





# **Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013**

**No. 61, 2013**

**An Act to amend the law in relation to  
superannuation, corporations and first home saver  
accounts, and for related purposes**

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



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**An Act to amend the law in relation to  
superannuation, corporations and first home saver  
accounts, and for related purposes**

*[Assented to 26 June 2013]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

## 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 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 June 2013
2. Schedule 1, items 1 to 3	1 July 2013.	1 July 2013
3. Schedule 1, items 4 to 6	1 July 2015.	1 July 2015
4. Schedule 1, items 7 and 8	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)
5. Schedule 1, item 9	1 July 2013.	1 July 2013
6. Schedule 1, item 10	Immediately after the commencement of item 1A of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	28 November 2012
6A. Schedule 1, items 10A to 10E	Immediately after the commencement of item 8 of Schedule 3 to the <i>Superannuation</i>	1 July 2013

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	
7. Schedule 1, item 11	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012.</i>	1 July 2013
8. Schedule 1, item 12	The day after this Act receives the Royal Assent.	27 June 2013
8A. Schedule 1, item 12A	Immediately after the commencement of item 22 of Schedule 3 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	1 July 2013
8B. Schedule 1, items 12B to 12P	Immediately after the commencement of item 8 of Schedule 4 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.</i>	1 January 2013
9. Schedule 1, items 13 to 15	1 July 2013.	1 July 2013
10. Schedule 1, items 16 and 17	The day this Act receives the Royal Assent.	26 June 2013
11. Schedule 1, items 18 and 19	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)
12. Schedule 1, item 20	1 July 2013.	1 July 2013
13. Schedule 1, items 21 and 22	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
14. Schedule 1, item 23	1 July 2013.	1 July 2013
15. Schedule 1, items 24 and 25	The day after this Act receives the Royal Assent.	27 June 2013
16. Schedule 1, items 26 to 37	1 July 2013.	1 July 2013
17. Schedule 1, items 38 to 42B	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)
18. Schedule 1, item 43	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	1 July 2013
19. Schedule 1, items 44 to 47	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)
19A. Schedule 1, item 47A	Immediately after the commencement of item 12 of Schedule 4 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> .	1 January 2013
20. Schedule 1, items 48 to 61	1 July 2013.	1 July 2013
21. Schedule 1, items 62 to 69	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012</i> .	1 July 2013
22. Schedule 1, item 70	1 July 2013. However, if item 9 of Schedule 3 to the	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Act 2013</i> commences on 1 July 2013, the provision(s) do not commence at all.	
23. Schedule 1, item 71	Immediately after the commencement of item 9 of Schedule 3 to the <i>Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Act 2013</i> .  However, if item 9 of Schedule 3 to the <i>Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Act 2013</i> does not commence on 1 July 2013, the provision(s) do not commence at all.	
24. Schedule 1, items 72 to 110	1 July 2013.	1 July 2013
25. Schedule 1, item 111	Immediately after the commencement of Schedule 7 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> .	
26. Schedule 1, items 112 to 115	1 July 2013.	1 July 2013
27. Schedule 1, item 116	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after item 7 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commences.	27 June 2013 (paragraph (a) applies)
28. Schedule 1, item 117	Immediately after the commencement of Schedule 7 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> .	1 July 2013
29. Schedule 1, items 118 and 119	The later of: (a) the day after this Act receives the Royal	27 June 2013 (paragraph (a)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	Assent; and (b) the day after Schedule 6 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> commences.	applies)
29A. Schedule 1, items 119A to 119C	Immediately after the commencement of item 13 of Schedule 4 to the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> .	1 January 2013
30. Schedule 1, item 120	The day this Act receives the Royal Assent.	26 June 2013
31. Schedule 1, items 121 to 123	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day after items 12 and 13 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> commence.	27 June 2013 (paragraph (a) applies)
32. Schedule 1, items 124 to 128	1 July 2013.	1 July 2013
33. Schedule 1, items 129 and 130	The day this Act receives the Royal Assent.	26 June 2013

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

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

### **3 Schedule(s)**

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

## **Schedule 1—Amendments**

### **Part 1—Amendments**

#### *Corporations Act 2001*

##### **1 Paragraph 211(3)(a)**

Omit “fund for the purposes of making provision for, or obtaining, superannuation benefits”, substitute “fund or scheme for the purposes of making provision for, or obtaining, superannuation benefits (including defined benefits)”.

##### **2 Subsection 556(2) (definition of *superannuation contribution*)**

Omit “fund for the purposes of making provision for, or obtaining, superannuation benefits”, substitute “fund or scheme for the purposes of making provision for, or obtaining, superannuation benefits (including defined benefits)”.

##### **3 Paragraph 596AA(2)(b)**

Omit “fund for the purposes of making provision for, or obtaining, superannuation benefits”, substitute “fund or scheme for the purposes of making provision for, or obtaining, superannuation benefits (including defined benefits)”.

##### **4 Paragraph 912A(1)(d)**

Omit “unless the licensee is a body regulated by APRA—”, substitute “subject to subsection (4)—”.

##### **5 Paragraph 912A(1)(h)**

Omit “unless the licensee is a body regulated by APRA—”, substitute “subject to subsection (5)—”.

##### **6 At the end of section 912A**

Add:

(4) Paragraph (1)(d):

(a) does not apply to a body regulated by APRA, unless the body is an RSE licensee; and

(b) does not apply to an RSE licensee, unless the RSE licensee is also the responsible entity of a registered scheme.

(5) Paragraph (1)(h):

(a) does not apply to a body regulated by APRA, unless the body is an RSE licensee that is also the responsible entity of a registered scheme; and

(b) does not apply to an RSE licensee that is also the responsible entity of a registered scheme, to the extent that the risk relates solely to the operation of a regulated superannuation fund by the RSE licensee.

(6) In subsections (4) and (5):

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

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

## 7 Subsection 947D(1)

Repeal the subsection, substitute:

(1) This section applies (subject to subsection (4)) if the advice is or includes a recommendation that:

(a) the client dispose of, or reduce the client's interest in, all or part of a particular financial product and instead acquire all or part of, or increase the client's interest in, another financial product; or

(b) the client dispose of, or reduce the client's interest in, a MySuper product offered by a regulated superannuation fund and instead acquire an interest, or increase the client's interest, in another MySuper product or a choice product offered by the fund.

## 8 At the end of section 947D

Add:

(5) In this section:

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

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### **9 Subsection 964(3)**

Repeal the subsection, substitute:

- (3) The definition of *custodial arrangement* in subsection 1012IA(1) is to be read as if the reference in that definition to an instruction included a reference to:
- (a) a direction of the kind mentioned in paragraph 58(2)(d) or (da) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind; and
  - (b) a direction of the kind mentioned in subsection 52B(4) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind.

### **10 Subsection 1017B(9)**

Insert:

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

### **10A Paragraph 1017BA(1)(c)**

Repeal the paragraph, substitute:

- (c) that the information set out in each product dashboard about fees and other costs is updated within 14 days after the end of a period prescribed by the regulations; and

### **10B Subsection 1017BA(2)**

Repeal the subsection, substitute:

- (2) The product dashboard for a MySuper product must set out:
- (a) the following, worked out in accordance with the regulations in relation to the period or periods prescribed by the regulations:
    - (i) a return target or return targets for the product;
    - (ii) a return or returns for the product;
    - (iii) a comparison or comparisons between return targets and returns for the product;
    - (iv) the level of investment risk that applies to the product;

- (v) a statement of fees and other costs in relation to the product; and
- (b) any other information prescribed by the regulations.

### **10C Subsection 1017BA(3)**

Repeal the subsection, substitute:

- (3) Subject to subsection (4), the product dashboard for a choice product must set out:
  - (a) the following for each investment option offered within the choice product, worked out in accordance with the regulations in relation to the period or periods prescribed by the regulations:
    - (i) a return target or return targets for the investment option;
    - (ii) a return or returns for the investment option;
    - (iii) a comparison or comparisons between return targets and returns for the investment option;
    - (iv) the level of investment risk that applies to the investment option;
    - (v) a statement of fees and other costs in relation to the investment option; and
  - (b) any other information prescribed by the regulations.

### **10D After subsection 1017BA(4)**

Insert:

- (4A) The regulations may prescribe circumstances in which assets of a regulated superannuation fund are, or are not, to be treated as invested in a single asset for the purposes of paragraph (4)(c).

### **10E Subsection 1017BA(5) (definition of *quarter*)**

Repeal the definition.

### **11 Subsection 1526(2)**

Repeal the subsection, substitute:

- (2) The definition of *custodial arrangement* in subsection 1012IA(1) is to be read as if the reference in that definition to an instruction included a reference to:

- (a) a direction of the kind mentioned in paragraph 58(2)(d) or (da) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind; and
- (b) a direction of the kind mentioned in subsection 52B(4) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind.

## **12 After Part 10.21**

Insert:

### **Part 10.21A—Transitional provisions relating to the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013**

#### **1538A Application of amendments relating to contributions to a fund or scheme**

The amendments made by items 1, 2 and 3 of Schedule 1 to the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013* apply to contributions paid or payable on or after 1 July 2013.

#### **1538B Application of amendments relating to Statements of Advice**

The amendments made by items 7 and 8 of Schedule 1 to the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013* apply in relation to personal advice given on or after the commencement of those items.

#### **12A Section 1540**

Omit “31 December 2013”, substitute “30 June 2014”.

***Fair Work Act 2009***

**12B Subsection 155A(2)**

Omit “FWA”, substitute “the FWC”.

**12C Subsection 155A(3)**

Omit “FWA” (first occurring), substitute “The FWC”.

**12D Paragraph 155A(3)(a)**

Omit “FWA”, substitute “the FWC”.

**12E Subsection 155A(4)**

Omit “FWA”, substitute “the FWC”.

**12F Subsection 155A(5)**

Omit “FWA” (first occurring), substitute “The FWC”.

**12G Paragraph 155A(5)(a)**

Omit “FWA”, substitute “the FWC”.

**12H Clause 10 of Schedule 1 (heading)**

Omit “FWA”, substitute “FWC”.

**12J Subclause 10(2) of Schedule 1**

Omit “FWA”, substitute “The FWC”.

**12K Clause 11 of Schedule 1 (heading)**

Omit “FWA”, substitute “FWC”.

**12L Subclause 11(2) of Schedule 1**

Omit “FWA” (first occurring), substitute “The FWC”.

**12M Subclause 11(2) of Schedule 1**

Omit “FWA” (second occurring), substitute “the FWC”.

**12N Subclause 11(3) of Schedule 1**

Omit “FWA”, substitute “The FWC”.

**12P Clause 12 of Schedule 1**

Omit “FWA”, substitute “the FWC”.

***First Home Saver Accounts Act 2008***

**13 Section 18**

Insert:

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

**14 Section 93**

Repeal the section, substitute:

**93 Capital requirements**

The capital requirements under this section are met by an applicant if it satisfies the financial requirements that apply under the Prudential Standards.

**15 After paragraph 114(2)(a)**

Insert:

(aa) to:

- (i) a director of an FHSA provider; and
- (ii) a secretary of an FHSA provider; and
- (iii) another person who is concerned or takes part in the management of an FHSA provider;

where the FHSA provider holds such an authorisation, in the same way that they apply to a responsible officer of an RSE licensee that is a trustee of a public offer superannuation fund; and

**16 Paragraph 115(b)**

Omit “, 2B and 3”, substitute “and 2B”.

**17 After paragraph 115(b)**

Insert:

(ba) Parts 3, 3A and 3B;

**18 Paragraph 115(b)**

Omit “and 2B”, substitute “, 2B and 2C”.

**19 Paragraph 115(d)**

Omit “and 55A”, substitute “, 55A and 55B”.

**20 Paragraph 115(d)**

After “and 55B”, insert “and subsection 52(7)”.

**21 Paragraph 115(g)**

Omit “11”, substitute “11A”.

**22 Paragraph 115(k)**

Repeal the paragraph, substitute:  
(k) Parts 32 and 33.

**23 Paragraph 115(k)**

Omit “and 33”, substitute “, 33 and 34”.

**24 After paragraph 116(b)**

Insert:

(ba) treat references to “the prudential standards” as references to the Prudential Standards;

**25 Subsection 119(3)**

Omit “paragraph 146(1)(d)”, substitute “paragraph 146(d)”.

**26 Subsections 120(2) to (7)**

Repeal the subsections, substitute:

- (2) Treat the reference in paragraph 52(2)(b) of the *Superannuation Industry (Supervision) Act 1993* to a “prudent superannuation trustee” as a reference to a prudent FHSA provider.
- (3) After subparagraph 52(6)(a)(vii) of the *Superannuation Industry (Supervision) Act 1993*, insert the following subparagraph:
  - (vii a) if the trustee holds an authorisation as an FHSA provider—the risk of capital losses in light of the purpose of the FHSA and the minimum term of the

FHSA having regard to subparagraph 32(1)(c)(i) or (ii) of the *First Home Saver Accounts Act 2008*;

- (4) Treat the reference in paragraph 52A(2)(b) of the *Superannuation Industry (Supervision) Act 1993* to a “prudent superannuation entity director” as a reference to a prudent director of an FHSA provider.

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

#### **27 Section 4 (after table item dealing with Part No. 21)**

Insert:

22 | infringement notices

#### **28 Subparagraph 6(1)(a)(x)**

Omit “23”, substitute “22”.

#### **29 Subsection 10(1) (definition of *actuary*)**

Repeal the definition.

#### **30 Subsection 10(1) (definition of *approved auditor*)**

Repeal the definition.

#### **31 Subsection 10(1)**

Insert:

*APRA staff member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

#### **32 Subsection 10(1) (paragraph (dq) of the definition of *reviewable decision*)**

Omit “subsection 35A(2A)”, substitute “subsection 35A(3)”.

#### **33 Subsection 10(1)**

Insert:

*RSE actuary* means a person who is appointed as an actuary of a registrable superannuation entity.

#### **34 Subsection 10(1)**

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Insert:

**RSE auditor** means a person who is appointed as an auditor of a registrable superannuation entity.

### 35 Subsection 10(1)

Insert:

**SMSF actuary** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

### 36 Subsection 10(1)

Insert:

**superannuation actuary** means:

- (a) an RSE actuary; or
- (b) an SMSF actuary.

### 37 Subsection 10(1)

Insert:

**superannuation auditor** means:

- (a) an RSE auditor; or
- (b) an approved SMSF auditor.

### 38 Paragraph 29T(1)(j)

Omit “or 29WA”, substitute “, 29WA or 29WB”.

### 39 Paragraph 29TC(1)(g)

Omit “unless the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; and”, substitute:

unless:

- (i) the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; or
- (ii) the person who holds the interest has died and the interest is replaced with a beneficial interest of another class in the fund of a kind, and in the circumstances, prescribed by the regulations; and

**39A At the end of subsection 29TC(1)**

Add:

- ; and (j) no member who holds a beneficial interest of that class in the fund is precluded from holding a beneficial interest of another class in the fund because of that fact; and
- (k) no member is precluded from holding a beneficial interest of that class in the fund because the member holds a beneficial interest of another class in the fund.

**40 Paragraph 29U(2)(b)**

Omit “the RSE licensee was authorised”, substitute “authority was given”.

**41 Paragraph 29U(2)(e)**

Omit “or 29WA”, substitute “, 29WA or 29WB”.

**41A Subsection 29U(4)**

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

**41B Subsection 29VA(8)**

Repeal the subsection, substitute:

*Administration fee exemption for employees of an employer-sponsor*

- (8) This rule is satisfied if:
  - (a) the fee is an administration fee charged in relation to one or more members of the fund who hold the MySuper product in accordance with the administration fee exemption for employees of an employee-sponsor (see section 29VB); and
  - (b) in relation to those members of the fund who hold the MySuper product but in relation to whom the administration fee is not charged in accordance with the administration fee exemption for employees of an employee-sponsor (the **remaining members**)—the fee would satisfy the charging rule in subsection (2), (3) or (4) if the remaining members were the only members of the fund who held the MySuper product.

Note: In some circumstances, the RSE licensee may wish to offer a MySuper product for the employees of a large employer or its

## Schedule 1 Amendments

### Part 1 Amendments

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associates (see sections 29T and 29TB). Any fee set for that MySuper product may differ from the equivalent fee set for another MySuper product within the fund. In other circumstances, a separate MySuper product may not be offered, but instead a lower administration fee charged to the employees of a particular employer-sponsor (see section 29VB).

#### **42 Before paragraph 29VB(1)(a)**

Insert:

- (aa) although the trustee, or the trustees, of the fund are authorised to offer the MySuper product, it is not on the basis that section 29TB was satisfied in relation to that class of beneficial interest in the fund; and

#### **42A Paragraph 29VB(1)(b)**

Omit “one or more”, substitute “those”.

#### **42B At the end of Division 5 of Part 2C**

Add:

#### **29VE Percentage-based administration fees may be capped**

If, under the governing rules of a regulated superannuation fund:

- (a) all or part of the administration fee in relation to a MySuper product is charged to those members of the fund who hold the product as a percentage of so much of the account balance of each of those members that relates to the MySuper product; and
- (b) the amount of the administration fee is capped at a specified amount; and
- (c) the cap is the same for all of those members; and
- (d) but for the fact that the administration fee is capped in that way, a charging rule in section 29VA would be satisfied in relation to the administration fee;

that charging rule is taken to be satisfied in relation to the administration fee.

#### **43 Section 29VP**

Repeal the section, substitute:

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

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

#### **29VPA Contravention of section 29VO**

- (1) A person must not contravene section 29VO.
- (2) A contravention of subsection (1) is not an offence and a contravention of that subsection does not result in the invalidity of a transaction.
- (3) A person who suffers loss or damage as a result of the conduct of another person that was engaged in in contravention of subsection (1) may, with the leave of the court, recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (4) A person may, within 6 years after the day on which the cause of action arose, seek the leave of the court to bring such an action.
- (5) In deciding whether to grant leave to bring such an action, the court must take into account whether:
  - (a) the applicant is acting in good faith; and
  - (b) there is a serious question to be tried.
- (6) The court may, in granting leave to bring such an action, specify a period within which the action may be brought.

#### **44 Paragraph 29WA(1)(c)**

Repeal the paragraph, substitute:

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- (c) either:
- (i) the person has not given the trustee, or the trustees, of the fund a direction that the contribution is to be invested under one or more specified investment options; or
  - (ii) the person has given the trustee, or the trustees, of the fund a direction that some of the contribution is to be invested under one or more specified investment options, but no such direction has been made in relation to the remainder of the contribution.

#### **45 Subsection 29WA(2)**

Omit “election has been made” (wherever occurring), substitute “direction has been given”.

#### **46 At the end of section 29WA**

Add:

*Directions*

- (4) For the purposes of this section, a direction that it is alleged was given to the trustee, or the trustees, of the fund after 31 March 2013 is taken not to have been given if:
  - (a) the direction was not given in writing; or
  - (b) a copy of the direction is not held by or on behalf of the trustee, or the trustees, of the fund.
- (5) The regulations may prescribe circumstances in which a direction given to the trustee, or the trustees, of one regulated superannuation fund is to be taken to be a direction given to the trustee, or the trustees, of another regulated superannuation fund for the purposes of this section.

*Exception—life policies, investment account contracts and cash investment options*

- (6) If an asset (or assets) attributed to the person mentioned in subsection (1) is invested in one or more of the following on 31 March 2013:
  - (a) 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;

- (b) a life policy under which the benefit to the person (or a relative or dependant of the person) is based only on the realisation of a risk, not the performance of an investment;
- (c) an investment account contract the only beneficiaries of which are the person, and relatives and dependants of the person;
- (d) an investment option under which the investment is held as cash;

subsection (2) does not apply to the extent that a contribution to the fund for the benefit of the person is invested in the life policy, under the investment account contract or in the cash investment option.

#### **47 After section 29WA**

Insert:

#### **29WB Contributions by large employer in relation to which no election is made to be paid into large employer MySuper product**

- (1) This section applies if:
  - (a) the trustee, or the trustees, of a regulated superannuation fund are authorised to offer a class of beneficial interest in the fund as a MySuper product on the basis that section 29TB is satisfied in relation to that class of beneficial interest; and
  - (b) a member (other than a defined benefit member) is entitled to hold the MySuper product; and
  - (c) a contribution is made for the benefit of the member; and
  - (d) either:
    - (i) the member has not given the trustee, or the trustees, of the fund a direction that the contribution is to be invested under one or more specified investment options; or
    - (ii) the member has given the trustee, or the trustees, of the fund a direction that some of the contribution is to be invested under one or more specified investment options, but no such direction has been made in relation to the remainder of the contribution.

- (2) The trustee, or the trustees, of the fund must treat so much of the contribution in relation to which no direction is given as a contribution to be paid into the MySuper product.
- (3) A trustee commits an offence if the trustee contravenes subsection (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note 1: 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.

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

*Directions*

- (4) For the purposes of this section, a direction that it is alleged was given to the trustee, or the trustees, of the fund after 31 March 2013 is taken not to have been given if:
- (a) the direction was not given in writing; or
  - (b) a copy of the direction is not held by or on behalf of the trustee, or the trustees, of the fund.
- (5) The regulations may prescribe circumstances in which a direction given to the trustee, or the trustees, of one regulated superannuation fund is to be taken to be a direction given to the trustee, or the trustees, of another regulated superannuation fund for the purposes of this section.

*Exception—life policies, investment account contracts and cash investment options*

- (6) If an asset (or assets) attributed to the member mentioned in subsection (1) is invested in one or more of the following on 31 March 2013:
- (a) 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;
  - (b) 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;

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

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

subsection (2) does not apply to the extent that a contribution to the fund for the benefit of the member is invested in the life policy, under the investment account contract or in the cash investment option.

#### **47A Section 29XC**

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

#### **48 Before section 35**

Insert:

### **Division 1—Objects**

#### **49 Section 35A**

Repeal the section, substitute:

### **Division 2—Obligations for registrable superannuation entities**

#### **35A Accounting records**

*Accounting records must be kept etc.*

- (1) Each trustee of a registrable superannuation entity must ensure that:
  - (a) accounting records that correctly record and explain the transactions and financial position of the RSE licensee for the entity and the entity are kept; and
  - (b) the accounting records of the RSE licensee and the entity are kept in a way that enables:
    - (i) the preparation of reporting documents referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*; and

- (ii) the preparation of any other documents required to be audited under the RSE licensee law; and
  - (c) the accounting records of the RSE licensee and the entity are kept in a way that enables those reporting documents and other documents to be conveniently and properly audited in accordance with the RSE licensee law.
- (2) If accounting records of an RSE licensee or a registrable superannuation entity are kept in accordance with subsection (1), each trustee of the entity must ensure that:
  - (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
  - (b) the records are kept either:
    - (i) in Australia; or
    - (ii) in another country if the Regulator gives written approval for the records to be kept in that country, and the conditions (if any) specified in the approval are met; and
  - (c) the records are kept:
    - (i) in writing in the English language; or
    - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.
- (3) An approval given under subparagraph (2)(b)(ii) may be given subject to specified conditions.

*Notification of address where accounting records are kept*

- (4) A trustee of a registrable superannuation entity must notify APRA, in the approved form, of the address where the accounting records of the RSE licensee and the entity are kept:
  - (a) if, immediately before the commencement of this subsection, APRA has not already been notified of the current address where the accounting records of the RSE licensee or the entity are kept—within 28 days after that commencement; or
  - (b) otherwise—within 28 days after the entity is registered under section 29M.
- (5) If:

- (a) a trustee of a registrable superannuation entity has notified APRA of the address where the accounting records of the RSE licensee and the entity are kept; and
- (b) the entity moves the accounting records to a new address; a trustee of the entity must notify APRA, in the approved form and within 28 days after the day on which the accounting records are moved to the new address, of the new address where the accounting records are kept.

*Offences*

- (6) A trustee commits an offence if the trustee contravenes subsection (1), (2), (4) or (5).

Penalty: 100 penalty units.

- (7) A trustee commits an offence of strict liability if the trustee contravenes subsection (1), (2), (4) or (5).

Penalty: 50 penalty units.

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

**35AB Auditor requests for documents**

- (1) If the auditor of a registrable superannuation entity requests, in writing, a trustee of the entity to give the auditor a document, each trustee of the entity must ensure that the document is given to the auditor within 14 days of the request being made. An auditor may only request documents that are relevant to the preparation of a report about the operations of the entity or the RSE licensee of the entity.

- (2) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: Imprisonment for 2 years.

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

Penalty: 50 penalty units.

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

### **35AC Appointed auditor's functions and duties**

- (1) This section applies if the RSE licensee law:
  - (a) requires an auditor of a registrable superannuation entity to be appointed; or
  - (b) requires or permits a function or duty to be performed, or a power to be exercised, by an auditor.
- (2) The RSE licensee of the registrable superannuation entity must not appoint a person as an auditor of the entity unless the RSE licensee is reasonably satisfied that the person:
  - (a) meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; and
  - (b) has not been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D.
- (3) A person who is appointed as an auditor must perform the functions and duties set out in the RSE licensee law that are relevant to the person's appointment.
- (4) The appointed auditor must comply with the RSE licensee law in performing the functions and duties.
- (5) The trustee of the registrable superannuation entity to whom the RSE licensee law applies must make any arrangements that are necessary to enable the appointed auditor to perform the functions and duties.
- (6) The RSE licensee of the registrable superannuation entity must end the appointment of a person as an auditor of the entity if the RSE licensee becomes aware that the person:
  - (a) no longer meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; or
  - (b) has been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D.

### **35AD Appointed actuary's functions and duties**

- (1) This section applies if the RSE licensee law:
-

- (a) requires an actuary of a registrable superannuation entity to be appointed; or
  - (b) requires or permits a function or duty to be performed, or a power to be exercised, by an actuary.
- (2) The RSE licensee of a registrable superannuation entity must not appoint a person as an actuary of the entity unless the RSE licensee is reasonably satisfied that the person:
  - (a) meets the eligibility criteria for actuaries of registrable superannuation entities set out in the prudential standards; and
  - (b) has not been disqualified from being or acting as an actuary of a registrable superannuation entity under section 130D.
- (3) A person who is appointed as an actuary must perform the functions and duties set out in the RSE licensee law that are relevant to the person's appointment.
- (4) The appointed actuary must comply with the RSE licensee law in performing the functions and duties.
- (5) The trustee of the registrable superannuation entity to whom the RSE licensee law applies must make any arrangements that are necessary to enable the appointed actuary to perform the functions and duties.
- (6) The RSE licensee of a registrable superannuation entity must end the appointment of a person as an actuary of the entity if the RSE licensee becomes aware that the person:
  - (a) no longer meets the eligibility criteria for actuaries of registrable superannuation entities set out in the prudential standards; or
  - (b) has been disqualified from being or acting as an actuary of a registrable superannuation entity under section 130D.

## **Division 3—Obligations for self managed superannuation funds**

### **35AE Accounting records**

*Accounting records must be kept etc.*

- (1) Each trustee of a superannuation entity that is a self managed superannuation fund must ensure that:
  - (a) accounting records that correctly record and explain the transactions and financial position of the entity are kept; and
  - (b) the accounting records of the entity are kept in a way that enables the following to be prepared:
    - (i) the accounts and statements of the entity referred to in section 35B;
    - (ii) the returns of the entity referred to in section 35D; and
  - (c) the accounting records of the entity are kept in a way that enables those accounts, statements and returns to be conveniently and properly audited in accordance with this Act.
  
- (2) If accounting records of a superannuation entity that is a self managed superannuation fund are kept in accordance with subsection (1), each trustee of the superannuation entity must ensure that:
  - (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
  - (b) the records are kept in Australia; and
  - (c) the records are kept:
    - (i) in writing in the English language; or
    - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.

#### *Offences*

- (3) A trustee commits an offence if the trustee contravenes subsection (1) or (2).

Penalty: 100 penalty units.

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

Penalty: 50 penalty units.

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

**50 Section 35B (heading)**

Repeal the heading, substitute:

**35B Accounts and statements**

**51 Section 35C (heading)**

Repeal the heading, substitute:

**35C Audit of accounts and statements**

**52 Subsection 35C(1)**

After “superannuation entity”, insert “that is a self managed superannuation fund”.

**53 Subsection 35C(1)**

Omit “approved auditor”, substitute “approved SMSF auditor”.

**54 Subsection 35C(1)**

Omit “, and the RSE licensee (if any) of the entity,”.

**55 Subsection 35C(1)(note)**

Repeal the note.

**56 Subsection 35C(1A)**

Repeal the subsection.

**57 Subsection 35C(2)**

After “superannuation entity”, insert “that is a self managed superannuation fund”.

**58 Subsection 35C(5)**

Repeal the subsection, substitute:

- (5) Without limiting subsection (1), an approved form:
- (a) must either:
    - (i) relate solely to the audit of the accounts and statements referred to in subsection 35B(1) and prepared in respect of a year of income; or
    - (ii) relate only to the audit of those accounts and statements and of any other accounts and statements, prepared in respect of a year of income, that are identified in the form; and
  - (b) must include a statement by the auditor as to the extent of the auditor's compliance with the auditor independence requirements referred to in paragraph 128F(d); and
  - (c) must include a statement by the auditor as to whether, in the auditor's opinion, each trustee of the entity has, during the year of income, complied with the provisions of this Act and the regulations that are identified in the form.

**59 Subsection 35C(7)**

Repeal the subsection.

**60 Section 35D (heading)**

Repeal the heading, substitute:

**35D Trustee to lodge annual returns**

**61 Section 36**

Repeal the section.

**62 Before subsection 55(1)**

Insert:

*Covenants must be complied with*

**63 Before subsection 55(2)**

Insert:

*Breach of covenant not an offence and does not result in invalidity*

**64 Before subsection 55(3)**

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Insert:

*Breach of covenant may result in action to recover loss or damage*

**65 Subsection 55(3)**

Omit “A person”, substitute “Subject to subsection (4A), a person”.

**66 Subsection 55(4)**

Repeal the subsection, substitute:

- (4) Unless an action under subsection (3) is of a kind dealt with in subsections (4A) to (4D), it may be begun at any time within 6 years after the day on which the cause of action arose.

*Leave of court required where directors’ covenants contravened*

(4A) If:

- (a) the person who is alleged to have contravened subsection (1) is or was a director of a corporate trustee of a registrable superannuation entity; and
- (b) it is alleged that the contravention is of a covenant that is contained, or taken to be contained, in the governing rules of the entity, and is:
  - (i) a covenant of the kind mentioned in subsection 52A(2);  
or
  - (ii) a covenant prescribed under section 54A that relates to the conduct of the director of a corporate trustee of a registrable superannuation entity;

an action under subsection (3) may be brought only with the leave of the court.

- (4B) A person may, within 6 years after the day on which the cause of action arose, seek the leave of the court to bring such an action.
- (4C) In deciding whether to grant an application for leave to bring such an action, the court must take into account whether:
- (a) the applicant is acting in good faith; and
  - (b) there is a serious question to be tried.
- (4D) The court may, in granting leave to bring such an action, specify a period within which the action may be brought.

**67 Before subsection 55(5)**

Insert:

*Defences in actions to recover loss or damage*

**68 Subsection 55(5)**

Omit “in relation to the investment”, substitute “in relation to each act, or failure to act, that resulted in the loss or damage”.

**69 Subsection 55(6)**

Omit “in relation to the management of the reserve”, substitute “in relation to each act, or failure to act, that resulted in the loss or damage”.

**70 At the end of subsections 56(2) and 57(2)**

Add:

; or (c) the payment of any amount payable under an infringement notice.

**71 After paragraphs 56(2)(b) and 57(2)(b)**

Insert:

(c) the payment of any amount payable under an infringement notice; or

**72 After section 58**

Insert:

**58A Service providers and investments cannot be limited to particular persons or associates**

*Does not apply to self managed superannuation funds*

- (1) This section does not apply to a regulated superannuation fund that is a self managed superannuation fund.

*Service providers*

- (2) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies a person or persons (whether by name or in any other way, directly or indirectly) from

whom the trustee, or one or more of the trustees, of the fund may or must acquire a service.

*Investments in entities*

- (3) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies an entity or entities (whether by name or in any other way, directly or indirectly) in or through which one or more of the assets of the fund may or must be invested.

*Financial products*

- (4) A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies (whether by name or by reference to an entity) a financial product or financial products:
- (a) in or through which one or more of the assets of the fund may or must be invested; or
  - (b) that may or must be purchased using assets of the fund; or
  - (c) in relation to which one or more assets of the fund may or must be used to make payments.

*Exception*

- (5) Subsections (2), (3) and (4) do not apply if the relevant person, entity or financial product is specified in a law of the Commonwealth or of a State or Territory, or is required to be specified under such a law.

**58B Service providers and investments**

- (1) This section applies if a trustee, or the trustees, of a regulated superannuation fund does one or more of the following:
- (a) acquires a service from an entity;
  - (b) invests assets of the fund in or through an entity;
  - (c) invests assets of the fund in or through a financial product;
  - (d) purchases a financial product using assets of the fund;
  - (e) uses assets of the fund to make payments in relation to a financial product.
- (2) If the trustee, or the trustees, would not breach:

- (a) a provision of any of the following:
  - (i) this or any other Act;
  - (ii) a legislative instrument made under this or any other Act;
  - (iii) the prudential standards;
  - (iv) the operating standards;
  - (v) the governing rules of the fund; or
- (b) any covenant referred to in this Part or prescribed under this Part;

in doing one or more of the things mentioned in subsection (1), the general law relating to conflict of interest does not apply to the extent that it would prohibit the trustee, or the trustees, from doing the thing.

### **73 At the end of Part 7**

Add:

#### **68C Voting by a director of a corporate trustee—governing rules**

- (1) This section applies to a regulated superannuation fund, other than a self managed superannuation fund, of which the trustee is a body corporate.
- (2) A provision in the governing rules of the fund is void to the extent that it purports to preclude a director of the trustee from voting on a matter relating to the fund.

#### *Exception*

- (3) Subsection (2) does not apply to a provision in the governing rules of the fund to the extent that the provision:
  - (a) precludes a director of the trustee of the fund from voting on a matter in which the director has a material personal interest; or
  - (b) otherwise relates to voting by a director of the trustee of the fund on a matter in which the director has a material personal interest; or
  - (c) precludes a director of the trustee of the fund from voting where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or

- (d) otherwise relates to voting by a director of the trustee of the fund where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or
- (e) precludes a director of the trustee of the fund from exercising a casting vote; or
- (f) ensures compliance by the trustee of the fund, or a director of the trustee of the fund, with a prudential standard that deals with conflicts of interest or duty.

#### **68D Voting by an individual trustee—governing rules**

- (1) This section applies to a regulated superannuation fund, other than a self managed superannuation fund, of which the trustee, or each of the trustees, is an individual.
- (2) A provision in the governing rules in the fund is void to the extent that it purports to preclude a trustee of the fund from voting on a matter relating to the fund.

##### *Exception*

- (3) Subsection (2) does not apply to a provision in the governing rules of the fund to the extent that the provision:
  - (a) precludes a trustee of the fund from voting on a matter in which the trustee has a material personal interest; or
  - (b) otherwise relates to voting by a trustee of the fund on a matter in which the trustee has a material personal interest; or
  - (c) precludes a trustee of the fund from voting where there is a conflict of a kind described in paragraph 52(2)(d); or
  - (d) otherwise relates to voting by a trustee of the fund where there is a conflict of a kind described in paragraph 52(2)(d);  
or
  - (e) precludes a trustee of the fund from exercising a casting vote;  
or
  - (f) ensures compliance by a trustee of the fund with a prudential standard that deals with conflicts of interest or duty.

#### **74 At the end of subsection 101(1)**

Add:

- ; and (c) if a person referred to in subsection (1A) makes a complaint that relates to the payment of a death benefit:

- (i) the person is given written reasons for a decision made by the trustee in relation to the complaint when the person is given notice of the decision; or
- (ii) if no decision is made in relation to the complaint within 90 days after the complaint is made—the person may, by giving notice in writing to a trustee of the fund, request written reasons for the failure to make a decision in relation to the complaint within that period; and
- (d) if a person referred to in subsection (1A) makes a complaint of another kind specified in that subsection in relation to the person, the person may, by giving notice in writing to a trustee of the fund, request written reasons for:
  - (i) a decision made by the trustee in relation to the complaint; or
  - (ii) if no decision is made in relation to the complaint within 90 days after the complaint is made—the failure to make a decision in relation to the complaint within that period; and
- (e) if a notice requesting written reasons is given in the circumstances set out in subparagraph (c)(ii) or paragraph (d), the written reasons are given to the person within 28 days after the notice is given, or such longer period as the Regulator, in writing, permits.

**75 After sub-subparagraph 107(2)(a)(ii)(D)**

Insert:

- (DA) the member representative no longer meeting one or more of the criteria for fitness and propriety relevant to the member representative set out in the prudential standards; or

**76 After subparagraph 108(2)(a)(ii)**

Insert:

- (ia) the additional independent trustee or additional independent director no longer meeting one or more of the criteria for fitness and propriety relevant to the independent trustee or independent director set out in the prudential standards; or

**77 After subsection 126H(6)**

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Insert:

- (6A) In deciding whether it is satisfied as mentioned in subsection (5), the Court may also take into account any criteria for fitness and propriety that are relevant to the trustee or responsible officer set out in the prudential standards.

**78 Subparagraph 129(1)(a)(i)**

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

**79 Paragraph 129(1)(b)**

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

**80 Paragraph 130(1)(b)**

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

**81 After paragraph 130A(b)**

Insert:

- (ba) the prudential standards; or

**82 Section 130A**

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

**83 Subparagraphs 130C(1)(a)(i) and (ii)**

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

**84 Paragraph 130C(1)(b)**

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

**85 Subsection 130D(3)**

Omit “approved auditor”, substitute “auditor”.

**86 Subparagraph 130D(4)(a)(i)**

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

**87 Subparagraph 130D(4)(a)(iii)**

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

**88 After paragraph 130D(4)(a)**

Insert:

- (aa) the person has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or

**89 Paragraph 130D(5)(a)**

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

**90 After subsection 130D(5)**

Insert:

- (5A) In deciding whether it is satisfied as mentioned in paragraph (4)(b), the Court may also take into account any criteria for fitness and propriety that are relevant to the person as auditor or actuary set out in the prudential standards.

**91 Paragraph 130D(6)(a)**

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

**92 Paragraphs 131AA(1)(a) and 131AA(2)(a)**

Omit “approved auditor”, substitute “auditor”.

**93 After paragraph 131AA(2)(b)**

Insert:

- (ba) the person has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or

**94 Paragraph 131AA(2)(c)**

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

**95 After subsection 131AA(2)**

Insert:

(2A) In deciding, for the purposes of paragraph (2)(b), whether a person is a fit and proper person to hold an appointment, APRA may take into account any criteria for fitness and propriety that are relevant to the appointment set out in the prudential standards.

**96 Subsection 131A(1)**

Omit “an approved auditor (other than an approved SMSF auditor) or an actuary” (first occurring), substitute “an RSE auditor or a superannuation actuary”.

**97 Subparagraph 131A(1)(a)(i)**

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

**98 Subparagraph 131A(1)(a)(iii)**

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

**99 After paragraph 131A(1)(a)**

Insert:

(aa) has been or acted as the auditor or actuary of a registrable superannuation entity, knowing that he or she did not meet the relevant eligibility criteria set out in the prudential standards; or

**100 Paragraph 131A(1)(b)**

Omit “an approved auditor of a superannuation entity that is not a self managed superannuation fund, or to be an actuary,”, substitute “an RSE auditor or a superannuation actuary”.

**101 After subsection 131A(1)**

Insert:

(1A) In deciding whether it is satisfied as mentioned in paragraph (1)(b) in relation to a person who is or has been an RSE auditor or an

RSE actuary, the Regulator may also take into account any criteria for fitness and propriety that are relevant to the auditor or actuary set out in the prudential standards.

**102 Subsection 131A(2)**

Omit “an approved auditor or an actuary”, substitute “an RSE auditor or a superannuation actuary”.

**103 Subsection 131A(3)**

Omit “an approved auditor or actuary”, substitute “an RSE auditor or a superannuation actuary”.

**104 Subsection 131A(4)**

Omit “an approved auditor or an actuary”, substitute “an RSE auditor or a superannuation actuary”.

**105 Paragraphs 131B(1)(a) and (b)**

Omit “an actuary”, substitute “a superannuation actuary”.

**106 Paragraph 131B(2A)(a)**

Omit “an approved auditor of a kind other than an approved SMSF auditor”, substitute “an RSE auditor”.

**107 Paragraph 131B(2A)(b)**

Omit “such an approved auditor”, substitute “an RSE auditor”.

**108 At the end of section 134**

Add:

- (5) In deciding whether it is satisfied as mentioned in paragraph (4)(c) in relation to a person who is or has been a trustee of a registrable superannuation entity, the Regulator may also take into account any criteria for fitness and propriety that are relevant to the trustee set out in the prudential standards.

**109 At the end of section 135**

Add:

- (3) If:

- (a) a person (the *former trustee*) is suspended or removed as a trustee of a superannuation entity; and
- (b) a person is appointed under this Part to act as trustee of the superannuation entity; and
- (c) the acting trustee is required under the terms and conditions of his or her appointment to give information to APRA; and
- (d) the acting trustee gives the former trustee notice in writing of the requirement;

the former trustee must do all things reasonably practicable to assist the acting trustee to comply with the requirement.

- (4) The former trustee commits an offence of strict liability if the former trustee fails to comply with subsection (3).

Penalty for contravention of this subsection: 50 penalty units.

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

## **110 After section 139**

Insert:

### **139A Acting trustee authorised to offer a MySuper product**

- (1) This section applies if:
  - (a) the trustee, or the trustees, of a regulated superannuation fund is or are suspended or removed; and
  - (b) before the suspension or removal, the RSE licensee of the fund was authorised to offer a class of beneficial interest in the fund as a MySuper product.
- (2) The Regulator must not appoint a person to act as trustee of the fund unless the person has made elections of the kind referred to in sections 29SAA, 29SAB and 29SAC.
- (3) The person appointed to act as trustee of the fund is taken to have been authorised to offer that class of beneficial interest in the fund as a MySuper product.

## **111 Before section 140**

Insert:

### **139B Acting trustee authorised to operate an eligible rollover fund**

- (1) This section applies if the trustee, or the trustees, of an eligible rollover fund is or are suspended or removed.
- (2) The Regulator must not appoint a person to act as trustee of the fund unless the person has made elections of the kind referred to in sections 242B and 242C.
- (3) The person appointed to act as trustee of the fund is taken to have been authorised to operate the eligible rollover fund.

### **112 After Part 21**

Insert:

## **Part 22—Infringement notices**

### **Division 1—Overview**

#### **223 Simplified outline**

The following is a simplified outline of this Part:

This Part deals with the use of infringement notices if an infringement officer reasonably believes that a provision has been contravened.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice under this Part. The provision may be an offence provision or a civil penalty provision, or both.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

**223A Provisions *subject to an infringement notice***

- (1) An offence against one of the following provisions is ***subject to an infringement notice*** under this Part:
    - (a) subsection 18(7B);
    - (b) subsection 29W(1);
    - (c) subsection 29WA(3);
    - (d) subsection 29WB(3);
    - (e) subsection 35A(7);
    - (f) subsection 107(4);
    - (g) subsection 108(4);
    - (h) subsection 140(3);
    - (i) subsection 242P(1);
    - (j) subsection 260(3);
    - (k) subsection 262(2).
  
  - (2) An offence against one of the following provisions is ***subject to an infringement notice*** under this Part, unless the superannuation entity to which the offence relates is a self managed superannuation fund:
    - (a) subsection 11C(2), (3) or (4);
    - (b) subsection 63(7) or (10);
    - (c) subsection 64(3A);
    - (d) subsection 71EA(5);
    - (e) subsection 103(3);
    - (f) subsection 104(2);
    - (g) subsection 105(2);
    - (h) subsection 122(2);
    - (i) subsection 124(2);
    - (j) subsection 141A(3) or (6);
    - (k) subsection 252A(3).
  
  - (3) The regulations may provide that:
    - (a) an offence against a provision of this Act not already specified in this section, or a civil penalty provision in this Act, is ***subject to an infringement notice*** under this Part; and
    - (b) an offence against the regulations, or a civil penalty provision in the regulations, is ***subject to an infringement notice*** under this Part.
-

### **223B *Infringement officer***

- (1) A person is an ***infringement officer*** for the purposes of exercising powers under this Part in relation to a contravention of a provision subject to an infringement notice under this Part, if the person is one of a class of persons determined by the Chair of APRA under section 223C to be infringement officers in relation to a contravention of the provision.
- (2) A person who is an ***infringement officer*** for the purposes of exercising powers mentioned in subsection (1) is also an ***infringement officer*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).

### **223C Chair of APRA may determine *infringement officers***

- (1) The Chair of APRA may by legislative instrument determine that APRA staff members of a class specified in the determination are to be infringement officers for the purposes of exercising powers under this Part in relation to a contravention of a provision that is subject to an infringement notice under this Part.
- (2) The Chair of APRA must not specify a class of APRA staff members in the determination unless the Chair is satisfied that persons of that class have suitable training or experience to properly exercise the powers of an infringement officer.
- (3) An infringement officer must, in exercising powers as such, comply with any directions of the Chair of APRA in relation to the relevant provision.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **223D *Relevant chief executive***

- (1) The Chair of APRA is the ***relevant chief executive*** for the purposes of exercising powers under this Part in relation to the contravention of a provision subject to an infringement notice under this Part.

- (2) The Chair of APRA is also the *relevant chief executive* for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) The Chair of APRA may, in writing, delegate the powers and functions of the relevant chief executive under this Part to:
  - (a) an APRA member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or
  - (b) an APRA staff member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*) who is an executive general manager or equivalent.
- (4) A person exercising powers or functions under a delegation under subsection (3) must comply with any directions of the relevant chief executive.

## **Division 2—Infringement notices**

### **224 When an infringement notice may be given**

- (1) If an infringement officer has reasonable grounds to believe that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single offence provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than one day; and

- (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

#### **224A Matters to be included in an infringement notice**

- (1) An infringement notice must:
- (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
  - (e) give details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose if the provision were contravened; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
    - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; or
    - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order will not be brought, and the person is not liable to be prosecuted in a court, in relation to the alleged contravention; or
    - (iii) if the provision is an offence provision—the person will not be liable to be prosecuted in a court for the alleged contravention; and
  - (i) state that payment of the amount is not an admission of guilt or liability; and

- (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so:
    - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; or
    - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
    - (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn:
    - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; or
    - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
    - (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention; and
  - (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice; and
  - (o) include any other information prescribed by the regulations.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must be equal to:

- (a) if the provision is an offence provision—one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
- (b) if the provision is a civil penalty provision—one-fortieth of the maximum penalty that a court could impose on the person for that contravention.

#### **224B Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 224A(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 224A(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 224A(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 224A(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

## **224C Withdrawal of an infringement notice**

### *Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

### *Withdrawal of notice*

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

### *Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and

- (d) that the infringement notice is withdrawn; and
- (e) that:
  - (i) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; or
  - (ii) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may be brought, and the person may be liable to be prosecuted in a court, in relation to the alleged contravention; or
  - (iii) if the provision is an offence provision—the person may be liable to be prosecuted in a court for the alleged contravention.

*Refund of amount if infringement notice withdrawn*

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

**224D Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 224A(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) if the provision is a civil penalty provision and does not also constitute an offence provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
  - (c) if the provision is a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may not be brought, and the person may not be

prosecuted in a court, in relation to the alleged contravention;  
and

- (d) if the provision is an offence provision—the person may not be prosecuted in a court for the alleged contravention; and
- (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
- (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

### **224E Effect of this Part**

This Part does not:

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

### **113 Section 252B**

Repeal the section.

### **114 Paragraph 323(1)(b)**

Omit “subsection 55(3)”, substitute “subsections 29VP(3), 29VPA(3) and 55(3)”.

**115 Section 327 (paragraphs (aa) and (b) of the definition of *modifiable provision*)**

Repeal the paragraphs.

**116 Subsection 344(12)**

After “(dn),”, insert “(doa), (dob),”.

**117 Subsection 344(12)**

Omit “or (t)”, substitute “, (t), (ua) or (ub)”.

**118 At the end of section 389**

Add:

; and (d) the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

**119 At the end of section 390**

Add:

; and (d) the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

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

**119A Subitem 13(1) of Schedule 4**

Omit “FWA” (wherever occurring), substitute “the FWC”.

**119B Subitem 13(3) of Schedule 4 (definition of *FWA*)**

Repeal the definition.

**119C Subitem 13(3) of Schedule 4**

Insert:

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

***Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012***

**120 After item 11 of Schedule 1**

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Insert:

**11A Enhanced trustee obligations—decisions made before  
1 July 2013**

*Decision to give, or refuse to give, authority to offer a MySuper product*

- (1) Subitem (2) applies if, before 1 July 2013, APRA makes a decision under section 29T of the SIS Act to give, or refuse to give, an RSE licensee authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.
- (2) APRA’s decision is not invalid merely because the enhanced trustee obligations do not commence until 1 July 2013, provided subitem (3) or (4) has been complied with.
- (3) If the decision is to give authority, APRA must be satisfied at the time it makes the decision that it is likely that on and after 1 July 2013:
  - (a) where the RSE licensee is a body corporate—the RSE licensee; or
  - (b) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees;will comply with the enhanced trustee obligations for MySuper products that will come into force on that day.
- (4) If the decision is to refuse to give authority on the ground that:
  - (a) where the RSE licensee is a body corporate—the RSE licensee; or
  - (b) where the RSE licensee is made up of a group of individual trustees—each of those individual trustees;will not comply with the enhanced trustee obligations for MySuper products that will come into force on 1 July 2013, APRA must be satisfied at the time it makes the decision that it is not likely that the person will satisfy those obligations on and after 1 July 2013.

**121 Subitem 12(3) of Schedule 1**

Omit “Section 29WA of the SIS Act (contributions in relation to which no election made) does not apply”, substitute “Sections 29WA and 29WB of the SIS Act (contributions in relation to which no election made) do not apply”.

**122 Paragraph 12(5)(b) of Schedule 1**

Omit “section 29WA of the SIS Act does not apply”, substitute  
“sections 29WA and 29WB of the SIS Act do not apply”.

**123 Item 13 of Schedule 1**

Omit “Section 29WA of the SIS Act applies”, substitute  
“Sections 29WA and 29WB of the SIS Act apply”.

***Superannuation (Resolution of Complaints) Act 1993***

**124 Subsection 14(6A)**

Repeal the subsection, substitute:

- (6A) The Tribunal cannot deal with a complaint under this section about a decision of a trustee relating to the payment of a disability benefit because of total and permanent disability if the complaint is not made within the following period:
- (a) in the case of a person who, before the making of the decision, permanently ceased particular employment because of the physical or mental condition that gave rise to the claim for disability benefit—4 years after the making of the decision;
  - (b) in any other case—6 years after the making of the decision.

## **Part 2—Application and transitional provisions**

### **125 Application of item 14**

The amendment made by item 14 of this Schedule applies in relation to:

- (a) RSE licensees who apply to be authorised as an FHSA provider on or after the day on which that item commences; and
- (b) RSE licensees that are authorised as FHSA providers, whether before, on or after the day on which that item commences.

### **126 Application of item 74**

The amendment made by item 74 of this Schedule applies in relation to a complaint if:

- (a) where a decision is made in relation to the complaint within 90 days after the complaint is made—the decision is made on or after 1 July 2013; and
- (b) where no decision is made in relation to the complaint within 90 days after the complaint is made—the 90 day period ends on or after 1 July 2013.

### **127 Application of infringement notice scheme**

- (1) Part 22 of the *Superannuation Industry (Supervision) Act 1993*, inserted by item 112 of this Schedule, applies to contraventions of provisions subject to an infringement notice under that Part all of the physical elements of which occur on or after 1 July 2013.
- (2) The amendment made by item 113 of this Schedule applies to contraventions of section 252A all of the physical elements of which occur on or after 1 July 2013.

### **128 Application of item 124**

The amendment made by item 124 of this Schedule applies in relation to decisions made on or after 1 July 2013.

### **129 Validation of certain decisions**

**Schedule 1** Amendments

**Part 2** Application and transitional provisions

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A decision by APRA to authorise, or refuse to authorise, an RSE licensee to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product is not invalid merely because any of the amendments made by items 38 to 42B and 44 to 47 of this Schedule had not yet commenced, if the decision would have been valid had those amendments commenced before the decision was made.

**130 Application of amendment inserting section 58B**

The amendment made by item 72 of this Schedule, to the extent that it relates to proposed section 58B, applies in relation to things done on or after 1 July 2013.

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*[Minister's second reading speech made in—  
House of Representatives on 29 November 2012  
Senate on 16 May 2013]*

(228/12)

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