



# **Superannuation Legislation Amendment (Stronger Super) Act 2012**

**No. 91, 2012**

**An Act to amend the law relating to  
superannuation, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Superannuation Legislation Amendment (Stronger Super) Act 2012**

**No. 91, 2012**

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## **An Act to amend the law relating to superannuation, and for other purposes**

[Assented to 28 June 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Superannuation Legislation Amendment (Stronger Super) Act 2012*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2012
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	29 June 2012
3. Schedule 1, Part 3	Immediately after the commencement of item 9 of Schedule 2 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> . However, if that item commences before the provision(s) covered by table item 1, the provision(s) do not commence at all.	
4. Schedule 1, Part 4	The day after this Act receives the Royal Assent.	29 June 2012
5. Schedule 2	The day after this Act receives the Royal Assent.	29 June 2012

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Data and payment standards relating to superannuation and retirement savings**

### **Part 1—Main amendments**

#### *Retirement Savings Accounts Act 1997*

##### **1 After Part 4**

Insert:

### **Part 4A—Data and payment regulations and standards relating to RSAs**

#### **Division 1—Data and payment regulations and standards relating to RSAs**

##### **45 Object of Part**

- (1) The object of this Part is to further the interests of holders of RSAs by improving the productivity of the retirement savings account system.
- (2) The Part does this by providing for a system of standards relating to payments and information connected with the operation of RSAs.

##### **45A Alternative constitutional basis**

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to an employer were, by express provision, confined to an employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

##### **45B Data and payment regulations and standards relating to RSAs**

- (1) The regulations may make provision for and in relation to data and payment matters relating to RSAs, to be complied with by:
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- (a) RSA providers; and
  - (b) employers in their dealings with RSA providers.
- (2) The regulations may prescribe different requirements for different classes of RSA or employer.
- (3) The Commissioner of Taxation may, by legislative instrument, determine standards (***data and payment standards relating to RSAs***) relating to data and payment matters relating to RSAs, applicable to:
- (a) RSA providers; and
  - (b) employers in their dealings with RSAs.
- Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) The data and payment standards relating to RSAs may specify different requirements for different classes of RSA or employer.
- (5) A ***data and payment matter relating to RSAs*** is a matter relating to the manner in which payments and information of a kind mentioned in subsection (6):
- (a) relating to:
    - (i) a holder of an RSA; or
    - (ii) an employee for whose benefit a contribution to an RSA is to be made by an employer; and
  - (b) connected with the operation of the RSA;
- are dealt with.
- (6) The kinds of payments and information are:
- (a) transactions, including payments, contributions, roll-over superannuation benefits (within the meaning of the *Income Tax Assessment Act 1997*), allocations, transfers and refunds; and
  - (b) reports; and
  - (c) records, including registrations; and
  - (d) unique identifiers for use with such transactions, reports and records; and
  - (e) any other kind of payment or information that is prescribed by the regulations for the purposes of this paragraph; and

**Schedule 1** Data and payment standards relating to superannuation and retirement savings

**Part 1** Main amendments

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- (f) to avoid doubt, any payment or information of a kind mentioned in paragraphs (a) to (e) and made or provided by the Commissioner of Taxation.

*Adoption of other instruments*

- (7) The regulations or standards may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (8) Subsection (7) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.

*Consultations in preparing data and payment standards relating to RSAs*

- (9) The Commissioner of Taxation must consult with APRA in preparing the data and payment standards relating to RSAs.

Note: For further consultation requirements, see section 17 of the *Legislative Instruments Act 2003*.

- (10) A failure to comply with subsection (9) does not affect the validity or enforceability of the data and payment standards relating to RSAs.

**45C Relationship between standards and other law**

- (1) A data and payment standard relating to RSAs may elaborate or supplement any aspect of regulations made under this Part.
- (2) However, a data and payment standard relating to RSAs is of no effect to the extent that it conflicts with this Act or regulations made under this Act.

## **Division 2—Compliance with data and payment regulations and standards relating to RSAs**

### **45D Compliance requirement—RSA providers**

- (1) An RSA provider must ensure that payments and information relating to a holder of an RSA, or a person for whose benefit a contribution to the RSA is to be made, are dealt with in a manner that complies with any applicable:
  - (a) regulations made under this Part; and
  - (b) data and payment standards relating to RSAs.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 20 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

### **45E Compliance requirement—employers**

- (1) An employer must deal with payments and information relating to an employee, for whose benefit a contribution to an RSA is to be made, in a manner that complies with any applicable:
  - (a) regulations made under this Part; and
  - (b) data and payment standards relating to RSAs.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).
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Penalty: 20 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

**45F Regulator's power to give directions in certain circumstances—  
RSA providers**

- (1) The Regulator may give an RSA provider a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the RSA provider has contravened, or is likely to contravene:
- (a) a particular regulation made under this Part; or
  - (b) a particular data and payment standard relating to RSAs.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
- (a) the extent (if any) to which the RSA provider is operating in a way that is contrary to the object of this Part;
  - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the RSA provider.
- (4) The kinds of direction that an RSA provider may be given are directions to do any one or more of the following by a specified time:
- (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
  - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The RSA provider must comply with the direction by the specified time.
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Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the RSA provider, vary the direction or the time specified if, at the time of the variation, the Regulator considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the RSA provider. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

**45G Regulator's power to give directions in certain circumstances—employers**

- (1) The Regulator may give an employer a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the employer has contravened, or is likely to contravene:
- (a) a particular regulation made under this Part; or
  - (b) a particular data and payment standard relating to RSAs.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
- (a) the extent (if any) to which the employer is dealing with an RSA provider in a way that is contrary to the object of this Part;
  - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the employer.

**Schedule 1** Data and payment standards relating to superannuation and retirement savings

**Part 1** Main amendments

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- (4) The kinds of direction that the employer may be given are directions to do any one or more of the following by a specified time:
- (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
  - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The employer must comply with the direction by the specified time.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the employer, vary the direction or the time specified if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the employer. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

## **Division 3—Infringement notices**

### **45H When an infringement notice may be given**

- (1) If the Regulator has reasonable grounds to believe that a person has contravened an offence of strict liability in Division 2, the Regulator may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
  - (a) 2 or more alleged contraventions of an offence of strict liability in Division 2; and
  - (b) alleged contraventions of 2 or more offences of strict liability in Division 2.

### **45J Matters to be included in notice**

- (1) An infringement notice must:
  - (a) state the day on which it is given; and
  - (b) state the name of the person to whom it is given; and
  - (c) state the name of the person who gave the notice; and
  - (d) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for the contravention; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (e) state the amount that is payable under the notice; and
  - (f) give an explanation of how payment of the amount is to be made; and
  - (g) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) the person is not liable to be prosecuted in a court in relation to the alleged contravention; and

- (h) state that payment of the amount is not an admission of guilt or liability; and
  - (i) state that the person may apply to the Regulator to have the period in which to pay the amount extended; and
  - (j) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court in relation to the alleged contravention; and
  - (k) set out how the notice can be withdrawn; and
  - (l) state that if the notice is withdrawn:
    - (i) any amount paid under the notice must be refunded; and
    - (ii) the person may be prosecuted in a court for the alleged contravention; and
  - (m) state that the person may make written representations to the Regulator seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(e), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum penalty that a court could impose on the person for that contravention.

#### **45K Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the Regulator for an extension of the period referred to in paragraph 45J(1)(g).
- (2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.
- (3) If the Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 45J(1)(g) is taken to be a reference to that period so extended.
- (4) If the Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 45J(1)(g) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 45J(1)(g);



- (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend.
- (5) The Regulator may extend the period more than once under subsection (2).

#### **45L Withdrawal of an infringement notice**

##### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may, within 21 days after the day the notice is given, make written representations to the Regulator seeking the withdrawal of the notice.

##### *Withdrawal of notice*

- (2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Regulator:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Regulator; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of an offence of strict liability in Division 2;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of an offence of strict liability in Division 2 if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the Regulator considers relevant.

*Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) that the infringement notice is withdrawn; and
  - (d) that the person may be prosecuted in a court in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
- (a) the Regulator withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

**45M Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 45J(1)(g):
- (a) any liability of the person for the alleged contravention is discharged; and
  - (b) the person may not be prosecuted in a court for the alleged contravention; and
  - (c) the person is not regarded as having been convicted of the alleged offence; and
  - (d) the person is not regarded as having admitted guilt or liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**45N Effect of this Division**

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of an offence of strict liability in Division 2; or

- (b) affect the liability of a person for an alleged contravention of an offence of strict liability in Division 2 if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of an offence of strict liability in Division 2; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an offence of strict liability in Division 2.

## **Division 4—Correction and rectification of information**

### **45P Correction and rectification of information**

- (1) The Commissioner of Taxation may alter information in his or her possession for the purposes of ensuring the information complies with:
  - (a) any applicable regulations made under this Part; and
  - (b) any applicable data and payment standards relating to RSAs.
- (2) An alteration made by the Commissioner of Taxation under subsection (1) does not have the effect of discharging any liability of a person for a contravention of a provision of this Part relating to the information.

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

### **2 Before Part 4**

Insert:

## **Part 3B—Superannuation data and payment regulations and standards**

### **Division 1—Superannuation data and payment regulations and standards**

#### **34H Object of Part**

- (1) The object of this Part is to further the interests of beneficiaries of superannuation entities by improving the productivity of the superannuation system.
- (2) The Part does this by providing for a system of standards relating to payments and information connected with the operation of superannuation entities.

#### **34J Alternative constitutional basis**

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to an employer were, by express provision, confined to an employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

#### **34K Superannuation data and payment regulations and standards**

- (1) The regulations may make provision for and in relation to superannuation data and payment matters, to be complied with by:
  - (a) trustees of superannuation entities; and
  - (b) employers in their dealings with superannuation entities.
- (2) The regulations may prescribe different requirements for different classes of superannuation entity or employer.
- (3) The Commissioner of Taxation may, by legislative instrument, determine standards (*superannuation data and payment standards*) relating to superannuation data and payment matters, applicable to:
  - (a) trustees of superannuation entities; and
  - (b) employers in their dealings with superannuation entities.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (4) The superannuation data and payment standards may specify different requirements for different classes of superannuation entity or employer.
- (5) A ***superannuation data and payment matter*** is a matter relating to the manner in which payments and information of a kind mentioned in subsection (6):
- (a) relating to:
    - (i) a member of a superannuation entity; or
    - (ii) an employee for whose benefit a contribution to a superannuation entity is to be made by an employer; and
  - (b) connected with the operation of the superannuation entity; are dealt with.
- (6) The kinds of payments and information are:
- (a) transactions, including payments, contributions, roll-over superannuation benefits (within the meaning of the *Income Tax Assessment Act 1997*), allocations, transfers and refunds; and
  - (b) reports; and
  - (c) records, including registrations; and
  - (d) unique identifiers for use with such transactions, reports and records; and
  - (e) any other kind of payment or information that is prescribed by the regulations for the purposes of this paragraph; and
  - (f) to avoid doubt, any payment or information of a kind mentioned in paragraphs (a) to (e) and made or provided by the Commissioner of Taxation.

*Adoption of other instruments*

- (7) The regulations or standards may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (8) Subsection (7) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.

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*Consultations in preparing superannuation data and payment standards*

- (9) The Commissioner of Taxation must consult with APRA in preparing the superannuation data and payment standards.

Note: For further consultation requirements, see section 17 of the *Legislative Instruments Act 2003*.

- (10) A failure to comply with subsection (9) does not affect the validity or enforceability of the superannuation data and payment standards.

**34L Relationship between standards and other law**

- (1) A superannuation data and payment standard may elaborate on or supplement any aspect of regulations made under this Part.
- (2) However, a superannuation data and payment standard is of no effect to the extent that it conflicts with this Act or the regulations.

**Division 2—Compliance with superannuation data and payment regulations and standards**

**34M Compliance requirement—trustees of superannuation entities**

- (1) Each trustee of a superannuation entity must ensure that payments and information relating to a member of the superannuation entity, or a person for whose benefit a contribution to the superannuation entity is to be made, are dealt with in a manner that complies with any applicable:
- (a) regulations made under this Part; and
  - (b) superannuation data and payment standards.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 20 penalty units.

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Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

### **34N Compliance requirement—employers**

- (1) An employer must deal with payments and information relating to an employee, for whose benefit a contribution to a superannuation entity is to be made, in a manner that complies with any applicable:
- (a) regulations made under this Part; and
  - (b) superannuation data and payment standards.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 20 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (3) A contravention of subsection (1) does not affect the validity of a transaction.

### **34P Regulator's power to give directions in certain circumstances—trustees of superannuation entities**

- (1) The Regulator may give a trustee of a superannuation entity a direction of a kind specified in subsection (4) if the Regulator reasonably believes that a trustee of the superannuation entity has contravened, or is likely to contravene:
- (a) a particular regulation made under this Part; or
  - (b) a particular superannuation data and payment standard.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:

**Schedule 1** Data and payment standards relating to superannuation and retirement savings

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- (a) the extent (if any) to which the superannuation entity is operating in a way that is contrary to the object of this Part;
  - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the trustee of the superannuation entity.
- (4) The kinds of direction that a trustee of a superannuation entity may be given are directions to do any one or more of the following by a specified time:
- (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
  - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The trustee of the superannuation entity must ensure the direction is complied with by the specified time.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the trustee of the superannuation entity, vary the direction or the time specified if, at the time of the variation, the Regulator considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the trustee of the superannuation entity. The Regulator
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may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

**34Q Regulator’s power to give directions in certain circumstances—employers**

- (1) The Regulator may give an employer a direction of a kind specified in subsection (4) if the Regulator reasonably believes that the employer has contravened, or is likely to contravene:
  - (a) a particular regulation made under this Part; or
  - (b) a particular superannuation data and payment standard.
- (2) In deciding whether to give a direction, and deciding the content of the direction, the Regulator must take account of the following matters:
  - (a) the extent (if any) to which the employer is operating in a way that is contrary to the object of this Part;
  - (b) any other matter that the Regulator considers relevant.
- (3) The direction must be given by notice in writing to the employer.
- (4) The kinds of direction that the employer may be given are directions to do any one or more of the following by a specified time:
  - (a) do a specified act that the Regulator considers is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection);
  - (b) refrain from doing an act, if the Regulator considers the refraining is necessary to address the contravention mentioned in subsection (1) (or prevent the likely contravention mentioned in that subsection).
- (5) The time specified in the direction must be 21 days or more after the day the direction is given.
- (6) The employer must comply with the direction by the specified time.

Note: Section 288-110 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for contravention of this subsection.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 50 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

- (8) The Regulator may, by notice in writing to the employer, vary the direction or the time specified if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (9) The direction has effect until the Regulator revokes it by notice in writing to the employer. The Regulator may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

### **Division 3—Infringement notices**

#### **34R When an infringement notice may be given**

- (1) If the Regulator has reasonable grounds to believe that a person has contravened an offence of strict liability in Division 2, the Regulator may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
- (a) 2 or more alleged contraventions of an offence of strict liability in Division 2; and
  - (b) alleged contraventions of 2 or more offences of strict liability in Division 2.

#### **34S Matters to be included in notice**

- (1) An infringement notice must:
- (a) state the day on which it is given; and
  - (b) state the name of the person to whom it is given; and
  - (c) state the name of the person who gave the notice; and
-

- (d) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for the contravention; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (e) state the amount that is payable under the notice; and
  - (f) give an explanation of how payment of the amount is to be made; and
  - (g) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) the person is not liable to be prosecuted in a court in relation to the alleged contravention; and
  - (h) state that payment of the amount is not an admission of guilt or liability; and
  - (i) state that the person may apply to the Regulator to have the period in which to pay the amount extended; and
  - (j) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court in relation to the alleged contravention; and
  - (k) set out how the notice can be withdrawn; and
  - (l) state that if the notice is withdrawn:
    - (i) any amount paid under the notice must be refunded; and
    - (ii) the person may be prosecuted in a court for the alleged contravention; and
  - (m) state that the person may make written representations to the Regulator seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(e), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum penalty that a court could impose on the person for that contravention.

### **34T Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the Regulator for an extension of the period referred to in paragraph 34S(1)(g).

- (2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.
- (3) If the Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 34S(1)(g) is taken to be a reference to that period as so extended.
- (4) If the Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 34S(1)(g) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 34S(1)(g);
  - (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend.
- (5) The Regulator may extend the period more than once under subsection (2).

### **34U Withdrawal of an infringement notice**

#### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may, within 21 days after the day the notice is given, make written representations to the Regulator seeking the withdrawal of the notice.

#### *Withdrawal of notice*

- (2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Regulator:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Regulator; and
  - (b) may take into account the following:

- (i) whether a court has previously imposed a penalty on the person for a contravention of an offence of strict liability in Division 2;
- (ii) the circumstances of the alleged contravention;
- (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of an offence of strict liability in Division 2 if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
- (iv) any other matter the Regulator considers relevant.

*Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) that the infringement notice is withdrawn; and
  - (d) that the person may be prosecuted in a court in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
  - (a) the Regulator withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

**34V Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 34S(1)(g):
    - (a) any liability of the person for the alleged contravention is discharged; and
    - (b) the person may not be prosecuted in a court for the alleged contravention; and
-

- (c) the person is not regarded as having been convicted of the alleged offence; and
  - (d) the person is not regarded as having admitted guilt or liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

### **34W Effect of this Division**

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of an offence of strict liability in Division 2; or
- (b) affect the liability of a person for an alleged contravention of an offence of strict liability in Division 2 if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of an offence of strict liability in Division 2; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an offence of strict liability in Division 2.

## **Division 4—Correction and rectification of information**

### **34X Correction and rectification of information**

- (1) The Commissioner of Taxation may alter information in his or her possession for the purposes of ensuring the information complies with:
  - (a) any applicable regulations made under this Part; and
  - (b) any applicable superannuation data and payment standards.
- (2) An alteration made by the Commissioner of Taxation under subsection (1) does not have the effect of discharging any liability

of a person for a contravention of a provision of this Part relating to the information.

### ***Taxation Administration Act 1953***

#### **3 At the end of Division 288 in Schedule 1**

Add:

#### **288-110 Contravention of superannuation data and payment regulation or standard**

*Liability to penalty—RSA providers and trustees of superannuation entities*

- (1) An entity is liable to an administrative penalty if the entity contravenes:
  - (a) subsection 34M(1) of the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) subsection 45D(1) of the *Retirement Savings Accounts Act 1997*.
- (2) An entity is liable to an administrative penalty if the entity contravenes:
  - (a) subsection 34P(6) of the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) subsection 45F(6) of the *Retirement Savings Accounts Act 1997*.

*Liability to penalty—employers*

- (3) An entity is liable to an administrative penalty if the entity contravenes:
    - (a) subsection 34N(1) of the *Superannuation Industry (Supervision) Act 1993*; or
    - (b) subsection 45E(1) of the *Retirement Savings Accounts Act 1997*.
  - (4) An entity is liable to an administrative penalty if the entity contravenes:
    - (a) subsection 34Q(6) of the *Superannuation Industry (Supervision) Act 1993*; or
-

**Schedule 1** Data and payment standards relating to superannuation and retirement savings

**Part 1** Main amendments

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(b) subsection 45G(6) of the *Retirement Savings Accounts Act 1997*.

*Amount of the penalty*

- (5) The amount of the penalty is:
- (a) for an administrative penalty under subsection (1) or (3)—4 penalty units; or
  - (b) for an administrative penalty under subsection (2) or (4)—10 penalty units.

Note: The Commissioner is required to notify you of an administrative penalty: see section 298-10.



## Part 2—Consequential amendments

### *Retirement Savings Accounts Act 1997*

#### 4 After paragraph 3(1)(ba)

Insert:

- (bb) APRA also has the general administration of Divisions 2 and 3 of Part 4A to the extent that administration of the provisions is not conferred on the Commissioner of Taxation by paragraph (f); and

#### 5 At the end of subsection 3(1) (before the note)

Add:

- ; and (f) the Commissioner of Taxation has the general administration of:
  - (i) Division 1 of Part 4A; and
  - (ii) Division 2 of Part 4A, to the extent it relates to employers; and
  - (iii) Division 2 of Part 4A, to the extent it relates to payments and information given to the Commissioner of Taxation; and
  - (iv) Division 4 of Part 4A.

#### 6 Section 16

Insert:

*data and payment matter relating to RSAs* has the meaning given by subsection 45B(5).

#### 7 Section 16

Insert:

*data and payment standard relating to RSAs* means a standard issued by the Commissioner of Taxation under section 45B.

#### 8 Section 16 (after paragraph (f) of the definition of *reviewable decision*)

Insert:

- (g) a decision of the Regulator to give or vary a direction under section 45F or 45G; or

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

#### **9 Section 4 (before table item dealing with Part 4)**

Insert:

- 3B | superannuation data and payment standards for funds and employers

#### **10 Paragraph 6(1)(a)**

After “(e)”, insert “, (fa)”.

#### **11 Before subparagraph 6(1)(a)(ii)**

Insert:

- (ib) Divisions 2 and 3 of Part 3B;

#### **12 Before subparagraph 6(1)(e)(i)**

Insert:

- (ia) Division 2 of Part 3B;

#### **13 After paragraph 6(1)(f)**

Insert:

- (fa) the Commissioner of Taxation has the general administration of:
  - (i) Division 1 of Part 3B; and
  - (ii) Division 2 of Part 3B, to the extent it relates to employers; and
  - (iii) Division 2 of Part 3B, to the extent it relates to payments and information given to the Commissioner of Taxation; and
  - (iv) Division 4 of Part 3B; and

#### **14 Subsection 10(1) (before paragraph (dp) of the definition of *reviewable decision*)**

Insert:

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(dod) a decision of the Regulator to give or vary a direction under section 34P or 34Q; or

**15 Subsection 10(1)**

Insert:

*superannuation data and payment matter* has the meaning given by subsection 34K(5).

**16 Subsection 10(1)**

Insert:

*superannuation data and payment standard* means a standard issued by the Commissioner of Taxation under section 34K.

**17 Subsection 344(12)**

After “(dn)”, insert “, (dod)”.

**Schedule 1** Data and payment standards relating to superannuation and retirement savings

**Part 3** Amendments contingent on the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012

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**Part 3—Amendments contingent on the  
Superannuation Legislation Amendment  
(Trustee Obligations and Prudential  
Standards) Act 2012**

*Superannuation Industry (Supervision) Act 1993*

**18 Subsection 10(1) (paragraph (dod) of the definition of  
*reviewable decision*)**

Repeal the paragraph.

**19 Subsection 10(1) (before paragraph (dp) of the definition  
of *reviewable decision*)**

Insert:

(dod) a decision of the Regulator to give or vary a direction under section 34P or 34Q; or

## Part 4—Application provision

### 20 Application of amendments

- (1) The amendments made by this Schedule apply in relation to:
  - (a) a trustee of a superannuation entity; or
  - (b) an RSA provider;in relation to conduct that occurs on or after 1 July 2013.
- (2) The amendments made by this Schedule apply in relation to an entity that is a medium to large employer on 1 July 2014 in relation to conduct that occurs on or after 1 July 2014.
- (3) The amendments made by this Schedule apply in relation to an entity that is a small employer on 1 July 2014 in relation to conduct that occurs on or after:
  - (a) if paragraph (b) does not apply—1 July 2015; or
  - (b) if the regulations prescribe a day after 1 July 2015 for the purposes of this paragraph—that day.
- (4) In this item:

*medium to large employer*, at a particular time, means an employer that employs 20 or more employees at that time.

*small employer*, at a particular time, means an employer that employs fewer than 20 employees at that time.
- (5) For the purpose of calculating the number of employees employed by an employer at a particular time, count all employees employed by the employer at that time.
- (6) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

## **Schedule 2—Costs of implementing SuperStream measures**

### ***Australian Prudential Regulation Authority Act 1998***

#### **1 At the end of paragraph 50(1)(a)**

Add:

; and (iii) implementing the SuperStream measures until 30 June 2018;

#### **2 At the end of paragraph 50(1)(b)**

Add:

; and (iii) implementing the SuperStream measures until 30 June 2018.

#### **3 After subsection 50(1)**

Insert:

- (1A) The Minister may make, by legislative instrument, for each financial year, a determination specifying the proportion of amounts of levy money paid to APRA, on behalf of the Commonwealth, for the year, that is to be credited to the APRA Special Account on an ongoing basis.

#### **4 Subsections 50(2) and 50(3)**

Repeal the subsections, substitute:

- (2) The proportion determined under subsection (1A) of any amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year, is to be credited to the APRA Special Account.
- (3) If the amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year, exceeds the sum of:
- (a) the amount determined under paragraph (1)(a), or the total of the amounts determined under paragraph (1)(b), for that financial year; and
  - (b) the proportion determined under subsection (1A) of amounts of levy money, for that financial year;

the excess is to be credited to the APRA Special Account.

Note: The annual financial statements of APRA, in respect of the APRA Special Account, must be prepared in accordance with the Finance Minister's Orders (see section 49 of the *Financial Management and Accountability Act 1997*).

## **5 Subsection 50(6)**

Insert:

*SuperStream measures* means:

- (a) the superannuation data and payment regulations and standards made under the *Superannuation Industry (Supervision) Act 1993*; and
- (b) the data and payment regulations and standards for retirement savings accounts made under the *Retirement Savings Accounts Act 1997*; and
- (c) the consolidation of active and inactive superannuation interests; and
- (d) the requirement that tax file numbers be the primary means for identifying member accounts; and
- (e) any other matter prescribed by the regulations made for the purposes of this subsection.

## **6 Application**

The amendments made by this Schedule apply from 1 July 2012.

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[Minister's second reading speech made in—  
House of Representatives on 24 May 2012  
Senate on 19 June 2012]