Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

No. 171, 2012

An Act to amend the law in relation to superannuation and for related purposes

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

Contents

1 Short title 1
2 Commencement 2
3 Schedule(s) 5
4 Acquisition of property 5

Schedule 1—Fees and costs 6

Part 1—Amendments 6

Superannuation Industry (Supervision) Act 1993 6

Part 2—Application 19

Schedule 2—Provision of benefits 20

Part 1—Amendments 20

Superannuation Guarantee (Administration) Act 1992 20

Superannuation Industry (Supervision) Act 1993 20

Part 2—Application 23

Schedule 3—Collection and disclosure of information 24

Part 1—Amendments 24

Australian Prudential Regulation Authority Act 1998 24

Corporations Act 2001 26

Financial Sector (Collection of Data) Act 2001 45

Superannuation Industry (Supervision) Act 1993 48

Part 2—Application and transitional provisions 52

Schedule 4—Modern awards and enterprise agreements 54

Part 1—Amendments 54

Fair Work Act 2009 54

Superannuation Guarantee (Administration) Act 1992 58

Superannuation Industry (Supervision) Act 1993 58

Part 2—Transitional 60

Schedule 5—Defined benefit members 62

Superannuation Guarantee (Administration) Act 1992 62

Superannuation Industry (Supervision) Act 1993 62

Schedule 6—Moving accrued default amounts 65

Superannuation Industry (Supervision) Act 1993 65

Schedule 7—Eligible rollover funds 77

Part 1—Main amendments 77

Superannuation Industry (Supervision) Act 1993 77

Part 2—Other amendments 92

Retirement Savings Accounts Act 1997 92

Schedule 8—Other amendments 93

Superannuation Guarantee (Administration) Act 1992 93

Superannuation Industry (Supervision) Act 1993 93

Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

No. 171, 2012

An Act to amend the law in relation to superannuation and for related purposes

[*Assented to 3 December 2012*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) 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.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 December 2012
2. Schedule 1, items 1 to 6	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
3. Schedule 1, item 7	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*. However, the provision(s) do not commence at all if item 1 of Schedule 3 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* commences on or before that time.	
4. Schedule 1, items 8 to 16	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
5. Schedule 1, items 17 and 18	Immediately after the commencement of the provision(s) covered by table item 24.	
6. Schedule 1, items 19and20	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
7. Schedule 1,	Immediately after the commencement of the	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
item 21	provision(s) covered by table item 24.	
8. Schedule 1, items 22 to 36	Immediately after the commencement of item 9 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
9. Schedule 1, items 37 and 38	The day after this Act receives the Royal Assent.	4 December 2012
10. Schedule 1, item 39	Immediately after the commencement of the provision(s) covered by table item 24.	
11. Schedule 1, items 40 and 41	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
12. Schedule 2, item 1	Immediately after the commencement of item 1 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
13. Schedule 2, items 2 to 4	1 July 2013.	1 July 2013
14. Schedule 2, item 5	The day this Act receives the Royal Assent.	3 December 2012
15. Schedule 2, items 6 and 7	1 July 2013.	1 July 2013
16. Schedule 3, items 1 to 39	1 July 2013.	1 July 2013
17. Schedule 3, item 40	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
18. Schedule 3, items 41to 47	1 July 2013.	1 July 2013
19. Schedule 4, items 1 to 8	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
20. Schedule 4,	1 January 2014.	1 January 2014

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
items 9 and 10		
21. Schedule 4, items 11 to 13	Immediately after the commencement of the provision(s) covered by table item 24.	
22. Schedule 5, items 1 to3	1 January 2014.	1 January 2014
23. Schedule 5, items 4 to 10	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
24. Schedule 6	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
25. Schedule 7	1 July 2013.	1 July 2013
26. Schedule 8, item 1	Immediately after the commencement of item 1 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*.	
27. Schedule 8, item 2	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*. However, the provision(s) do not commence at all unless item 1 of Schedule 3 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* commences on or before that time.	
28. Schedule 8, item 3	Immediately after the commencement of item 2 of Schedule 1 to the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 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.

4 Acquisition of property

(1) This Act does not apply to the extent (if any) that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

(2) The following subsections do not limit subsection (1).

(3) If, apart from this section, this Act would result in such an acquisition of property because, as a result of a repeal or an amendment made in a Schedule to this Act, a person would be required or permitted to use, disclose or publish information, then despite any other provision of this Act, the person is not required or permitted to use, disclose or publish the information in the circumstances that would result in such an acquisition.

(4) To avoid doubt, any provision that does not result in an acquisition of property continues to apply in relation to the use, disclosure and publication of information.

Schedule 1—Fees and costs

Part 1—Amendments

Superannuation Industry (Supervision) Act 1993

1 Section 4 (after table item dealing with Part No. 11)

Insert:

11A	General fees rules

2 Subparagraph 6(1)(a)(v)

Repeal the subparagraph, substitute:

(v) Parts 8 to 11A (other than section 99F);

3Before subparagraph 6(1)(c)(ii)

Insert:

(iia) section 99F; and

4 Subsection 10(1)

Insert:

activity fee has the meaning given by subsection 29V(7).

5 Subsection 10(1)

Insert:

administration fee has the meaning given by subsection 29V(2).

6 Subsection 10(1)

Insert:

advice fee has the meaning given by subsection 29V(8).

7 Subsection 10(1)

Insert:

buy-sell spread has the meaning given by subsection 29V(4).

8 Subsection 10(1)

Insert:

entry fee has the meaning given by subsection 99B(2).

9 Subsection 10(1)

Insert:

exit fee has the meaning given by subsection 29V(6).

10 Subsection 10(1)

Insert:

financial product has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

11 Subsection 10(1)

Insert:

financial product advice has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

12 Subsection 10(1)

Insert:

general fees rules means the rules in Part 11A.

13 Subsection 10(1)

Insert:

insurance fee has the meaning given by subsection 29V(9).

14 Subsection 10(1)

Insert:

investment fee has the meaning given by subsection 29V(3).

15 Subsection 10(1)

Insert:

personal advice has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

16 Subsection 10(1)

Insert:

switching fee has the meaning given by subsection 29V(5).

17 At the end of paragraph 29S(2)(f)

Add:

; (iii) section 29SAC.

18 After section 29SAB

Insert:

29SAC Election not to charge MySuper members for payment of conflicted remuneration

(1) An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:

(a) the RSE licensee elects that, if the authority is given, the RSE licensee will not charge anyMySuper membera fee in relation to the MySuper product, all or part of which relates directly or indirectly to costs incurred by a trustee or the trustees of the fund:

(i) in paying conflicted remuneration to a financial services licensee, or a representative of a financial services licensee; or

(ii) in paying an amount to another person that a trustee of the fund knows, or reasonably ought to know, relates to conflicted remuneration paid by that other person to a financial services licensee, or a representative of a financial services licensee; and

(b) the election is in writing; and

(c) the election is in the approved form.

(2) In this section:

conflicted remuneration has the same meaning as in Part 7.7A of the *Corporations Act 2001*, subject to the extension of that meaning in subsection (3).

representative, of a financial services licensee, has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

(3) In this section, ***conflicted remuneration***also has the meaning it would have if:

(a) financial product advice provided to the RSE licensee mentioned in subsection (1) by a financial services licensee, or a representative of a financial services licensee, mentioned in subparagraph (1)(a)(i) or (ii) were provided to the RSE licensee as a retail client; and

(b) financial product advice provided to the other person mentioned in subparagraph (1)(a)(ii) by a financial services licensee, or a representative of a financial services licensee, mentioned in that subparagraph were provided to the other person as a retail client.

19 Paragraph 29T(1)(i)

After “is likely to comply with”, insert “the general fees rules and”.

20 Paragraph 29U(2)(d)

After “is likely to comply with”, insert “the general fees rules and”.

21 At the end of subsection 29U(2)

Add:

; or (k) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 29SAC (election not to pass costs of conflicted remuneration to MySuper members).

22 At the end of subsection 29V(1)

Add:

; (g) an advice fee;

(h) an insurance fee.

23 Subsection 29V(2)

Omit “the fund” (first occurring), substitute “a superannuation entity”.

24 Subsection 29V(2)

Omit “the fund (that are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee or an activity fee)”, substitute “the entity that:

(a) relate to the administration or operation of the fund; and

(b) are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee”.

25 Subsection 29V(3)

Omit “the fund” (first occurring), substitute “a superannuation entity”.

26 Paragraph 29V(3)(b)

Omit “the fund (that are not otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee or an activity fee)”, substitute “the entity that:

(i) relate to the investment of assets of the entity; and

(ii) are not otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee”.

27 Subsection 29V(4)

After “or the trustees,”, insert “of a superannuation entity”.

28 Subsection 29V(4)

Omit “the fund”, substitute “the entity”.

29 Subsection 29V(5)

Repeal the subsection, substitute:

(5) A ***switching fee*** is a fee to recover the costs of switching all or part of a member’s interest in a superannuation entity from one class of beneficial interest in the entity to another.

30 Subsection 29V(6)

Omit “the fund”, substitute “a superannuation entity”.

31 Subsection 29V(7)

Repeal the subsection, substitute:

(7) A fee is an ***activity fee*** if:

(a) the fee relates to costs incurred by the trustee, or the trustees, of a superannuation entity that are directly related to an activity of the trustee, or the trustees:

(i) that is engaged in at the request, or with the consent, of a member; or

(ii) that relates to a member and is required by law; and

(b) those costs are not otherwise charged as an administration fee, an investment fee, a buy-sell spread, a switching fee, an exit fee, an advice fee or an insurance fee.

(8) A fee is an ***advice fee*** if:

(a) the fee relates directly to costs incurred by the trustee, or the trustees, of a superannuation entity because of the provision of financial product advice to a member by:

(i) a trustee of the entity; or

(ii) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the entity; and

(b) those costs are not otherwise charged as an administration fee, an investment fee, a switching fee, an exit fee, an activity fee or an insurance fee.

(9) A fee is an ***insurance fee*** if:

(a) the feerelates directly to either or both of the following:

(i) insurance premiums paid by the trustee, or the trustees, of a superannuation entity in relation to a member or members of the entity;

(ii) costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the provision of insurance for a member or members of the entity; and

(b) the fee does not relate to any part of a premium paid or cost incurred in relation to a life policy or a contract of insurance that relates to a benefit to the member that is based on the performance of an investment rather than the realisation of a risk; and

(c) thepremiums and costs to which the fee relates are not otherwise charged as an administration fee, an investment fee, a switching fee, an exit fee, an activity fee or an advice fee.

32 Subsection 29VA(1)

After “may only charge a fee”, insert “in relation to the MySuper product”.

33 At the end of section 29VA

Add:

Advice fees

(9) This rule is satisfied if:
- (a) the fee is an advice fee that relates directly to financial product advice provided to a member; and
- (b) the member holds a MySuper product; and
- (c) the fee is charged to the member.

Insurance fees

(10) This rule is satisfied if:
- (a) the fee is an insurance fee that relates directly to either or both of the following:
  - (i) insurance premiums paid by the trustee, or the trustees, of a superannuation entity in relation to a member;
  - (ii) costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the provision of insurance for a member; and
- (b) the member holds a MySuper product; and
- (c) the fee is charged to the member.

34 Paragraph 29VB(1)(d)

Repeal the paragraph, substitute:
- (d) the fee is in accordance with subsection (2), (3) or (4); and
- (e) the fee is in accordance with subsection (5).

35 At the end of section 29VB

Add:

(5) The total amount of the administration fee charged in relation to the employee members is at least equal to an amount that reasonably relates to costs that:

(a) are incurred by the trustee, or the trustees, of the fund in the administration and operation of the fund in relation to those members; and

(b) are not otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.

36 At the end of Division 5 of Part 2C

Add:

29VC Activity fees and insurance fees to be charged on a cost recovery basis

(1) If the trustee, or the trustees, of a regulated superannuation fund charge an activity fee or an insurance fee to a member in relation to a MySuper product, the fee must be no more than it would be if it were charged on a cost recovery basis.

(2) The regulations may prescribe the way in which an activity fee or an insurance fee charged on a cost recovery basis is to be worked out.

29VD Performance-based fees

(1) This section applies if:

(a) a regulated superannuation fund offers a MySuper product; and

(b) the trustee, or the trustees, of the fund enter into an arrangement with an investment manager for the investment of an asset or assets of the fund attributed, in whole or in part, to the MySuper product; and

(c) under the arrangement, a fee payable to the investment manager is determined, in whole or in part, by reference to the performance of the investments made by the investment manager on behalf of the trustee or trustees of the fund (a ***performance-based fee***).

(2) The trustee, or the trustees, of the regulated superannuation fund must ensure that the arrangement complies with this section.

Base fee must be set or adjusted to give incentive to obtain performance-based fee

(3) If, under the arrangement, a fee is or fees are payable to the investment manager in addition to the performance-based fee, the other fee or fees must be set or adjusted so that they are lower than they would be if the arrangement did not include the performance-based fee.

Period to which performance-based fee relates

(4) The period over which entitlement to the performance-based fee is determined under the arrangement must be appropriate to the kinds of investment to which the performance-based fee relates.

Performance of investment must be measured against an appropriate benchmark

(5) Under the arrangement, the performance of the investment must be measured by comparison with the performance of investments of a similar kind.

Performance-based fee to be worked out on after-costs, after-tax basis

(6) For the purposes of working out the performance-based fee payable under the arrangement, the performance of the investment must be determined on an after-costs and, where possible, an after-tax basis.

Disincentives to underperformance

(7) Under the arrangement, the performance-based fee must be calculated in a way that includes disincentives for poorly performing investments.

Best interests of MySuper members

(8) A trustee of a regulated superannuation fund does not breach this section to the extent that the asset or assets of the fund invested under the arrangement are attributed by the trustee or the trustees of the fund to a MySuper product if, despite the fact that the arrangement does not comply with one or more of the provisions of

this section, the arrangement promotes the financial interests of the beneficiaries of the fund who hold the MySuper product.

37 After paragraph 31(2)(d)

Insert:

(da) the charging of fees (including the calculation of the amount of fees) to:

(i) members of a fund; and

(ii) members who hold a particular class of beneficial interest in a fund;

(db) the attribution of costs between classes of beneficial interest in a fund;

38 After section 33

Insert:

33A Relationship between operating standards, this Act and the regulations

(1) A standard applicable to the operation of a superannuation entity may be prescribed that elaborates, supplements or otherwise deals with any aspect of:

(a) a matter relating to the operation of the entity to which a covenant referred to in sections 52 to 53 or prescribed under section 54A relates; or

(b) a matter relating to the operation of the entity to which a provision of this Act or another provision of the regulations relates.

(2) However, a standard applicable to the operation of a superannuation entity is of no effect to the extent that it conflicts with this Act.

39 At the end of section 55B

Add:

;or (d) an election made in accordance with section 29SAC (election not to pass costs of paying conflicted remuneration onto MySuper members).

40 After Part 11

Add:

Part 11A—General fees rules

99A Application

The rules set out in this Part do not apply to self managed superannuation funds.

99B No entry fees

(1) The trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund must not charge entry fees.

(2) An ***entry fee*** is a fee, other than a buy-sell spread, that relates, directly or indirectly, tothe issuing of a beneficial interest in a superannuation entity to a person who is not already a member of the entity.

99C Buy-sell spreads, switching fees and exit fees to be charged on a cost recovery basis

(1) If the trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund charge a buy-sell spread, a switching fee or an exit fee, the fee must be no more than it would be if it were charged on a cost recovery basis.

(2) The regulations may prescribe the way in which a buy-sell spread, a switching fee or an exit fee charged on a cost recovery basis is to be worked out.

99D Cost of advice to employers not to be borne by members

The trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund must not include in any fee charged to any member of the fund an amount that relates to costs incurred by any person, directly or indirectly, in relation to personal advice provided by any person to an employer of one or more members of the fund.

99E Fair and reasonable attribution of costs between classes of beneficial interest in a regulated superannuation fund

If there is more than one class of beneficial interest in a regulated superannuation fund, the trustee, or the trustees, of the fund must attribute the costs of the fund between the classes fairly and reasonably.

99F Cost of financial product advice

(1) The trustee or the trustees of a regulated superannuation fund must not directly or indirectly pass the cost of providing financial product advice in relation to a member of the fund (the ***subject member***) on to any other member of the fund, to the extent that:

(a) the advice is provided by:

(i) a trustee of the fund; or

(ii) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the fund; and

(b) the advice is personal advice; and

(c) the advice is provided in any of the following circumstances:

(i) the subject member has not yet acquired a beneficial interest in the fund when the advice is given, and the advice relates to whether the subject member should acquire such an interest;

(ii) the advice relates to a financial product that is not a beneficial interest in the fund, a related pension fund for the member and the fund, a related insurance product for the member and the fund or a cash management facilitywithin the fund;

(iii) the advice relates to whether the subject member should consolidate that member's beneficial interests in 2 or more superannuation entities into a beneficial interest in a single superannuation entity;

(iv) at the time the advice is provided, the subject member reasonably expects that a person mentioned in subparagraph (a)(i) or (ii) will periodically review the advice, provide further personal advice or monitor whether recommendations in the original or any later advice are implemented and the results of that implementation;

(v) other prescribed circumstances.

(2) If:

(a) under the governing rules of a regulated superannuation fund (the ***first fund***):

(i) a member of another regulated superannuation fund (the ***second fund***) is entitled to become a member of the first fund on the satisfaction of a condition of release of benefits specified in a standard made under paragraph 31(2)(h); and

(ii) on becoming a member of the first fund, a pension would be payable out of the assets of the first fund to the member; and

(b) the RSE licensee for the first fund is, or is an associate of, the RSE licensee of the second fund;

then the first fund is a ***related pension fund*** of the second fund for a member of the second fund in relation to whom paragraph (a) is satisfied.

(3) If:

(a) the trustee, or the trustees, of a regulated superannuation fund provide a benefit to members of the fund who hold a particular class of beneficial interest in the fund by taking out insurance; and

(b) a person holds a beneficial interest of that class in the fund, or is considering acquiring a beneficial interest of that class in the fund;

a life policy or contract of insurance by which that benefit is or would be provided is a ***related insurance product*** for the person and the fund.

(4) In this section:

cash management facility has the same meaning as it has for the purposes of subsection 946B(1) of the *Corporations Act 2001*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

Part 2—Application

41 Application of general fees rules

(1) Subject to subitems (2) and (3), the amendment made by item 40of this Schedule applies in relation to:

(a) fees charged, and costs passed on, to members of regulated superannuation funds and approved deposit funds on andafter 1 July 2013; and

(b) costs attributed to classes of beneficial interest in a regulated superannuation fund on and after 1 July 2013.

(2) The amendment made by item 40 of this Schedule does not apply to a fee charged, or a cost passed on, to a member of a regulated superannuation fund or an approved deposit fund to the extent that it relates to a life policy if:

(a) the life policy is one under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested; and

(b) the member was covered under the life policy immediately before 1 July 2013.

(3) The amendment made by item 40 of this Schedule does not apply to a fee charged, or a cost passed on, to a member of a regulated superannuation fund or an approved deposit fund to the extent that it relates to an investment account contract if:

(a) the investment account contract is one under which the only beneficiaries are the member, and relatives and dependants of the member; and

(b) the investment account contract was in force immediately before 1 July 2013.

(4) In this item:

investment account contract has the same meaning as in the *Life Insurance Act 1995*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

Schedule 2—Provision of benefits

Part 1—Amendments

Superannuation Guarantee (Administration) Act 1992

1 Paragraph 32C(2)(d)

Repeal the paragraph, substitute:

(d) the fund complies with the requirements (if any) set out in the regulations in relation to the provision of a benefit in respect of MySuper members of the fund that is payable only in the event of the death of the member; and

(e) the fund complies with the requirements (if any) set out in the regulations in relation to offering a benefit in respect of members of the fund (other than MySuper members) that is payable only in the event of the death of the member.

Superannuation Industry (Supervision) Act 1993

2 Subsection 10(1)

Insert:

death benefit: see section 68AA.

3 Subsection 10(1)

Insert:

permanent incapacity: a member of a superannuation fund or an approved deposit fund is suffering ***permanent incapacity*** if the member is taken, under the regulations, to be suffering permanent incapacity for the purposes of this Act.

4 Subsection 10(1)

Insert:

permanent incapacity benefit: see section 68AA.

5 After paragraph 31(2)(e)

Insert:

(ea) the kinds of benefits that must not be provided by taking out insurance, or insurance of a particular kind;

(eb) the kinds of benefits that must not be provided other than by taking out insurance, or insurance of a particular kind;

6 After section 68

Insert:

68AA Benefits for permanent incapacity and death—MySuper members

Requirement to provide permanent incapacity benefit and death benefit by taking out insurance

(1) Each trustee of a regulated superannuation fund must ensure the following:

(a) that the fund provides permanent incapacity benefit to each MySuper member of the fund;

(b) that the fund provides death benefit in respect of each MySuper member of the fund;

(c) that the benefits referred to in paragraphs (a) and (b) are provided by taking out insurance.

Note: A failure to comply with subsection (1) is a breach of a condition of the RSE licence (see paragraph 29E(1)(a)).

(2) The trustees of a regulated superannuation fund are not required to provide permanent incapacity benefit or death benefit if the conditions determined under subsection (3) in relation to the benefit are not met.

(3) The trustees of a regulated superannuation fund may determine reasonable conditions to which the provision of:

(a) permanent incapacity benefit; or

(b) death benefit;

is subject.

(4) Without limiting subsection (3), conditions determined under subsection (3) in relation to a benefit are reasonable if they are the same as the terms and conditions of the policy of insurance taken out to provide the benefit.

Requirement to allow MySuper members to elect not to receive permanent incapacity benefit or death benefit

(5) Each trustee of a regulated superannuation fund must ensure that each MySuper member of the fund may elect either or both of the following:

(a) that permanent incapacity benefit will not be provided to the member by the fund;

(b) that death benefit will not be provided in respect of the member by the fund.

Note: A failure to comply with subsection (5) is a breach of a condition of the RSE licence (see paragraph 29E(1)(a)).

(6) The trustees of a regulated superannuation fund may require that MySuper members who wish to make an election in accordance with subsection (5):

(a) must make the election in relation to both permanent incapacity benefit and death benefit; or

(b) must make the election in relation to death benefit if they make the election in relation to permanent incapacity benefit.

(7) Subsection (5) does not apply to a MySuper member of a regulated superannuation fund if the circumstances prescribed by the regulations for the purposes of this subsection are met.

(8) If a MySuper member of a regulated superannuation fund makes an election in accordance with subsection (5) in relation to a benefit, subsection (1) does not apply in relation to the member and the benefit.

(9) This section does not apply to a defined benefit member.

Death benefit and permanent incapacity benefit

(10) For the purposes of this Act:

death benefit means a benefit provided in respect of a member of a regulated superannuation fund in, and only in, the event of the death of the member.

permanent incapacity benefit means a benefit provided to a member of a regulated superannuation fund if, and only if, the member is suffering permanent incapacity.

Part 2—Application

7 Elections made before commencement

(1) This item applies if:

(a) before the commencement of this item, a MySuper member of a regulated superannuation fund elected either or both of the following:

(i) that a benefit of a kind referred to in paragraph 68AA(1)(a) of the new Act will not be provided to the member by the fund;

(ii) that a benefit referred to in paragraph 68AA(1)(b) of the new Act will not be provided in respect of the member by the fund; and

(b) as at the commencement of this item, the election is in force.

(2) Subsection 68AA(8) of the new Act applies in relation to the MySuper member as if the election were an election made by the member, immediately after the commencement of this item, in accordance with subsection 68AA(5) in relation to the benefit or benefits (as the case may be).

(3) Subsection 68AA(6) of the new Act does not apply in relation to the election.

(4) In this item:

new Act means the *Superannuation Industry (Supervision) Act 1993* as in force immediately after the commencement of this item.

Schedule 3—Collection and disclosure of information

Part 1—Amendments

Australian Prudential Regulation Authority Act 1998

1 Subsection 56(1) (after paragraph (c) of the definition of *protected document*)

Insert:

; or (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) of the *Financial Sector (Collection of Data) Act 2001*;

2 Subsection 56(1) (after paragraph (c) of the definition of *protected information*)

Insert:

; or (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) of the *Financial Sector (Collection of Data) Act 2001*;

3 Subsection 56(5C)

Repeal the subsection, substitute:

(5C) If:

(a) a document is a reporting document given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and

(b) either:

(i) a determination has been made under section 57 that the document does not, or documents of that kind do not, contain confidential information; or

(ii) a determination has been made under section 57 that a specified part of the document, or of documents of that kind, does not contain confidential information;

it is not an offence to disclose the document or that part of the document, or any information contained in the document or that part of the document, to any person (including by making the document, the part of the document or the information available on APRA's website).

4 Section 57

Repeal the section, substitute:

57 Determination of confidentiality

(1) This section applies in relation to reporting documents that are required to be given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* by:

(a) a registered entity; or

(b) a body regulated by APRA.

A reporting document of that kind is referred to in this section as a ***relevant reporting document***.

(2) APRA may determine, by legislative instrument, that:

(a) all or a specified part of a relevant reporting document contains, or does not contain, confidential information; or

(b) all or a specified part of relevant reporting documents of a specified kind contains, or do not contain, confidential information.

(3) APRA must not make a determination under subsection (2) unless APRA gives interested parties for the determination a reasonable opportunity to make representations as to whether or not the relevant reporting document contains, or relevant reporting documents of that kind contain, confidential information.

(4) APRA may determine that:

(a) all or a specified part of a relevant reporting document does not contain confidential information; or

(b) all or a specified part of relevant reporting documents of a specified kind do not contain confidential information;

if, taking into account any representations made under subsection (3) in relation to the document or documents of that kind, APRA considers that the benefit to the public from the disclosure of the document or documents, or information contained

in the document or documents, outweighs any detriment to commercial interests that the disclosure may cause.

(5) In this section:

interested party, for a determination, means:

(a) if the determination is to relate to all or a specified part of a relevant reporting document—an entity or body that is required to give the document under section 13 of the *Financial Sector (Collection of Data) Act 2001*; or

(b) if the determination is to relate to all or a specified part of a relevant reporting document of a specified kind—an association or other body representing an entity or body, or a class of entities or bodies, required to give a document of that kind under section 13 of the *Financial Sector (Collection of Data) Act 2001*.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

Corporations Act 2001

5 Paragraph 601TAA(a)

Omit “published”, substitute “made available to the public”.

6 Paragraph 601TAA(b)

Omit “available”, substitute “made available to the public”.

7 Section 761A

Insert:

registrable superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

8 After section 1017B

Insert:

1017BA Trustees of regulated superannuation funds—obligation to make product dashboard publicly available

(1) The trustee, or the trustees, of a regulated superannuation fund that has 5 or more members must ensure:

(a) that a product dashboard for each of the fund's MySuper products and choice products is publicly available at all times on the fund's website; and

(b) that each product dashboard sets out the information required by subsection (2) or (3); and

(c) that the information set out in each product dashboard about the average amount of fees and other costs is updated within 14 days after the end of each quarter; and

(d) that the other information set out in each product dashboard is updated within 14 days after any change to the information; and

(e) if the regulations prescribe the way in which information is to be set out in a product dashboard—that each product dashboard sets out the information in accordance with the regulations.

(2) The product dashboard for a MySuper product must set out the following:

(a) the investment return target for the product;

(b) the number of times the current target has been achieved for the product:

(i) in the last 10 financial years; or

(ii) if the MySuper product has been offered for a period of less than 10 financial years—in each of the financial years in which the MySuper product has been offered;

(c) the level of investment risk that applies to the product;

(d) a statement about the liquidity of members' investments in the MySuper product;

(e) the average amount of fees and other costsin relation to the MySuper product during the last quarter, expressed as a percentage of the assets of the fund attributable to the MySuper product.

(3) Subject to subsection (4), the product dashboard for a choice product must set out the following for each investment option offered within the choice product:

(a) the investment return target for the investment option;

(b) the number of times the current target has been achieved for the investment option:

(i) in the last 10 financial years; or

(ii) if the investment option has been offered for a period of less than 10 financial years—in each of the financial years in which the investment option has been offered;

(c) the level of investment risk that applies to the investment option;

(d) a statement about the liquidity of members' investments in the investment option;

(e) the average amount of fees and other costs in relation to the investment option during the last quarter, expressed as a percentage of the assets of the fund attributable to the investments in that option.

(4) Subsection (3) does not apply to an investment option within a choice product if:

(a) the assets of the fund that are invested under the option are invested only in one or more of the following:

(i) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;

(ii) a life policy under which the benefit to a member (or a relative or dependant of a member) is based only on the realisation of a risk, not the performance of an investment;

(iii) an investment account contract the only beneficiaries of which are a member, and relatives and dependants of a member; or

(b) the sole purpose of the investment option is the payment of a pension to members who have satisfied a condition of release of benefits specified in a standard made under paragraph 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*; or

(c) the assets of the fund that are invested under the option are invested only in another single asset.

(5) In this section:

choice product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

fee, in relation to a MySuper product or a choice product offered by a regulated superannuation fund, means a fee (other than an activity fee, an advice fee or an insurance fee within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that may be charged by the trustee, or the trustees, of the regulated superannuation fund in relation to the product under that Act.

investment account contract has the same meaning as in the *Life Insurance Act 1995*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

member, in relation to a regulated superannuation fund, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

MySuper product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

pension has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

quarterhas the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

1017BB Trustees of registrable superannuation entities—obligation to make information relating to investment of assets publicly available

(1) The trustee, or the trustees, of a registrable superannuation entity (other than a pooled superannuation trust) must make the following information publicly available on the entity's website no later than 90 days after each reporting day:

(a) information that is sufficient to identify each of the financial products or other property in which assets, or assets derived from assets, of the entity are invested, at the end of the reporting day;

(b) the value of the assets, or assets derived from assets, of the entity, at the end of the reporting day, that are invested in each of the financial products or other property.

(2) Information made publicly available under subsection (1) in respect of a reporting day must continue to be made publicly available on the registrable superannuation entity's website until information relating to the next reporting day is made publicly available under subsection (1).

(3) If the regulations prescribe the way in which information made publicly available under subsection (1) must be organised, the information must be organised in accordance with the regulations.

(4) The regulations may provide that investment in a financial product or other property is not a material investment in circumstances prescribed by the regulations.

(5) If regulations are made for the purposes of subsection (4), information relating to the investment of a financial product or other property in the prescribed circumstances is not required to be made publicly available under subsection (1).

(6) In this section:

reporting day means 30 June and 31 December each year.

1017BC Obligations relating to investment of assets of registrable superannuation entities—general rule about giving notice and providing information

(1) This section applies if:

(a) a person (the ***first party***) enters into an arrangement with another person (the ***second party***); and

(b) under the terms of the arrangement, the first party acquires a financial product from the second party; and

(c) the first party acquires the financial product in this jurisdiction; and

(d) the first party knows, or reasonably ought to know, that an asset that is the subject of the arrangement is, or is derived from, an asset of a registrable superannuation entity; and

(e) the arrangement is not of a kind prescribed by the regulations as an arrangement to which this section does not apply.

Obligation of first party

(2) The first party must, at the time the arrangement is entered into, notify the second party of the following:

(a) that an asset that is the subject of the arrangement is, or is derived from, the assets of a registrable superannuation entity;

(b) details of the trustee, or the trustees, of the registrable superannuation entity.

Obligations of second party

(3) If the second party is notified by the first party in accordance with subsection (2), the second party must provide the trustee, or the trustees, of the registrable superannuation entity with information about:

(a) the financial product acquired by the first party; and

(b) if the second party knows, or reasonably ought to know, that:

(i) an asset about which the second party was notified by the first party will be used, by the second party or another person, to acquire another financial product—that financial product; or

(ii) an asset about which the second party was notified by the first party will be used, by the second party or another person, to acquire property other than a financial product—that other property;

sufficient to allow the trustee, or the trustees, of the registrable superannuation entity to satisfy the obligation under section 1017BB.

Obligation of agent of first party

(4) If the financial product is acquired in this jurisdiction on behalf of the first person by a person (the ***agent***) other than a person who is the provider or acquirer under a custodial arrangement:

(a) the agent must notify the second party in accordance with subsection (2) on behalf of the first party; and

(b) if the agent so notifies the second party, the first party is taken to have satisfied the obligation under that subsection.

Definitions

(5) In this section:

acquirer, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

custodial arrangement has the same meaning as in subsection 1012IA(1).

provider, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

1017BD Obligations relating to investment of assets of registrable superannuation entities—giving notice to providers under custodial arrangements

(1) This section applies if:

(a) a person (the ***first party***) enters into an arrangement (the ***core arrangement***) with another person (the ***second party***); and

(b) under the terms of the core arrangement, the second party is the provider under a custodial arrangement under which the first party is a client; and

(c) the first party knows, or reasonably ought to know that, under the custodial arrangement, a financial product may be acquired in this jurisdiction; and

(d) the first party knows, or reasonably ought to know, that an asset that is the subject of the core arrangement is, or is derived from, an asset of a registrable superannuation entity; and

(e) the core arrangement is not of a kind prescribed by the regulations as an arrangement to which this section does not apply.

(2) The first party must, at the time the core arrangement is entered into, notify the second party of the following:

(a) that an asset that is the subject of the core arrangement is, or is derived from, the assets of a registrable superannuation entity;

(b) details of the trustee, or the trustees, of the registrable superannuation entity.

Note: Section 1017BC may apply in relation to an arrangement under which the second party, or an acquirer under the custodial arrangement, actually acquires the financial product.

(3) In this section:

acquirer, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

client, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

custodial arrangement has the same meaning as in subsection 1012IA(1).

provider, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

1017BE Obligations relating to investment of assets of registrable superannuation entities—giving notice to acquirers under custodial arrangements

(1) This section applies if:

(a) a person (the ***first party***) enters into an arrangement (the ***core arrangement***) with another person (the ***second party***); and

(b) under the terms of the core arrangement, the second party is the acquirer in relation to a custodial arrangement under which the first party is the provider; and

(c) the first party knows, or reasonably ought to know that, under the core arrangement, the second party may acquire a financial product in this jurisdiction; and

(d) the first party knows, or reasonably ought to know, that an asset that is the subject of the core arrangement is, or is derived from, an asset of a registrable superannuation entity; and

(e) the core arrangement is not of a kind prescribed by the regulations as an arrangement to which this section does not apply.

(2) The first party must, at the time the core arrangement is entered into, notify the second party of the following:

(a) that an asset that is the subject of the core arrangement is, or is derived from, the assets of a registrable superannuation entity;

(b) details of the trustee, or the trustees, of the registrable superannuation entity.

Note: Section 1017BC may apply in relation to an arrangement under which the second party actually acquires the financial product.

(3) In this section:

acquirer, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

custodial arrangement has the same meaning as in subsection 1012IA(1).

provider, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

9 At the end of subsection 1020E(1)

Add:

; or (c) information made publicly available under section 1017BA or 1017BB, or provided under subsection 1017BC(3), is defective (see subsection (11)).

10 After paragraph 1020E(2)(b)

Insert:

; or (c) if paragraph (1)(c) applies—specified conduct in respect of the financial products or other property to which the information relates;

11 Paragraph 1020E(7)(a)

Omit “or (c)”, substitute “, (c) or (d)”.

12 At the end of subsection 1020E(7)

Add:

; or (d) if paragraph (1)(c) applies—the person who made the information publicly available or who provided the information.

13 Subsection 1020E(11) (at the end of the definition of *defective*)

Add:

; and (c) in relation to information made publicly available under section 1017BA—means:

(i) the information has not been updated as required by that section; or

(ii) the information is otherwise misleading or deceptive; or

(iii) there is an omission from the information; and

(d) in relation to information made publicly available under section 1017BB or information provided under section 1017BC—means:

(i) the information is misleading or deceptive; or

(ii) there is an omission from the information.

14 After section 1021N

Insert:

1021NA Offences relating to obligation to make product dashboard publicly available

Failure to comply with obligation to make product dashboard publicly available

(1) A person commits an offence if:

(a) the person is a trustee of a regulated superannuation fund; and

(b) as trustee, the person is required, under section 1017BA, to ensure that a product dashboard for each of the fund's MySuper products and choice products is made publicly available on the fund's website; and

(c) a product dashboard for each of the fund's MySuper products and choice products is not made publicly available as required by that section.

Offence where information known to be defective

(2) A person commits an offence if:
  (a) the person is a trustee of a regulated superannuation fund; and
  (b) a product dashboard is made publicly available on the fund's website in purported compliance with section 1017BA; and
  (c) the person knows that:
    (i) the information set out in the product dashboard has not been updated as required by that section; or
    (ii) the information set out in the product dashboard is otherwise misleading or deceptive; or
    (iii) there is an omission from the information set out in the product dashboard.

Offence whether or not information known to be defective

(3) A person commits an offence if:
  (a) the person is a trustee of a regulated superannuation fund; and
  (b) a product dashboard is made publicly available on the fund's website in purported compliance with section 1017BA; and
  (c) either:
    (i) the information set out in the product dashboard has not been updated as required by that section; or
    (ii) the information set out in the product dashboard is otherwise misleading or deceptive; or
    (iii) there is an omission from the information set out in the product dashboard.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in any of subparagraphs (3)(c)(i) to (iii).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defences

(5) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (2)(c)(iii) or (3)(c)(iii), it is a defence if:

(a) the trustee or another trustee of the fund took reasonable steps to ensure that there would not be an omission from the information set out in the product dashboard; or

(b) both of the following apply:

(i) the information was omitted because it was not up to date;

(ii) the trustee or another trustee of the fund took reasonable steps to obtain up-to-date information; or

(c) both of the following apply:

(i) the information was omitted because it would have been misleading or deceptive;

(ii) the trustee or another trustee of the fund took reasonable steps to obtain information that would not have been misleading or deceptive.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (3)(c)(i), it is a defence if the trustee or another trustee of the fund took reasonable steps to ensure that the information set out in the product dashboard was updated as required by section 1017BA.

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

(7) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (3)(c)(ii), it is a defence if the trustee or another trustee of the fund took reasonable steps to ensure that the information set out in the product dashboard would not be misleading or deceptive.

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

1021NB Offences relating to obligation to make superannuation investment information publicly available

Failure to comply with obligation to make information publicly available

(1) A person commits an offence if:

(a) the person is a trustee of a registrable superannuation entity; and
(b) as trustee, the person is required, under section 1017BB, to make information publicly available on the entity's website; and
(c) the information is not made publicly available as required by that section.

Offence where information known to be defective

(2) A person commits an offence if:
(a) the person is a trustee of a registrable superannuation entity; and
(b) as trustee, the person is required, under section 1017BB, to make information publicly available; and
(c) information is made publicly available in purported compliance with that requirement; and
(d) the trustee knows that:
(i) the information is misleading or deceptive; or
(ii) there is an omission from the information.

Offence whether or not information known to be defective

(3) A person commits an offence if:
(a) the person is a trustee of a registrable superannuation entity; and
(b) as trustee, the person is required, under section 1017BB, to make information publicly available; and
(c) information is made publicly available in purported compliance with that requirement; and
(d) either:
(i) the information is misleading or deceptive; or
(ii) there is an omission from the information.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in subparagraph (3)(d)(i) or (ii).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defences

(5) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subsection (1), it is a defence if the information would have been made publicly available but for the fact that the trustee or another trustee of the entity was unable to obtain the information after taking reasonable steps to do so.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subparagraph (2)(d)(ii) or (3)(d)(ii), it is a defence if:

(a) there was an omission from the information made publicly available because the trustee or another trustee of the entity was unable to obtain the information after taking reasonable steps to do so; or

(b) both of the following apply:

(i) the information was omitted because it would have been misleading or deceptive;

(ii) the trustee or another trustee of the entity took reasonable steps to obtain information that would not have been misleading or deceptive.

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

(7) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subparagraph (3)(d)(i), it is a defence if the trustee or another trustee of the entity took reasonable steps to ensure that the information made publicly available would not be misleading or deceptive.

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

1021NC Offences relating to obligations under sections 1017BC, 1017BD and 1017BE

Failure to notify

(1) A person commits an offence if:

(a) the person is required to notify another person under subsection 1017BC(2) or (4) or section 1017BD or 1017BE; and

(b) the person does not notify, and is not taken to have notified, the other person as required by that provision.

Failure to provide information

(2) A person commits an offence if:

(a) the person is required to provide another person with information under subsection 1017BC(3); and

(b) the person does not provide the other person with the information as required by that subsection.

Information provided known to be defective

(3) A person commits an offence if:

(a) the person:

(i) notifies another person of information as required by subsection 1017BC(2) or (4) or section 1017BD or 1017BE; or

(ii) provides information (whether in a document or otherwise) to another person as required by subsection 1017BC(3); and

(b) the person knows that:

(i) the information provided is misleading or deceptive; or

(ii) there is an omission from the information provided.

Information provided defective

(4) A person commits an offence if:

(a) the person:

(i) notifies another person of information as required by subsection 1017BC(2) or (4) or section 1017BD or 1017BE; or

(ii) provides information (whether in a document or otherwise) to another person as required by subsection 1017BC(3); and

(b) either:

(i) the information provided is misleading or deceptive; or

(ii) there is an omission from the information provided.

(5) For the purposes of an offence based on subsection (4), strict liability applies to the physical element of the offence specified in subparagraph (4)(b)(i) or (ii).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defences

(6) In any proceedings against a person for an offence based on subparagraph (3)(b)(ii) or (4)(b)(ii), it is a defence if:

(a) the person took reasonable steps to ensure that there would not be an omission from the information provided; or

(b) both of the following apply:

(i) the information was omitted because it would have been misleading or deceptive;

(ii) the person took reasonable steps to obtain information that would not have been misleading or deceptive.

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

(7) In any proceedings against a person for an offence based on subparagraph (4)(b)(i), it is a defence if the person took reasonable steps to ensure that the information provided would not be misleading or deceptive.

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

15 After paragraph 1022B(1)(e)

Insert:

; or (f) a person is required by section 1017BA to make information publicly available on a regulated superannuation fund's website and any of the following circumstances apply:

(i) the information is not made publicly available as required by that section;

(ii) the information made publicly available is not updated as required by that section;

(iii) the information made publicly available is misleading or deceptive;

(iv) there is an omission from the information made publicly available; or

(g) a person is required by section 1017BB to make information publicly available on a registrable superannuation entity's website and any of the following circumstances apply:

(i) the information is not made publicly available as required by that section;

(ii) the information made publicly available is misleading or deceptive;

(iii) there is an omission from the information made publicly available; or

(h) a person is required by subsection 1017BC(3) to provide information to another person and any of the following circumstances apply:

(i) the person does not provide the information as required by that subsection;

(ii) the information provided is misleading or deceptive;

(iii) there is an omission from the information provided.

16 After paragraph 1022B(2)(e)

Insert:

; or (f) if paragraph (1)(f), (g) or (h) apply—because of any of the circumstances mentioned in those paragraphs;

17 Subsection 1022B(2)

Omit "or (e)", substitute ", (e) or (f)".

18 At the end of subsection 1022B(3)

Add:

; or (e) if paragraph (1)(f) applies—the trustee, or the trustees, of the regulated superannuation fund on whose website the information was required to be made publicly available; or

(f) if paragraph (1)(g) applies—the trustee, or the trustees, of the registrable superannuation entity on whose website the information was required to be made publicly available; or

(g) if paragraph (1)(h) applies—the person who was required to provide the information.

19 After subsection 1022B(7A)

Insert:

(7B) A person is not liable under subsection (2) in a situation described in subparagraph (1)(f)(iii), (g)(ii) or (h)(ii) if the person took reasonable steps to ensure that the information would not be misleading or deceptive.

(7C) A person is not liable under subsection (2) in a situation described in subparagraph (1)(f)(iv), (g)(iii) or (h)(iii) if the person took reasonable steps to ensure that there would not be an omission from the information.

20 At the end of paragraph 1041H(3)(a)

Add:

(iii) section 1021NA, 1021NB or 1021NC; or

21 At the end of paragraph 1041K(1)(a)

Add:

(iii) section 1021NA, 1021NB or 1021NC; or

22 At the end of Chapter 10

Add:

Part 10.22—Transitional provisions relating to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

1539 Application of section 1017BA (Obligation to make product dashboard publicly available)

Section 1017BA applies:

(a) to the extent that it relates to MySuper products—on and after 1 July 2013; and

(b) to the extent that it relates to choice products—on and after 1 July 2014.

1540 Application of subsection 1017BB(1) (Obligation to make information relating to investment of assets of superannuation entities publicly available)

Subsection 1017BB(1) applies in relation to the reporting day that is 31 December 2013 and to later reporting days.

1541 Application of section 1017BC (Obligation to provide information relating to investment of assets of superannuation entities)

(1) Section 1017BC applies in relation to arrangements entered into on or after this Act receives the Royal Assent.

(2) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subsection 1021NB(1), it is a defence if the information would have been made publicly available but for the fact that the information was not provided to the trustee because, under this section, section 1017BC did not apply to a particular arrangement.

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

(3) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subparagraph 1021NB(2)(d)(ii) or (3)(d)(ii), it is a defence if there would not have been an omission from the information made publicly available but for the fact that the information omitted was not provided to the trustee because, under this section, section 1017BC did not apply to a particular arrangement.

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

23 Schedule 3 (after table item 308A)

Insert:

308AA	Subsection 1021NA(1)	100 penalty units or imprisonment for 2 years, or both.
308AB	Subsection 1021NA(2)	200 penalty units or imprisonment for 5 years, or both.
308AC	Subsection 1021NA(3)	100 penalty units or imprisonment for 2

		years, or both.
308AD	Subsection 1021NB(1)	100 penalty units or imprisonment for 2 years, or both.
308AE	Subsection 1021NB(2)	200 penalty units or imprisonment for 5 years, or both.
308AF	Subsection 1021NB(3)	100 penalty units or imprisonment for 2 years, or both.
308AG	Subsections 1021NC(1) and (2)	100 penalty units or imprisonment for 2 years, or both.
308AH	Subsection 1021NC(3)	200 penalty units or imprisonment for 5 years, or both.
308AI	Subsection 1021NC(4)	100 penalty units or imprisonment for 2 years, or both.

Financial Sector (Collection of Data) Act 2001

24 Subsection 3(1)

Omit “in order to assist”, substitute “for the purposes of”.

25 Paragraph 3(1)(a)

Before “APRA”, insert “assisting”.

26 After paragraph 3(1)(a)

Insert:

(aa) enabling APRA to publish information given by financial sector entities; and

27 Paragraph 3(1)(b)

Before “another”, insert “assisting”.

28 Paragraph 3(1)(c)

Before “the Minister”, insert “assisting”.

29 After subsection 13(4)

Insert:

(4A) A reporting standard may require an RSE licensee to provide information in relation to the investment of assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities (the ***relevant assets***) by the RSE licensee or a person connected with the RSE licensee (the ***investor***), including information about the following:

(a) any deductions (whether to cover fees, taxes, costs or for any other purpose) from the return on the investment made by the investor before all or part of the remainder of the return is paid or reinvested;

(b) if the investor has invested all or part of the relevant assets in financial products or other property—the financial products or other property in which the investor has invested the relevant assets;

(c) if the investor has invested all or part of the relevant assets in a managed investment scheme and the assets of the scheme have been invested in whole or part in financial products or other property—the financial products or other property in which the assets of the scheme have been invested;

(d) if the investor has invested all or part of the relevant assets in a pooled superannuation trust or other kind of trust and the assets of the trust have been invested in whole or part in financial products or other property—the financial products or other property in which the assets of the trust have been invested;

(e) the operations of the investor.

(4B) If:

(a) a reporting standard requires an RSE licensee to provide information (the ***required information***) in relation to the investment of relevant assets by the RSE licensee or a person connected with the RSE licensee; and

(b) the relevant assets are invested under a contract or other arrangement between:

(i) the RSE licensee, a related body corporate of the RSE licensee or a custodian in relation to the relevant assets and the RSE licensee or related body corporate (the ***first party***); and

(ii) a person connected with the RSE licensee (the ***second party***);

the contract or arrangement is taken to include:

(c) a term requiring the first party, at the time the relevant assets are invested or as soon as reasonably practicable after that time, to notify the second party that the assets are, or are derived from, a registrable superannuation entity; and

(d) a term requiring the second party, if notified by the first party in accordance with paragraph (c), to, as soon as reasonably practicable after being notified, provide the first party with the required information of which the second party is aware.

(4C) A person is ***connected with*** an RSE licensee for the purposes of subsections (4A) and (4B) if the person is:

(a) a related body corporate of the RSE licensee; or

(b) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee; or

(c) a person who, under a contract or other arrangement with:

(i) the RSE licensee; or

(ii) a related body corporate of the RSE licensee; or

(iii) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee;

invests assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities.

30 Subparagraph 13B(2)(a)(iii)

Omit "to".

31 Section 31

Insert:

arrangement has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

32 Section 31

Insert:

custodian has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

33 Section 31

Insert:

financial product has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

34 Section 31

Insert:

pooled superannuation trust has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

35 Section 31

Insert:

registrable superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

36 Section 31

Insert:

related, in relation to an RSE licensee that is a body corporate and another body corporate, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

37 Section 31

Insert:

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

Superannuation Industry (Supervision) Act 1993

38Subparagraph 6(1)(a)(i)

After “subsection 29SAA(3)”, insert “and sections 29QB and 29QC”.

39Subparagraph 6(1)(c)(ia)

After “subsection 29SAA(3)”, insert “and sections 29QB and 29QC”.

40 Subsection 10(1) (definition of *choice product*)

Repeal the definition, substitute:

choice product: A class of beneficial interest in a regulated superannuation fund is a ***choice product*** unless:

(a) all the members of the fund who hold that class of beneficial interest in the fund are defined benefit members; or

(b) that class of beneficial interest in the fund is a MySuper product.

41 Subsection 10(1)

Insert:

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October.

42 At the end of Division 6 of Part 2B

Add:

29QB Certain information required to be made publicly available

(1) An RSE licensee of a registrable superannuation entity must ensure that the following is made publicly available, and kept up to date, at all times on the registrable superannuation entity's website:

(a) details of the remuneration of:

(i) if the RSE licensee is a body corporate—each executive officer in relation to the RSE licensee; and

(ii) if the RSE licensee is a group of individual trustees—each trustee of the registrable superannuation entity;

being details of a kind prescribed by the regulations;

(b) any other document or information prescribed by the regulations.

(2) A person commits an offence if:

(a) the person is:

(i) a body corporate that is an RSE licensee; or

(ii) a member of a group of individual trustees that is an RSE licensee; and

(b) the RSE licensee contravenes subsection (1).

Penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal liability and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

29QC Obligation to give consistent information

(1) Subject to subsection (2), if:

(a) an RSE licensee is required to give information to APRA under a reporting standard (within the meaning of the *Financial Sector (Collection of Data) Act 2001*); and

(b) under the reporting standard, the information is required to be calculated in a particular way; and

(c) the same or equivalent information is given by the RSE licensee to a person other than an agency of the Commonwealth or of a State or Territory, whether or not by publishing the information on a website;

the RSE licensee must ensure that the information given to the other person is calculated in the same way as the information given to APRA.

(2) Subsection (1) does not apply to information given to the other personin circumstances prescribed by the regulations.

(3) A person commits an offence if:

(a) the person is:

(i) a body corporate that is an RSE licensee; or

(ii) a member of a group of individual trustees that is an RSE licensee; and

(b) the RSE licensee contravenes subsection (1).

Penalty: 50 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal liability and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

43 Section 38A (at the end of the definition of *regulatory provision*)

Add:

; or (c) any of the following provisions of the *Corporations Act 2001*:

(i) subsection 1021NA(1), (2) or (3);

(ii) subsection 1021NB(1), (2) or (3);

(iii) subsection 1021NC(1), (2), (3) or (4).

44 After section 348

Insert:

348A Quarterly reports about superannuation

(1) As soon as practicable after the end of each quarter, the Regulator must publish the following information on its website in respect of the quarter:

(a) the fees charged in relation to MySuper products, on a product by product basis;

(b) the costs incurred in relation to MySuper products, on a product by product basis;

(c) the net returns to beneficiaries of regulated superannuation funds who hold MySuper products, on a product by product basis;

(d) any other information prescribed by the regulations.

(2) The Regulator must not publish the information in a manner that enables the identification of a beneficiary of a regulated superannuation fund.

(4) In this section:

Regulator means APRA.

Part 2—Application and transitional provisions

45 Savings provision—section 57 determinations

(1) A determination that:

(a) is made under section 57 of the old law; and

(b) is in force immediately before this item commences;

has effect on and after this item commences as if it had been made under section 57 of the new law.

(2) If, before this item commences:

(a) APRA has, for the purposes of paragraph 57(a) of the old law, given an entity, association or other body the opportunity to make representations in respect of information of the kind contained in a document; and

(b) APRA has not made a determination under section 57 of the old law in respect of the document;

any representations made by the entity, association or other body in respect of information of the kind contained in the document, whether the representations are made before, on or after this item commences, are taken to have been made for the purposes of subsection 57(3) of the new law.

(3) In this item:

new law means the *Australian Prudential Regulation Authority Act 1998* as amended by this Schedule.

old law means the *Australian Prudential Regulation Authority Act 1998* as in force immediately before this item commences.

46 Application—reporting standards

(1) Subsection 13(4B) of the *Financial Sector (Collection of Data) Act 2001*, as inserted by this Schedule, applies in relation to a contract or arrangement whether entered into before, on or after this item commences.

(2) Despite subitem (1), that subsection does not apply in relation to a contract or arrangement that is entered into before this item commences,

to the extent that the operation of a reporting standard mentioned in that subsection would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

(3) If, because of subitem (2), an RSE licensee is unable to obtain particular information that a reporting standard (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) requires an RSE licensee to provide in relation to the investment of assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities by a person connected with the RSE licensee, then the RSE licensee is not required to comply with the reporting standard to the extent that it requires the RSE licensee to provide that particular information.

47 Application—quarterly reports about superannuation

Section 348A of the *Superannuation Industry (Supervision) Act 1993*, as inserted by this Schedule, applies in relation to the quarter beginning on 1 July 2013 and all later quarters.

Schedule 4—Modern awards and enterprise agreements

Part 1—Amendments

Fair Work Act 2009

1 Section 12

Insert:

default fund employee: see subsection 149A(2).

2 Section 12

Insert:

defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992*.

3 Section 12

Insert:

exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993*.

4 Section 12

Insert:

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993*.

5 At the end of Subdivision C of Division 3 of Part 2-3

Add:

149A Superannuation contributions for defined benefit members

(1) A modern award must include a term that permits an employer covered by the award to make contributions to a superannuation fund or scheme in relation to a default fund employee who is:

(a) covered by the award; and

(b) a defined benefit member of the fund or scheme.

Note: An employer may make contributions under this term even if the superannuation fund or scheme to which the contributions are made is not specified in the modern award because of section 155A.

(2) An employee is a ***default fund employee*** if the employee has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.

6 At the end of Division 3 of Part 2-3

Add:

155A Terms dealing with superannuation

(1) A modern award must not include a term that has the effect of requiring or permitting contributions, for the benefit of an employee covered by the award who is a default fund employee, to be made to a superannuation fund or scheme specified in the modern award, unless one of the following is satisfied in relation to the fund or scheme:

(a) it is a fund that offers a MySuper product;

(b) it is an exempt public sector superannuation scheme.

Note: Contributions may be made to a superannuation fund or scheme for its defined benefit members under section 149A even though the fund or scheme is not specified in a modern award because of this section.

(2) Subsection (3) applies ifthe Australian Prudential Regulation Authority (***APRA***) gives FWA notice under subsection 29U(4) of the *Superannuation Industry (Supervision) Act 1993* that a regulated superannuation fund no longer offers any MySuper product.

(3) FWA must:

(a) ensure that the text of a modern award as published by FWA does not include a term that has the effect of requiring or permitting contributions, for the benefit of an employee covered by the award who is a default fund employee, to be made to the fund; and

(b) do so as soon as is reasonably practicable after receiving the notice.

(4) Subsection (5) applies if APRA gives FWA notice under section 29XC of the *Superannuation Industry (Supervision) Act 1993* that a scheme has ceased to be an exempt public sector superannuation scheme and does not offer a MySuper product.

(5) FWA must:

(a) ensure that the text of a modern award as published by FWA does not include a term that has the effect of requiring or permitting contributions, for the benefit of an employee covered by the award who is a default fund employee, to be made to the scheme; and

(b) do so as soon as is reasonably practicable after receiving the notice.

7 At the end of section 194

Add:

; or (h) a term that has the effect of requiring or permitting contributions, for the benefit of an employee (the ***relevant employee***) covered by the agreement who is a default fund employee, to be made to a superannuation fund or scheme that is specified in the agreement but does not satisfy one of the following:

(i) it is a fund that offers a MySuper product;

(ii) it is a fund or scheme of which the relevant employee, and each other default fund employee in relation to whom contributions are made to the fund or scheme by the same employer as the relevant employee, is a defined benefit member;

(iii) it is an exempt public sector superannuation scheme.

8 At the end of Schedule 1 to the Act

Add:

Part 2—Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

8 Definitions

In this Part:

amended Act means this Act as amended by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

9 Application of sections 149A and155A of amended Act

Sections 149A and155A of the amended Act apply in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.

10 FWA to vary certain modern awards

(1) This clause applies in relation to a modern award if the award:
  (a) is made before 1 January 2014; and
  (b) is in operation on that day; and
  (c) immediately before that day, does not include a term (the ***relevant term***) of the kind mentioned in section 149A of the amended Act.

(2) FWA must, by 31 December 2013, make a determination varying the modern award to include the relevant term.

(3) A determination made under subclause (2) comes into operation on (and takes effect from)1 January 2014.

(4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.

11 FWA to update text of certain modern awards

(1) This clause applies in relation to a modern award if the award:
  (a) is made before 1 January 2014; and

(b) is in operation on that day; and
(c) immediately before that day, includes a term (the ***relevant term***) of the kind mentioned in section 155A of the amended Act that specifies a fund or scheme (a ***non-complying fund or scheme***) that does not satisfy paragraph (1)(a) or (b) of that section.

(2) FWA must ensure thatthe text of the modern award as published by FWA does not include a non-complying fund or scheme in the relevant term.

(3) FWA must do so by1 January 2014 (despite section 155A of the amended Act).

12 Application of paragraph 194(h) of amended Act

Paragraph 194(h) of the amended Act applies in relation to an enterprise agreement that is approved by FWA on or after 1 January 2014.

Superannuation Guarantee (Administration) Act 1992

9 At the end of subsection 12A(1)

Add:

; (j) ***State reference transitional award or common rule***.

10 At the end of subsection 32C(6)

Add:

; or (i) an award mentioned in paragraph 2(2)(a) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or

(j) a State reference transitional award or common rule.

Superannuation Industry (Supervision) Act 1993

11 At the end of section 29U

Add:

(4) If:

(a) APRA cancels an authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product; and

(b) as a result of the cancellation, the fund no longer offers any MySuper product;

APRA must also notify Fair Work Australia in writing of that fact.

12 At the end of Division 8 of Part 2C

Add:

29XCPublic sector superannuation scheme ceases to be exempt

If APRA becomes aware that:

(a) a public sector superannuation scheme has ceased to be an exempt public sector superannuation scheme; and

(b) the scheme is not a regulated superannuation fund that offers a MySuper product;

APRA must notify Fair Work Australia of that fact.

Part 2—Transitional

13 Section 29WA of SIS Act not apply to contributions made under certain enterprise agreements

(1) This item applies if:

(a) an enterprise agreement is approved by FWA before 1 January 2014; and

(b) at the time the agreement is approved by FWA, the agreement includes a term that has the effect of requiring or permitting contributions, for the benefit of an employee (the ***relevant employee***) covered by the agreement who is a default fund employee, to be made to a superannuation fund or scheme that is specified in the agreement but does not satisfy one of the following:

(i) it is a fund that offers a MySuper product;

(ii) it is a fund or scheme of which the relevant employee, and each other default fund employee in relation to whom contributions are made to the fund or scheme by the same employer as the relevant employee, is a defined benefit member;

(iii) it is an exempt public sector superannuation scheme; and

(c) on or after 1 January 2014, one or more contributions (the ***relevant contributions***) are made to the fund or scheme under, or in accordance with, the agreement.

(2) Section 29WA of the SIS Act does not apply to the relevant contributions.

(3) In this item:

default fund employee has the same meaning as in the *Fair Work Act 2009*.

defined benefit member has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

exempt public sector superannuation scheme has the same meaning as in the SIS Act.

FWA has the same meaning as in the *Fair Work Act 2009*.

MySuper product has the same meaning as in the SIS Act.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

Schedule 5—Defined benefit members

Superannuation Guarantee (Administration) Act 1992

1 Section 6 (definition of *defined benefit member*)

After "***defined benefit member***", insert ", subject to section 6AA,".

2After section 6

Insert:

6AA Interpretation: defined benefit member

The regulations may prescribe:

(a) circumstances in which a member of a superannuation fund is not a ***defined benefit member*** for the purposes of this Act, or a provision of this Act; and

(b) circumstances in which a member of a superannuation fund who is not otherwise a ***defined benefit member*** is to be taken to be a ***defined benefit member*** for the purposes of this Act, or a provision of this Act.

3 After subsection 19(2C)

Insert:

(2CA) For the purposes of paragraph (2B)(b), if the employee is a defined benefit member of a superannuation fund, subsection 32C(2) applies in relation to the employee and the fund as if it did not include paragraph 32C(2)(c) (requirement that fund includes a MySuper product).

Superannuation Industry (Supervision) Act 1993

4 Subsection 10(1) (definition of *defined benefit member*)

Repeal the definition, substitute:

defined benefit member:

(a) in the definition of ***choice product*** in this subsection, section 20B and Part 2C—has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*; and

(b) in Division 3A of Part 8 and in Part 23—has the meaning given by section 83A; and

(c) in any other provision of this Act—has the meaning given by the regulations;

subject to subsection (1A).

5 Savings

Despite the repeal of the definition of ***defined benefit member*** in subsection 10(1)of the *Superannuation Industry (Supervision) Act 1993* by item 4 of this Schedule, regulations in force for the purposes of that definition immediately before the commencement of that item continue in effect on and after that commencement, and may be repealed, as if they were made for the purposes of paragraph (c) of the definition of ***defined benefit member*** inserted by that item.

6 After subsection 10(1)

Insert:

(1A) The regulations may prescribe:

(a) circumstances in which a member of a superannuation fund is not a ***defined benefit member*** for the purposes of this Act, or a provision of this Act; and

(b) circumstances in which a member of a superannuation fund who is not otherwise a ***defined benefit member***for the purposes of this Act, or a provision of this Act, is to be taken to be a ***defined benefit member*** for the purposes of this Act, or that provision.

7 Subparagraph 29TB(1)(d)(i)

After “any employee of the large employer”, insert “who is not a defined benefit member of the fund”.

8 Subparagraph 29TB(1)(d)(ii)

After “any employee of that associate”, insert “who is not a defined benefit member of the fund”.

9 At the end of section 29TB

Add:

(3) In working out under subsection (2) whether an employer is a ***large employer***, disregard defined benefit members of the fund.

10 Paragraph 29WA(1)(a)

After “a regulated superannuation fund”, insert “(other than a defined benefit member)”.

Schedule 6—Moving accrued default amounts

Superannuation Industry (Supervision) Act 1993

1At the end of subparagraph 6(1)(a)(i)

Add “(other than subsection 29SAA(3))”.

2Before subparagraph 6(1)(c)(i)

Insert:

(ia) subsection 29SAA(3); and

3 Subsection 10(1)

Insert:

accrued default amount, for a member of a regulated superannuation fund, has the meaning given by section 20B.

4 At the end of Division 2 of Part 1

Add:

20B*Accrued default amounts*

(1) Subject to this section, the total amount attributed by the trustee, or the trustees, of a regulated superannuation fund to a member of the fund is an ***accrued default amount*** for the member if subsection (1A) or (1B) is satisfied.

(1A) This subsection is satisfied if the member has given the trustee, or the trustees, of the fund no direction on the investment option under which the asset (or assets) of the fund attributed to the member in relation to the amount (the ***member’s underlying asset(s)***) is to be invested.

(1B) This subsection is satisfied if the investment option under which the asset (or assets) of the fund attributed to the member in relation to the amount (the ***member’s underlying asset(s)***) is invested is one which, under the current governing rules of the fund, would be the investment option for a new member if no direction were given.

(2) Such an amount is not an ***accrued default amount*** to the extent that the amount is attributed to the member in relation to a MySuper product.

(3) Such an amount is not an***accrued default amount***:

(a) if the member is a defined benefit member of the fund; or

(b) if the fund is an eligible rollover fund; or

(c) to the extent thatthe member's underlying asset(s) isinvested in one or more of the following:

(i) a life policy underwhich contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;

(ii) a life policy under which the benefit to the member (or a relative or dependant of the member) is based only on the realisation of a risk, not the performance of an investment;

(iii) an investment account contract the only beneficiaries of which are the member, and relatives and dependants of the member;

(iv) an investment option under which the investment is held as cash; or

(d) to the extent that a pension is payable out of the member's underlying asset(s), because the member has satisfied a condition of release of benefits specified in a standard made under paragraph 31(2)(h).

(3A) For the purposes of subsection (1A), if:

(a) benefits of a person in a regulated superannuation fund (the ***earlier fund***) are transferred to another regulated superannuation fund (the ***later fund***); and

(b) the person gave or (because of a previous application of this subsection) is taken to have given the trustee, or the trustees, of the earlier fund a direction on the investment option under which an asset (or assets) of the earlier fund is to be invested; and

(c) an amount attributable to the person is invested under an equivalent investment option offered by the later fund (the ***equivalent investment option***);

the person is taken to have given the trustee, or the trustees, of the later fund a direction to invest in the equivalent investment option any asset (or assets) of the later fund that is attributed to the person in relation to an amount attributed to the person.

(4) In this section:

investment account contract has the same meaning as in the *Life Insurance Act 1995*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

5 After subsection 29E(6A)

Insert:

RSE licensees who apply for authority to offer MySuper product

(6B) An additional condition is imposed on each RSE licensee who makes an application under section 29S for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product. The condition is that the RSE licensee must give effect to elections made in accordance with sections 29SAA, 29SAB and 29SAC.

6At the end of subsection 29S(2)

Add:

; and (f) be accompanied by elections made in accordance with each of the following sections:

(i) section 29SAA;

(ii) section 29SAB.

7After section 29S

Insert:

29SAA Election to transfer accrued default amounts

(1) An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:

(a) the RSE licensee elects that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, the RSE licensee will:

(i) attribute to the MySuper product each amount that is an accrued default amount for a member of the fund who is eligible to hold the MySuper product, unless the member directs the RSE licensee in writing to attribute the amount to another MySuper product or an investment option within a choice product in the fund; and

(ii) do so before the end of a period of 30 days beginning on the day on which notice of authority to offer the class of beneficial interest in the fund as a MySuper product is given to the RSE licensee under section 29TD; and

(b) the RSE licensee elects that the RSE licensee will, before the end of the action period,take the action required under the prudential standards in relation to the following:

(i) each amount that is an accrued default amount for a member of the fund who is not eligible to hold a MySuper product offered by the fund;

(ii) each amount that is an accrued default amount for a member of another regulated superannuation fund of the RSE licensee that does not offer a MySuper product; and

(c) the election is in writing; and

(d) the election is in the approved form.

(2) The ***action period***, for the purposes of paragraph (1)(b), in relation to an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, ends at the end of a period of 90 days beginning on:

(a) if APRA authorises the RSE licensee to offer the class of beneficial interest in the fund as a MySuper product—the day on which notice of that authority is given to the RSE licensee under section 29TD; or

(b) if APRA refuses the application—the day on which notice of the refusal is given to the RSE licensee under section 29TE.

(3) If an RSE licensee makes an election under this section, the RSE licensee must comply with any requirements prescribed in the regulations in relation to:

(a) notices to be given to a member of the fund for whom there is an accrued default amount before the amount is attributed, or a decision is taken to continue to attribute the amount, to a MySuper product or an investment option within a choice product in the fund; and

(b) notices to be given to a member of the fund for whom there is an accrued default amount before the amount is moved to another fund.

29SAB Election to transfer assets attributed to a MySuper product if authorisation cancelled

An RSE licensee that applies for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product makes an election in accordance with this section if:

(a) the RSE licensee elects:

(i) to take the action required under the prudential standards in relation to any asset or assets of the fund that are attributed to the MySuper product, if the authority to offer the relevant class of beneficial interest in the fund as a MySuper product is cancelled under subsection 29U(1); and

(ii) to do so before the end of a period of 90 days beginning on the day on which notice of the cancellation is given to the RSE licensee under subsection 29U(3); and

(b) the election is in writing; and

(c) the election is in the approved form.

8 At the end of subsection 29U(2)

; or (j) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 29SAA (election to transfer accrued default amounts to a MySuper product).

8A Paragraph 29TC(1)(b)

After “facilities”, insert “except to the extent that a benefit is provided by taking out risk insurance”.

9 At the end of Part 2C

Add:

Division 8—Other matters

29X Prudential standards dealing with accrued default amounts

A prudential standard determined under section 34C may include provisions:

(a) requiring an RSE licensee of a regulated superannuation fund who holds an accrued default amount:

(i) for a member of the fund who is not eligible to hold a MySuper product offered by the fund; or

(ii) for a member of a regulated superannuation fund of the RSE licensee that does not offer a MySuper product;

to transfer that amount to another regulated superannuation fund that includes a MySuper product; and

(b) setting out the requirements that must be met in relation to the transfer ofsuch an accrued default amount; and

(c) dealing with other matters relating to such an accrued default amount.

29XA Prudential standards dealing with assets attributed to former MySuper products

A prudential standard determined under section 34C may include provisions:

(a) requiring an RSE licensee who is authorised to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product to transfer any asset or assets of the fund that are attributed to the MySuper product into another MySuper product within the fund, or a MySuper product within another fund, if the authority is cancelled under subsection 29U(1); and

(b) setting out the requirements that must be met in relation to the transfer of such an asset or assets; and

(c) dealing with other matters relating to such an asset or assets.

29XB No liability for certain transfers

A trustee of a regulated superannuation fund is not subject to any liability to a member of the fund:

(a) for an action taken to give effect to an election made in accordance with section 29SAA or 29SAB; or

(b) for an action of the kind mentioned in subsection 55C(1).

10 After section 55A

Insert:

55B Governing rules do not prevent giving effect to certain elections

A provision in the governing rules of a regulated superannuation fund is void to the extent that it would prevent a trustee or trustees of the fund from giving effect to:

(a) an election made in accordance with section 29SAA (election to transfer accrued default amounts to a MySuper product); or

(b) an election made in accordance with section 29SAB (election to transfer assets attributed to a MySuper product if authorisation cancelled); or

(c) a requirement in regulations made for the purposes of subsection 29SAA(3).

55C Governing rules do not prevent transfer from pre-MySuper default option to MySuper product

(1) A provision of the governing rules of a regulated superannuation fund is void to the extent that it would prevent a trustee or trustees of the fund from attributing an amount to a MySuper product for a member, instead of attributing the amount to a pre-MySuper default option.

(2) A ***pre-MySuper default option***, in relation to an amount attributed to a member of a regulated superannuation fund, is an investment option under which an asset (or assets) of the fund attributed to the member in relation to the amount would be invested, under the governing rules of the fund, if the member gave no direction in relation to the amount.

11 After paragraph 58(2)(d)

Insert:

(da) a direction given by a member of a regulated superannuation fund to attribute (or continue to attribute) an amount that is an accrued default amount for the member to a MySuper product or an investment option within a choice product in the fund; or

12At the end of section 193

Add:

;(l) section 388.

12A After section 349A

Insert:

349B Acquisition of property

(1) This Act does not apply to the extent (if any) that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

(2) The following subsections do not limit subsection (1).

(3) If, apart from this section, this Act would result in such an acquisition of property because:

(a) it would require a person to take action in relation to an accrued default amount; or

(b) it would require a person to take action in relation to an asset of the kind mentioned in subparagraph 29SAB(a)(i);

then despite any other provision of this Act, the person is not required to take that action.

(4) If, apart from this section, this Act would result in such an acquisition of property because it would prevent the charging of a fee of a kind mentioned in paragraph 29SAC(1)(a), then despite any other provision of this Act, the person is not prevented from charging that fee.

(5) If, apart from this section, this Act would result in such an acquisition of property because it would require or permit a person

to use, disclose or publish information, then despite any other provision of this Act, the person is not required or permitted to use, disclose or publish the information in the circumstances that would result in such an acquisition.

(6) If, apart from this section, this Act would result in such an acquisition of property because it excuses a person from liability, then despite any other provision of this Act, the person is not excused from the liability.

(7) To avoid doubt, any provision that does not result in an acquisition of property continues to apply in relation to:
  (a) action in relation to accrued default amounts; and
  (b) action in relation to an asset of the kind mentioned in subparagraph 29SAB(a)(i); and
  (c) the charging of a fee of a kind mentioned in paragraph 29SAC(1)(a); and
  (d) the use, disclosure and publication of information; and
  (e) a liability.

13 At the end of the Act

Add:

Part 33—Additional transitional provisions relating to MySuper

Division 1—Moving accrued default amounts to MySuper products

386Object

The object of this Division is to ensure that each accrued default amountheld by an RSE licensee before 1 July 2017ismoved into a MySuper product.

387Election to transfer accrued default amounts

(1) An RSE licensee of a regulated superannuation fund that makes an application before 1 July 2017 for authority to offer a class of

beneficial interest in the fund as a MySuper product is taken to make an election in accordance with section 29SAA if:

(a) the RSE licensee elects that, if authority to offer the class of beneficial interest in the fund as a MySuper product is given, the RSE licensee will:

(i) attribute to the MySuper product each amount that is an accrued default amount for a member of the fund who is eligible to hold the MySuper product, unless the member directs the RSE licensee in writing to attribute the amount to another MySuper product or an investment option within a choice product in the fund; and

(ii) do so before 1 July 2017, or the end of a period of 30 days beginning on the day on which notice of authority to offer the relevant class of beneficial interest in the fund as a MySuper product is given to the RSE licensee under section 29TD (whichever is later); and

(b) the RSE licensee elects to take the action required under the prudential standards in relation to the following, and to do so before the transitional action period ends:

(i) each amount that is an accrued default amount for a member of the fund who is not eligible to hold a MySuper product offered by the fund;

(ii) each amount that is an accrued default amount for a member of another regulated superannuation fund of the RSE licensee that does not offer a MySuper product; and

(c) the election is otherwise made in accordance with paragraphs 29SAA(1)(c) and (d).

(2) The ***transitional action period***, for the purposes of paragraph (1)(b), in relation to an application by an RSE licensee for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product, ends on the later of:

(a) 1 July 2017; and

(b) the end of a period of 90 days beginning on:

(i) if APRA authorises the RSE licensee to offer the class of beneficial interest in the fund as a MySuper product—the day on which notice of that authority is given to the RSE licensee under section 29TD; or

(ii) if APRA refuses the application—the day on which notice of the refusal is given to the RSE licensee under section 29TE.

388Transfer to MySuper products

(1) If:

(a) an RSE licensee of a regulated superannuation fund holds an accrued default amount for a member of the fund immediately before 1 July 2017; and

(b) no application is made before 1 July 2017 by the RSE licensee, in relation to any of the RSE licensee's regulated superannuation funds, for authority to offer a class of beneficial interest in the fund as a MySuper product;

the RSE licensee must take the action required under the prudential standards in relation to the amount before 1 July 2017.

(2) A trustee of a regulated superannuation fund is not subject to any liability to a memberof the fund for an action taken in accordance with subsection (1).

Division 2—Miscellaneous

389 Prudential standards dealing with transitional matters

A prudential standard determined under section 34C may include provisions dealing with matters of a transitionalnature relating to:

(a) the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*;and

(b) the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*; and

(c) the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

390 Regulations dealing with transitional, savings and application matters

The Governor-General may make regulations dealing with matters of a transitional, saving, or application nature relating to the amendments made by:

(a) the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012*;and

(b) the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*; and

(c) the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

Schedule 7—Eligible rollover funds

Part 1—Main amendments

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

> ***eligible rollover fund***: a regulated superannuation fund is an ***eligible rollover fund*** if an RSE licensee is authorised under section 242F to operate the fund as an eligible rollover fund.

2 Subsection 10(1) (definition of *enhanced director obligations*)

Repeal the definition, substitute:

> ***enhanced director obligations*** means:
>
> (a) for MySuper products—the obligations imposed by:
>
> (i) section 29VO; and
>
> (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced director obligations for MySuper products; and
>
> (b) for eligible rollover funds—the obligations imposed by:
>
> (i) section 242L; and
>
> (ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced director obligations for eligible rollover funds.

3 Subsection 10(1) (definition of *enhanced trustee obligations*)

Repeal the definition, substitute:

> ***enhanced trustee obligations*** means:
>
> (a) for MySuper products—the obligations imposed by:
>
> (i) covenants referred to in section 52, as enhanced by the obligations imposed under section 29VN; and

(ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced trustee obligations for MySuper products; and

(b) for eligible rollover funds—the obligations imposed by:

(i) covenants referred to in section 52, as enhanced by the obligations imposed under section 242K; and

(ii) covenants prescribed under section 54A that are specified in the regulations as forming part of the enhanced trustee obligations for eligible rollover funds.

4 Subsection 10(1) (after paragraph (u) of the definition of *reviewable decision*)

Insert:

(ua) a decision of APRA under subsection 242F(2) to refuse to authorise an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund; or

(ub) a decision of APRA under subsection 242J(1) to cancel an authority to operate a regulated superannuation fund as an eligible rollover fund; or

5After subsection 29E(6B)

Insert:

RSE licensees who apply for authority to operate eligible rollover funds

(6C) An additional condition is imposed on each RSE licensee who makes an application under section 242A for authority to operate a regulated superannuation fund as an eligible rollover fund. The condition is that the RSE licensee must give effect to an election made in accordance with section 242B.

RSE licensees authorised to operate eligible rollover funds

(6D) An additional condition is imposed on each RSE licensee that is authorised to operate a regulated superannuation fund as an eligible rollover fund. The condition is that the RSE licensee must ensure that the governing rules of the fund are not varied so that:

(a) the only purpose of the fund is no longer to be a temporary repository for amounts transferred to the fund from other

regulated superannuation funds in circumstances allowed by the RSE licensee law; or

(b) a single diversified investment strategy is no longer adopted in relation to assets of the fund.

6 Paragraph 29T(1)(e)

Omit "(within the meaning of Part 24)".

7 At the end of subsection 54A(4)

Add ", for MySuper products or eligible rollover funds".

8 At the end of section 55B

Add:

; or (e) an election made in accordance with section 242B (election to transfer amounts held in an eligible rollover fund if authorisation cancelled); or

(f) an election made in accordance with section 242C (election not to pass costs of paying conflicted remuneration to members of eligible rollover fund).

9 Paragraph 193(l)

Repeal the paragraph, substitute:

(l) subsection 242M(1);

(m) section 388;

(n) section 394.

10 Part 24 (heading)

Repeal the heading, substitute:

Part 24—Eligible rollover funds

11 Before section 241

Insert:

Division 1—Preliminary

12 Section 241

Repeal the section, substitute:

241 Object of this Part

The object of this Part is:

(a) to provide for the authorisation of RSE licensees to operate eligible rollover funds; and

(b) to impose additional obligations on trustees, and directors of corporate trustees, in relation to eligible rollover funds; and

(c) to provide a facility for the payment of benefits to eligible rollover funds.

13 Section 242 (definition of *eligible rollover fund*)

Repeal the definition.

14 Section 242 (definition of *fund*)

Omit “or an approved deposit fund”.

15 After section 242

Insert:

Division 2—Authority to operate an eligible rollover fund

Subdivision A—Applying for authority

242A Application for authority to operate an eligible rollover fund

Who may apply?

(1) An RSE licensee of a prescribed class may apply to APRA for authority to operate a regulated superannuation fund as an eligible rollover fund.

Requirements for applications

(2) An application for authority to operate a regulated superannuation fund as an eligible rollover fund must:

(a) be in the approved form; and

(b) contain the information required by the approved form; and

(c) state the RSE licensee’s and the fund’s ABNs; and

(d) be accompanied by an election made in accordance with each of the following sections:

(i) section 242B;
(ii) section 242C.

(3) If:
(a) an RSE licensee applies for authority to operate a regulated superannuation fund as an eligible rollover fund; and
(b) after the application is made, but before APRA decides the application, information contained in the application ceases to be correct;

the RSE licensee must give APRA the correct information, in writing, as soon as practicable after the information in the application ceases to be correct.

(4) An application is taken not to comply with this section if subsection (3) is contravened.

Note: APRA cannot give authority to operate a regulated superannuation fund as an eligible rollover fund while the application does not comply with this section: see paragraph 242F(1)(a).

Lapsed applications

(5) An application for authority lapses if:
(a) it was made by an RSE licensee; and
(b) the RSE licensee ceases to be an RSE licensee,or an RSE licensee of a class prescribed for the purposes of subsection (1),before:
(i) APRA makes a decision on the application for authority; or
(ii) if APRA's decision with respect to the application is subject to review under this Act—the review is finally determined or otherwise disposed of.

242B Election to transfer amounts held in eligible rollover fund if authorisation cancelled

An RSE licensee that applies for authority to operate a regulated superannuation fund as an eligible rollover fund makes an election in accordance with this section if:
(a) the RSE licensee elects:
(i) to take the action required under the prudential standards in relation to amounts held in the eligible

rollover fund, if the authority to operate the fund as an eligible rollover fund is cancelled under subsection 242J(1); and

(ii) to do so before the end of a period of 90 days beginning on the day on which notice of the cancellation is given to the RSE licensee under subsection 242J(3); and

(b) the election is in writing; and

(c) the election is in the approved form.

242C Election not to charge members of eligible rollover fund for payment of conflicted remuneration

(1) An RSE licensee that applies for authority to operate a regulated superannuation fund as an eligible rollover fund makes an election in accordance with this section if:

(a) the RSE licensee elects that, if the authority is given, the RSE licensee will not charge any member of the fund a fee all or part of which relates directly or indirectly to costs incurred by a trustee or the trustees of the fund:

(i) in paying conflicted remuneration to a financial services licensee, or a representative of a financial services licensee; or

(ii) in paying an amount to another person that a trustee of the fund knows, or reasonably ought to know, relates to conflicted remuneration paid by that other person to a financial services licensee, or a representative of a financial services licensee; and

(b) the election is in writing; and

(c) the election is in the approved form.

(2) In this section:

conflicted remuneration has the same meaning as in Part 7.7A of the *Corporations Act 2001*, subject to the extension of that meaning in subsection (3).

representative, of a financial services licensee, has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

(3) In this section, ***conflicted remuneration*** also has the meaning it would have if:

(a) financial product advice provided to the RSE licensee mentioned in subsection (1) by a financial services licensee, or a representative of a financial services licensee, mentioned in subparagraph (1)(a)(i) or (ii) were provided to the RSE licensee as a retail client; and

(b) financial product advice provided to the other person mentioned in subparagraph (1)(a)(ii) by a financial services licensee, or a representative of a financial services licensee, mentioned in that subparagraph were provided to the other person as a retail client.

242D APRA may request further information

APRA may give an RSE licensee that has applied for authority to operate a regulated superannuation fund as an eligible rollover fund a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application.

Note: A failure to give the requested information delays the time within which APRA must decide the application: see paragraph 242E(1)(b).

242E Period for deciding applications for authority

(1) APRA must decide an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund:

(a) within 60 days after receiving the application; or

(b) if the applicant was requested to provide information under section 242D—within 60 days after:

(i) receiving from the RSE licensee all of the information the RSE licensee was requested to provide under that section; or

(ii) all notices relating to that information being disposed of;

unless APRA extends the period for deciding the application under subsection (2).

(2) APRA may extend the period for deciding an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund by up to 60 days if APRA informs the RSE licensee of the extension:

(a) in writing; and

(b) within the period in which it would otherwise be required to decide the application under subsection (1).

(3) If APRA extends the period for deciding an application for authority to operate a regulated superannuation fund as an eligible rollover fund, it must decide the application within the extended period.

(4) If APRA has not decided an application for authority to operate a regulated superannuation fund as an eligible rollover fund by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

Subdivision B—Authority

242F Authority to operate an eligible rollover fund

(1) APRA must authorise an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund if, and only if:

(a) the application for authority complies with section 242A; and

(b) the applicant has provided to APRA all information that the applicant was requested, under section 242D, to provide, or the request has been disposed of; and

(c) the fund is registered under Part 2B; and

(d) the RSE licensee is of a class prescribed for the purposes of subsection 242A(1); and

(e) APRA is satisfied that, under the governing rules of the fund:

(i) the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; and

(ii) a single diversified investment strategy is to be adopted in relation to all assets of the fund; and

(f) APRA is satisfied that the RSE licensee is likely to comply with the enhanced trustee obligations for eligible rollover funds; and

(g) APRA is satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for eligible rollover funds; and

(h) APRA is satisfied that the RSE licensee is likely to comply with the general fees rules; and

(i) APRA is satisfied that the RSE licensee is not likely to contravene section 242P.

(2) Otherwise APRA must refuse to give the authority.

242G Notice of authority

If APRA authorises an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund, APRA must notify the RSE licensee in writing of the authority.

242H APRA to give notice of refusal of authority

If APRA refuses an application by an RSE licensee for authority to operate a regulated superannuation fund as an eligible rollover fund, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice:

(a) informing it of APRA's refusal of the application; and

(b) setting out the reasons for the refusal;

as soon as practicable after refusing the application.

Subdivision C—Cancelling authority

242J Cancelling authority to operate eligible rollover fund

(1) APRA may, in writing, cancel an authority to operate a regulated superannuation fund as an eligible rollover fund.

(2) Without limiting subsection (1), APRA may cancel an authority to operate a regulated superannuation fund as an eligible rollover fund if:

(a) APRA is no longer satisfied that, under the governing rules of the fund:

(i) the only purpose of the fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the RSE licensee law; and

(ii) a single diversified investment strategy is to be adopted in relation to all assets of the fund; or

(b) APRA is no longer satisfied that the RSE licensee is likely to comply with the enhanced trustee obligations for eligible rollover funds (whether because of a previous failure to do so, or for any other reason); or

(c) APRA is no longer satisfied that the directors of the RSE licensee are likely to comply with the enhanced director obligations for eligible rollover funds (whether because of a previous failure to do so, or for any other reason); or

(d) APRA is no longer satisfied that the RSE licensee is likely to comply with the general fees rules (whether because of a previous failure to do so, or for any other reason); or

(e) APRA is no longer satisfied that the RSE licensee is not likely to contravene section 242P (whether because of a previous contravention of that section, or for any other reason); or

(f) the fund ceases to be registered under Part 2B; or

(g) the RSE licensee ceases to be of a class prescribed for the purposes of subsection 242A(1);or

(h) APRA is satisfied that the RSE licensee has contravened a provision of the governing rules of the eligible rollover fund; or

(i) APRA is satisfied that the RSE licensee has failed to give effect to an election made in accordance with section 242C (election not to pass costs of conflicted remuneration to members of eligible rollover fund).

(3) If APRA cancels an authority to operate a regulated superannuation fund as an eligible rollover fund it must take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee:

(a) that APRA has cancelled the authority; and

(b) of the reasons for the cancellation.

Subdivision D—Trustee obligations relating to eligible rollover funds

242K Additional obligations of a trustee in relation to an eligible rollover fund

Each trustee of an eligible rollover fund must promote the financial interests of the beneficiaries of the fund, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).

242L Additional obligations of a director of a corporate trustee in relation to an eligible rollover fund

(1) Each director of a corporate trustee of an eligible rollover fund 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 242K.

(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.

242M Contravention of section 242K or 242L

(1) A person must not contravene section 242K or 242L.

(2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

(3) A contravention of subsection (1) does not result in the invalidity of a transaction.

242N Governing rules void to the extent that they are inconsistent with obligations under section 242K or 242L

A provision of the governing rules of an eligible rollover fund is void to the extent that it is inconsistent with:

(a) the obligations that apply to a trustee of the fund under section 242K; or

(b) the obligations that apply to the directors of a corporate trustee of the fund under section 242L.

Subdivision E—Miscellaneous

242P Operating a fund as an eligible rollover fund when not authorised to do so

(1) A person commits an offence if:
  (a) the person makes a representation; and
  (b) the representation is that a regulated superannuation fund is an eligible rollover fund; and
  (c) the RSE licensee for the fund does not have authority to operate the fund as an eligible rollover fund.

Penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

242Q Prudential standards dealing with amounts held in eligible rollover funds

A prudential standard determined under section 34C may include provisions:
  (a) requiring an RSE licensee whose authority to operate a regulated superannuation fund as an eligible rollover fund is cancelled under subsection 242J(1) to transfer any amounts held in the eligible rollover fund to a regulated superannuation fund that:
    (i) is an eligible rollover fund; or
    (ii) offers a MySuper product; and
  (b) setting out the requirements that must be met in relation to the transfer of such amounts; and
  (c) dealing with other matters relating to such amounts.

242R No liability for giving effect to a section 242B election

A trustee of a regulated superannuation fund is not subject to any liability to a member of the fund for an action taken to give effect to an election made in accordance with section 242B.

16 Before section 243

Insert:

Division 3—Facility to pay benefits to eligible rollover funds

16A After paragraph 349B(3)(b)

Insert:

or (c) it would require a person to take action in relation to an amount held in an entity that is or was an eligible rollover fund;

16B Subsection 349B(4)

After “paragraph 29SAC(1)(a)”, insert “or 242C(1)(a)”.

16C After paragraph 349B(7)(b)

Insert:

(ba) action in relation to an amount held in an entity that is or was an eligible rollover fund; and

16D Paragraph 349B(7)(c)

After “paragraph 29SAC(1)(a)”, insert “or 242C(1)(a)”.

17 At the end of the Act

Add:

Part 34—Additional transitional provisions relating to eligible rollover funds

391 Definitions

In this Part:

existing ERF means a regulated superannuation fund that is an eligible rollover fund within the meaning of the old law immediately before the commencement of this section.

old law means this Act as in force immediately before the commencement of this section.

392 Authority to operate an eligible rollover fund given before 1 January 2014

If, before 1 January 2014, APRA authorises an RSE licensee to operate a regulated superannuation fund as an eligible rollover fund, that authority takes effect on 1 January 2014.

393 Operation of existing ERFs after commencement

Despite the amendments made by Schedule 7 to the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*, an existing ERF is taken to be an eligible rollover fund for the purposes of Division 3 of Part 24 during the period:

(a) beginning on the day this section commences; and

(b) ending on 31 December 2013.

394 Moving amounts held in existing ERFs

(1) If:

(a) immediately before 1 January 2014, an amount is held in an existing ERF; and

(b) on that day, the RSE licensee of the existing ERF is not authorised to operate the existing ERF as an eligible rollover fund;

the RSE licensee of the existing ERF must take the action required under the prudential standards in relation to the amount before the end of a period of 90 days beginning on 1 January 2014.

(2) A prudential standard determined under section 34C may include provisions:

(a) requiring an RSE licensee of an existing ERF to, in the circumstances mentioned in subsection (1), transfer the

amount held in the existing ERF to a regulated superannuation fund that:

(i) is an eligible rollover fund; or

(ii) offers a MySuper product; and

(b) setting out the requirements that must be met in relation to the transfer of such an amount; and

(c) dealing with other matters relating to such an amount.

(3) A trustee of a regulated superannuation fund is not subject to any liability to any member of the fund for an action taken in accordance with this section.

Part 2—Other amendments

Retirement Savings Accounts Act 1997

18 Section 88 (definition of *eligible rollover fund*)

Omit “Part 24 of”.

Schedule 8—Other amendments

Superannuation Guarantee (Administration) Act 1992

1 Subsection 6(1)

Insert:

> ***MySuper member*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Superannuation Industry (Supervision) Act 1993

2 Subsection 10(1) (definition of *buy-sell spread*)

Repeal the definition, substitute:

> ***buy-sell spread*** has the meaning given by subsection 29V(4).

3 Subsection 10(1)

Insert:

> ***MySuper member***: A member of a regulated superannuation fund is a ***MySuper member*** of the fund if the member holds a beneficial interest in the fund of a class that the RSE licensee of the fund is authorised to offer as a MySuper product.

[*Minister's second reading speech made in—*
House of Representatives on 19 September 2012
Senate on 29 November 2012]

(177/12)