





# **Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012**

**No. 117, 2012**

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

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



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

*[Assented to 8 September 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Superannuation Legislation  
Amendment (Trustee Obligations and Prudential Standards) Act  
2012*.

## 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.	8 September 2012
2. Schedule 1	1 July 2013.	1 July 2013
3. Schedule 2, items 1 to 7	The day after this Act receives the Royal Assent.	9 September 2012
4. Schedule 2, item 8	The later of: (a) immediately after the commencement of item 7 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> ; and (b) the start of the day after this Act receives the Royal Assent.	
5. Schedule 2, items 9 to 33	The day after this Act receives the Royal Assent.	9 September 2012
6. Schedule 2, item 34	The later of: (a) immediately after the commencement of item 9 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> ; and (b) the start of the day after this Act receives the Royal Assent.	
7. Schedule 2, items 35 to 49	The day after this Act receives the Royal Assent.	9 September 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Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Trustee obligations

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

#### 1 Subsection 10(1)

Insert:

*enhanced director obligations*, for MySuper products, means the obligations imposed by:

- (a) section 29VO; and
- (b) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced director obligations.

#### 2 Subsection 10(1)

Insert:

*enhanced trustee obligations*, for MySuper products, means the obligations imposed by:

- (a) covenants referred to in section 52, as enhanced by the obligations imposed under section 29VN; and
- (b) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced trustee obligations.

#### 3 Subsection 10(1)

Insert:

*superannuation entity director* has the meaning given by subsection 29VO(3).

#### 4 Paragraph 29D(1)(g)

Repeal the paragraph, substitute:

- (g) in a case where the application is for a licence of a class that enables a trustee that holds a licence of the class to be a trustee of a public offer entity subject to any condition imposed under subsection 29EA(3)—APRA is satisfied that the applicant is a constitutional corporation; and

## **5 Section 29DA**

Repeal the section.

## **6 Subsection 29E(3)**

Repeal the subsection, substitute:

- (3) An additional condition is imposed on each RSE licence that enables a trustee that holds a licence of that class to be a trustee of a public offer entity. The condition is that the RSE licensee that holds the licence must continue to be a constitutional corporation.

## **7 After paragraph 29T(1)(h)**

Insert:

- (ha) where the RSE licensee is a body corporate—APRA is satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for MySuper products; and

## **8 After paragraph 29U(2)(c)**

Insert:

- (ca) where the RSE licensee is a body corporate—APRA is no longer satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for MySuper products (whether because of a previous failure to do so, or for any other reason); or

## **9 After Division 5 of Part 2C**

Insert:

## **Division 6—Trustee obligations relating to MySuper**

### **29VN Additional obligations of a trustee in relation to a MySuper product**

Each trustee of a regulated superannuation fund that includes a MySuper product must:

- (a) promote the financial interests of the beneficiaries of the fund who hold the MySuper product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes); and

- (b) determine on an annual basis whether the beneficiaries of the fund who hold the MySuper product are disadvantaged, in comparison to the beneficiaries of other funds who hold a MySuper product within those other funds, because the financial interests of the beneficiaries of the fund who hold the MySuper product are affected:
  - (i) because the number of beneficiaries of the fund who hold the MySuper product is insufficient; or
  - (ii) because the number of beneficiaries of the fund is insufficient; or
  - (iii) where the assets of the fund that are attributed to the MySuper product are, or are to be, pooled with other assets of the fund or assets of another entity or other entities—because that pool of assets is insufficient; or
  - (iv) in a case to which subparagraph (iii) does not apply—because the assets of the fund that are attributed to the MySuper product are insufficient; and
- (c) include in the investment strategy for the MySuper product the details of the trustee's determination of the matters mentioned in paragraph (b); and
- (d) include in the investment strategy for the MySuper product, and update each year:
  - (i) the investment return target over a period of 10 years for the assets of the fund that are attributed to the MySuper product; and
  - (ii) the level of risk appropriate to the investment of those assets.

**29VO Additional obligations of a director of a corporate trustee in relation to a MySuper product**

- (1) Each director of a corporate trustee of a regulated superannuation fund that includes a MySuper product must exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the obligations referred to in section 29VN.
- (2) The reference in subsection (1) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.

- (3) A *superannuation entity director* is a person whose profession, business or employment is or includes acting as director of a corporate trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

#### **29VP Contravention of section 29VN or 29VO**

- (1) A person must not contravene section 29VN or 29VO.
- (2) A contravention of subsection (1) is not an offence and a contravention of that subsection does not result in the invalidity of a transaction.
- (3) A person who suffers loss or damage as a result of the conduct of another person that was engaged in in contravention of subsection (1) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (4) An action under subsection (3) may be begun at any time within 6 years after the day on which the cause of action arose.

#### **29VQ Governing rules void to the extent that they are inconsistent with obligations under section 29VN or 29VO**

A provision of the governing rules of a regulated superannuation fund is void to the extent that it is inconsistent with:

- (a) the obligations that apply to a trustee of the fund under section 29VN; or
- (b) if the trustee of the fund is a body corporate—the obligations that apply to the directors of the body corporate under section 29VO.

### **10 Division 6 of Part 2C**

Repeal the heading, substitute:

### **Division 7—Offences**

#### **11 After section 51**

Insert:

### **51A Covenants are cumulative**

To avoid doubt, each covenant referred to in sections 52 to 53 or prescribed under section 54A, and each obligation referred to in sections 29VN and 29VO, that applies to a trustee of a superannuation entity, or a director of a corporate trustee of a superannuation entity, applies in addition to every other covenant or obligation referred to in those sections that applies to the trustee or director.

### **12 Section 52**

Repeal the section, substitute:

### **52 Covenants to be included in governing rules—registrable superannuation entities**

#### *Governing rules taken to contain covenants*

- (1) If the governing rules of a registrable superannuation entity do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.

#### *General covenants*

- (2) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
  - (a) to act honestly in all matters concerning the entity;
  - (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;
  - (c) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;
  - (d) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:

- (i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
  - (ii) to ensure that the duties to the beneficiaries are met despite the conflict; and
  - (iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
  - (iv) to comply with the prudential standards in relation to conflicts;
- (e) to act fairly in dealing with classes of beneficiaries within the entity;
- (f) to act fairly in dealing with beneficiaries within a class;
- (g) to keep the money and other assets of the entity separate from any money and assets, respectively:
- (i) that are held by the trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;
- (h) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers;
- (i) if there are any reserves of the entity—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (j) to allow a beneficiary of the entity access to any prescribed information or any prescribed documents.

*Superannuation trustee*

- (3) In paragraph (2)(b), a ***superannuation trustee*** is a person whose profession, business or employment is or includes acting as a trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

*Obligations to beneficiaries override obligations under certain other Acts*

- (4) The obligations of the trustee under paragraph (2)(d) override any conflicting obligations an executive officer or employee of the trustee has under:
- (a) Part 2D.1 of the *Corporations Act 2001*; or
  - (b) Division 4 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*.

*Trustee not prevented from engaging or authorising persons to act on trustee's behalf*

- (5) A covenant referred to in paragraph (2)(h) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.

*Investment covenants*

- (6) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
- (a) to formulate, review regularly and give effect to an investment strategy for the whole of the entity, and for each investment option offered by the trustee in the entity, having regard to:
    - (i) the risk involved in making, holding and realising, and the likely return from, the investments covered by the strategy, having regard to the trustee's objectives in relation to the strategy and to the expected cash flow requirements in relation to the entity; and
    - (ii) the composition of the investments covered by the strategy, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification; and
    - (iii) the liquidity of the investments covered by the strategy, having regard to the expected cash flow requirements in relation to the entity; and
    - (iv) whether reliable valuation information is available in relation to the investments covered by the strategy; and
    - (v) the ability of the entity to discharge its existing and prospective liabilities; and

- (vi) the expected tax consequences for the entity in relation to the investments covered by the strategy; and
- (vii) the costs that might be incurred by the entity in relation to the investments covered by the strategy; and
- (viii) any other relevant matters;
- (b) to exercise due diligence in developing, offering and reviewing regularly each investment option;
- (c) to ensure the investment options offered to each beneficiary allow adequate diversification.

*Insurance covenants*

- (7) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
  - (a) to formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing each of the following matters:
    - (i) the kinds of insurance that are to be offered to, or acquired for the benefit of, beneficiaries;
    - (ii) the level, or levels, of insurance cover to be offered to, or acquired for the benefit of, beneficiaries;
    - (iii) the basis for the decision to offer or acquire insurance of those kinds, with cover at that level or levels, having regard to the demographic composition of the beneficiaries of the entity;
    - (iv) the method by which the insurer is, or the insurers are, to be determined;
  - (b) to consider the cost to all beneficiaries of offering or acquiring insurance of a particular kind, or at a particular level;
  - (c) to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries;
  - (d) to do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success.

*Covenants relating to risk*

- (8) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
- (a) to formulate, review regularly and give effect to a risk management strategy that relates to:
    - (i) the activities, or proposed activities, of the trustee, to the extent that they are relevant to the exercise of the trustee's powers, or the performance of the trustee's duties and functions, as trustee of the entity; and
    - (ii) the risks that arise in operating the entity;
  - (b) to maintain and manage in accordance with the prudential standards financial resources (whether capital of the trustee, a reserve of the entity or both) to cover the operational risk that relates to the entity.

**52A Covenants relating to directors to be included in governing rules—registrable superannuation entities**

*Governing rules taken to contain covenants*

- (1) If the governing rules of a registrable superannuation entity of which a trustee is a body corporate do not contain covenants to the effect of the covenants set out in subsection (2), those governing rules are taken to contain covenants to that effect.

*The covenants*

- (2) The covenants referred to in subsection (1) are the following covenants by each director of a corporate trustee of the entity:
- (a) to act honestly in all matters concerning the entity;
  - (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation entity director would exercise in relation to an entity where he or she is a director of the trustee of the entity and that trustee makes investments on behalf of the entity's beneficiaries;
  - (c) to perform the director's duties and exercise the director's powers as director of the corporate trustee in the best interests of the beneficiaries;

- (d) where there is a conflict between the duties of the director to the beneficiaries, or the interests of the beneficiaries, and the duties of the director to any other person or the interests of the director, the corporate trustee or an associate of the director or corporate trustee:
  - (i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
  - (ii) to ensure that the duties to the beneficiaries are met despite the conflict; and
  - (iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
  - (iv) to comply with the prudential standards in relation to conflicts;
- (e) not to enter into any contract, or do anything else, that would:
  - (i) prevent the director from, or hinder the director in, properly performing or exercising the director's functions and powers as director of the corporate trustee; or
  - (ii) prevent the corporate trustee from, or hinder the corporate trustee in, properly performing or exercising the corporate trustee's functions and powers as trustee of the entity;
- (f) to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the covenants referred to in section 52.

*Obligations to beneficiaries override obligations under certain other Acts*

- (3) The obligations of the director under paragraph (2)(d) override any conflicting obligation the director has under:
  - (a) Part 2D.1 of the *Corporations Act 2001*; or
  - (b) Division 4 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*.

*Director not prevented from engaging or authorising persons to act on behalf of the trustee*

- (4) A covenant referred to in paragraph (2)(e) does not prevent the director from engaging or authorising persons to do acts or things on behalf of the trustee.

*Using reasonable care and diligence to ensure compliance by corporate trustee*

- (5) The reference in paragraph (2)(f) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the circumstances of the corporate trustee.

*Covenants operate as if director party to the governing rules*

- (6) A covenant referred to in subsection (2) operates as if the director were a party to the governing rules.

## **52B Covenants to be included in governing rules—self managed superannuation funds**

*Governing rules taken to contain covenants*

- (1) If the governing rules of a self managed superannuation fund do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.

*The covenants*

- (2) The covenants referred to in subsection (1) are the following covenants by each trustee of the fund:
- (a) to act honestly in all matters concerning the fund;
  - (b) to exercise, in relation to all matters affecting the fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (c) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;

- (d) to keep the money and other assets of the fund separate from any money and assets, respectively:
  - (i) that are held by the trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the fund;
- (e) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers;
- (f) to formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the fund's investments, having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the fund's investments as a whole including the extent to which the investments are diverse or involve the fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the fund's investments, having regard to its expected cash flow requirements;
  - (iv) the ability of the fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the fund—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary of the fund access to any prescribed information or any prescribed documents.

*Trustee not prevented from engaging or authorising persons to act on trustee's behalf*

- (3) A covenant referred to in paragraph (2)(e) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.

*Covenant referred to in paragraph (2)(f)*

- (4) An investment strategy is taken to be in accordance with paragraph (2)(f) even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the trustee, where:
  - (a) the directions relate to the strategy to be followed by the trustee in relation to the investment of a particular asset or assets of the fund; and
  - (b) the directions are given in circumstances prescribed by regulations made for the purposes of this paragraph.

**52C Covenant relating to directors to be included in governing rules—self managed superannuation funds**

*Governing rules taken to contain covenant*

- (1) If the governing rules of a self managed superannuation fund of which a trustee is a body corporate do not contain a covenant to the effect of the covenant set out in subsection (2), those governing rules are taken to contain a covenant to that effect.

*The covenant*

- (2) The covenant referred to in subsection (1) is a covenant by each director of a corporate trustee of the fund to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the covenants referred to in section 52B.

*Reasonable degree of care and diligence*

- (3) The reference in subsection (2) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of director of the corporate trustee would exercise in the corporate trustee's circumstances.

*Covenant operates as if director party to the governing rules*

- (4) The covenant referred to in subsection (2) operates as if the director were a party to the governing rules.

**13 After section 54**

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Insert:

#### **54A Regulations may prescribe other covenants**

- (1) The regulations may prescribe a covenant to be included in the governing rules of a superannuation entity and, if the governing rules of such a superannuation entity do not contain a covenant to the effect of the prescribed covenant, those rules are taken to contain a covenant to that effect.

*Prescribed covenants may deal with same matters as other requirements*

- (2) Without limiting the generality of subsection (1), the regulations may prescribe, for the purposes of that subsection, a covenant that elaborates, supplements, or otherwise deals with, any aspect of:
- (a) a matter to which a covenant in sections 52 to 53 relates; or
  - (b) a matter to which a provision of this Act relates.

*But prescribed covenants must be capable of operating concurrently with other requirements*

- (3) However, a covenant prescribed under subsection (1) must be capable of operating concurrently with:
- (a) all the covenants referred to in sections 52 to 53; and
  - (b) this Act.
- (4) The regulations may specify that a covenant prescribed under subsection (1) is to form part of the enhanced trustee obligations, or the enhanced director obligations.

#### **14 Subsections 55(5) and (6)**

Repeal the subsections, substitute:

- (5) It is a defence to an action for loss or damage suffered by a person as a result of the making of an investment by or on behalf of a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to the investment.

- (6) It is a defence to an action for loss or damage suffered by a person as a result of the management of any reserves by a trustee of a superannuation entity if the defendant establishes that the defendant has complied with all of the covenants referred to in sections 52 to 53 and prescribed under section 54A, and all of the obligations referred to in sections 29VN and 29VO, that apply to the defendant in relation to the management of the reserve.

**15 Subsection 55(7)**

After “under subsection (3)”, insert “, section 29VP”.

**16 Subsection 56(1)**

Omit “A provision”, substitute “Subject to subsections (2) and (2A), a provision”.

**17 Paragraph 56(1)(b)**

Omit “subject to subsection (2),”.

**18 After subsection 56(2)**

Insert:

- (2A) A provision in the governing rules of a registrable superannuation entity is void in so far as it would have the effect of allowing a trustee of the entity:
- (a) to indemnify itself out of the assets of the entity for any amount expended out of capital of the trustee managed and maintained by the trustee to cover the operational risk of the entity; or
  - (b) to indemnify itself out of any assets of the entity that do not form part of a reserve maintained for the purpose of covering the operational risk relating to the entity, any amount that relates to that risk, without first exhausting the reserve and any other financial resources managed and maintained by the trustee to cover the risk.

**19 Paragraph 58(2)(d)**

Repeal the paragraph, substitute:

- (d) a direction given by a beneficiary to take up, dispose of or alter the amount invested in an investment option, where:
  - (i) the entity is a registrable superannuation entity; and

- (ii) the direction is given in circumstances prescribed by the regulations for the purposes of this paragraph; or

## **20 Section 115**

Repeal the section, substitute:

### **115 Trustee of superannuation entity may maintain reserves**

- (1) The trustee of a superannuation entity may maintain a reserve of the entity for a particular purpose, unless the governing rules of the entity prohibit the maintenance of a reserve for that purpose.

*Governing rules of an RSE must not prohibit reserves to cover operational risk*

- (2) The governing rules of a registrable superannuation entity must not prohibit the maintenance of a reserve to cover the operational risk relating to the entity.
- (3) If the governing rules of a registrable superannuation entity are inconsistent with subsection (2):
- (a) subsection (2) prevails; and
  - (b) the governing rules are invalid, to the extent of the inconsistency.

## Schedule 2—Prudential standards

### Part 1—Prudential standards

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

##### 1 After Part 3

Insert:

### Part 3A—Prudential standards

#### 34B Object of this Part

The object of this Part is to provide for a system of standards in relation to prudential matters concerning registrable superannuation entities.

#### 34C APRA may determine *prudential standards*

- (1) APRA may determine (in writing) standards (*prudential standards*) relating to prudential matters that must be complied with by:
  - (a) all RSE licensees of registrable superannuation entities; or
  - (b) the connected entities of all RSE licensees of registrable superannuation entities; or
  - (c) a specified class of RSE licensees of registrable superannuation entities; or
  - (d) a specified class of connected entities of RSE licensees of registrable superannuation entities; or
  - (e) one or more specified RSE licensees of registrable superannuation entities; or
  - (f) one or more specified connected entities of RSE licensees of registrable superannuation entities.
- (2) A prudential standard may impose different requirements to be complied with:

- (a) by different classes of RSE licensees of registrable superannuation entities or connected entities of RSE licensees of registrable superannuation entities; or
  - (b) in different situations; or
  - (c) in respect of different activities.
- (3) Without limiting the prudential matters in relation to which APRA may determine a prudential standard, a prudential standard may require the following entities to ensure that the entity's connected entities (or particular connected entities), or the entity and the entity's connected entities (or particular connected entities), collectively satisfy particular requirements:
- (a) each RSE licensee of a registrable superannuation entity;
  - (b) each RSE licensee of a registrable superannuation entity included in a specified class of RSE licensees;
  - (c) a specified RSE licensee of a registrable superannuation entity;
  - (d) each of 2 or more RSE licensees of registrable superannuation entities.
- (4) A **prudential matter** is a matter relating to:
- (a) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the registrable superannuation entity, or the affairs of a connected entity of the RSE licensee, in such a way as to:
    - (i) protect the interests of the beneficiaries of the registrable superannuation entity; or
    - (ii) meet the reasonable expectations of the beneficiaries of the registrable superannuation entity; or
  - (b) the conduct by a connected entity of an RSE licensee of a registrable superannuation entity of the affairs of the connected entity in such a way as to:
    - (i) protect the interests of the beneficiaries of the registrable superannuation entity; or
    - (ii) meet the reasonable expectations of the beneficiaries of the registrable superannuation entity; or
  - (c) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the licensee in such a way as:
    - (i) to keep itself in a sound financial position; or
-

- (ii) not to cause or promote instability in the Australian financial system; or
  - (d) the conduct by an RSE licensee of a registrable superannuation entity of the affairs of the registrable superannuation entity in such a way as not to cause or promote instability in the Australian financial system; or
  - (e) the conduct by a connected entity of an RSE licensee of a registrable superannuation entity of the affairs of the connected entity in such a way as:
    - (i) to keep itself in a sound financial position; or
    - (ii) not to cause or promote instability in the Australian financial system; or
  - (f) the conduct by an RSE licensee of a registrable superannuation entity, or a connected entity of the RSE licensee, of any of its affairs that are relevant to the registrable superannuation entity with integrity, prudence and professional skill; or
  - (g) the appointment of auditors and actuaries; or
  - (h) the conduct of audits and actuarial investigations.
- (5) The prudential standards may provide for APRA to exercise powers and discretions under the standards, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to the following:
  - (a) a particular RSE licensee of a registrable superannuation entity;
  - (b) a particular connected entity of an RSE licensee of a registrable superannuation entity;
  - (c) specified RSE licensees of registrable superannuation entities;
  - (d) specified connected entities of RSE licensees of registrable superannuation entities.
- (6) APRA may, in writing, vary or revoke a standard.
- (7) A standard referred to in paragraph (1)(e) or (f), or a variation of a standard referred to in those paragraphs, comes into force on the later of:
  - (a) the day on which APRA satisfies subsection 34E(1) in relation to the standard or variation (obligation to give a copy

- to each RSE licensee and connected entity to which it applies); and
- (b) if APRA includes with the copy of the standard or variation a notice that the standard or variation will come into force on a later day—that later day.
- (8) The revocation of a standard referred to in paragraph (1)(e) or (f) comes into force on the later of:
- (a) the day on which APRA satisfies subsection 34E(2) in relation to the revocation (obligation to give notice of the revocation to each RSE licensee or connected entity to which the standard relates); and
  - (b) the day specified in that notice as the day on which the revocation comes into force.
- (9) The following instruments made under this section are not legislative instruments:
- (a) a standard referred to in paragraph (1)(e) or (f);
  - (b) an instrument varying or revoking a standard referred to in paragraph (1)(e) or (f).
- (10) Otherwise, an instrument made under this section is a legislative instrument.

#### **34D Relationship between prudential standards, this Act and the regulations**

- (1) A prudential standard may be determined that elaborates, supplements or otherwise deals with any aspect of:
- (a) a prudential matter to which a covenant referred to in sections 52 to 53 or prescribed under section 54A relates; or
  - (b) a prudential matter to which a provision of this Act or the regulations relates.
- (2) However, a prudential standard is of no effect to the extent that it conflicts with this Act or the regulations.

#### **34E Notice of determination, variation or revocation of certain prudential standards**

- (1) If APRA determines or varies a prudential standard referred to in paragraph 34C(1)(e) or (f), APRA must give a copy of the standard
-

or of the variation to each RSE licensee and connected entity to which the standard applies.

- (2) If APRA revokes a prudential standard referred to in paragraph 34C(1)(e) or (f), APRA must give notice of the revocation to each RSE licensee and connected entity to which the standard applies.

### **34F APRA to monitor prudential matters**

The functions of APRA include:

- (a) collecting and analysing information on prudential matters concerning RSE licensees of registrable superannuation entities and connected entities of RSE licensees of registrable superannuation entities; and
- (b) encouraging and promoting the carrying out of sound practices in relation to prudential matters by RSE licensees of registrable superannuation entities and connected entities of RSE licensees of registrable superannuation entities; and
- (c) evaluating the effectiveness and carrying out of those practices.

## **Part 2—Consequential amendments**

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

#### **2 Section 4 (after table item dealing with Part No. 3)**

Insert:

3A	Prudential standards concerning registrable superannuation entities
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#### **3 After subparagraph 6(1)(a)(i)**

Insert:

(ia) Part 3A;

#### **4 Subsection 10(1)**

Insert:

*connected entity*, in relation to an RSE licensee of a registrable superannuation entity, means:

- (a) a subsidiary of the RSE licensee (where the RSE licensee is a body corporate); and
- (b) any other entity of a kind prescribed by the regulations.

#### **5 Subsection 10(1)**

Insert:

*prudential matter* has the meaning given by subsection 34C(4).

#### **6 Subsection 10(1)**

Insert:

*prudential standard* means a standard determined by APRA under subsection 34C(1).

#### **7 Subsection 10(1) (paragraph (d1a) of the definition of *reviewable decision*)**

Repeal the paragraph.

**8 Subsection 10(1) (paragraph (do) of the definition of reviewable decision)**

Repeal the paragraph.

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

Insert:

(doc) a decision to determine, vary or revoke a prudential standard referred to in paragraph 34C(1)(e) or (f); or

**10 Subsection 10(1) (after paragraph (a) of the definition of RSE licensee law)**

Insert:

(aa) prudential standards; and

**11 Subsection 10(1)**

Insert:

*subsidiary* has the same meaning as in the *Corporations Act 2001*.

**12 Subsection 13A(1)**

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

**13 Subsections 13A(2), (4), (5), (6) and (7)**

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

**14 Subsection 29A(2)**

Omit:

Note 3:	In order to obtain an RSE licence, the trustee, or group of individual trustees, must have a risk management strategy.
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**15 Subsection 29A(2)**

Omit:

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Note 2:	In order to obtain registration of a fund or trust, the trustee, or group of individual trustees, must have a risk management plan for that fund or trust.
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**16 Paragraph 29C(4)(c)**

Omit “paragraph; and”, substitute “paragraph.”.

**17 Paragraphs 29C(4)(d) and (e)**

Repeal the paragraphs.

**18 Subsection 29C(8)**

Repeal the subsection.

**19 Subsection 29C(9)**

Omit “, (7) or (8)”, substitute “or (7)”.

**20 Paragraph 29D(1)(d)**

Repeal the paragraph, substitute:

(d) APRA is satisfied that:

- (i) if the application is made by a body corporate—the body corporate meets the requirements of the prudential standards relating to fitness and propriety for RSE licensees; or
- (ii) if the application is made by a group of individual trustees—the group as a whole meets the requirements of the prudential standards relating to fitness and propriety for RSE licensees and each of the members of the group meets the requirements of the prudential standards relating to fitness and propriety for members of groups of trustees that are RSE licensees; and

**21 Paragraph 29D(1)(e)**

Repeal the paragraph.

**22 Paragraphs 29E(1)(c) and (e)**

Repeal the paragraphs.

**23 After subsection 29EA(2)**

Insert:

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(2A) A condition may be expressed to have effect despite anything in the prudential standards.

**24 Paragraph 29GB(a)**

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

**25 Division 8 of Part 2A**

Repeal the Division.

**26 Section 29JC**

Repeal the section.

**27 Section 29JD**

Omit “, 29JB or 29JC”, substitute “or 29JB”.

**28 Paragraph 29L(2)(d)**

Omit “rules); and”, substitute “rules).”.

**29 Paragraphs 29L(2)(e) and (f)**

Repeal the paragraphs.

**30 Subsection 29L(5)**

Repeal the subsection.

**31 Subsection 29L(6)**

Omit “, (4) or (5)”, substitute “or (4)”.

**32 Paragraph 29M(1)(d)**

Repeal the paragraph.

**33 Divisions 5 and 6 of Part 2B**

Repeal the Divisions.

**34 Paragraph 29UB(a)**

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

**35 Paragraph 35C(5)(c)**

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Omit “form; and”, substitute “form.”.

**36 Paragraph 35C(5)(d)**

Repeal the paragraph.

**37 Subsections 68(6) and (7)**

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

**38 After paragraph 135(1)(b)**

Insert:

(ba) the prudential standards; and

**39 Paragraph 139(b)**

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

**40 Subsection 262A(1)**

After “this Act”, insert “, the regulations or the prudential standards”.

**41 Paragraph 263(1)(a)**

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

**42 Section 301 (definition of *SIS officer*)**

Repeal the definition, substitute:

*SIS officer* means a person exercising powers or performing functions under or in relation to this Act, the regulations or the prudential standards.

**43 Section 301 (paragraphs (a), (b), (c) and (d) of the definition of *statement made to an SIS officer*)**

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

**44 Paragraphs 303(1)(a) and (b)**

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

**45 Paragraphs 306(1)(a) and (2)(a)**

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

**46 Paragraphs 307(1)(h) and (i) and 308(1)(f) and (g)**

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

**47 Section 341**

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

**48 Section 349**

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

**49 Section 349A**

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

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*[Minister’s second reading speech made in—  
House of Representatives on 16 February 2012  
Senate on 18 June 2012]*