licensee must have regard to the extent of inadequacies in the licensee’s arrangements to ensure compliance with the RSE licensee law and Chapter 2M of the Corporations Act.

*[Items 216, 217, 218, sections 29D, 29E and 29JA of the SIS Act]*

1.24 For the purposes of Chapter 2M of the Corporations Act, ‘director’ of a registrable superannuation entity means:

- where the RSE licensee is a constitutional corporation or a body corporate – a director of the constitutional corporation or body corporate; and
- where the RSE licensee is a group of individual trustees – each of those trustees.

*[Items 6, 7 and 177, sections 9 and 345AAC of the Corporations Act]*

1.25 The Bill amends section 344 of the Corporations Act to provide that a director of a registrable superannuation entity commits an offence if they fail to take all reasonable steps to comply with, or secure compliance with all of the following requirements:

- Part 2M.2 of the Corporations Act (record-keeping);
- Part 2M.3 of the Corporations Act (financial reporting); and
- sections 324DAA, 324DAB and 324DAC of the Corporations Act (approval to extend auditor rotation requirements).

*[Item 176, section 344 of the Corporations Act]*

1.26 If a person fails to comply with these requirements, and that contravention is dishonest, the penalty for this offence is 15 years imprisonment.

1.27 ‘Dishonest’ is defined in section 9 of the Corporations Act to mean dishonest according to the standards of ordinary people.

1.28 Directors of a registrable superannuation entity do not commit an offence under section 344 of the Corporations Act if they fail to comply with the requirement to allow auditors access to the entity’s books

or give information, explanation or assistance in section 312 of the Corporations Act.

## **Record-keeping requirements for registrable superannuation entities**

1.29 The Bill requires that financial records must be kept for all registrable superannuation entities. *[Item 31, section 286 of the Corporations Act]*

1.30 ‘Financial records’ are defined in section 9 of the Corporations Act as including:

- invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- documents of prime entry; and
- working papers and other documents needed to explain the methods by which financial statements are made up and adjustments to be made in preparing financial statements.

1.31 The RSE licensee for a registrable superannuation entity must keep written financial records that correctly record and explain the entity’s transactions, financial position and performance and would enable true and fair financial statements to be prepared and audited. A failure to comply with this record-keeping requirement is an offence. The penalty for this offence is two years imprisonment (for a fault-based offence), or 60 penalty units for an offence of strict liability. *[Items 30 and 31, sections 285 and 286 of the Corporations Act]*

1.32 The penalty for this offence is the same as the existing penalty that applies to companies and registered schemes under the Corporations Act, and to RSE licensees under the SIS Act. In this case, the penalty for a strict liability offence is consistent with the Guide to Framing Commonwealth Offences, which states that the maximum penalty for strict liability offences should not exceed 60 penalty units for a natural person or 300 penalty units for a body corporate.

1.33 An RSE licensee must retain the financial records for a registrable superannuation entity for seven years after the transactions covered by the records are completed. A failure to comply with this requirement is an offence. The penalty is two years imprisonment for a fault-based offence, or 60 penalty units for an offence of strict liability. *[Item 31, section 286 of the Corporations Act]*

1.34 The penalty for this offence is the same as the existing penalty that applies to companies and registered schemes under the Corporations Act and is consistent with the requirements for strict liability offences in the Guide to Framing Commonwealth Offences.

1.35 Financial records for a registrable superannuation entity may:

- be kept in any language — but if they are kept in a language other than English, an English translation of the financial records must be made available to inspect within a reasonable time to a person who is entitled to inspect the records and asks for the English translation — a failure to comply is an offence of strict liability (the penalty is 60 penalty units);
- be kept in electronic form — but if so, they must be convertible into hard copy and be made available within a reasonable time to a person who is entitled to inspect the records — a failure to comply is an offence of strict liability (the penalty is 60 penalty units); and
- be kept in a location outside Australia — but if so, sufficient written information must be kept in Australia to enable the preparation of true and fair financial statements and ASIC must be given written notice, in the prescribed form, of the place where the information is kept — a failure to comply is an offence of strict liability (the penalty is 60 penalty units).

*[Items 32 and 33, section 289 of the Corporations Act]*

1.36 Strict liability offences are necessary in each of these circumstances to deter misconduct that could impede the preparation of accurate financial reports. Having strict liability apply to these offences is intended to reduce non-compliance and bolster the integrity of the regulatory regime enforced by ASIC and improve public confidence in the regime. These offence provisions are the same as the existing offence provisions that apply to companies and registered schemes under the Corporations Act. The penalty for these offences is within the recommended limits in the Guide to Framing Commonwealth Offences, which states that the maximum penalty for strict liability offences should not exceed 60 penalty units for a natural person or 300 penalty units for a body corporate.

1.37 If financial records are kept outside Australia, ASIC may direct a registrable superannuation entity to produce specified financial records. This direction must specify where and when the records are to be produced. An entity must be given at least 14 days after the direction is given to produce the specified records. *[Item 34, section 289 of the Corporations Act]*

1.38 A director of a registrable superannuation entity (or a person on behalf of the director who has been authorised by the Court) has a right to access the financial records of the entity at all reasonable times. *[Item 35, section 290 of the Corporations Act]*

1.39 To ensure that record-keeping requirements for registrable superannuation entities are consistent across the Corporations Act and the



SIS Act, the Bill makes the following consequential amendments to the requirements for the retention of accounting records in the SIS Act:

- increasing the length of time that accounting records must be retained, from five years after the end of the year of income to which the transactions relate, to seven years;
  - The transitional provisions specify that this amendment will apply to records required to be kept for a year of income beginning on or after 1 July 2022.
- removing the fault element for the following offence provisions (i.e. these offence provisions will become exclusively strict liability offences):
  - seek written approval from APRA to keep records outside Australia;
  - to keep records in English, or in a form that is readily accessible and convertible into English;
  - notify APRA of the address where accounting records are kept; and
  - if the records are moved to a new location, to notify APRA of the new address within the specified timeframe.
- increasing the penalty for these strict liability offences from 50 penalty units to 60 penalty units; and
- modifying the penalty for the remaining fault-based offences (to retain specified accounting records and to keep records for seven years) from 100 penalty units to two years imprisonment.
  - Using the fine/imprisonment ratio in the Guide to Framing Commonwealth Offences, an imprisonment term of 24 months, when converted to penalty units, results in the penalty for these offences increasing from 100 penalty units to 120 penalty units.
  - This change is considered justified and necessary to ensure consistency with the penalty framework for the same offences in the Corporations Act and ensure that conduct gives rise to the same penalty under both Acts.

*[Items 228 to 232 and 263, section 35A of the SIS Act]*

1.40 These consequential amendments to the record-keeping requirements in the SIS Act are intended to align similar obligations and offence provisions, where applicable, across the Corporations Act and the SIS Act.

1.41 The increased penalty for strict liability offences under the SIS Act is consistent with the maximum penalty amount recommended in the Guide to Framing Commonwealth Offences. Also, as recommended by the Guide, strict liability is not available for offences punishable by imprisonment.

1.42 To further ensure alignment between the Corporations Act and the SIS Act, the Bill requires that the accounting records kept by the RSE licensee comply with the requirements under both the RSE licensee law and Chapter 2M of the Corporations Act by being kept in a way that enables:

- the preparation of reporting documents referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*, as well as any other documents required to be audited under the RSE licensee law or Chapter 2M of the Corporations Act; and
- those documents to be conveniently and properly audited in accordance with the RSE licensee law and Chapter 2M of the Corporations Act.

*[Items 226 and 227, section 35A of the SIS Act]*

### **Financial reports for registrable superannuation entities**

1.43 The Bill amends the financial reporting requirements for registrable superannuation entities by requiring the RSE licensee for a registrable superannuation entity to:

- prepare a financial report (including a directors' report);
- obtain an auditor's report of an entity's financial report for each financial year and half-year;
- lodge the reports with ASIC;
- make a copy of the reports for a financial year publicly available on the entity's website;
- include details of how to access an entity's financial report for a financial year and relevant auditor's report with the notice to the annual members' meeting; and
- provide financial reports to members upon request.

*[Items 22 to 29, 178 and 179, sections 285 and 1017C of the Corporations Act]*

#### ***Financial report for a financial year – contents and preparation***

1.44 The Bill requires an RSE licensee for a registrable superannuation entity to prepare and lodge (with ASIC) a financial report for each financial year.

1.45 These financial reporting requirements are in addition to existing financial reporting obligations, which require the trustees of a registrable superannuation entity to prepare and lodge (with APRA) financial information in accordance with the *Financial Sector (Collection of Data) Act 2001* and the superannuation reporting standards, which are made under section 13 of that Act.

1.46 The RSE licensee for a registrable superannuation entity must prepare a financial report and directors' report for each financial year for the entity. *[Item 36, section 292 of the Corporations Act]*

1.47 The financial report for a financial year must consist of:

- the financial statements required by the accounting standards;
- the notes to the financial statements required by the regulations and accounting standards;
- if the entity has one or more sub-funds during all or part of the financial year – the financial statements for the year and notes to the financial statement for each sub-fund; and
- a declaration by the directors (directors' declaration) about the financial statement and notes.

*[Items 38, 39 and 40, section 295 of the Corporations Act]*

1.48 The accounting standards are made under section 334 of the Corporations Act, which provides that the Australian Accounting Standards Board may make accounting standards, by legislative instrument, for the purposes of the Corporations Act.

1.49 The requirement for financial statements (and notes) to be prepared for each sub-fund is intended to ensure that financial information about the registrable superannuation entity and each sub-fund is subject to public scrutiny and compliance monitoring by ASIC.

1.50 The Bill inserts a new definition of 'sub-fund' into the Corporations Act, which provides that, for the purposes of Chapter 2M of the Corporations Act, 'sub-fund' is defined as a segment of the registrable superannuation entity that has the following characteristics:

- the segment has separately identifiable assets and separately identifiable beneficiaries; and
- the interest of each beneficiary of the segment is determined by reference only to the conditions governing that segment.

*[Item 21, section 9 of the Corporations Act]*

1.51 This definition of 'sub-fund' is intended to be used only for the purposes of the financial reporting requirements in Chapter 2M of the Corporations Act and is consistent with the treatment of sub-funds under section 69A of the SIS Act.

1.52 However, there are several alternative definitions of ‘sub-fund’ in related legislation, including in the *Corporations Regulations 2001*, the reporting standards made under the *Financial Sector (Collection of Data) Act 2001* and the prudential standards made under the SIS Act. The definition of ‘sub-fund’ in the Bill is not intended to repeal, amend or supersede these alternative definitions.

1.53 The financial report for a financial year for a registrable superannuation entity must comply with the accounting standards and give a true and fair view of the financial position and performance of the entity. [Item 41, section 297 of the *Corporations Act*]

1.54 The RSE licensee for a registrable superannuation entity is also required to prepare an annual directors’ report for each financial year. The annual directors’ report must be made in accordance with a resolution of the directors and include:

- the general information required by section 299 of the Corporations Act, which includes information about the operations and activities of the registrable superannuation entity;
- a copy of the auditor’s independence declaration required under section 307C of the Corporations Act;
- the date on which the report was made and be signed by a director of the registrable superannuation entity;
- details of the remuneration of each member of the key management personnel for the registrable superannuation entity and any other matters relating to remuneration prescribed in the *Corporations Regulations 2001* – this information is required to be included in the directors’ report under the heading ‘Remuneration report’;
- details of any payments made to the auditor for non-audit services provided by the auditor, by another person or firm on the auditor’s behalf – this information is required to be included in the directors’ report under the heading ‘Non-audit services’. This section of the report must include:
  - the name of the auditor of the entity (RSE auditor) and the dollar amount paid by the registrable superannuation entity or the RSE licensee for the entity for each of those non-audit services; and
  - a statement as to whether the directors are satisfied, and their reasons for this view, that the provision of non-audit services was compatible with the general standard of auditor independence. This statement must be made in

accordance with advice provided by the entity’s audit committee; and

- if approval has been granted by the directors of a registrable superannuation entity or a declaration has been made by ASIC for an extension of the auditor rotation requirements – the details of the approval or declaration.

*[Items 42, 43, 45, 46, 48 and 49, sections 298, 299, 300 and 300C of the Corporations Act]*

1.55 The Bill inserts a new definition of ‘RSE remuneration report’ into the Corporations Act, which is a reference to the section of the directors’ report for a financial year for a registrable superannuation entity. *[Item 21, section 9 of the Corporations Act]*

1.56 For the purposes of the RSE remuneration report, ‘key management personnel’ is defined in accordance with the existing definition in the accounting standards (*Australian Accounting Standard 124 – Related Party Disclosures*), as those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

1.57 *Australian Accounting Standard 124* was made by the Australian Accounting Standards Board under section 334 of the Corporations Act.

1.58 The Bill amends the definition of ‘non-audit services provider’ in the Corporations Act to provide that for a registrable superannuation entity, a non-audit services provider:

- is not a professional member of the audit team conducting the audit of the audited body; and
- is one of the following:
  - if the auditor is an individual auditor—an employee of the individual auditor (or of an entity acting for, or on behalf of, the individual auditor); or
  - if the auditor is a member or employee of an RSE audit firm—a member of the RSE audit firm or senior manager of the RSE audit firm (or of an entity acting for, or on behalf of, the RSE audit firm); or
  - if the auditor is a director or employee of an RSE audit company—a director of the RSE audit company or senior manager of the RSE audit company (or of an entity acting for, or on behalf of, the RSE audit company); and

- provides, or has provided, services (other than services related to the conduct of an audit) to the registrable superannuation entity.

*[Items 12, 13 and 14, section 9 of the Corporations Act]*

1.59 The Bill inserts a new regulation-making power to provide for the annual directors' report to include other matters relating to remuneration. Without limiting the matters that the regulations may provide for, the regulations may prescribe:

- the way in which the value of an element of remuneration is to be determined; and
- the details of remuneration that must relate to the financial year to which the directors' report relates and earlier financial years specified in regulations.

*[Item 49, section 300C of the Corporations Act]*

1.60 This regulation-making power provides the necessary flexibility to make timely changes to support the policy objectives of transparency and accountability of financial reporting of registrable superannuation entities. Regulations are subject to disallowance and therefore subject to appropriate parliamentary scrutiny.

1.61 The Bill also inserts a new regulation-making power for regulations to be made prescribing the requirements for:

- a financial report and directors' report prepared for a registrable superannuation entity; and
- lodgement of a report (for a financial year or half-year) prepared for a registrable superannuation entity.

*[Items 37, 85 and 87, sections 292, 319 and 320 of the Corporations Act]*

1.62 This regulation-making power provides for regulations to be made prescribing alternative requirements for the form and lodgement financial reports to ensure the long-term flexibility of the financial reporting requirements by keeping up with technological change. Regulations are subject to disallowance and therefore subject to appropriate parliamentary scrutiny.

1.63 An RSE licensee must have the financial report for a financial year audited and obtain a copy of the auditor's report. *[Item 50, section 301 of the Corporations Act]*

1.64 The financial year for a registrable superannuation entity is the same as the entity's 'year of income', within the meaning of the SIS Act. The general rule is that the income year (or year of income) is the same as the financial year (e.g. the period of 12 months commencing on 1 July), except in the case of companies and taxpayers with substituted accounting periods. This means that if the year of income for an entity is other than

the 12-month period beginning on 1 July, this will be taken to be the financial year for that entity for the purposes of their compliance with the requirements in Chapter 2M of the Corporations Act. *[Items 9 and 97, sections 9 and 323DAAA(1) of the Corporations Act]*

1.65 For example, if a registrable superannuation entity's year of income commences on 1 April each year, the RSE licensee for that entity is required to prepare and lodge a financial report for a financial year for the period from 1 April to 31 March of the following year.

1.66 For convenience, this explanatory document uses the term 'financial year' in the context of obligations under the Corporations Act and the term 'year of income' or 'income year' in the context of obligations under the SIS Act.

1.67 An RSE licensee for a registrable superannuation entity must lodge the financial report for a financial year for the entity with ASIC within three months after the end of the financial year for the registrable superannuation entity. *[Items 82 to 84, section 319 of the Corporations Act]*

1.68 The timing for lodgement of financial reports is intended to align with the requirement to lodge financial information with APRA for a year of income under the reporting standards (*Superannuation Reporting Standard 320.0 - Statement of Financial Position*), which is made under the authority of section 13(1)(a) of the *Financial Sector (Collection of Data) Act 2001*.

1.69 A failure by an RSE licensee to lodge a financial report for a financial year with ASIC is an offence of strict liability. The penalty for this offence is 20 penalty units.

1.70 A strict liability offence is considered necessary and appropriate in this circumstance to strongly deter non-compliance, which could cause detriment for members of registrable superannuation entities and negatively impact the integrity and public confidence in the regulatory regime administered by ASIC. This penalty is higher than the recommended penalty, of 60 penalty units, for strict liability offences in the Guide to Framing of Commonwealth Offences. However, this penalty is considered appropriate as it ensures legislative consistency by imposing the same penalty as for the existing offence provision that applies to companies and registered schemes under the Corporations Act.

1.71 ASIC also has the power to give the RSE licensee for a registrable superannuation entity a direction to lodge with ASIC a copy of the financial report, directors' report and auditor's report for a financial year. *[Item 88, section 321 of the Corporations Act]*

1.72 A failure to comply with a direction given by ASIC is an offence of strict liability. The penalty for this offence is 30 penalty units. A strict liability offence is required to deter non-compliance and promote the

integrity of the regulatory regime administered by ASIC. The penalty for this offence is less than the maximum penalty amount for strict liability offences recommended in the Guide to Framing Commonwealth Offences and ensures legislative consistency by imposing the same penalty as for the existing offence provision that applies to companies and registered schemes under the Corporations Act.

1.73 If a financial report or directors' report for a financial year is amended after being lodged with ASIC, the RSE licensee for the registrable superannuation entity must lodge the amended report with ASIC and make a copy of the amended report publicly available on the entity's website in accordance with the regulations, along with a description of the amendment within 14 days after the amendment is made. *[Items 89, 90 and 91, section 322 of the Corporations Act]*

1.74 This regulation-making power provides for regulations to be made setting out the details for publication of these reports on an entity's website. The purpose of this power is to ensure the flexibility of the requirements, which take into account practical considerations and keep up with technological change. Regulations are subject to disallowance and therefore subject to appropriate parliamentary scrutiny. *[Item 91, section 322(2A) of the Corporations Act]*

1.75 A failure to re-lodge and publish a revised financial report for a financial year or annual directors' report if an amendment is made is an offence of strict liability. The penalty for this offence is 30 penalty units. *[Items 92 and 189, section 322 and Schedule 3 of the Corporations Act]*

1.76 A strict liability offence is required to deter non-compliance and promote the integrity of the regulatory regime administered by ASIC. The penalty for this offence is less than the maximum penalty amount for strict liability offences recommended in the Guide to Framing Commonwealth Offences and ensures legislative consistency by imposing the same penalty as for the existing offence provision that applies to companies and registered schemes under the Corporations Act.

### ***Financial reports for a half-year***

1.77 The Bill requires the RSE licensee for a registrable superannuation entity to prepare and lodge a financial report for each half-year.

1.78 The requirement to prepare and lodge a financial report for each half-year is in addition to existing financial reporting requirements, which provide that registrable superannuation entities must prepare and lodge financial information for each quarter with APRA in accordance with the *Financial Sector (Collection of Data) Act 2001* and relevant reporting standards.

1.79 An RSE licensee for a registrable superannuation entity must:



- prepare a financial report and directors' report for a half-year;
- have the financial report audited or reviewed and obtain a copy of the auditor's report; and
- lodge the financial report for a half-year with ASIC.

*[Items 8, 24 and 52, sections 9, 285 and 302A of the Corporations Act]*

1.80 The financial report for a half-year must comprise of:

- the financial statements for the half-year required by the accounting standards;
- notes to the financial statements required by the regulations and accounting standards;
- if the entity has one or more sub-funds during the half-year – the financial statements and notes for the half-year for each sub-fund; and
- a declaration by the directors about the financial statements and notes.

*[Items 53 to 56, section 303 of the Corporations Act]*

1.81 The financial report for a half-year must comply with the accounting standards and give a true and fair view of the financial position and performance of the registrable superannuation entity. *[Item 57, section 305 of the Corporations Act]*

1.82 The directors' report for each half-year must be made in accordance with a resolution of the directors and include:

- a review of the entity's operations during the half-year and the results of those operations;
- the name of each person who has been a director of the entity at any time during or since the end of the half-year and the period for which they were a director;
- a copy of the auditor's independence declaration made under section 307C of the Corporations Act; and
- the date on which the report was made and be signed by a director of the registrable superannuation entity.

*[Items 58 and 59, section 306 of the Corporations Act]*

1.83 A half-year for a registrable superannuation entity is the first six months of a financial year (which for a registrable superannuation entity is the entity's year of income). To be consistent with the requirements for companies and registered schemes, the directors of the entity may determine that the half-year is to be shorter or longer (but not by more than seven days). *[Items 10 and 97, sections 9 and 323DAAA(2) of the Corporations Act]*

1.84 An RSE licensee is required to lodge a copy of the financial report, directors' report and auditor's report for a half-year for a registrable superannuation entity with ASIC within 75 days after the end of the half-year for the entity. *[Item 86, section 320 of the Corporations Act]*

1.85 ASIC also has the power to give an RSE licensee for a registrable superannuation entity a direction to lodge, with ASIC, a copy of the financial report or directors' report for a half-year or auditor's report of the financial report for the half-year. *[Item 88, section 321 of the Corporations Act]*

1.86 A failure to comply with a direction is an offence of strict liability. The penalty for this offence is 30 penalty units. A strict liability offence is required to deter non-compliance and promote the integrity of the regulatory regime administered by ASIC. The penalty for this offence is less than the maximum penalty amount for strict liability offences recommended in the Guide to Framing Commonwealth Offences and ensures legislative consistency by imposing the same penalty as for the existing offence that applies to disclosing entities under the Corporations Act.

1.87 If a financial report or directors' report for a half-year is amended after being lodged with ASIC, the RSE licensee for the registrable superannuation entity must lodge the amended report with ASIC within 14 days after the amendment is made. *[Items 90 and 91, section 322 of the Corporations Act]*

1.88 A failure to re-lodge a revised report is an offence of strict liability. The penalty for this offence is 30 penalty units. A strict liability offence is required to deter non-compliance and promote the integrity of the regulatory regime administered by ASIC. The penalty for this offence is less than the maximum penalty amount for strict liability offences recommended in the Guide to Framing Commonwealth Offences and ensures legislative consistency by imposing the same penalty as for the existing offence provision that applies to disclosing entities under the Corporations Act.

### ***Financial report – reporting to members***

1.89 The Bill streamlines the public reporting requirements for registrable superannuation entities in the Corporations Act and the SIS Act.

1.90 An RSE licensee for a registrable superannuation entity must report to members for a financial year by making the following documents publicly available on the entity's website, in accordance with the regulations, within three months after the end of the financial year:

- the financial report for the financial year;
- the directors' report for the financial year; and

- the auditor’s report on the financial report for the financial year.

*[Items 80 and 81, sections 314AA and 315 of the Corporations Act]*

1.91 This regulation-making power provides for regulations to be made setting out the details for publication of these reports on an entity’s website. The purpose of this power is to ensure the flexibility of the requirements, which take into account practical considerations and keep up with technological change. Regulations are subject to disallowance and therefore subject to appropriate parliamentary scrutiny. *[Item 80, section 314AA(2) of the Corporations Act]*

1.92 A failure to comply with the requirement to publish these reports on the entity’s website is an offence of strict liability, the penalty for this offence is 30 penalty units. *[Items 80 and 188, section 314AA and Schedule 3 of the Corporations Act]*

1.93 A strict liability offence is necessary to strongly deter misconduct that can have serious detriment for members of registrable superannuation entities. It is important that financial reports are publicly available within a timely manner, to ensure members can make informed decisions based on accurate reporting of the financial position and performance of their superannuation fund. This offence provision is intended to reduce non-compliance and improve the integrity of the regulatory regime enforced by ASIC and strengthen public confidence in the superannuation system. The penalty for this offence is less than the maximum penalty amount for strict liability offences recommended in the Guide to Framing Commonwealth Offences and ensures legislative consistency by imposing the same penalty as for the existing offence provision that applies to companies and registered schemes under the Corporations Act.

1.94 An RSE licensee is not required to make financial reports for each half-year publicly available on the entity’s website.

1.95 Unlike the reporting requirements that apply to companies and registered schemes in the Corporations Act, the RSE licensee for a registrable superannuation entity is not required to provide copies of the reports directly to members (electronically or in hard copy), notify members that the reports are available, give members a choice as to how they receive reports, or provide concise reports in lieu of full financial reports.

1.96 The public reporting requirements for registrable superannuation entities are adapted from the existing public reporting requirements under the SIS Act and are intended to achieve a balance between ensuring that members are adequately informed and reducing regulatory burden for RSE licensees.

1.97 To avoid duplicating the reporting requirements for RSE licensees for a registrable superannuation entity, the Bill repeals the requirement in the SIS Act that certain information, such as remuneration information of executive officers or individual trustees of an RSE licensee, be made publicly available on the entity's website. *[Item 225, section 29QB of the SIS Act]*

1.98 To ensure a smooth transition process and limit the changes for RSE licensees, it is intended that the existing regulations made under section 29QB of the SIS Act will be re-made in the *Corporations Regulations 2001*.

1.99 An RSE licensee for a registrable superannuation entity is also required to directly provide a copy of any of the following documents on request by a concerned person:

- the financial report, directors' report and auditor's report of the entity for a specified financial year; and
- the financial report, directors' report and auditor's report of the entity for a specified half-year.

*[Items 178 and 179, section 1017C of the Corporations Act]*

1.100 The RSE licensee must comply with a request to give a copy of a document, as soon as practicable, or in any event, make reasonable efforts to comply with the request within one month of receiving the request.

1.101 A 'concerned person' in relation to a superannuation product is defined in section 1017C(9) of the Corporations Act as a person who is, or was, within the preceding 12 months, a member of the registrable superannuation entity, or is a beneficiary of the entity.

1.102 A failure by an RSE licensee to comply with a request for these documents from a concerned person is an offence. The penalty for this offence is two years imprisonment. *[Items 178 and 202, section 1017C and Schedule 3 of the Corporations Act]*

1.103 It is important that members are able to access financial reports are publicly available within a timely manner to ensure members can make informed decisions based on accurate reporting of the financial position and performance of their superannuation fund. This offence provision is intended to reduce non-compliance and strengthen public confidence in the superannuation system. The Bill ensures legislative consistency by imposing the same penalty as for the existing offence provision for the failure by an RSE licensee to provide other documents to members upon request. In accordance with the Guide to Framing Commonwealth Offences, strict liability is not available for an offence punishable by imprisonment.

1.104 Regulation 2.33 of the *Superannuation Industry (Supervision) Regulations 1994*, also provides that a person (other than a concerned person) may request any of the following documents (to the extent the RSE licensee for a registrable superannuation entity has access to the documents):

- audited accounts of the entity, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
- for a regulated superannuation fund or approved deposit fund—a copy of the fund information that was most recently given to the members; and
- for a pooled superannuation trust—a copy of the information mentioned in Subdivision 5.7 of Part 7.9 of the *Corporations Regulations 2001* that was most recently given to the members.

#### ***Annual members' meeting***

1.105 In accordance with existing requirements under the SIS Act, the RSE licensee for a registrable superannuation entity must hold an annual members' meeting for each year of income of the entity.

1.106 The annual members' meeting must be held within three months after the notice of the meeting is given.

1.107 The notice of the meeting is required to be given no later than six months after the end of the year of income of the entity. The Bill requires that the notice of the annual member's meeting is also required to include details of how to access each of the following documents that are already required to be made publicly available at all times on the entity's website:

- the financial report for the financial year of the entity;
- the directors' report for the financial year of the entity; and
- the auditor's report on the financial report for the financial year of the entity.

#### ***[Items 219 and 220, section 29P of the SIS Act]***

1.108 Allowing RSE licensees for a registrable superannuation entity to provide these details instead of providing the information, in full, with a notice of an annual members' meeting ensures that RSE licensees have appropriate flexibility in providing information to members in a timely, efficient, user-friendly and cost-effective manner.

1.109 The following persons, subject to being given a notice of the meeting, are required to attend an annual members' meeting:

- the Chair of the board of directors of the RSE licensee;

- a director of the RSE licensee for an entity;
- an executive officer of the RSE licensee for an entity;
- a member of a group of individual trustees that is an RSE licensee for an entity;
- a person who is, or has been, an auditor of the entity (RSE auditor) for the year of income of the entity; and
- a person who was an actuary of the entity during a year of income of the entity.

*[Item 221, section 29PA of the SIS Act]*

1.110 To avoid duplication of requirements, unlike for companies and registered schemes, the requirements for annual general meetings do not apply to registrable superannuation entities.

### ***Consolidated financial statements***

1.111 The Bill amends various provisions in the Corporations Act relating to the preparation of consolidated financial statements. These provisions only apply where a consolidated financial statement is required to be prepared. Consolidated financial statements are not currently required to be prepared for registrable superannuation entities because of the exemption in the Australian accounting standard *AASB 10 – Consolidated Financial Statements*.

1.112 There are no plans to amend this accounting standard to require registrable superannuation entities to prepare consolidated financial statements. Consequently, these amendments are not intended to require registrable superannuation entities to prepare consolidated financial statements. *[Items 5, 44, 45, 47, 48, 93 to 97 and 190, sections 9, 299, 300, 323, 323A, 323B, 323C, 323DAAA(3), (4) and (5) and Schedule 3 of the Corporations Act]*

1.113 The purpose of these amendments is to future proof the legislation, to accommodate future events, such as *AASB 10 – Consolidated Financial Statements* being amended to require registrable superannuation entities to prepare consolidated financial statements.

## **Auditing of registrable superannuation entities**

### ***Key definitions***

1.114 An individual may be appointed as the auditor of a registrable superannuation entity. *[Items 98, 99 and 100, Division 1 of Part 2M.4 and section 324AA of the Corporations Act]*

1.115 The Bill amends the definition of ‘individual auditor’ in section 9 of the Corporations Act to include an individual who consents to be appointed, or is appointed, as auditor of a registrable superannuation entity. *[Item 11, section 9 of the Corporations Act]*

1.116 The Bill also inserts a new definition of ‘individual auditor’ in section 10 of the SIS Act, to mean an auditor who is an individual. The purpose of this definition is to distinguish between individual auditors and audit firms and companies involved in the audit of a registrable superannuation entity. This definition complements the existing definition of ‘RSE auditor’ in section 10 of the SIS Act, which means a person who is appointed as an auditor of a registrable superannuation entity. *[Item 215, section 10 of the SIS Act]*

1.117 The Bill also inserts a new definition of ‘auditor for the purposes of the RSE licensee law’ in the Corporations Act, which means an auditor appointed in fulfilment of a requirement imposed by the RSE licensee law. *[Item 4, section 9 of the Corporations Act]*

1.118 Unlike for companies and registered schemes regulated under Chapter 2M of the Corporations Act:

- an audit firm or audit company may not be appointed as the auditor of a registrable superannuation entity; and
- a registrable superannuation entity may only have one auditor. The auditor of the entity is subject to audit-related obligations under both Chapter 2M of the Corporations Act and the RSE licensee law.

*[Items 100, 234 and 237, section 324AA of the Corporations Act and section 35AC of the SIS Act]*

1.119 The Bill inserts a new definition of ‘RSE licensee law’ into the Corporations Act, which has the same meaning as in the SIS Act. Section 10 of the SIS Act defines ‘RSE licensee law’ as meaning the SIS Act, the *Superannuation Industry (Supervision) Regulations 1994*, the prudential standards, the *Financial Sector (Collection of Data) Act 2001*, the *Financial Institutions Supervisory Levies Collection Act 1998*, a ‘regulatory provision’ of the Corporations Act and any other law prescribed by regulations. *[Items 21, section 9 of the Corporations Act]*

1.120 The review auditor for the audit of a registrable superannuation entity is the registered company auditor (if any) who is responsible to the individual auditor of the entity for reviewing the conduct of the audit. *[Item 103, section 324AF of the Corporations Act]*

1.121 Where the individual appointed as auditor of a registrable superannuation entity is also a director or employee of an audit company, that audit company is known as an RSE audit company. *[Items 21 and 215, section 9 of the Corporations Act and section 10 of the SIS Act]*

1.122 Similarly, where the individual appointed as auditor of a registrable superannuation entity is also a member or employee of an audit firm, that audit firm is known as an RSE audit firm. *[Items 21 and 215, section 9 of the Corporations Act and section 10 of the SIS Act]*

1.123 While audit firms and audit companies may not be appointed as the auditor of a registrable superannuation entity, the Bill creates obligations for RSE audit firms, members of RSE audit firms, RSE audit companies and directors of RSE audit companies, which result from an individual auditor's appointment as auditor of the entity.

1.124 To clarify the relationship between a member of an RSE audit firm and the firm, the Bill provides that an offence committed by an audit firm is taken to have been committed by each member of the firm, unless a member of the firm does not know of the circumstances that constitute the offence or knows of the circumstances but takes all reasonable steps to correct the contravention as soon as possible after becoming aware of those circumstances. *[Items 153, 154, 155 and 257, section 332G of the Corporations Act and section 131CB of the SIS Act]*

1.125 For the purposes of criminal proceedings against an audit firm or company, an act or omission by an individual is also attributed to the firm or company if that person is acting within the actual or apparent scope of their employment or authority and is an employee, member or agent of the firm, or employee, officer or agent of the company. *[Item 257, section 131CC of the SIS Act]*

1.126 In relation to an audit of a registrable superannuation entity, the professional members of the audit team are:

- any registered company auditor (registered under Part 9.2 of the Corporations Act) who participates in the conduct of the audit;
- any other person who participates in the conduct of the audit and, in the course of doing so, exercises professional judgment in relation to the application of, or compliance with, the accounting standards, auditing standards, or the provisions of the Corporations Act dealing with financial reporting and the conduct of audits;
- any other person who is in a position to directly influence the outcome of the audit because of the role they play in the design, planning, management, supervision or oversight of the audit; and
- any person who provides, or takes part in providing, quality control for the audit.

*[Items 101 and 102, section 324AE of the Corporations Act]*

1.127 The Bill amends the definition of 'audit-critical employee' in section 9 of the Corporations Act to apply to a registrable superannuation entity and means a person who is:

- an employee of the RSE licensee for an entity; and



- able, because of the position in which the person is employed, to exercise significant influence over a material aspect of the contents of the financial report being audited, or the conduct or efficacy of the audit.

*[Items 1 and 2, section 9 of the Corporations Act]*

### ***Appointment and removal of auditors***

1.128 The Bill sets out the requirements relating to the eligibility, appointment, removal and fees of auditors of registrable superannuation entities.

1.129 To consent to be the auditor of a registrable superannuation entity, act as auditor of an entity for the purposes of Chapter 2M of the Corporations Act, or prepare an audit or review report for an entity, the person must:

- be registered as a company auditor;
  - ‘Registered company auditor’ is defined in section 9 of the Corporations Act as a person who is registered under Part 9.2 of the Corporations Act.
- meet the eligibility criteria for auditors of a registrable superannuation entity for the purposes of the RSE licensee law;
  - This includes meeting the fitness and propriety requirements under the prudential standards (*SPS 520 – Fit and Proper*).
- not be disqualified from being, or acting as, an auditor of the entity under the SIS Act;
- not be a member or employee of a firm that is disqualified under the SIS Act; and
- not be a director or employee of a company that is disqualified under the SIS Act.

*[Items 104, 105 and 235, sections 324BA and 324BF of the Corporations Act and section 35AC of the SIS Act]*

1.130 These eligibility requirements are designed to ensure that the individual appointed as auditor of a registrable superannuation entity meets the eligibility requirements under both the Corporations Act and the SIS Act and that the auditor is able to perform the functions and duties of an auditor under both Acts.

1.131 A failure to comply with the eligibility requirements is an offence. The penalty for this offence is six months imprisonment.

*[Items 105 and 191, section 324BF and Schedule 3 of the Corporations Act]*

1.132 This penalty is intended to ensure consistency across the legislation by imposing the same penalty as for the existing offence that applies to an individual auditor of a registered scheme under the Corporations Act. In accordance with the Guide to Framing Commonwealth Offences, strict liability does not apply to an offence punishable by imprisonment.

1.133 An RSE licensee for a registrable superannuation entity is responsible for appointing the auditor of the entity.

1.134 In regard to the initial appointment of an auditor for a registrable superannuation entity:

- if the registrable superannuation entity becomes registered under section 29M of the SIS Act, on or after 1 July 2022 – the RSE licensee must appoint an auditor within one month after the day the entity is registered by APRA; or
- if the registrable superannuation entity is registered under section 29M of the SIS Act immediately before 1 July 2022 and the RSE licensee for the entity has already appointed an auditor of the entity under the SIS Act, then the RSE licensee is taken to have been appointed as auditor of the entity for the purposes of the Corporations Act from 1 July 2022.

*[Item 147, section 331AF of the Corporations Act]*

1.135 From 1 July 2022, these requirements relating to the timing of the appointment of an auditor of a registrable superannuation entity override the requirement in the prudential standards (*SPS 310 – Audit and Related Matters*), which provide that an RSE licensee for an entity must appoint an auditor no later than the last date of each year of income to which the appointment relates.

1.136 An RSE licensee for a registrable superannuation entity commits an offence if they fail to appoint an auditor of the registrable superannuation entity in accordance with these requirements. A director of a registrable superannuation entity also commits an offence if they fail to take all reasonable steps to secure compliance with this requirement. The penalty for this offence is six months imprisonment. *[Items 147 and 201, section 331AF and Schedule 3 of the Corporations Act]*

1.137 This offence provision is considered necessary to strongly deter non-compliance and strengthen the regulatory regime administered by ASIC. This penalty is considered appropriate to ensure consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to the appointment of an auditor of a company or registered scheme under the Corporations Act. Also, in accordance with the Guide to the Framing Commonwealth Offences, strict liability does not apply to an offence punishable by imprisonment.

1.138 A person who is appointed (or taken to have been appointed) as the individual auditor of a registrable superannuation entity holds office until the auditor:

- dies;
- is removed or resigns from office;
- ceases to be capable of acting as auditor as a result of not being able to meet any of the following requirements:
  - Division 2 of Part 2M.4 of the Corporations Act – registration requirements;
  - Division 2A of Part 2M.4 of the Corporations Act – eligibility requirements; or
  - Division 5 of Part 2M.4 of the Corporations Act – auditor rotation requirements;
- ceases to be an auditor for the purposes of the RSE licensee law – an individual who ceases to be auditor for the purposes of the RSE licensee law also ceases to be the individual auditor of the entity for the purposes of Chapter 2M of the Corporations Act; or
- does not remedy a conflict of interest situation and fails to give ASIC a notice that the conflict of interest situation has ceased within the specified period (21 days, or further period approved by ASIC).

*[Item 147, section 331AH of the Corporations Act]*

1.139 The requirements in the Bill relating to the duration of an auditor’s appointment override the requirement in the prudential standards (*SPS 310 Audit and Related Matters*), which provide that an RSE licensee for a registrable superannuation entity must annually appoint an RSE auditor.

1.140 If there is a vacancy in the office of auditor of a registrable superannuation entity the RSE licensee must, within one month after the vacancy occurs, appoint an auditor to fill the vacancy. *[Item 147, section 331AG of the Corporations Act]*

1.141 An RSE licensee that contravenes this obligation commits an offence. A director of a registrable superannuation entity also commits an offence if they fail to take all reasonable steps to secure compliance with this requirement. The penalty for this offence is six months imprisonment. *[Items 147 and 201, section 331AG and Schedule 3 of the Corporations Act]*

1.142 This offence provision is considered necessary to strongly deter non-compliance and strengthen the regulatory regime administered by ASIC. This penalty is considered appropriate to ensure consistency across

the legislation by imposing the same penalty as the for the existing offence provision that applies to the appointment of an auditor in the event of a vacancy in relation to a company or registered scheme under the Corporations Act. In accordance with the Guide to the Framing Commonwealth Offences, strict liability does not apply to an offence punishable by imprisonment.

1.143 If the RSE licensee for a registrable superannuation entity does not appoint an auditor in compliance with the licensee's obligations, ASIC may appoint an auditor of the entity if the individual consents to be appointed. If ASIC exercises this power and appoints an auditor of the registrable superannuation entity, ASIC must notify APRA of the appointment as soon as practicable after making the appointment.

*[Item 147, section 331AJ of the Corporations Act]*

1.144 Under the Corporations Act, an individual auditor of a registrable superannuation entity may be removed from office in the following ways:

- the RSE licensee for the entity may, with ASIC's consent, remove the auditor from office; or
- the auditor of the entity may, by written notice given to the RSE licensee for the entity, resign as auditor if ASIC consents – this resignation takes effect on the day specified in the notice of resignation, the day ASIC consents, or on another day fixed by ASIC.

*[Item 147, sections 331AK(1) to (5) of the Corporations Act]*

1.145 If ASIC consents to the resignation or removal of the auditor of a registrable superannuation entity, ASIC must notify APRA as soon as practicable after giving consent. *[Item 147, section 331AK(7) of the Corporations Act]*

1.146 Within 14 days after the RSE licensee for a registrable superannuation entity removes an auditor from office, or receives a notice of resignation from the auditor, the RSE licensee must lodge a notice with ASIC of the removal or resignation in the prescribed form. *[Item 147, section 331AK(6) of the Corporations Act]*

1.147 Under the SIS Act, the RSE licensee for a registrable superannuation entity must end the appointment of the RSE auditor if the RSE licensee becomes aware that the person:

- no longer meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards;
- has been disqualified from being, or acting, as auditor of a registrable superannuation entity by the court under the SIS Act; or

- is a member or employee of an audit firm, or director or employee of an audit company that is disqualified by the court under the SIS Act.

*[Item 236, section 35AC of the SIS Act]*

1.148 If a person is an employee or member of a disqualified audit firm, or an employee or director of a disqualified audit company, and the RSE licensee for a registrable superannuation entity fails to end their appointment as auditor of the entity, APRA may give a written direction to the RSE licensee to end the appointment of the person as auditor of the entity. *[Item 253, section 131AA of the SIS Act]*

1.149 If APRA makes a direction to end a person’s appointment as the auditor of a registrable superannuation entity, APRA must notify ASIC as soon as practicable after giving the direction. *[Item 254, section 131AA(6A) of the SIS Act]*

1.150 The Bill also gives APRA the power to make directions for contraventions of Chapter 2M of the Corporations Act by an RSE licensee for a registrable superannuation entity. This power is generally expected to be used to address repeated or systemic contraventions of the requirements in the Corporations Act. In these situations, APRA may give the RSE licensee a direction, which could include (but is not limited to), removing a responsible officer of the RSE licensee from office, ordering an audit of a registrable superannuation entity or removing an auditor of a registrable superannuation entity from office etc. *[Item 258, section 131D(1) of the SIS Act]*

1.151 If APRA makes a direction to remove an auditor of a registrable superannuation entity and appoint another auditor, APRA must notify ASIC as soon as practicable after making the direction. *[Item 259, section 131D(6) of the SIS Act]*

1.152 The appointment of an RSE auditor under the SIS Act is also taken to have ceased if the registrable superannuation entity is regulated under Chapter 2M of the Corporations Act and the individual ceases to be the auditor of the entity for the purposes of Chapter 2M of the Corporations Act. *[Item 237, section 35AC(8) of the SIS Act]*

1.153 The court may, upon application by APRA or ASIC, make an order disqualifying a person from being or acting as an RSE auditor – this order may disqualify a person as being, or acting as, the auditor of a particular entity or a specified class of entities. *[Items 213, 214, 249, 250 and 251, sections 6, 130D and 130E of the SIS Act]*

1.154 For the purposes of disqualifying actuaries, APRA is the Regulator. *[Item 214, section 6 of the SIS Act]*

1.155 The court may also, upon application by ASIC, make an order disqualifying a firm or company from being an RSE audit firm or RSE

audit company. The court may make such an order if the court is satisfied that the firm or company has:

- failed to put in place appropriate systems and processes to perform its functions and duties under the SIS Act, the *Superannuation Industry (Supervision) Regulations 1994*, the *Financial Sector (Collection of Data) Act 2001*, the prudential standards, Chapter 2M of the Corporations Act or a law of the Commonwealth, State or Territory;
- failed to put in place appropriate systems and processes to enable an individual auditor (who is an employee or member of the audit firm or employee or director of the audit company) to properly carry out or perform their duties; or
- failed to take reasonable steps to ensure that each individual auditor (who is an employee or member of the audit firm or employee or director of the audit company) meets the relevant eligibility criteria set out in the prudential standards and is a fit and proper person to be an RSE auditor.

*[Item 252, section 130EA of the SIS Act]*

1.156 Once an order of disqualification is made by the court, ASIC or the disqualified firm or company may apply to the Federal Court of Australia for a variation or revocation of the disqualification order. At least 21 days before commencing proceedings, the applicant (either ASIC or the disqualified firm or company) must give written notice of the proceedings to the other party (disqualified firm or company or ASIC).

*[Item 252, section 130EB of SIS Act]*

1.157 If the court disqualifies an RSE audit firm, this means that no member or employee of that firm is eligible to be appointed as the auditor of a registrable superannuation entity while the firm is disqualified. Similarly, if an RSE audit company is disqualified, no director or employee of the disqualified audit company is eligible to be appointed as an RSE auditor. To be eligible to be the auditor of an entity, a person would need to cease to be an employee, member or director of the disqualified firm or company. *[Item 235, section 35AC(2) of the SIS Act]*

1.158 A person must not refuse or fail to comply with a requirement to answer a question or give information, produce books or do any other act required under the SIS Act on the ground that this action may make the person, firm or company liable to disqualification as an individual auditor or of the audit firm or audit company. *[Items 238, 239 and 240, section 126L of the SIS Act]*

1.159 A person also commits an offence if they make representations that a member or employee of an audit firm or a director or employee of an audit company is eligible to be an RSE auditor if that audit firm or company is disqualified. The penalty for this strict liability offence is

50 penalty units for a member of an audit firm or 250 penalty units for an audit company. This offence provision supplements an existing offence for persons holding themselves out as an RSE auditor if they are not an RSE auditor (e.g. because they have been disqualified under section 130D of the SIS Act). *[Item 255, section 131BA of the SIS Act]*

1.160 A strict liability offence is necessary in these circumstances to deter misleading conduct, reduce non-compliance, bolster the integrity of the regulatory regime enforced by ASIC and ensure consistency across the legislation.

1.161 A contravention by an audit firm is taken to be a contravention by each member of the disqualified audit firm, unless a member does not know of the circumstances that constitute the offence or knows of the circumstances but takes all reasonable steps to correct the contravention as soon as possible after becoming aware of those circumstances. *[Item 257, section 131CB of the SIS Act]*

1.162 The penalty for an offence committed by a member of a disqualified audit firm (an individual) is 50 penalty units, which is consistent with the Guide to Framing Commonwealth Offences, which provides that the fine for a strict liability offence may be up to 60 penalty units for an individual. The penalty also ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to a person who holds themselves out as an RSE auditor under section 131B of the SIS Act.

1.163 The penalty for a contravention by an audit company is 250 penalty units. This penalty is consistent with the Guide to Framing of Commonwealth Offences, which provides that the maximum penalty for a body corporate may be up to five times higher than for a natural person.

1.164 Similarly, a person commits an offence if they are, or act as, the auditor of a registrable superannuation entity and:

- they are a member or employee of a disqualified audit firm, or a director or employee of a disqualified audit company and they know that the firm or company is disqualified – the penalty for this offence is two years imprisonment; or
- they are a member or employee of a disqualified audit firm, or a director or employee of a disqualified audit company (without an additional knowledge requirement) – this is a strict liability offence, for which the penalty is 60 penalty units.

*[Item 256, section 131CA of the SIS Act]*

1.165 For an offence involving knowledge, the penalty ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to a disqualified individual acting

as the auditor of a registrable superannuation entity. Also, in accordance with the Guide to Framing Commonwealth Offences, strict liability is not available for offences punishable by imprisonment.

1.166 For an offence of strict liability, the penalty is less than the maximum penalty amount recommended by the Guide to Framing Commonwealth Offences.

1.167 The reasonable fees and expenses incurred by the auditor of a registrable superannuation entity are payable by the RSE licensee for the entity. *[Item 147, section 331AL of the Corporations Act]*

### ***Auditor's reports***

1.168 The Bill requires the auditor of a registrable superannuation entity to comply with the requirements for audits and audit reports in Chapter 2M of the Corporations Act.

1.169 The individual auditor of a registrable superannuation entity who conducts an audit of the financial report for a financial year or half-year for an entity must form an opinion about whether:

- the financial report is in accordance with the Corporations Act, including whether it complies with the accounting standards and gives a true and fair view of the entity's financial position and performance;
- the auditor has been given all information, explanation and assistance necessary for the conduct of the audit;
- the RSE licensee for the entity has kept financial records sufficient to enable a financial report to be prepared and audited; and
- the RSE licensee has kept other records and registers, as required by the Corporations Act.

*[Item 60, section 307 of the Corporations Act]*

1.170 The auditor's report of a registrable superannuation entity's financial report for a financial year or half-year must include:

- the matters about which the individual auditor is required to form an opinion under section 307 of the Corporations Act;
- if the auditor is of the opinion that the financial report does not comply with the accounting standard, the auditor's report must quantify the effect of the non-compliance, if it is practical to do so;
- any defect or irregularity in the financial report; and
- if the directors' report for the financial year includes an RSE remuneration report – the auditor's opinion on whether the



RSE remuneration report complies with the requirements under the Corporations Act, and if not, why.

*[Item 70, section 308 of the Corporations Act]*

1.171 The individual auditor of a registrable superannuation entity commits an offence of strict liability if the auditor's report of an entity's financial report for a financial year or half-year does not comply with these requirements. The penalty is 50 penalty units. *[Items 71 and 184, section 308 and Schedule 3 of the Corporations Act]*

1.172 Strict liability offences are appropriate to deter misconduct that could affect the accuracy and compliance of an entity's financial report, which could result in financial harm for members. Strict liability offences also reduce non-compliance, improve the integrity of the regulatory regime and promote public confidence in the superannuation system. This penalty is less than the maximum penalty amount of 60 penalty units recommended by the Guide to Framing Commonwealth Offences. This penalty also ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to individual auditors of companies and registered schemes under the Corporations Act.

1.173 The auditor of a registrable superannuation entity must also comply with the requirements for conducting an audit under the prudential standards (*Superannuation Prudential Standards 310 – Audit and Related Matters*).

1.174 The auditor of a registrable superannuation entity may comply with all of their auditing requirements (under the Corporations Act and the RSE licensee law) for a financial report for a financial year of an entity in a single report. *[Item 51, section 301 of the Corporations Act]*

1.175 In accordance with existing requirements in the Corporations Act, an audit or review of a registrable superannuation entity's financial report for a financial year or half-year must be conducted in accordance with the auditing standards. A failure by an individual auditor to comply with this requirement is an offence. The penalty for a fault-based offence is two years imprisonment, while the penalty for a strict liability offence is 50 penalty units.

1.176 For a fault-based offence, the penalty ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to an individual auditor of a company or registered scheme under the Corporations Act. Also, in accordance with the Guide to Framing Commonwealth Offences, strict liability is not available for offences punishable by imprisonment.

1.177 For an offence of strict liability, the penalty is less than the maximum penalty amount recommended by the Guide to Framing Commonwealth Offences.

1.178 Section 336 of the Corporations Act provides that the Auditing and Assurance Standards Board may, by legislative instrument, make auditing standards for the purposes of the Corporations Act.

1.179 The individual auditor of a registrable superannuation entity who conducts an audit or review of a registrable superannuation entity's financial report for a financial year or half-year, must also give the directors of the registrable superannuation entity a written declaration, which states that to the best of their knowledge and belief:

- there have been no contraventions of the auditor independence requirements, as prescribed in the Corporations Act or applicable code of professional conduct; or
- the only contraventions of the auditor independence requirements are those contraventions detailed in the declaration – this does not need to include a declaration about a conflicted relationship if the relationship does not constitute an offence.

*[Items 65, 67, 68 and 69, section 307C of the Corporations Act]*

1.180 The auditor independence declaration must be signed by the individual auditor of the registrable superannuation entity. *[Item 66, section 307C(5) of the Corporations Act]*

1.181 An individual auditor of a registrable superannuation entity who fails to comply with the requirements of the auditor independence declaration commits an offence of strict liability. The penalty for this offence is 20 penalty units. A strict liability offence is appropriate to deter misconduct, reduce non-compliance, improve the integrity of the regulatory regime and promote public confidence in the superannuation system. The penalty is less than the maximum penalty amount recommended by the Guide to Framing Commonwealth Offences and ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to individual auditors of companies and registered schemes under the Corporations Act.

### ***Retention of audit working papers***

1.182 Audit working papers are required to be retained for seven years after the date of the audit report to which the audit working papers relate, unless an earlier date is determined by ASIC. *[Item 64, section 307B of the Corporations Act]*

1.183 Audit working papers are the working papers prepared by, or for, or considered or used by, the auditor in accordance with the requirements of the auditing standards.

1.184 The obligation to retain audit working papers for an audit or review of a registrable superannuation entity applies as follows – if the individual auditor of a registrable superannuation entity who conducts the audit:

- is not an employee or member of an RSE audit firm, or an employee or director of an RSE audit company – the individual auditor;
- is either an employee or member of an RSE audit firm, or an employee or director of an RSE audit company – the individual auditor and the RSE audit firm or RSE audit company; or
- was, at the time of conducting the audit either an employee or member of an RSE audit firm, or an employee or director of an RSE audit company, but subsequently ceases to be an employee or member of an RSE audit firm, or an employee or director of an RSE audit company – the RSE audit firm or RSE audit company.

*[Item 61 to 64, section 307B of the Corporations Act]*

1.185 Where an RSE audit firm or RSE audit company is required to retain audit working papers, this obligation continues even if the firm or company subsequently ceases to be an RSE audit firm or RSE audit company. For example, if an employee of an audit firm is appointed as the auditor of a registrable superannuation entity, but two years after the audit is completed, the individual leaves the firm, and at that time, no other employee or member is the auditor of a registrable superannuation entity – the audit firm is no longer an ‘RSE audit firm’. However, despite this change in the firm’s classification (from RSE audit firm to audit firm), the firm retains the obligation to keep audit working papers for the audit of the entity.

1.186 A failure by an individual auditor, member of an audit firm or an audit company to comply with the requirement to retain audit working papers is an offence of strict liability. *[Items 62 and 63, section 307B of the Corporations Act]*

1.187 The penalty for these offences is as follows:

- for an offence committed by an individual auditor – 50 penalty units;
  - for an offence committed by a member of an audit firm – 50 penalty units; or
- for an offence committed by an audit company – 250 penalty units.

*[Items 182 and 183, Schedule 3 of the Corporations Act]*

1.188 A member of an RSE audit firm does not commit an offence if the member:

- does not know at that time of the relevant circumstances; or
- knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

*[Items 63, section 307B(5C) of the Corporations Act]*

1.189 The use of strict liability offences in these circumstances is necessary to deter non-compliance by auditors and strengthen the integrity of the regulatory regime administered by ASIC.

1.190 In the case of an offence committed by a natural person (individual auditors or members of an audit firm), the penalty is less than the maximum penalty amount recommended by the Guide to Framing Commonwealth Offences for strict liability offences and ensures consistency across the legislation by ensuring that the penalty is the same as for the existing offence provision that applies to individual auditors of a company or registered scheme under the Corporations Act.

1.191 An offence committed by an audit company is not subject to section 1311C of the Corporations Act, which provides that the applicable penalty for an offence committed by a body corporate is ten times the penalty specified. Instead, the penalty for an audit company is set at a rate five times higher than for individuals, which is consistent with the multiplier rule in the Guide to Framing Commonwealth Offences. *[Items 62 and 180, sections 307B(2A) and 1311C of the Corporations Act]*

1.192 In situations where both an individual auditor and an audit firm or audit company are under an obligation to retain audit working papers, ASIC may decide to take enforcement action against the individual auditor, the audit firm or audit company, or both the individual auditor and the audit firm or company.

#### ***Auditor access to documents***

1.193 The Bill requires relevant personnel to provide reasonable support for the conduct of an audit of a registrable superannuation entity by providing auditors and relevant audit personnel with access to information, books, explanations and assistance.

1.194 At all reasonable times, the auditor of a registrable superannuation entity has a right to access the books of the entity. *[Items 72, 73 and 74, section 310 of the Corporations Act]*

1.195 The auditor of a registrable superannuation entity may also, by written notice, require an officer of a registrable superannuation entity to give the auditor information, explanation or other assistance for the purposes of the audit or review of the entity within 14 days after the notice

is given. An officer of a registrable superannuation entity is only required to comply with such a notice if it is reasonable. *[Item 74, section 310(2) of the Corporations Act]*

1.196 An officer of a registrable superannuation entity must allow the auditor access to the books of the entity and give the auditor any information, explanation or assistance required to be given. A failure to comply is an offence of strict liability. The penalty for this offence is 60 penalty units. *[Items 78, 79 and 187, section 312 and Schedule 3 of the Corporations Act]*

1.197 This strict liability offence is required for the proper performance of an auditor's function. The penalty amount is consistent with the maximum penalty recommended in the Guide to Framing Commonwealth Offences for strict liability offences (60 penalty units). It also ensures consistency across the legislation by imposing a penalty that is the same as for the existing offence that applies to an officer of a company or registered scheme under the Corporations Act.

1.198 Under the SIS Act, if the auditor of a registrable superannuation entity requests a document relevant to the conduct of the audit, each trustee of the entity is under an obligation to ensure that the document is given to the auditor within 14 days of the request being made. A failure to comply with this requirement is an offence. The penalty for this offence is two years imprisonment for a fault-based offence and 60 penalty units for a strict liability offence. *[Item 233, section 35AB of the SIS Act]*

1.199 For a fault-based offence, the penalty ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to an individual auditor under the Corporations Act. Also, in accordance with the Guide to Framing Commonwealth Offences, strict liability is not available for offences punishable by imprisonment.

1.200 For a strict liability offence, the Bill increases the existing penalty for a strict liability offence from 50 penalty units to 60 penalty units. This is justified on the basis that it ensures consistency with the equivalent penalty in the Corporations Act and does not exceed the recommended penalty amount in the Guide to Framing Commonwealth Offences.

1.201 The Bill inserts a new definition of "officer" of a registrable superannuation entity in the Corporations Act, which provides that for the purposes of Chapter 2M of the Corporations Act, an officer of a registrable superannuation entity means:

- if the RSE licensee is a constitutional corporation or body corporate – an officer of the constitutional corporation or body corporate; or
- if the RSE licensee is a group of individual trustees – each trustee or a person who makes, or participates in making,

decisions that affect the whole, or a substantial part, of the business of the entity, or who has the capacity to affect significantly the entity's financial standing.

*[Items 15 and 177, sections 9 and 345AAD of the Corporations Act]*

1.202 In accordance with the existing offence provision in section 1308 of the Corporations Act, a person also commits an offence or contravenes a civil penalty provision by knowingly providing false or misleading information in a statement or document required under the Corporations Act (the penalty for this offence is five years imprisonment) or failing to take reasonable steps to ensure that information is not false or misleading (the penalty for a strict liability offence is 20 penalty units). The Bill does not modify these existing offence provisions.

1.203 Consistent with this, the Bill amends the SIS Act to make it an offence for an RSE licensee, a responsible officer of an RSE licensee or an employee of the RSE licensee to provide false or misleading information to an RSE audit firm or RSE audit company.

- If the person knows that the information is false or misleading, or missing something that makes the information misleading – the penalty is five years imprisonment, 200 penalty units, or both.
- If the person did not take reasonable steps to ensure that the information was not false or misleading or missing something that makes the information misleading – the penalty is two years imprisonment, 100 penalty units, or both.

*[Item 247, section 130BBA of the SIS Act]*

1.204 The penalty for these offences is considered appropriate to ensure consistency across the legislation, by imposing the same penalty as for the existing offence provision in section 130BB of the SIS Act that applies to the provision of false or misleading information to the individual auditor of a registrable superannuation entity.

***Auditor reporting requirements***

1.205 The Bill requires the individual auditor of a registrable superannuation entity, members of an RSE audit firm and directors of an RSE audit company to report matters identified through the performance of audit functions to the Regulator.

1.206 Consistent with existing requirements for individual auditors of companies and registered schemes, the individual auditor of a registrable superannuation entity is required to notify ASIC as soon as practical (or within 28 days), after the auditor suspects on reasonable grounds a contravention of the Corporations Act. A failure to comply is an offence.

The penalty for a fault-based offence is 50 penalty units, or 25 penalty units for an offence of strict liability. [*Items 75, 76, 185 and 186, section 311 and Schedule 3 of the Corporations Act*]

1.207 This ensures consistency across the legislation by imposing the same penalty as for the existing offence provisions that apply to an individual auditor of a company or registered scheme. Also, the penalty for a strict liability offence is less than the maximum penalty amount recommended in the Guide to Framing Commonwealth Offences.

1.208 Under the SIS Act, RSE auditors are under an existing obligation to comply with the following reporting requirements, which require the RSE auditor to notify APRA if the person:

- forms the opinion in the course of, or in connection with, the performance of their audit functions that a contravention of any of the following has occurred, may be occurring or has occurred - the SIS Act, *Superannuation Industry (Supervision) Regulations 1994*, the prudential standards, the *Financial Sector (Collection of Data) Act 2001* or a ‘regulatory provision’ of the Corporations Act;
  - The penalty for this offence is 50 penalty units for a fault-based offence, or 25 penalty units for a strict liability offence.
- forms the opinion in the course of, or in connection with, the performance of their audit functions, that the financial position of the entity may be, or may be about to become unsatisfactory;
  - The penalty for this offence is 50 penalty units for a fault-based offence, or 25 penalty units for a strict liability offence.
- becomes aware of circumstances that amount to an attempt, in relation to an audit of the superannuation entity, by any person to unduly influence, coerce, manipulate or mislead the auditor or a member of the audit team or otherwise interfere with the proper conduct of the audit; or
  - The penalty for this offence is 12 months imprisonment, 50 penalty units, or both.
- forms the opinion, or in connection with, the performance of audit functions that there has been a failure to implement an actuarial recommendation that the registrable superannuation entity was required to implement.

- The penalty for this offence is 50 penalty units for a fault-based offence, or 25 penalty units for an offence of strict liability.

1.209 The Bill does not modify these existing obligations and offence provisions that apply to RSE auditors in the SIS Act.

1.210 The Bill also provides that, if the individual auditor is an employee or member of an RSE audit firm or an employee or director of an RSE audit company, the members of that RSE audit firm or the directors of that RSE audit company are also under an obligation to report:

- suspected contraventions of the Corporations Act to ASIC; and
- the following matters to APRA – suspected contraventions of the SIS Act (and associated legislation), if the financial position of the entity becomes unsatisfactory, attempts to unduly influence or interfere with the conduct of the audit and a failure to implement actuarial recommendations.

*[Items 77, 186, 241, 242, 244, 246, 248, 261 and 262, section 311 and Schedule 3 of the Corporations Act, and sections 129A, 130AA, 130B, 130BAA, 130CA and 336F of the SIS Act]*

1.211 To ensure consistency across the legislation, the penalty for these offences is the same as the penalty for the existing offence provisions that apply to the individual auditor of a registrable superannuation entity under the Corporations Act and the SIS Act, as applicable. Also, in accordance with the Guide to Framing Commonwealth Offences, any offences punishable by imprisonment are not subject to strict liability.

1.212 The new obligation in the Bill that requires individual auditors, and members of an RSE audit firm or a directors of an RSE audit company, to report contraventions of the Corporations Act to ASIC is intended to ensure consistency across the legislation by imposing the same obligations and penalty as for the existing offence provision that applies to the requirement to report contraventions of the SIS Act to APRA. The reduced penalty for strict liability offences, as compared to fault-based offences in relation to the same conduct is intended to reflect an adequate level of deterrence from misconduct for these contraventions taking into account that there is no need to demonstrate any fault elements.

1.213 The Bill also provides that an individual auditor, member of an RSE audit firm or director of an RSE audit company must report to APRA any attempts to unduly influence, coerce, manipulate or mislead the auditor or interfere with the proper conduct of an audit. An audit for the purposes of this obligation includes an audit in accordance with the requirements of the RSE licensee law, as well as an audit in accordance with the requirements in Chapter 2M of the Corporations Act. If the



attempt to unduly influence, coerce, manipulate or mislead the conduct of an audit relates partly or entirely to an audit for the purposes of Chapter 2M of the Corporations Act, APRA must give ASIC notification of this report as soon as practicable after receiving notification from the auditor. This amendment is not intended to have any implications for auditor of Self Managed Superannuation Funds. *[Items 245 and 246, sections 130BA and 130BAA(5) and (6) of the SIS Act]*

1.214 This requirement is intended to reduce the regulatory burden for auditors by providing that an auditor of a registrable superannuation entity (or a member of an RSE audit firm or director of an RSE audit company) who becomes aware of an attempt to unduly influence, coerce, manipulate or mislead the conduct of an audit is only required to report the matter once (to APRA), while still ensuring that both ASIC and APRA receive timely notification of the report.

1.215 The purpose of these amendments is to ensure that the auditor of a registrable superannuation entity (as well as members of an RSE audit firm and directors of an RSE audit company) are subject to consistent obligations and offence provisions under both the Corporations Act and the SIS Act.

1.216 In addition to these reporting obligations, under the SIS Act, an RSE auditor, RSE audit firm or RSE audit company may give APRA information about the entity or RSE licensee obtained in the course of, or in connection with, the performance of their audit functions, if the person, firm or company considers that giving this information will assist the Regulator in performing its functions under the SIS Act, *Superannuation Industry (Supervision) Regulations 1994*, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*. *[Items 243 and 260, sections 130AB and 131FB of the SIS Act]*

### ***Auditor independence requirements***

1.217 The Bill introduces auditor independence requirements that require the individual auditor of a registrable superannuation entity, members of an RSE audit firm, an RSE audit company and directors of an RSE audit company to identify, resolve and disclose conflicts of interest situations.

1.218 Auditor independence is a fundamental aspect of the financial reporting laws under the Corporations Act, and requires an auditor to be, and be seen to be, independent of the audited body.

1.219 The auditor independence requirements include the requirement, under section 307C of the Corporations Act, for an auditor to give a written declaration of independence to the directors of the registrable superannuation entity.

1.220 It is noted that auditor independence requirements already apply to the individual auditor of a registrable superannuation entity under the prudential standards made under the SIS Act (*Superannuation Prudential Standard 510 – Governance*).

1.221 The Bill amends the Corporations Act to:

- apply the auditor independence requirements in the Corporations Act to the individual auditor of a registrable superannuation entity;
- provide that, if the individual auditor of the entity is a member or employee of an RSE audit firm - the auditor independence requirements in the Corporations Act also apply to RSE audit firms and the members of RSE audit firms; and
- provide that, if the individual auditor of the entity is a director or employee of an RSE audit company - the auditor independence requirements in the Corporations Act also apply to RSE audit companies and the directors of RSE audit companies.

1.222 The Bill provides that a conflict of interest situation exists in relation to a registrable superannuation entity at a particular time if, because of circumstances that exist at that time:

- the auditor, or a professional member of the audit team, is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the entity; or
- a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the auditor, or a professional member of the audit team, is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the entity.

1.223 The Bill amends the definition of ‘audited body’ in the Corporations Act to include a registrable superannuation entity. [*Item 3, section 9 of the Corporations Act*]

1.224 In determining whether a conflict of interest situation exists, regard must be had to circumstances arising from any relationship that exists, has existed or is likely to exist between the following parties:

- the auditor – which could include:
  - individual auditor of a registrable superannuation entity;
  - if the individual auditor is a member or employee of an RSE audit firm – the RSE audit firm or any current or former member of the RSE audit firm; or

- if the individual auditor is a director or employee of the RSE audit company – the RSE audit company or any current or former director of the RSE audit company or any person currently or formerly involved in the management of the RSE audit company.
- the audited body (the registrable superannuation entity) – which could include:
  - the RSE licensee for the registrable superannuation entity (if the RSE licensee is a body corporate or a constitutional corporation);
  - a current or former director of the registrable superannuation entity;
  - a person currently or formerly involved in the management of the entity;
  - a person currently or formerly involved in the management of the RSE licensee for the entity; or
  - a connected entity of the RSE licensee (as defined in section 10 of the SIS Act).

*[Items 111, 112 and 113, section 324CD of the Corporations Act]*

1.225 The Bill extends the existing general auditor independence requirements in section 324CA of the Corporations Act that apply to an individual auditor of a company or registered scheme to also apply to an individual auditor engaged in an audit of a registrable superannuation entity. This provides that the individual auditor of an entity commits an offence if:

- the person fails to take all reasonable steps, as soon as possible after becoming aware of a conflict of interest situation, to ensure that the conflict ceases to exist – the penalty for this offence is six months imprisonment;
- the conflict of interest situation continues to exist at the end of seven days from the day the person becomes aware of the situation and the person has failed to notify ASIC of the existence of the conflict in writing, even if that might incriminate the person or expose them to a penalty – the penalty for this offence is 30 penalty units; and
  - The information, and the giving of the information, are not admissible as evidence against the person in a criminal proceeding or any other proceeding for the recovery of a penalty, other than proceedings for an offence for giving false or misleading information.

- the individual auditor is not aware that the conflict exists but would have been aware of the conflict if they had put in place an adequate quality control system, unless the person had reasonable grounds to believe that they did have a suitable quality control system in place - the penalty for this offence is 30 penalty units.

*[Items 106 and 107, section 324CA of the Corporations Act]*

1.226 Each of these cases ensures consistency across the legislation by imposing the same penalty as for the existing offence provision that applies to an individual auditor of a company or registered scheme under the Corporations Act.

1.227 The Bill amends the Corporations Act to provide that these general auditor independence requirements also apply to RSE audit companies, members of RSE audit firms and directors of RSE audit companies. *[Items 108, 109 and 110, sections 324CAA, 324CBA and 324CCA of the Corporations Act]*

1.228 Contraventions of the general auditor independence requirements by members of an RSE audit firm or directors of an RSE audit company are subject to the same penalty as for an existing offence committed by an individual auditor under the Corporations Act. *[Items 193 and 194, Schedule 3 of the Corporations Act]*

1.229 In accordance with the existing offence provisions under the Corporations Act, strict liability applies to specified elements of these offences. This is considered necessary in these circumstances to deter non-compliance, improve the integrity of the regulatory regime administered by ASIC and ensure internal consistency within the Corporations Act. In each case where strict liability applies, the penalty amount is less than the maximum penalty recommended in the Guide to Framing Commonwealth Offences.

1.230 If, at the time an individual auditor (who is an employee or director of an RSE audit company) engages in audit activity in relation to a registrable superannuation entity and a conflict of interest situation exists, the RSE audit company commits an offence if:

- the RSE audit company is aware that the conflict exists and fails to take reasonable steps to cease conflict – the penalty for this offence is 300 penalty units;
  - The equivalent penalty for contravention of this offence by a natural person is six months imprisonment.
  - The penalty for contravention of this offence by an RSE audit company is based on the combined effects of the ‘individual fine formula’ in section 1311B of the Corporations Act, which provides that the term of

imprisonment (in months) is to be multiplied by ten and the ‘multiplier rule’ in the Guide to Framing Commonwealth Offences, which provides that the penalty for a body corporate is five times higher than for a natural person.

- the RSE audit company is aware that the conflict exists and fails to notify ASIC of the conflict within seven days – the penalty for this offence is 150 penalty units; or
- the RSE audit company is not aware that the conflict exists but would have been aware if they had in place an adequate quality control system – the penalty for this offence is 150 penalty units.

*[Items 108 and 192, section 324CAA and Schedule 3 of the Corporations Act]*

1.231 An offence committed by an RSE audit company is not subject to section 1311C of the Corporations Act, which provides that the applicable penalty for an offence committed by a body corporate is ten times the penalty specified. Instead, the penalty for an RSE audit company is set at a rate five times higher than for individuals, which is consistent with the multiplier rule in the Guide to Framing Commonwealth Offences. *[Items 108 and 180, sections 324CAA(1), (2) and (5) and 1311C of the Corporations Act]*

1.232 If ASIC is given a notice that a conflict of interest situation exists, ASIC must as soon as practical after receiving the notice, give a copy of the notice to the registrable superannuation entity. *[Items, 108, 109 and 110, section 324CAA, 324CBA and 324CCA of the Corporations Act]*

1.233 The specific auditor independence requirements in the Corporations Act impose restrictions on specific relationships between the auditor and the audited body. These specific restrictions are considered “core” circumstances which, if they exist, necessarily mean that the auditor is not independent. The relationships in section 324CH(1) of the Corporations Act can be broken down into two discrete types of relationships:

- employment relationships (items 1–9); and
- financial relationships (items 10–19).

1.234 The Bill extends the specific auditor independence requirements in the Corporations Act that apply to an individual auditor of a company or registered scheme to also apply to an individual auditor engaged in an audit of a registrable superannuation entity. This provides that an individual auditor of an entity commits an offence under the following circumstances:

- if the person fails to take all reasonable steps, as soon as possible after becoming aware of a specified relationship, to

ensure that the conflict ceases to exist – the penalty for this offence is six months imprisonment;

- if the specified relationship continues to exist at the end of seven days from the day the person becomes aware of it and the person has failed to notify ASIC of the existence of the relationship in writing, even if that might incriminate the person or expose them to a penalty – the penalty for this offence is 30 penalty units; and
  - The information, and the giving of the information, is not admissible as evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding for providing false or misleading information.
- a relevant relationship applies at the time – strict liability applies to the physical elements of determining whether a relevant relationship applies at the time the auditor engages in audit activity – the penalty is 30 penalty units.

*[Items 114 and 115, section 324CE of the Corporations Act]*

1.235 The Bill amends the Corporations Act to provide that these specific auditor independence requirements also apply to members of an RSE audit firm, RSE audit companies and directors of RSE audit companies. *[Items 116, 117, 195 and 196, sections 324CFA and 324CGA and Schedule 3 of the Corporations Act]*

1.236 Contraventions of these specific auditor independence requirements by members of an RSE audit firm or directors of an RSE audit company are subject to the same penalty as for an existing offence committed by an individual auditor under the Corporations Act. *[Items 195 and 196, Schedule 3 of the Corporations Act]*

1.237 In accordance with the existing offence provisions under the Corporations Act, strict liability applies to specified elements of these offences. This is considered necessary in these circumstances to deter non-compliance, improve the integrity of the regulatory regime administered by ASIC and ensure internal consistency within the Corporations Act. In each case where strict liability applies, the penalty amount is less than the maximum penalty recommended in the Guide to Framing Commonwealth Offences.

1.238 In the case of contraventions of the specific auditor independence requirements committed by an RSE audit company, the penalties are as follows:

- failure to take reasonable steps – the penalty for this offence is 300 penalty units;

- The penalty for contravention of this offence by a natural person is six months imprisonment.
- The penalty for contravention of this offence by an RSE audit company is based on the combined effects of the ‘individual fine formula’ in section 1311B of the Corporations Act, which provides that the term of imprisonment (in months) is to be multiplied by ten and the ‘multiplier rule’ in the Guide to Framing Commonwealth Offences provides that the penalty for a body corporate is five times higher than for an individual.
- failure to notify ASIC – the penalty for this offence is 150 penalty units; and
- an employee or director of the RSE audit company is the individual auditor of a registrable superannuation entity, is engaged in audit activity and at that time a relevant relationship applies – the penalty for this offence is 150 penalty units.

*[Items 117 and 196, section 324CGA and Schedule 3 of the Corporations Act]*

1.239 An offence committed by an audit company is not subject to section 1311C of the Corporations Act, which provides that the applicable penalty for an offence committed by a body corporate is ten times the penalty specified. Instead, the penalty for an audit company is set at a rate five times higher than for individuals, which is consistent with the multiplier rule in the Guide to Framing Commonwealth Offences.

*[Items 117 and 180, sections 324CGA(1), (2) and (4) and 1311C of the Corporations Act]*

1.240 If ASIC is given a notice a specified relationship, ASIC must as soon as practical after receiving the notice, give a copy of the notice to the registrable superannuation entity. *[Items 116 and 117, section 324CFA and 324CGA of the Corporations Act]*

1.241 For clarity purposes, the Bill provides that if an audited body is a registrable superannuation entity:

- the references to the audited body in items 1 to 9, and items 15 and 19 in the table in section 324CH(1) of the Corporations Act were references to the RSE licensee for the entity;
- the references to an interest in the audited body in items 10 and 12 of the table in section 324CH(1) of the Corporations Act were references to an interest in either the entity or the RSE licensee for the entity; and
- the references to an investment in an entity that has a controlling interest in the audited body in items 13 and 14 of

the table in section 324CH(1) of the Corporations Act were references to an investment in an entity that has a controlling interest in the RSE licensee for the entity.

*[Items 118 and 119, section 324CH of the Corporations Act]*

1.242 A retired partner of an RSE audit firm or a retired director of an RSE audit company, who was at any time the individual auditor of a registrable superannuation entity or a professional member of the audit team in the audit of the entity, must not become (or remain) an officer of the entity within two years after the latest auditor's report of that entity's financial report for a financial year or half-year for the purposes of the Corporations Act. *[Item 120, section 324CIA of the Corporations Act]*

1.243 A similar two-year waiting period also applies to a professional employee of an RSE audit company (other than a director of the RSE audit company) if the person was the individual auditor, review auditor or a professional member of the audit team in the audit of a registrable superannuation entity. *[Item 121, section 324CJA of the Corporations Act]*

1.244 If a former member of an RSE audit firm or a former director of an RSE audit company becomes an officer of a registrable superannuation entity within a period of five years after that person ceased (or last ceased) to be a member of the audit firm or a director of the audit company, another former member or former director of the same RSE audit firm or RSE audit company who was at any time a professional member of the audit team in relation to the audit of the audited body may not also become an officer of that entity. *[Item 122, section 324CKA of the Corporations Act]*

1.245 These provisions ensure consistency across the legislation by imposing the same obligations and penalties as currently apply to companies and registered schemes under the Corporations Act. *[Items 120, 121, 122, 197, 198 and 199, sections 324CIA, 324CJA, 324CKA and Schedule 3 of the Corporations Act]*

1.246 For the purposes of the auditor independence requirements in the Corporations Act, the definition of an 'officer' of a registrable superannuation entity in the Bill is extended to also include the following people, unless ASIC makes a direction otherwise:

- a person who is an officer of a related body corporate of the RSE licensee or an entity controlled by the RSE licensee; or
- a person who has at any time within the previous 12 months been an officer or promoter of a related body corporate of the RSE licensee or an entity controlled by the RSE licensee.

*[Item 123, section 324CLA of the Corporations Act]*

1.247 A member of an RSE audit firm, or a director of an RSE audit company commits an offence if they bring about a state of affairs, which



if it continued, would prevent the individual auditor of a registrable superannuation entity from continuing to be the auditor of the entity without contravening the registration or auditor independence requirements in Divisions 2 or 3 of Part 2M.4 of the Corporations Act. The penalty for this offence is six months imprisonment. *[Items 124, 125, 126 and 200, section 324CM and Schedule 3 of the Corporations Act]*

1.248 This penalty is necessary to ensure consistency across the legislation, by imposing the same penalty amount as for the existing offence provision that applies to an individual auditor of a company or registered scheme under the Corporations Act.

### ***Auditor rotation***

1.249 The Bill requires the individual auditor of a registrable superannuation entity to comply with the auditor rotation requirements in the Corporations Act.

1.250 Auditor rotation builds on the auditor independence requirements to safeguard the quality of audits. The limitation on the number of years that an individual can play a significant role in the audit of a registrable superannuation entity is intended to ensure the impartiality of auditors, and thus the quality of audits, which otherwise may be compromised as a result of excessive familiarity and close relations between an auditor and the audited entity.

1.251 An individual is not eligible to play a significant role in the audit of a registrable superannuation entity for a financial year if this would result in the individual playing a significant role in the audit of the entity for more than five out of seven successive years unless ASIC makes a declaration in relation to the individual or the directors of the entity grant an approval to do so. *[Items 127 to 133, section 324DA of the Corporations Act]*

1.252 The Bill amends the definition of ‘play a significant role’ in relation to a registrable superannuation entity, by providing that a person plays a significant role in the audit of a registrable superannuation entity for a financial year if:

- the person is appointed as the individual auditor of a registrable superannuation entity and the person acts as an auditor for that financial year, or prepares an audit report for the entity for that financial year or a half-year within that financial year; or
- the person is a registered company auditor and acts as a review auditor in relation to an audit of the entity for that financial year or half-year within that financial year.

*[Items 16 to 19, section 9 of the Corporations Act]*

1.253 ASIC may make a declaration permitting an individual to play a significant role in the audit of a registrable superannuation entity for more than five out of seven successive years if:

- ASIC receives an application from the registered company auditor (i.e. the individual auditor); and
- if individual auditor is a member or employee of an RSE audit firm, or an employee or director of an RSE audit company – the application includes the written consent of the RSE audit firm or RSE audit company.

*[Items 168, 169 and 170, section 342A of the Corporations Act]*

1.254 In deciding whether to make a declaration, ASIC must have regard to any matters it considers relevant, including:

- the nature of the audited body or bodies, including whether the activity in which the audited body or bodies engage is such that specialist knowledge about that activity is necessary to carry out the audit properly; and
- the availability of other registered company auditors capable of providing satisfactory audit services for the audited body or bodies.

1.255 Before making a declaration, ASIC must consult with APRA.

*[Item 170, section 342A(5C) of the Corporations Act]*

1.256 If ASIC makes a declaration granting an extension of the auditor rotation requirements:

- ASIC must notify APRA of the declaration as soon as practicable after making the declaration; and
- the auditor must, as soon as practical after the declaration is made, give notice of the declaration by ASIC to the registrable superannuation entity.

*[Items 171 to 175, sections 342A and 342B of the Corporations Act]*

1.257 The directors of a registrable superannuation entity may, by resolution, grant approval for an individual to play a significant role in the audit of a registrable superannuation entity for an additional two years. Before the end of the permitted five successive years, the directors of the entity may:

- grant approval for one additional successive year, and may, by the end of that year, grant an approval for an additional successive year; or
- grant an approval for two successive years.

*[Items 134 to 137, section 324DAA of the Corporations Act]*

1.258 The directors of a registrable superannuation entity must not grant approval to extend the auditor rotation requirements unless the approval is in accordance with a recommendation endorsed by the Board Audit Committee and the individual to whom the approval relates agrees, in writing, to the approval being granted. *[Items 138 to 142, section 324DAB of the Corporations Act]*

1.259 Superannuation prudential standard 510 (*SPS 510 – Governance*) specifies that an RSE licensee must have a Board Audit Committee.

1.260 If the directors of a registrable superannuation entity grant approval, the directors must, within 14 days of granting approval:

- give a copy of the resolution granting approval to ASIC and APRA;
- give a copy of the resolution to the individual; and
- if the individual is an employee, director or member of an RSE audit firm or RSE audit company – give a copy of the approval to the RSE audit firm or RSE audit company.

*[Items 143 and 144, section 324DAC of the Corporations Act]*

1.261 Details of an approval granted by the directors of a registrable superannuation entity must be included in the directors' report for that financial year. *[Items 49 and 145, sections 300C and 324DAC of the Corporations Act]*

1.262 A person who plays a significant role in the audit of a registrable superannuation entity but who is not entitled to play that role, because of the auditor rotation requirements, commits an offence. The penalty for this offence is six months imprisonment. *[Item 146, section 324DB of the Corporations Act]*

1.263 To ensure consistency across the legislation, the penalty for non-compliance with the auditor rotation requirements is the same as for the existing offence provision that applies to auditors of a listed company or listed registered schemes under the Corporations Act. In accordance with the Guide to Framing Commonwealth Offences, strict liability is not available for an offence punishable by imprisonment.

1.264 APRA also has the power, under the prudential standards to grant an exemption from the auditor rotation requirements, for example if the individual auditor provides specialist services that are otherwise not readily available or there are no other registered company auditors available to provide satisfactory services for the RSE licensee. However, an approval granted by APRA to extend the auditor rotation requirements in accordance with the prudential standards is not sufficient to satisfy the requirements under the Corporations Act. This means that a person would

also need a declaration from ASIC or an approval from the directors of the entity.

1.265 The auditor rotation requirements that apply to audit companies and audit firms in the Corporations Act do not apply to RSE audit firms or RSE audit companies. This is because auditing a registrable superannuation entity is considered a complex process and the requirement for regular rotation would result in unnecessary costs and regulatory burden for RSE licensees and auditors and potentially undermine the quality of the audit.

### ***Auditor transparency reports***

1.266 The Bill extends the auditor transparency reporting requirements to apply to individual auditors of registrable superannuation entities, RSE audit companies and RSE audit firms.

1.267 Individual auditors, RSE audit companies and RSE audit firms may be required to prepare and publish an audit transparency report for a transparency reporting period (a period of 12 months starting on 1 July of any given year) if during that transparency reporting period, the individual auditor, RSE audit company or RSE audit firm, conducted audits of ten or more bodies of the kind listed in section 332A(1) of the Corporations Act. *[Item 148, section 332 of the Corporations Act]*

1.268 The Bill amends the list of bodies in section 332A(1) of the Corporations Act to include registrable superannuation entities. *[Item 149, section 332A of the Corporations Act]*

1.269 For example, an RSE audit firm would be required to prepare and lodge an audit transparency report for a transparency reporting period if, during that transparency reporting period, it conducts nine audits of companies and one registrable superannuation entity.

1.270 For the purposes of determining whether an RSE audit firm or RSE audit company is required to prepare an audit transparency report, an audit conducted by an individual auditor who is an employee or member of an RSE audit firm is taken to have been conducted by the RSE audit firm. In the same way, an audit conducted by an individual auditor who is an employee or director of an RSE audit company is taken to have been conducted by the RSE audit company. *[Item 150, section 332A of the Corporations Act]*

1.271 The content of the annual transparency report is required to be in accordance with the requirements in Schedule 7A of the *Corporations Regulations 2001*, which is made under the authority of section 332B of the Corporations Act.

1.272 If the individual auditor of a registrable superannuation entity, RSE audit firm or RSE audit company is required to prepare an audit transparency report, this report must be published on the auditor's website

within four months after the end of the transparency reporting year, or in accordance with an order made by ASIC. Failure to comply with this reporting requirement is an offence of strict liability, under section 1311(1) of the Corporations Act.

- Where an offence involves a contravention by an individual auditor - the penalty for this offence is 20 penalty units.
- Where an offence involves a contravention by an RSE audit firm – each member of the RSE audit firm commits an offence of strict liability – the penalty for this offence is 20 penalty units.
- Where an offence involves a contravention by an RSE audit company – the RSE audit company commits an offence of strict liability – the penalty for this offence is 100 penalty units.
  - This penalty is consistent with the ‘multiplier rule’ in the Guide to Framing Commonwealth Offences, which provides that the maximum penalty for a body corporate can be up to five times higher than the penalty for a natural person.

*[Item 149, section 332A of the Corporations Act]*

1.273 The use of a strict liability offence in each of these cases is intended to deter non-compliance and improve the integrity of the regulatory regime. The imposition of a penalty that is the same as for the offence provision that applies to auditors of companies and registered schemes ensures consistency across the legislation. The penalty for strict liability offences is less than the maximum penalty amount recommended in the Guide to Framing Commonwealth Offences, which provides the penalty should not be more than 60 penalty units for an individual and 300 penalty units for a body corporate.

1.274 In response to an application made by an individual auditor of a registrable superannuation entity, RSE audit firm or RSE audit company, ASIC may:

- make an order granting an extension for the publication of the annual transparency report;
- make an order relieving the auditor from being required to comply with some or all of the auditor transparency reporting requirements in sections 332A and 332B of the Corporations Act indefinitely or for a specified period of time; or
- make a legislative instrument applicable to a specified class of auditors relieving them from compliance with some or all

of these requirements indefinitely or for a specified period of time.

1.275 ASIC may make an order or legislative instrument only if ASIC is satisfied that compliance with the auditor transparency reporting requirements in sections 332A and 332B of the Corporations Act would be inappropriate in the circumstances or impose an unreasonable burden.

1.276 If an order is made, ASIC must give the applicant written notice of the making or revocation of the order. In this context, it is appropriate for ASIC to be able to provide relief where the issues to be addressed are too individual and specific to justify addressing them in the Act. The exemption and modification powers in the new law are subject to the usual safeguards, including administrative review by the AAT, judicial review and consideration in appropriate circumstances by the Commonwealth Ombudsman.

1.277 This limited expansion of ASIC's existing exemption power to also apply to registrable superannuation entities is intended to allow ASIC to provide administrative relief in circumstances where the strict operation of the Act is inappropriate or unreasonable. Legislative instruments made under this provision are subject to disallowance and sunseting in accordance with the requirements of the *Legislation Act 2003* and will therefore be subject to appropriate parliamentary scrutiny and periodic review.

1.278 An application for an order made by the individual auditor of a registrable superannuation entity, RSE audit firm or RSE audit company must be made in writing, lodged with ASIC before the report is required to be published and be signed by:

- if the auditor for the purposes of the transparency reporting requirement is an individual auditor – the individual auditor;
- if the auditor for the purposes of the transparency report is an RSE audit firm – a member of the RSE audit firm in the firm's name and in their own name; or
- if the auditor for the purposes of the transparency report is an RSE audit company – by a director of the company following authorisation by a resolution of the directors.

*[Items 151 and 152, sections 332C and 332D of the Corporations Act]*

1.279 If an auditor transparency report is required to be prepared, the individual auditor of a registrable superannuation entity, RSE audit firm or RSE audit company must lodge a copy of the report with ASIC on, or before, the day it is first published on the auditor's website. A failure to lodge the report with ASIC is an offence of strict liability. The penalty for this offence is 20 penalty units. *[Item 149, section 332A of the Corporations Act]*

1.280 A strict liability offence is considered appropriate in this case to deter non-compliance, improve the integrity of the regulatory regime and ensure consistency across the legislation by imposing a penalty that is the same as for the existing offence provision that applies to the lodgement of audit transparency reports by other entities under the Corporations Act. The penalty for this offence is less than the maximum penalty recommended for strict liability offences in the Guide to Framing Commonwealth Offences.

1.281 The Bill expands ASIC's existing power to make orders and legislative instruments granting exemptions from the requirements in Chapter 2M of the Corporations Act for companies and registered schemes to also apply to registrable superannuation entities.

1.282 In response to an application, ASIC may, in respect of:

- a registrable superannuation entity – make an order to grant relief to the director, auditor or the entity from any or all of the requirements in Part 2M.2, 2M.3 and 2M.4 of the Corporations Act, other than Division 4 of Part 2M.4 of the Corporations Act (deliberately disqualifying auditor);
- a specified class of registrable superannuation entities – make a legislative instrument to grant relief from any or all the requirements for the directors of the entity, the entity or the auditors of the entity
- non-auditor members of an RSE audit firm, former members of an RSE audit firm, or former directors or professional employees of an RSE audit company – make an order to grant relief from any or all the auditor independence requirements in Division 3 of Part 2M.4 of the Corporations Act (other than for Division 4 of Part 2M.4 of the Corporations Act); or
- a specified class of non-auditor members of RSE or former members, directors or professional employees of RSE audit firms or companies – make a legislative instrument to grant relief from any or all the auditor independence requirements in Division 3 of Part 2M.4 of the Corporations Act.

*[Items 156 to 167, sections 340, 341, 342, 342AA and 342AB of the Corporations Act]*

1.283 An order or legislative instrument made by ASIC may be made subject to conditions and apply indefinitely or for a specified period of time.

1.284 The application to ASIC for an exemption must be made in writing, authorised by a resolution of the directors of the registrable superannuation entity, signed by a director and lodged with ASIC.

1.285 ASIC may make an order or legislative instrument only if ASIC is satisfied that compliance with the requirements in Parts 2M.2, 2M.3 and 2M.4 of the Corporations Act would make the financial or other reports misleading, be inappropriate in the circumstances or would impose an unreasonable burden.

1.286 These limited expansions of ASIC's existing exemption powers are intended to allow ASIC to provide limited administrative relief in circumstances where the strict operation of the Act is inappropriate or unreasonable. This amendment is also intended to ensure consistency across the legislation by providing ASIC with the same powers in relation to registrable superannuation entities that it already has in relation to companies and registered schemes.

1.287 The power for ASIC to make orders granting relief in this context is appropriate as the issues to be addressed are too individual and specific to justify addressing them in the Corporations Act. Orders are subject to administrative review by the AAT, judicial review and consideration in appropriate circumstances by the Commonwealth Ombudsman.

1.288 Legislative instruments made by ASIC under this provision are subject to disallowance and sunseting in accordance with the requirements of the *Legislation Act 2003* and will therefore be subject to appropriate parliamentary scrutiny and periodic review.

### **Disclosure of information**

1.289 The Bill amends the ASIC Act to provide that information obtained by ASIC under Chapter 2M of the Corporations Act about the audit of a registrable superannuation entity conducted by an Australian auditor is taken to be an authorised use and disclosure of information if it is disclosed by a person authorised by the Chair of ASIC and is disclosed to the directors, audit committee or senior manager of an RSE licensee for a registrable superannuation entity in order to assist the RSE licensee for the registrable superannuation entity to properly manage its affairs.

- The person authorised by the ASIC Chair must not disclose this information unless the authorised person notifies the relevant auditor at least seven days before of the proposed disclosure.
- If the disclosure is made only to a senior manager of an RSE licensee, the authorised person must as soon as possible after making the disclosure, also provide a copy of the disclosure to the directors and audit committee of the RSE licensee for the entity.



- For the purposes of the ASIC Act, 'registrable superannuation entity' is defined to have the same meaning as in the Corporations Act, while 'RSE licensee' is defined to have the same meaning as in the SIS Act.

*[Items 207, 208, 209, 210, 211 and 212, section 127 of the ASIC Act]*

## Consequential amendments

1.290 For clarification and consistency purposes, the Bill amends certain provisions in the SIS Act to replace the term 'auditor' with the term 'RSE auditor', which is defined in section 10 of rh. *[Items 222, 223 and 224, section 29PD of the SIS Act]*

## Application and transitional provisions

### Commencement and application provisions

1.291 The amendments to the Corporations Act made by Division 1 of Part 1 of this Bill commence on 1 July 2022. *[Item 181, section 1701 of the Corporations Act]*

1.292 These amendments apply in relation to the report, audit or review of a registrable superannuation entity for the financial year (or year of income) beginning on, or after, 1 July 2022. The new financial reporting and auditing obligations and requirements will not apply before 1 July 2022.

1.293 For example, if a registrable superannuation entity's year of income commences on 1 April 2022, that entity will be required to apply the new reporting and auditing requirements to the report, which is required to be prepared for the year of income from 1 April 2023 to 31 March 2024.

1.294 The timing of the amendments is intended to ensure that RSE licensees and auditors are aware of the new requirements before the commencement of the reporting period to which the report or audit relates.

1.295 The amendments made in Division 2 of Part 1 of this Bill commence on the later of:

- immediately after the commencement of the provisions covered in Division 1 of Part 1 of this Bill - 1 July 2022; and
- the commencement of item 609 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.

1.296 These amendments are made to the Corporations Act to provide for the commencement of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*, which provides for registry functions under the Corporations Act to be transferred from ASIC to a Registrar, approved under the Corporations Act.

1.297 These amendments provide that, once the relevant amendments of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* commence, the following documents are to be lodged with the Registrar, rather than ASIC:

- a financial report for a half-year prepared for a registrable superannuation entity;
- an amended financial report or directors report for a financial year; and
- a notice of the removal or resignation of an auditor from office.

*[Items 203, 204, 205 and 206, sections 302A, 322 and 331AK of the Corporations Act]*

1.298 To ensure alignment with the changes to the Corporations Act, the amendments to the SIS Act and the ASIC Act made by Part 2 of this Bill also commence on 1 July 2022.

### **Transitional provisions**

1.299 The Bill amends the SIS Act to require an RSE licensee for a registrable superannuation entity to retain accounting records for a period of seven years, rather than five years. This amendment is not intended to have retrospective effect, and therefore applies in relation to accounting records relating to a year of income beginning on or after 1 July 2022.

*[Item 263, SIS Act]*

1.300 The previous requirement to retain accounting records for a period of five years, which is repealed by the Bill, continues to apply in relation to accounting records that are required to be kept for a year of income beginning before 1 July 2022. *[Item 263, SIS Act]*