Superannuation Safety Amendment Act 2004

No. 53, 2004

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

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

Contents

1 Short title 1
2 Commencement 2
3 Schedule(s) 3

Schedule 1—Licensing, registration and amalgamation 4

Part 1—Amendments commencing first 4

Superannuation Industry (Supervision) Act 1993 4

Part 2—Amendments commencing second 63

Superannuation Industry (Supervision) Act 1993 63

Schedule 2—Clarification of the application of the law to groups of trustees 66

Superannuation Industry (Supervision) Act 1993 66

Schedule 3—Actuaries, auditors and defined benefit funds 103

Part 1—Actuaries and auditors 103

Retirement Savings Accounts Act 1997 103

Superannuation Industry (Supervision) Act 1993 106

Part 2—Defined benefit funds 112

Superannuation Industry (Supervision) Act 1993 112

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No. 53, 2004

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

[*Assented to 27 April 2004*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Safety Amendment Act 2004*.

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 on which this Act receives the Royal Assent.	27 April 2004
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, Part 2	On the day after the end of the period of 2 years beginning on the day on which the provision(s) covered by table item 2 commence.	
4. Schedule 2	At the same time as the provision(s) covered by table item 2.	
5. Schedule 3	At the same time as the provision(s) covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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—Licensing, registration and amalgamation

Part 1—Amendments commencing first

Superannuation Industry (Supervision) Act 1993

1 Section 4 (after table item 2)

Insert:

2A	licensing of trustees and groups of individual trustees
2B	registrable superannuation entities

2 Section 4 (after table item 17)

Insert:

18	amalgamation of funds

3 Section 5

Repeal the section.

4 Subparagraph 6(1)(a)(i)

Repeal the subparagraph, substitute:

(i) Parts 2 to 2B;

5 Subsection 10(1) (paragraph (b) of the definition of *approved deposit fund*)

Repeal the paragraph, substitute:

(b) is maintained by:

(i) an approved trustee; or

(ii) an RSE licensee that is a constitutional corporation; and

(c) is maintained solely for approved purposes.

6 Subsection 10(1) (definition of *approved guarantee*)

Repeal the definition, substitute:

approved guarantee has the meaning given by section 11E.

7 Subsection 10(1)

Insert:

class, in relation to an RSE licensee, means (except in subsections 29E(7) and (8)) a class of RSE licence provided for under subsection 29B(2) or (3), or under regulations made for the purposes of subsection 29B(4).

8 Subsection 10(1)

Insert:

financial services licensee has the meaning given by Chapter 7 of the *Corporations Act 2001*.

9 Subsection 10(1)

Insert:

group of individual trustees means a group of trustees each of whom is an individual trustee.

10 Subsection 10(1)

Insert:

licensing transition period means the period:

(a) starting on the commencement of Part 1 of Schedule 1 to the *Superannuation Safety Amendment Act 2004*; and

(b) ending immediately before the commencement of Part 2 of that Schedule.

11 Subsection 10(1)

Insert:

public offer entity licence means an RSE licence of a class provided for under subsection 29B(2).

12 Subsection 10(1)

Insert:

registrable superannuation entity means:

(a) a regulated superannuation fund; or

(b) an approved deposit fund; or

(c) a pooled superannuation trust;

but does not include a self managed superannuation fund.

13 Subsection 10(1) (after paragraph (dc) of the definition of *reviewable decision*)

Insert:

(dd) a decision of APRA under subsection 29CA(2) to treat an application for an RSE licence as having been withdrawn; or

(de) a decision of APRA under subsection 29D(2) refusing an application for an RSE licence; or

(df) a decision of APRA under subsection 29EA(1) to impose additional conditions on an RSE licence; or

(dg) a decision of APRA under subsection 29FA(2) to treat an application for variation of an RSE licence so that it is an RSE licence of a different class as having been withdrawn; or

(dh) a decision of APRA under subsection 29FA(2) to treat an application for variation or revocation of a condition imposed on an RSE licence as having been withdrawn; or

(di) a decision of APRA to refuse to vary an RSE licence under subsection 29FC(1) so that it is an RSE licence of a different class; or

(dj) a decision of APRA to refuse to vary or revoke under subsection 29FC(1) any conditions imposed on an RSE licence; or

(dk) a decision of APRA under subsection 29FD(1) to vary or revoke any conditions imposed on an RSE licence; or

(dl) a decision of APRA under subsection 29G(1) to cancel an RSE licence; or

(dm) a decision of APRA under subsection 29M(2) refusing an application for registration of a registrable superannuation entity; or

(dn) a decision of APRA under subsection 29N(2) to cancel the registration of a registrable superannuation entity; or

14 Subsection 10(1)

Insert:

RSE licence means a licence granted under section 29D.

15 Subsection 10(1)

Insert:

RSE licensee means a constitutional corporation, body corporate, or group of individual trustees, that holds an RSE licence granted under section 29D.

16 Subsection 10(1)

Insert:

RSE licensee law means:

(a) this Act or the regulations; and

(b) the *Financial Sector (Collection of Data) Act 2001*; and

(c) the *Financial Institutions Supervisory Levies Collection Act 1998*; and

(d) the provisions of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as applying in relation to superannuation interests; and

(e) any other provisions of any other law of the Commonwealth specified in regulations made for the purposes of this paragraph.

17 After section 11D

Insert:

11E Approved guarantees

(1) In this Act, an ***approved guarantee*** is:

(a) a guarantee given by an ADI; or

(b) a guarantee given by or on behalf of the Commonwealth, a State or a Territory;

that meets the requirements that APRA determines in writing.

(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18 Paragraph 13(b)

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

19 Paragraph 13(c)

Repeal the paragraph.

Note: The heading to section 13 is altered by omitting "**and groups of trustees**".

20 After section 13

Insert:

13A RSE licensees that are groups of individual trustees

(1) Subject to this section, for the purposes of this Act and the regulations, a change in the composition of a group of individual trustees that is an RSE licensee does not affect the continuity of the group of individual trustees for the duration of the period during which the RSE licence continues in force.

Note: So, for example, an RSE licence granted to a group of individual trustees will not cease to continue in force, merely because of a change in the membership of the group.

(2) An obligation that would be imposed on an RSE licensee that is a group of individual trustees of a registrable superannuation entity by a provision of this Act or the regulations is imposed instead on each of the trustees but, subject to the entity's governing rules, may be discharged by any of them.

(3) A person who is a member of a group of individual trustees that is an RSE licensee is not liable under any offence of strict liability or civil penalty provision of this Act or the regulations in respect of any breach of a provision of this Act or the regulations, or failure, by the RSE licensee if the person proves that he or she:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the obligations of the RSE licensee were being complied with.

Note: In a prosecution for an offence of strict liability against a provision of this Act or the regulations, a defendant bears a legal burden in relation to the matters in subsection (3) (see section 13.4 of the *Criminal Code*).

(4) If a group of individual trustees is an RSE licensee, a direction, notice or other document is taken, for the purposes of a provision of this Act or the regulations, to be given to the RSE licensee if it is given it to any member of the group.

(5) If a group of individual trustees of a registrable superannuation entity is an RSE licensee, a request is taken, for the purposes of a provision of this Act or the regulations, to have been made to the RSE licensee if it is made to any member of the group and, subject to the entity's governing rules, may be dealt with by any member of the group.

(6) Any requirement under this Act or the regulations that a document be signed by an RSE licensee is taken, if the RSE licensee is a group of individual trustees, to be a requirement that the document be signed by each of the members of the group.

(7) An RSE licensee that is a group of individual trustees is taken, for the purposes of a provision of this Act or the regulations, to have provided something to a person if one of the members of the group has provided that thing to the person.

(8) For the purposes of this Act and the regulations, if an RSE licensee that is a group of individual trustees is affected by a reviewable decision, each member of the group is taken to be affected by that decision.

(9) The regulations may exclude or modify the effect of the subsections of this section (other than subsections (2) and (3)) in relation to specified provisions.

(10) This section has effect subject to a contrary intention in a provision of this Act or regulations made for the purposes of subsection (9).

21 Paragraph 17A(4)(a)

After "of the fund", insert "or an RSE licensee of the fund".

22 Subsection 17A(5)

After "does not", insert ", except for the purposes of section 29J,".

23 Subsection 21(2)

Repeal the subsection, substitute:

(2) This Part operates concurrently with Part 2A (which is about licensing of trustees and groups of individual trustees). The significance of the approval or licensing of trustees, or groups of individual trustees, is as follows:

(a) a fund cannot be an approved deposit fund unless it is maintained by an approved trustee or an RSE licensee that is a constitutional corporation (the other requirements of the definition of ***approved deposit fund*** in section 10 must also be satisfied);

(b) the trustee of a public offer entity must not engage in conduct to which section 152 applies unless the trustee is an approved trustee or an RSE licensee that is a constitutional corporation (other requirements also apply before that conduct may be engaged in);

(c) a person must not be, or act as, the trustee of a superannuation fund with fewer than 5 members (other than a self managed superannuation fund) if the person is required by subsection 121A(1) to be, but is not, an approved trustee or an RSE licensee that is a constitutional corporation;

(d) APRA may suspend or remove a trustee of a superannuation fund with fewer than 5 members (other than a self managed superannuation fund) if the trustee is required by subsection 121A(1) to be, but is not, an approved trustee or an RSE licensee that is a constitutional corporation;

(e) a person may contravene subsection 29J(1) if the person is not an approved trustee or does not hold an RSE licence.

Note: See Part 2A for information about RSE licences.

24 After subsection 23(1)

Insert:

(1A) However, an application must not be made during the licensing transition period.

25 At the end of subsection 26(1)

Add:

; and (c) the applicant's application was made before the start of the licensing transition period.

26 At the end of section 26

Add:

(7) In this section:

net tangible assets has the meaning given by the regulations.

27 Paragraph 27(b)

Repeal the paragraph, substitute:

(b) remains in force, subject to any variation under section 27B or 27C, until:

(i) it is revoked under section 28; or

(ii) the trustee is granted an RSE licence under section 29D.

Note: The heading to section 27C is altered by omitting "**his or her**" and substituting "**its**".

28 Paragraph 27E(b)

Repeal the paragraph, substitute:

(b) the variation remains in force until:

(i) the revocation of the approval to which it relates; or

(ii) the coming into force of a later variation of that approval; or

(iii) the trustee is granted an RSE licence under section 29D.

29 After Part 2

Insert:

Part 2A—Licensing of trustees and groups of individual trustees

Division 1—Object of this Part

29A Object of this Part and the relationship of this Part to other provisions

(1) The object of this Part is to set out provisions relating to the granting of RSE licences to:

(a) constitutional corporations; and

(b) other bodies corporate; and

(c) groups of individual trustees.

(2) The following is a simplified outline showing some key relationships between this Part and other provisions of the Act and the regulations that trustees should be aware of:

Certain provisions may be contravened if unlicensed trustees carry out particular activities (e.g.: sections 29J and 152). The trustee, or group of individual trustees, of a fund or trust may obtain an RSE licence under this Part.

Note 1: If the trustee is a constitutional corporation, the trustee obtaining an RSE licence may result in a fund or trust becoming an approved deposit fund or pooled superannuation trust, which are each registrable superannuation entities.

Note 2: If the trustee or group of individual trustees makes an election under section 19, the fund may become a regulated superannuation fund. Regulated superannuation funds other than self managed superannuation funds are registrable superannuation entities.

Note 3: In order to obtain an RSE licence, the trustee, or group of individual trustees, must have a risk management strategy.

A trustee, or group of individual trustees, that has obtained an RSE licence may have a registrable superannuation entity registered under Part 2B. Certain provisions may be contravened if certain activities are carried out while a registrable superannuation entity is not registered (e.g.: accepting contributions while the entity is unregistered may lead to an offence under section 34.)

Note 1: A failure to register the fund or trust may also lead to a breach of an RSE licence condition and possible loss of the RSE licence.

Note 2: In order to obtain registration of a fund or trust, the trustee, or group of individual trustees, must have a risk management plan for that fund or trust.

Division 2—Classes of RSE licences

29B Classes of RSE licences

(1) There are to be classes of RSE licences.

(2) One class of RSE licences is to be a class that enables a trustee that holds a licence of that class to be a trustee of:

(a) any public offer entity; and

(b) any other registrable superannuation entity included in a class of registrable superannuation entities specified in regulations made for the purposes of this subsection;

subject to any condition imposed on that licence under subsection 29EA(3).

Note 1: An RSE licence of this class is called a ***public offer entity licence***: see subsection 10(1).

Note 2: Only constitutional corporations may hold public offer entity licences: see paragraph 29D(1)(g).

(3) Another class of RSE licences is to be a class that enables a trustee that:

(a) holds a licence of that class; or

(b) is a member of a group of individual trustees that holds a licence of that class;

to be a trustee of any registrable superannuation entity included in a class of registrable superannuation entities (other than a class of public offer entities) specified in regulations made for the purposes of this subsection, subject to any condition imposed on that licence under subsection 29EA(3).

(4) The regulations may provide for other classes of RSE licences. For each such class, the regulations must specify the classes of registrable superannuation entities of which a trustee that:

(a) holds a licence of that class; or

(b) is a member of a group of individual trustees that holds a licence of that class;

is enabled to be a trustee, subject to any condition imposed on that licence under subsection 29EA(3).

(5) The classes of registrable superannuation entity that the regulations may specify in relation to a particular class of RSE licence may include one or more classes of registrable superannuation entity that the regulations specify in relation to another class of RSE licence.

Division 3—Applying for RSE licences

29C Applications for RSE licences

Who may apply for RSE licences

(1) A constitutional corporation may apply to APRA for an RSE licence of any class.

(2) A body corporate that is not a constitutional corporation may apply to APRA for an RSE licence of any class other than a class that would enable it to be a trustee of a public offer entity.

(3) A group of individual trustees may apply to APRA for an RSE licence of any class other than a class that would enable each of the members of the group to be a trustee of a public offer entity.

Requirements for applications

(4) An application for an RSE licence must:
  (a) be in the approved form; and
  (b) contain the information required by the approved form; and
  (c) be accompanied by the application fee (if any) prescribed by regulations made for the purposes of this paragraph; and
  (d) be accompanied by an up-to-date copy of:
    (i) if the applicant is a body corporate—the body corporate's risk management strategy, signed by the body corporate; or
    (ii) if the applicant is a group of individual trustees—the group's risk management strategy, signed by each member of the group; and
  (e) be accompanied by a statement, signed by:
    (i) if the applicant is a body corporate—the body corporate; or
    (ii) if the applicant is a group of individual trustees—each member of the group;

  that the risk management strategy complies with section 29H.

(5) Regulations made for the purposes of paragraph (4)(c) may prescribe different application fees for applications for different classes of RSE licences.

Notifying certain changes while applications are pending

(6) If:

(a) a body corporate applies for an RSE licence; and

(b) after the application is made, but before APRA decides the application, another director is added to, or removed from the board;

the body corporate must notify APRA, in the approved form, about the change to the membership of the board as soon as practicable after that change occurs.

Note: Part 9 has requirements about equal representation rules.

(7) If:

(a) a group of individual trustees applies for an RSE licence; and

(b) after the application is made, but before APRA decides the application, another trustee is added to, or removed from the group;

a member of the group must notify APRA, in the approved form, about the change to the membership of the group as soon as practicable after that change occurs.

Note: Part 9 has requirements about equal representation rules.

(8) If:

(a) a body corporate or group of individual trustees applies for an RSE licence; and

(b) after the application is made but before APRA decides the application, the risk management strategy for the body or group is varied or revoked and replaced;

the body or group must lodge an up-to-date copy of the risk management strategy with APRA as soon as practicable after the risk management strategy is varied or revoked and replaced.

(9) An application is taken not to comply with this section if subsection (6), (7) or (8) is contravened.

Note: APRA cannot grant an RSE licence while the application does not comply with this section: see paragraph 29D(1)(c).

29CA APRA may request further information

(1) If a body corporate or group of individual trustees has applied for an RSE licence, APRA may give the body corporate or a member

of the group a notice requesting the body or group to give APRA, in writing, specified information relating to the application by a specified time that is reasonable in the circumstances.

(2) APRA may decide to treat an application by a body corporate or group of individual trustees for an RSE licence as having been withdrawn if the body or group:

(a) does not comply with a request to provide information under this section; and

(b) does not have a reasonable excuse for not complying.

(3) If APRA decides under subsection (2) to treat an application for an RSE licence as having been withdrawn, APRA must take all reasonable steps to ensure that the body that made the application, or a member of the group that made the application, is given a notice informing the body or group of:

(a) APRA's decision; and

(b) the reasons for that decision;

as soon as practicable after making the decision.

29CB Period etc. for deciding applications from existing trustees in licensing transition period

Statements of intention to apply

(1) A person who was a trustee of a registrable superannuation entity at the start of the licensing transition period may give APRA a written statement that:

(a) is in the approved form; and

(b) indicates whether the person intends to apply under section 29C for an RSE licence; and

(c) lists the registrable superannuation entities that the person intends to apply to have registered under Part 2B if the RSE licence is granted.

Period for deciding applications

(2) Subject to subsection (3), APRA must decide an application for an RSE licence before the end of the licensing transition period if:

(a) the application is received by APRA during that period; and

(b) the application is for an RSE licence to be granted to:

(i) a body corporate that was a trustee of a registrable superannuation entity at the start of the licensing transition period; or

(ii) a group of individual trustees that has a member who was a trustee of a registrable superannuation entity at the start of the licensing transition period.

(3) At any time in the last 6 months of the licensing transition period, APRA may refuse to consider under subsection (2) any further applications for RSE licences that are received by APRA in the last 6 months before the end of the licensing transition period for RSE licences to be granted to:

(a) bodies corporate that were trustees of registrable superannuation entities at the start of the licensing transition period; or

(b) groups of individual trustees with one or more members who were each a trustee of a registrable superannuation entity at the start of the licensing transition period.

(4) If APRA decides to refuse, under subsection (3), to consider under subsection (2) any further applications, APRA must, as soon as practicable after making the decision, publish a notice stating APRA's decision in a daily newspaper that circulates generally in each State and Territory.

(5) If APRA decides to refuse, under subsection (3), to consider under subsection (2) an application, that application is taken, at the end of the licensing transition period, to have been received by APRA immediately after the end of the licensing transition period.

29CC Period for deciding other applications

(1) APRA must decide an application for an RSE licence within 90 days after receiving it if:

(a) the application is received by APRA after the end of the licensing transition period; or

(b) the application is received by APRA during the licensing transition period and is for an RSE license to be granted to:

(i) a body corporate that was not a trustee of a registrable superannuation entity at the start of the licensing transition period; or

(ii) a group of individual trustees that has no members that were a trustee of a registrable superannuation entity at the start of the licensing transition period;

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

(2) APRA may extend the period for deciding an application covered by paragraph (1)(a) or (b) by up to 30 days if APRA informs the body corporate, or a member of the group, that made the application of the extension:

(a) in writing; and

(b) within 90 days after receiving the application.

(3) If APRA extends the period for deciding the application, it must decide the application within the extended period.

(4) If APRA has not decided the application 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.

Division 4—Grant of RSE licences

29D Grant of RSE licences

(1) APRA must grant an RSE licence to a body corporate, or group of individual trustees, that has applied for an RSE licence if, and only if:

(a) APRA has no reason to believe that:

(i) if the application is made by a body corporate—the body corporate; or

(ii) if the application is made by a group of individual trustees—the group as a whole or any member of the group;

would fail to comply with the RSE licensee law if the RSE licence were granted; and

(b) APRA has no reason to believe that:

(i) if the application is made by a body corporate—the body corporate; or

(ii) if the application is made by a group of individual trustees—the group as a whole or any member of the group;

would fail to comply with any condition imposed on the RSE licence if it were granted; and

(c) the application for the licence complies with section 29C and is for a class of licence that the body corporate or group of individual trustees may apply for under that section; and

(d) APRA is satisfied that:

(i) if the application is made by a body corporate—the body corporate meets the requirements of standards prescribed under Part 3 relating to fitness and propriety for trustees of funds and RSE licensees; or

(ii) if the application is made by a group of individual trustees—the group as a whole meets the requirements of standards prescribed under Part 3 relating to fitness and propriety for RSE licensees and each of the members of the group meets the requirements of standards prescribed under Part 3 relating to fitness and propriety for trustees of funds; and

(e) APRA is satisfied that the risk management strategy for the body corporate or group meets the requirements of section 29H; and

(f) in a case where the applicant is not a constitutional corporation—APRA is satisfied that:

(i) if the application is made by a body corporate—the body corporate; or

(ii) if the application is made by a group of individual trustees—each member of the group;

only intends to act as a trustee of one or more superannuation funds that have governing rules providing that the sole or primary purpose of the fund is the provision of old-age pensions; and

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

(h) the application has not been withdrawn, treated as withdrawn under subsection 29CA(2), refused consideration under subsection 29CB(3) or taken to have been refused under subsection 29CC(4).

Note 1: Conditions apply to all RSE licences. See Division 5.

Note 2: An RSE licence may only be granted to a body corporate or a group of individual trustees because only bodies corporate and groups of individual trustees may apply for RSE licences. See section 29C.

(2) Otherwise APRA must refuse the application.

29DA Capital requirements

(1) The capital requirements under this section are met by a constitutional corporation if it satisfies at least one of the following subsections.

(2) A constitutional corporation satisfies this subsection if APRA is satisfied that the value of the corporation's net tangible assets is equal to, or greater than, the amount prescribed by regulations made for the purposes of this subsection.

(3) A constitutional corporation satisfies this subsection if APRA is satisfied that the corporation is entitled to the benefit of an approved guarantee that:

(a) is of an amount equal to, or greater than, the amount prescribed by regulations made for the purposes of this paragraph; and

(b) is in respect of the corporation's duties as trustee of each registrable superannuation entity of which it is, or is proposing to become, the trustee.

(4) A constitutional corporation satisfies this subsection if APRA is satisfied that:

(a) the corporation is entitled to the benefit of an approved guarantee that is in respect of its duties as trustee of each registrable superannuation entity of which it is, or is proposing to become, the trustee; and

(b) the sum of the amount of the approved guarantee and the value of the corporation's net tangible assets is equal to, or greater than, the amount prescribed by regulations made for the purposes of this paragraph.

(5) A constitutional corporation satisfies this subsection if it has agreed, in writing, to comply with written requirements that:

(a) were given to it by APRA before:

(i) it was granted an RSE licence; or

(ii) its class of RSE licence was varied, resulting in the RSE licensee being required to meet the capital requirements under this section; and

(b) relate to the custody of the assets of each of the registrable superannuation entities of which it is, or is proposing to become, the trustee.

(6) In this section:

net tangible assets has the meaning given by the regulations.

29DB Licence numbers etc.

If APRA decides to grant an RSE licence to a body corporate or group of individual trustees, APRA must give the body or group an RSE licence that specifies:

(a) a unique licence number; and

(b) the class of licence.

29DC Documents required to bear licence numbers

(1) An RSE licensee must ensure that the number of its RSE licence is included in:

(a) each document that it gives to APRA in the capacity of an RSE licensee; and

(b) any other document in which it identifies itself as an RSE licensee of a registrable superannuation entity; and

(c) if the RSE licensee is a body corporate—any document in which the body corporate identifies itself as a trustee of a registrable superannuation entity; or

(d) if the RSE licensee is a group of individual trustees—any document in which a member of the group identifies itself as a trustee of a registrable superannuation entity or as a member of a group of individual trustees that are the RSE licensee of a registrable superannuation entity.

(2) However, an RSE licensee is not required to comply with subsection (1) in respect of a particular document if it has been given written approval by APRA not to be required to ensure that the number is included in that document or in a class of documents that includes that document.

29DD Licence period

(1) An RSE licence comes into force at the later of:
  (a) the time when it is granted; or
  (b) the time specified on the licence as the time when it comes into force.

(2) An RSE licence continues in force, subject to:
  (a) any imposition of licence conditions under Division 5; or
  (b) any variation or revocation of the licence conditions, or variation of the licence class, under Division 6;

until the RSE licence is cancelled under Division 7.

29DE APRA to give notice of refusal of applications

If APRA refuses an application by a body corporate or a group of individual trustees for an RSE licence, APRA must take all reasonable steps to ensure that the body or a member of the group is given a notice informing the body or group of:
  (a) APRA's refusal of the application; and
  (b) the reasons for that refusal;

as soon as practicable after refusing the application.

Division 5—Conditions on RSE licences

29E Conditions imposed on all licences and on groups of licences

Conditions imposed on all RSE licences

(1) The following conditions are imposed on all RSE licences:
  (a) the RSE licensee and, if the RSE licensee is a group of individual trustees, each of the members of the group, must comply with the RSE licensee law;

(b) the duties of a trustee in respect of each registrable superannuation entity of which it is an RSE licensee must be properly performed by:

(i) if the RSE licensee is a body corporate—the body corporate; or

(ii) if the RSE licensee is a group of individual trustees—each of the members of the group;

(c) the RSE licensee must have a risk management strategy that complies with Division 8, and must comply with that strategy;

(d) the RSE licensee must ensure that each registrable superannuation entity of which it is the RSE licensee is:

(i) registered under Part 2B; or

(ii) the subject of an application for registration under Part 2B that has not been finally determined or otherwise disposed of;

(e) the RSE licensee must comply with each measure and procedure set out in the risk management plan for each registrable superannuation entity of which it is the RSE licensee;

(f) the RSE licensee must notify APRA of any change in the composition of the RSE licensee (see subsection (2)) within 14 days after the change takes place;

(g) the RSE licensee must comply with any other conditions prescribed by regulations made for the purposes of this paragraph.

Note 1: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).

Note 2: An RSE licensee must notify APRA if the RSE licensee breaches a licence condition: see section 29JA.

Note 3: Additional conditions may be imposed on various types of RSE licences (see subsections (3) to (7)) or a particular RSE licence (see section 29EA).

Change in the composition of the RSE licensee

(2) For the purposes of paragraph (1)(f), a ***change in the composition of the RSE licensee*** is:

(a) if the RSE licensee is a body corporate—a person becoming, or ceasing to be, a director of the body corporate; or

(b) if the RSE licensee is a group of individual trustees—an individual becoming, or ceasing to be, a member of the group.

Classes enabling RSE licensees to be trustees of public offer entities

(3) The following additional conditions are imposed on each RSE licence that enables a trustee that holds a licence of that class to be a trustee of a public offer entity:

(a) the RSE licensee that holds the licence must continue to be a constitutional corporation that meets the capital requirements under section 29DA; and

(b) if the RSE licensee that holds the licence met the capital requirements by satisfying subsection 29DA(5) (and not subsection 29DA(2), (3) or (4)) when APRA granted the licence—the RSE licensee must continue to comply with the written requirements mentioned in that subsection.

Licences held by RSE licensees that are not constitutional corporations

(4) The following additional condition is imposed on each RSE licence that is not held by a constitutional corporation:

(a) if the RSE licensee that holds the licence is a body corporate—that the body; or

(b) if the RSE licensee is a group of individual trustees—that the members of the group;

only act as a trustee of superannuation funds that have governing rules providing that the sole or primary purpose of the fund is the provision of old-age pensions.

Licences held by groups of individual trustees

(5) The following additional conditions are imposed on each RSE licence held by a group of individual trustees:

(a) the members of the group must make all reasonable efforts to ensure that the group always has at least 2 members;

(b) any continuous period for which the group has less than 2 members must be 90 days or less.

Note: Paragraph 29E(1)(f) requires APRA to be notified of any change in the composition of the RSE licensee.

Licences held by RSE licensees of transferee funds

(6) An additional condition is imposed on each RSE licence held by an RSE licensee of a fund that has had benefits of members and beneficiaries transferred to it from a transferor fund under Part 18 (whether while the RSE licensee was the RSE licensee of the fund or earlier). The condition is that, while the RSE licensee is the RSE licensee of the fund, the RSE licensee assumes the obligation to pay benefits to those who were members or beneficiaries of the transferor fund immediately before the transfer.

Prescribed conditions imposed on classes of licences

(7) An additional condition prescribed by a regulation made for the purposes of this subsection as a condition applying to all RSE licences of a specified class is imposed on each RSE licence of that class.

(8) A specified class mentioned in subsection (7) may be a class other than a class provided for under subsection 29B(2) or (3) or under regulations made for the purposes of subsection 29B(4).

29EA Additional conditions imposed on individual licences by APRA

(1) APRA may, at any time, impose an additional condition on an RSE licence by giving the RSE licensee a notice setting out the additional condition.

(2) A condition imposed under subsection (1) must not be inconsistent with any condition imposed by, or under, section 29E on an RSE licence.

Note 1: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).

Note 2: An RSE licensee must notify APRA if the RSE licensee breaches a licence condition: see section 29JA.

Note 3: RSE licensees may apply to APRA to have conditions imposed under this section varied or revoked: see section 29F.

(3) Without limiting subsection (1), an additional condition imposed under that subsection on an RSE licence may provide that the body corporate that is the RSE licensee, or each of the members of a

group of individual trustees that is the RSE licensee, must not act as a trustee under that RSE licence for a registrable superannuation entity other than:

(a) a registrable superannuation entity specified in the condition; or

(b) a registrable superannuation entity included in the class of registrable superannuation entities specified in the condition.

(4) Without limiting subsection (1), an additional condition imposed under that subsection on an RSE licence may provide that the RSE licensee must ensure that a fund specified in the condition, or in a class of funds specified in the condition, must comply with the alternative agreed representation rules whenever section 92 applies to the fund. However, before imposing such a condition, APRA must have regard to any written guidelines determined by APRA under this subsection.

(5) If the RSE licensee is also a financial services licensee:

(a) APRA must consult ASIC before imposing a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and

(b) APRA must inform ASIC about the imposition of any condition not covered by paragraph (a) within one week after the condition is imposed.

(6) A failure to comply with a requirement of subsection (5) does not invalidate the imposition of any condition.

(7) An additional condition imposed under this section comes into force on the later of:

(a) the day on which APRA gives the RSE licensee the notice of the condition; or

(b) the day specified in the notice as the day on which the condition comes into force.

29EB Directions to comply with licence conditions

APRA may direct an RSE licensee to comply with a specified condition of its RSE licence by a specified time if APRA has

reasonable grounds to believe that the RSE licensee has breached the condition. The direction must:

(a) be by notice in writing given to the RSE licensee; and

(b) specify a time that is reasonable in the circumstances.

Note: A failure to comply with a direction may lead to cancellation of the RSE licence (see section 29G) and may be an offence (see section 29JB).

Division 6—Varying RSE licences

29F Applications for variation of RSE licences

(1) An RSE licensee may apply to APRA for one or both of the following:

(a) variation of its RSE licence so that the RSE licence is an RSE licence of a different class;

(b) variation or revocation of a condition that APRA has imposed on its RSE licence under section 29EA.

(2) An application under this section must:

(a) be in the approved form; and

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

(c) if the application is for a variation of an RSE licence so that it is an RSE licence of a different class—be accompanied by the application fee (if any) prescribed for the type of variation by regulations made for the purposes of this paragraph.

29FA APRA may request further information

(1) APRA may give an RSE licensee that makes an application under section 29F a notice requesting the RSE licensee to give APRA, in writing, specified information relating to the application by a specified time that is reasonable in the circumstances.

(2) APRA may decide to treat an application under section 29F as having been withdrawn if the RSE licensee:

(a) does not comply with a request to provide information under this section; and

(b) does not have a reasonable excuse for not complying.

(3) If APRA decides to treat an application under section 29F as having been withdrawn, APRA must take all reasonable steps to ensure that the RSE licensee is given a notice informing the RSE licensee of:

(a) APRA's decision; and

(b) the reasons for that decision;

as soon as practicable after making the decision.

29FB Period for deciding applications

(1) APRA must decide an application under section 29F within 60 days of receiving the application, unless APRA extends the period for deciding the application under subsection (2).

(2) APRA may extend the period for deciding an application under section 29F by up to 60 days if APRA informs the RSE licensee of the extension:

(a) in writing; and

(b) within 60 days of receiving the application.

(3) If APRA extends the period for deciding an application under section 29F, it must decide the application within the extended period.

(4) If APRA has not decided an application under section 29F 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.

29FC APRA may vary RSE licences in accordance with applications

(1) APRA may, by notice to an RSE licensee:

(a) vary the RSE licensee's RSE licence so that it is an RSE licence of a different class; or

(b) vary or revoke a condition that APRA has imposed on the RSE licence under section 29EA;

in accordance with an application under section 29F.

(2) However:

(a) an RSE licence must not be varied so that it becomes an RSE licence of a particular class unless APRA is satisfied that the

RSE licensee will comply with any conditions imposed on that class of RSE licence; and

(b) a condition as varied under paragraph (1)(b) must not be inconsistent with any condition imposed by section 29E; and

(c) if the RSE licensee is also a financial services licensee:

(i) APRA must consult ASIC before varying the RSE licence so that it is an RSE licence of a different class, if, in APRA's opinion, the variation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and

(ii) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and

(iii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (ii); and

(iv) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i), (ii) or (iii) within one week after the condition is varied or revoked.

(3) A failure to comply with a requirement of paragraph (2)(c) does not invalidate:

(a) the variation of an RSE licence so that it is an RSE licence of a different class; or

(b) the variation or revocation of a licence condition.

(4) APRA is not required to vary the class of, or vary or revoke any condition of, an RSE licence in the terms requested by an RSE licensee in an application under section 29F.

29FD APRA may vary or revoke licence conditions on its own initiative

(1) APRA may, on its own initiative, vary or revoke any condition that it imposed on an RSE licence under section 29EA.

(2) However:

(a) a condition as varied under subsection (1) must not be inconsistent with any condition imposed by section 29E; and

(b) if the RSE licensee that holds the licence is also a financial services licensee:

(i) APRA must consult ASIC before varying or revoking a condition that, in APRA's opinion, might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides; and

(ii) APRA must consult ASIC before varying a condition so that it would, in APRA's opinion, become a condition that might reasonably be expected to have an effect as described in subparagraph (i); and

(iii) APRA must inform ASIC about the variation or revocation of any condition not covered by subparagraph (i) or (ii) within one week after the condition is varied or revoked.

(3) A failure to comply with a requirement of paragraph (2)(b) does not invalidate the variation or revocation of a condition.

29FE Notification of APRA's decisions under this Division

(1) APRA must give a notice to an RSE licensee if APRA:

(a) varies the RSE licensee's RSE licence under section 29FC so that it is an RSE licence of a different class; or

(b) varies or revokes, under section 29FC or 29FD, a condition that APRA imposed on the RSE licence under section 29EA.

(2) The notice must:

(a) if paragraph (1)(a) applies—specify the class of the RSE licence after the variation; and

(b) if paragraph (1)(b) applies:

(i) identify the licence condition being varied or revoked; and

(ii) specify any conditions imposed under section 29EA to which the licence is subject after the variation or revocation comes into force; and

(c) state the reasons for the variation or revocation; and

(d) specify the day, not earlier than the day on which APRA gives the notice, on which the variation or revocation comes into force.

(3) If APRA refuses an application for a variation or revocation under section 29FC, APRA must take all reasonable steps to ensure that the RSE licensee that made the application is given a notice informing it of:

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

(b) the reasons for the refusal;

as soon as practicable after refusing the application.

29FF When variations or revocations come into force etc.

(1) If, under section 29FC, APRA varies an RSE licence so that it is an RSE licence of a different class:

(a) the variation comes into force on the day specified in the notice under paragraph 29FE(2)(d); and

(b) the variation remains in force until:

(i) the licence is again varied so that it is an RSE licence of a different class; or

(ii) the licence is cancelled.

(2) If, under section 29FC or 29FD, APRA varies a condition imposed on an RSE licence:

(a) the variation comes into force on the day specified in the notice under paragraph 29FE(2)(d); and

(b) the variation remains in force until:

(i) the condition is varied in an inconsistent manner; or

(ii) the condition is revoked; or

(iii) the licence is cancelled.

(3) If, under section 29FC or 29FD, APRA revokes a condition imposed on an RSE licence, the revocation comes into force on the day specified in the notice under paragraph 29FE(2)(d).

Division 7—Cancelling RSE licences

29G Cancellation of RSE licences

(1) Subject to subsection (2), APRA may, in writing, cancel an RSE licence.

Note: In some circumstances, APRA needs the consent of the Minister (see subsection (3)) or must inform or consult ASIC (see section 29GA).

(2) Without limiting subsection (1), APRA may cancel an RSE licence under that subsection if:

(a) the RSE licensee has requested, in the approved form, that the licence be cancelled; or

(b) the RSE licensee is a body corporate and is a disqualified person for the purposes of Part 15; or

(c) the RSE licensee has breached a condition imposed on the licence; or

(d) APRA has reason to believe that the RSE licensee will breach a condition imposed on the licence; or

(e) the RSE licensee has failed to comply with a direction by APRA under section 29EB; or

(f) APRA has reason to believe that the RSE licensee will fail to comply with a direction by APRA under section 29EB.

(3) APRA must not cancel an RSE licence under subsection (1) without the Minister's written consent, unless paragraph (2)(a) or (b) applies to the cancellation.

(4) If APRA cancels an RSE licence it must take all reasonable steps to ensure that the body corporate or a member of the group that held the RSE licensee is given a notice informing the body corporate or group:

(a) that APRA has cancelled the licence; and

(b) of the reasons for the cancellation.

29GA Cancellation of RSE licences of financial services licensees

(1) Before cancelling the RSE licence of an RSE licensee that is also a financial services licensee, APRA must consult ASIC if, in APRA's opinion, the cancellation might reasonably be expected to affect the RSE licensee's ability to provide one or more of the financial services (within the meaning of the *Corporations Act 2001*) that the RSE licensee provides.

(2) If APRA cancels the RSE licence of an RSE licensee that is also a financial services licensee, APRA must inform ASIC of the cancellation within one week after the cancellation.

(3) A failure to comply with a requirement of this section does not invalidate the cancellation of an RSE licence.

29GB APRA may allow RSE licence to continue in effect

In a notice that APRA gives to an RSE licensee cancelling its RSE licence, APRA may specify that the RSE licence continues in effect as though the cancellation had not happened for the purposes of:

(a) a specified provision, administered by APRA, of this Act or the regulations; or

(b) a specified provision, administered by APRA, of any other law of the Commonwealth;

in relation to specified matters, a specified period, or both.

Division 8—Risk management strategies

Subdivision A—Contents of risk management strategies

29H Contents of risk management strategies

(1) A risk management strategy must set out reasonable measures and procedures that a body corporate or group of individual trustees is to apply to identify, monitor and manage risks that arise:

(a) in relation to its activities, or proposed activities, as an RSE licensee; and

(b) in relation to all its other activities, or proposed activities, to the extent that they are relevant to its activities, or proposed activities, as an RSE licensee.

(2) Without limiting subsection (1), the risk management strategy of a body corporate or group of individual trustees must set out:

(a) reasonable measures and procedures that the body or group is to apply to identify, monitor and manage:

(i) the risks associated with governance and decision-making processes; and

(ii) the risks that arise as a result of entering into outsourcing arrangements (other than arrangements that relate only to a particular registrable superannuation entity); and

(iii) the risks arising from any changes to the RSE licensee law; and

(iv) the risks of potential fraud and theft; and

(b) the circumstances in which an audit of the risks referred to in this section is to be undertaken; and

(c) such other matters as are prescribed by regulations made for the purposes of this paragraph.

(3) The risk management strategy must be signed:

(a) if it is the risk management strategy of a body corporate—by the body; or

(b) if it is the risk management strategy of a group of individual trustees—by each member of the group.

Note: An RSE licence will not be granted unless there is a risk management strategy that meets the requirements of this section: see paragraph 29D(1)(e).

(4) The risk management strategy must not by reference incorporate provisions of any other document unless that other document is available, without charge, to members of the public.

(5) A risk management strategy does not fail to comply with this section merely because it reproduces information contained in the risk management plan for an entity of which an applicant for an RSE licence is, or proposes to be, the RSE licensee.

Subdivision B—Maintaining and reviewing risk management strategies

29HA Requirement to maintain and review risk management strategies

(1) An RSE licensee must:

(a) ensure that at all times its risk management strategy is up to date; and

(b) ensure that its risk management strategy is reviewed at least once each year to ensure that it complies with section 29H; and

(c) modify, or replace, its risk management strategy in accordance with section 29HB if at any time the RSE licensee becomes aware that the risk management strategy no longer complies with section 29H.

(2) An RSE licensee must review its risk management strategy within 60 days after the RSE licensee:

(a) becomes the RSE licensee of a registrable superannuation entity (other than a registrable superannuation entity of which, at the time of the application for an RSE licence, the RSE licensee proposed to become the RSE licensee); or

(b) becomes an acting trustee appointed under Part 17 of a superannuation entity following the suspension or removal of a former trustee of the entity under that Part.

However, this subsection does not apply if review of the RSE licensee's risk management strategy is due under paragraph (1)(b) within the 60 days after the RSE licensee becomes an RSE licensee, or trustee, of the entity.

Note: Only a person may be appointed as an acting trustee under Part 17: see section 134.

29HB Modifications etc. to risk management strategies

(1) An RSE licensee may:

(a) modify its risk management strategy; or

(b) repeal its risk management strategy and replace it with a new risk management strategy.

(2) However, after the modification or the repeal and replacement, the risk management strategy must comply with section 29H.

(3) APRA may direct an RSE licensee to modify its risk management strategy as set out in the direction, by a specified time, to ensure that the strategy complies with section 29H. The direction is to be given by notice to the RSE licensee.

Note: A failure to comply with a direction may be an offence: see section 29JC.

(4) A time specified in a direction given to an RSE licensee under subsection (3) must be at least 14 days after the direction is given to the RSE licensee.

29HC Notification of modifications etc. to risk management strategies

(1) If an RSE licensee modifies its risk management strategy, the RSE licensee must give APRA:

(a) a copy of the modification; and

(b) a copy of the strategy as modified;

within 14 days after making the modification.

(2) If an RSE licensee repeals its risk management strategy (the ***old strategy***) and replaces it with another risk management strategy (the ***new strategy***), the RSE licensee must give APRA:

(a) a copy of the new strategy; and

(b) a written statement to the effect that the new strategy replaces the old strategy;

within 14 days after the old strategy is repealed.

(3) Any copy or statement given to APRA by an RSE licensee under this section must be signed by the RSE licensee.

Note: If the RSE licensee is a group of individual trustees, the copy or statement must be signed by each of the members of the group: see subsection 13A(6).

(4) 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 is in breach of subsection (1), (2) or (3).

Penalty: 50 penalty units.

(5) 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 is in breach of subsection (1), (2) or (3).

This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Subdivision C—Miscellaneous

29HD APRA to be given information

(1) APRA may give an RSE licensee a notice requesting it to give APRA, in a specified way, specified information relating to its risk management strategy by a specified time that is reasonable in the circumstances.

(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) there has been a failure by the RSE licensee to comply with a notice under subsection (1).

Penalty: 50 penalty units.

(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) there has been a failure by the RSE licensee to comply with a notice under subsection (1).

This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Note 3: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(4) Subsection (2) or (3) does not apply if the RSE licensee has a reasonable excuse for the failure to comply with the notice under subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Division 9—Offences and self-incrimination

29J Being trustee of a registrable superannuation entity while unlicensed etc.

(1) A person who was not a trustee of a registrable superannuation entity at the start of the licensing transition period must not be a trustee, or act as a trustee, of a registrable superannuation entity at a time during that period, unless at that time at least one of the following paragraphs apply:

(a) the person holds an RSE licence that enables the person to be the trustee of the entity;

(b) the person is a member of a group of individual trustees that holds an RSE licence that enables the members of the group to each be a trustee of the entity;

(c) the person has been a trustee of the entity for less than 30 days and that entity has at least one other trustee who has been a trustee of it from immediately before the start of the licensing transition period until that time;

(d) the person, and at least one other trustee of the entity who has been a trustee of it from immediately before the start of the licensing transition period until that time, have applied for an RSE licence that would enable them to be a trustee of that

entity and the application has not been finally determined or disposed of;

(e) the person is an approved trustee.

(2) Despite subsection 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to any matter in subsection (1) of this section.

(3) A person that contravenes subsection (1) commits an offence.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

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.

(4) A person must not be a trustee of a registrable superannuation entity, or act as a trustee of a registrable superannuation entity, if the person:

(a) is a body corporate; and

(b) is not the only trustee of the registrable superannuation entity.

(5) A person that contravenes subsection (4) commits an offence.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

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.

(6) This section does not prevent an RSE licensee from engaging or authorising persons to act on its behalf.

29JA Failing to notify breach of licence condition

(1) An RSE licensee must give APRA a notice setting out the particulars of a breach by the RSE licensee of a condition imposed on its RSE licence as soon as practicable after, and in any event within 14 days after:

(a) if the RSE licensee is a body corporate—the body corporate; or

(b) if the RSE licensee is a group of individual trustees—a member of the group;

becomes aware that the breach has occurred.

(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 is in breach of 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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

29JB Not complying with direction to comply with licence conditions

(1) An RSE licensee must comply with a direction given to it under section 29EB within the time specified in the direction.

(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 is in breach of subsection (1).

Penalty: 60 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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

29JC Not complying with direction to modify risk management strategy

(1) An RSE licensee must comply with a direction given to it under section 29HB within the time specified in the direction.

(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 is in breach of subsection (1).

Penalty: 60 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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

29JD Breach does not affect validity of issue of superannuation interests etc.

A breach of section 29J, 29JA, 29JB or 29JC does not affect the validity of the issue of a superannuation interest or of any other act.

29JE Self incrimination

(1) An individual is not excused from complying with a requirement under section 29CA, 29FA or 29HD to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:

(a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

Part 2B—Registrable superannuation entities

Division 1—Object of this Part

29K Object etc. of this Part

(1) The object of this Part is to provide for the registration of registrable superannuation entities.

(2) Registration is significant because an RSE licensee may breach the licence condition imposed by paragraph 29E(1)(d) if a registrable superannuation entity of which it is the RSE licensee is not registered.

Note: Breach of a licence condition may lead to consequences such as a direction from APRA to comply with the condition (see section 29EB) or cancellation of the licence (see section 29G).

Division 2—Applying for registration

29L Applications for registration

Who may apply for registration

(1) An RSE licensee may apply to APRA for registration of a registrable superannuation entity.

Requirements for applications

(2) An application for registration of a registrable superannuation entity must:
(a) be in the approved form; and
(b) contain the information required by the approved form; and
(c) be accompanied by an up-to-date copy of the trust deed by which the registrable superannuation entity is constituted (except to the extent that the trust deed is constituted by the governing rules of the entity); and
(d) be accompanied by an up-to-date copy of the governing rules of the registrable superannuation entity (except to the extent that the governing rules are constituted by the law of the Commonwealth or by unwritten rules); and

(e) be accompanied by an up-to-date copy of the risk management plan for the registrable superannuation entity, signed by the RSE licensee that made the application; and

(f) be accompanied by a statement, signed by the RSE licensee that made the application, to the effect that the risk management plan accompanying the application complies with section 29P.

Note: If the RSE licensee is a group of individual trustees, the copy or statement must be signed by each of the members of the group: see subsection 13A(6).

Notifying certain changes while applications are pending

(3) If:

(a) an RSE licensee applies for registration of a registrable superannuation entity; and

(b) after the application is made but before APRA decides the application, the trust deed (other than the governing rules of the entity) by which the entity is constituted is varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the trust deed with APRA as soon as practicable after the trust deed is varied or revoked and replaced.

(4) If:

(a) an RSE licensee applies for registration of a registrable superannuation entity; and

(b) after the application is made but before APRA decides the application, any governing rules of the entity (that are not constituted by the law of the Commonwealth or by unwritten rules) are varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the governing rules (that are not constituted by the law of the Commonwealth or by unwritten rules) with APRA as soon as practicable after the governing rules are varied or revoked and replaced.

(5) If:

(a) an RSE licensee applies for registration of a registrable superannuation entity; and

(b) after the application is made but before APRA decides the application, the risk management plan for the entity is varied or revoked and replaced;

the RSE licensee must lodge an up-to-date copy of the risk management plan with APRA as soon as practicable after the risk management plan is varied or revoked and replaced.

(6) An application is taken not to comply with this section if subsection (3), (4) or (5) is contravened.

Note: APRA cannot register an entity while the application does not comply with this section: see paragraph 29M(1)(a).

Lapsed applications

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

29LA APRA may request further information

APRA may give an RSE licensee that has applied for registration of a registrable superannuation entity 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 29LB(1)(b).

29LB Period for deciding applications for registration

(1) APRA must decide an application by an RSE licensee for registration of a registrable superannuation entity:
(a) within 21 days after receiving the application; or
(b) if the applicant was requested to provide information under section 29LA—within 21 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 registration of a registrable superannuation entity by up to 7 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 registration of a registrable superannuation entity, it must decide the application within the extended period.

(4) If APRA has not decided an application for registration of a registrable superannuation entity 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.

Division 3—Registration

29M Registration of registrable superannuation entity

(1) APRA must register a registrable superannuation entity if, and only if:

(a) the application for registration complies with section 29L; and

(b) the applicant has provided to APRA all information that the applicant was requested, under section 29LA, to provide, or the request has been disposed of; and

(c) APRA is satisfied that nothing in the governing rules of the entity conflicts with Part 6; and

(d) APRA is satisfied that the risk management plan for the entity meets the requirements of section 29P; and

(e) the applicant for registration holds an RSE licence that enables:

(i) if the applicant is a body corporate—the body corporate; or

(ii) if the applicant is a group of individual trustees—each member of the group;

to be a trustee of that entity.

(2) Otherwise APRA must refuse to register the entity.

29MA Registration numbers etc.

If APRA registers a registrable superannuation entity, APRA must:

(a) allocate the entity a unique registration number; and

(b) notify the RSE licensee of the entity in writing of the registration and of the entity's registration number.

29MB Documents required to bear registration numbers

(1) After a registrable superannuation entity is registered, the RSE licensee of the entity must ensure that the entity's registration number is included in:

(a) each document that the RSE licensee gives to APRA that relates to the entity; and

(b) any other document in which the RSE licensee identifies itself as the RSE licensee of the entity; and

(c) if the RSE licensee is a body corporate—any document in which the body corporate identifies itself as a trustee of the entity; and

(d) if the RSE licensee is a group of individual trustees—any document that a member of the group gives to APRA or in which a member of the group identifies itself as a trustee of the entity or as a member of a group of individual trustees that are the RSE licensee of the entity.

(2) However, an RSE licensee is not required to comply with subsection (1) in respect of a particular document if the RSE licensee has been given written approval by APRA not to ensure that the number is included in that document or in a class of documents that includes that document.

29MC APRA to give notice of refusal of applications

If APRA refuses an application by an RSE licensee for registration of a registrable superannuation entity, 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.

Division 4—Cancelling registration

29N Cancelling registration

(1) APRA must cancel the registration of a registrable superannuation entity if a document that:
(a) is a reporting document within the meaning of the *Financial Sector (Collection of Data) Act 2001*; and
(b) relates to the entity; and
(c) was given to APRA under that Act;
states that the entity has been wound up.

(2) APRA may cancel the registration of a registrable superannuation entity if APRA is satisfied, on reasonable grounds, that:
(a) the entity has no beneficiaries and no assets; and
(b) there are no outstanding claims against the entity for benefits or other payments; and
(c) other circumstances (if any) prescribed by regulations made for the purposes of this paragraph exist.

(3) If APRA cancels the registration of a registrable superannuation entity under subsection (2), APRA must take all reasonable steps to ensure that the RSE licensee of the entity is given a notice:
(a) stating that APRA has cancelled the registration of the entity; and
(b) setting out the reasons for the cancellation;
as soon as practicable after cancelling the registration of the entity.

Division 5—Risk management plans

Subdivision A—Contents of risk management plans

29P Contents of risk management plans

(1) The risk management plan for a registrable superannuation entity must set out reasonable measures and procedures that the RSE

licensee of the entity is to apply to identify, monitor and manage the risks that arise in operating the entity.

(2) Without limiting subsection (1), the risk management plan for a registrable superannuation entity must set out:

(a) reasonable measures and procedures that the RSE licensee of the entity is to apply to identify, monitor and manage:

(i) the risks to the investment strategy relevant to the entity; and

(ii) the risks to the entity's financial position; and

(iii) the risks from entering into outsourcing arrangements relating to the entity; and

(b) the circumstances in which an audit of the risks referred to in this section is to be undertaken; and

(c) such other matters as are prescribed by regulations made for the purposes of this paragraph.

(3) The risk management plan must be signed by the RSE licensee of the entity.

Note: If the RSE licensee is a group of individual trustees, the plan must be signed by each of the individual trustees: see subsection 13A(6).

(4) The risk management plan must not by reference incorporate provisions of any other document unless that other document is available, without charge, to members of the public.

(5) A risk management plan does not fail to comply with the above section merely because it reproduces information contained in the risk management strategy of the RSE licensee of the entity or in a risk management plan for another entity that has the same RSE licensee.

Subdivision B—Maintaining and reviewing risk management plans

29PA Requirement to maintain and review risk management plans

(1) An RSE licensee of a registrable superannuation entity that has been registered under this Part must:

(a) ensure that at all times the risk management plan for the entity is up-to-date; and

(b) ensure that the risk management plan for the entity is reviewed at least once each year to ensure that it complies with section 29P; and

(c) modify, or replace, the risk management plan for the entity in accordance with section 29PB if at any time the trustee becomes aware that the risk management plan no longer complies with section 29P.

(2) An RSE licensee of a registrable superannuation entity must review the risk management plan for the entity within 60 days after the RSE licensee:

(a) becomes the RSE licensee of the entity (unless the entity is a registrable superannuation entity of which, at the time of the application for an RSE license, the RSE licensee proposed to become the RSE licensee); or

(b) becomes an acting trustee appointed under Part 17 of a superannuation entity following the suspension or removal of a former trustee of the entity under that Part.

However, this subsection does not apply if a review of the risk management plan is due under paragraph (1)(b) within the 60 days after the RSE licensee becomes the RSE licensee, or trustee, of the entity.

Note: Only a person may be appointed as an acting trustee under Part 17: see section 134.

29PB Modifications etc. to risk management plans

(1) An RSE licensee of a registrable superannuation entity that has been registered under this Part may:

(a) modify the risk management plan for the entity; or

(b) repeal the risk management plan for the entity and replace it with a new risk management plan.

(2) However, after the modification or the repeal and replacement, the risk management plan must comply with section 29P.

(3) APRA may direct an RSE licensee of a registrable superannuation entity that has been registered under this Part to modify the risk management plan for the entity, as set out in the direction, by a specified time, to ensure that the plan complies with section 29P. The direction is to be given by notice to the RSE licensee.

Note: A failure to comply with a direction may be an offence: see section 29Q.

(4) A time specified in a direction given to an RSE licensee under subsection (3) must be at least 14 days after the direction is given to the RSE licensee.

29PC Notification of modifications etc. to risk management plans

(1) If an RSE licensee modifies a risk management plan for a registrable superannuation entity that has been registered under this Part, the RSE licensee must give APRA:

(a) a copy of the modification; and

(b) a copy of the plan as modified;

within 14 days after making the modification.

(2) If an RSE licensee repeals a risk management plan (the ***old plan***) for a registrable superannuation entity that has been registered under this Part and replaces it with another risk management plan (the ***new plan***), the RSE licensee must give APRA:

(a) a copy of the new plan; and

(b) a written statement to the effect that the new plan replaces the old plan;

within 14 days after the old plan is repealed.

(3) Any copy or statement given to APRA under this section must be signed by the RSE licensee.

Note: If the RSE licensee is a group of individual trustees, the copy or statement must be signed by each of the individual trustees: see subsection 13A(6).

(4) 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 is in breach of subsection (1), (2) or (3).

Penalty: 50 penalty units.

(5) 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 is in breach of subsection (1), (2) or (3).

This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Subdivision C—Miscellaneous

29PD Access to risk management plans

(1) If a member or unit holder of a registrable superannuation entity that has been registered under this Part requests a copy of the risk management plan for the entity, the RSE licensee of the entity must make a copy of the plan available, without charge, to the member or unit holder as soon as practicable after the RSE licensee receives the request.

(2) If an employer-sponsor of a registrable superannuation entity that:

(a) has been registered under this Part; and

(b) is a defined benefit fund;

requests a copy of the risk management plan for the entity, the RSE licensee of the entity must make a copy of the plan available, without charge, to the employer-sponsor as soon as practicable after the RSE licensee receives the request.

29PE APRA to be given information

(1) APRA may give an RSE licensee of a registrable superannuation entity that has been registered under this Part a notice requesting the RSE licensee to give APRA, in a specified way, specified information relating to the risk management plan for the entity by a specified time that is reasonable in the circumstances.

(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) there has been a failure by the RSE licensee to comply with the notice.

Penalty: 50 penalty units.

(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) there has been a failure by the RSE licensee to comply with the notice.

This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Note 3: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(4) Subsection (2) or (3) does not apply if the RSE licensee has a reasonable excuse for the failure to comply with the notice under subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Division 6—Offences and self-incrimination

29Q Not complying with direction to modify risk management plan

(1) An RSE licensee must comply with a direction given to it under section 29PB within the time specified in the direction.

(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 is in breach of subsection (1).

Penalty: 60 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 responsibility and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

29QA Breach does not affect validity of issue of superannuation interests etc.

A breach of section 29Q does not affect the validity of the issue of a superannuation interest or of any other act.

29QB Self incrimination

(1) An individual is not excused from complying with a requirement under section 29LA or 29PE to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:

(a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

30 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Operating standards

31 Section 30

Repeal the section, substitute:

30 Object of Part

The object of this Part is to provide for a system of prescribed standards applicable to:

(a) the operation of regulated superannuation funds, approved deposit funds and pooled superannuation trusts; and

(b) the trustees and RSE licensees of those funds and trusts.

32 At the end of subsection 31(1)

Add "and to trustees and RSE licensees of those funds".

33 Paragraph 31(2)(l)

After "funds", insert "and the management of the investment".

34 After paragraph 31(2)(m)

Insert:

(ma) the requirements relating to fitness and propriety for RSE licensees of funds and trustees of funds;

35 After paragraph 31(2)(p)

Insert:

(pa) the disclosure of information by a trustee of a fund who is a member of a group of individual trustees to the other trustees in that group;

36 After paragraph 31(2)(s)

Insert:

(sa) the outsourcing arrangements relating to the operation of funds;

(sb) the adequacy of resources (including human resources, technical resources, and financial resources) of, or available to, trustees of funds;

37 At the end of subsection 32(1)

Add "and to trustees and RSE licensees of those funds".

38 After paragraph 32(2)(a)

Insert:

(aa) the circumstances in which amounts may be deposited with funds;

39 Paragraph 32(2)(f)

After "funds", insert "and the management of the investment".

40 After paragraph 32(2)(f)

Insert:

(fa) the requirements relating to fitness and propriety for RSE licensees of funds and trustees of funds;

41 After paragraph 32(2)(l)

Insert:

(la) the outsourcing arrangements relating to the operation of funds;

(lb) the adequacy of resources (including human resources, technical resources, and financial resources) of, or available to, trustees of funds;

42 At the end of subsection 33(1)

Add "and to trustees and RSE licensees of those trusts".

43 Before paragraph 33(2)(a)

Insert:

(aa) the circumstances in which units in trusts may be acquired;

44 Paragraph 33(2)(b)

After "trusts", insert "and the management of the investment".

45 After paragraph 33(2)(b)

Insert:

(ba) the requirements relating to fitness and propriety for RSE licensees of trusts and trustees of trusts;

46 After paragraph 33(2)(j)

Insert:

(ja) the outsourcing arrangements relating to the operation of trusts;

(jb) the adequacy of resources (including human resources, technical resources and financial resources) of, or available to, trustees of trusts;

47 After subsection 63(7A)

Insert:

Additional rule for certain funds not complying with equal representation rules

(7B) An RSE licensee of a fund that is not a public offer superannuation fund must not, while subsection (7D) applies to the fund, accept any contributions made to the fund by an employer-sponsor.

Penalty: 60 penalty units.

(7C) Subsection (7B) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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

(7D) This subsection applies to the fund if:

(a) the fund is failing to comply with subsection 92(4) or 93(4) (whichever is applicable); or

(b) having previously failed to comply, the fund does so comply but the RSE licensee has not given to APRA a notice in the approved form that:

(i) states that the fund so complies; and

(ii) if the RSE licensee is a group of individual trustees and the compliance is as a result of the appointment of one or more other individual trustees to the group—states the appointee's name or the appointees' names; and

(iii) if the RSE licensee is a body corporate and the compliance is as a result of the appointment of one or more directors to the board of directors of the body corporate—states the appointee's name or the appointees' names.

Note: The heading to section 63 is replaced by the heading "**Certain regulated superannuation funds not to accept employer contributions in certain circumstances**".

48 Subsection 63(8)

After "subsection (7)", insert "or (7B)".

49 Subsection 63(8)

Omit "that subsection", substitute "either of those subsections".

50 Paragraph 92(5)(c)

After "(under section 26)", insert "or an RSE licensee".

51 Paragraph 92(5)(ca)

Repeal the paragraph, substitute:

(ca) either:

(i) the trustee's approval specifies that the trustee is also approved for the purposes of this subsection, either generally or in relation to the fund or a class of funds to which the fund belongs; or

(ii) a condition imposed under section 29EA on the RSE licensee's RSE licence requires the RSE licensee to ensure that the fund, or a class of funds to which the fund belongs, complies with the alternative agreed representation rule whenever this section applies to the fund; and

52 Subsection 92(9)

After "and 29,", insert "if the trustee is an approved trustee,".

53 Subsection 113(1)

After "of the entity", insert ", and the RSE licensee (if any) of the entity,".

54 Paragraph 113(3)(b)

Before "has complied with", insert "and the RSE licensee (if any) of the entity".

55 At the end of subsection 113(3)

Add:

; and (c) must, if it is approved for a registrable superannuation entity that is registered under Part 2B, include a statement by the auditor as to whether, in the opinion of the auditor, the RSE licensee of the entity:

(i) has complied with each risk management plan for the entity that applied during that year; and

(ii) has adequate systems to ensure future compliance with any risk management plan for the entity; and

(iii) has complied with each risk management strategy that applied to the RSE licensee during that year in relation to risks arising from any activities, and proposed activities, as RSE licensee of the entity, and all other activities, or proposed activities, relevant to those activities; and

(iv) has adequate systems to ensure future compliance with the risk management strategy for the RSE licensee in relation to future risks arising from any proposed future activities as RSE licensee of the entity, and all other proposed future activities relevant to those activities.

56 At the end of subsection 121A(1)

Add "or an RSE licensee that is a constitutional corporation".

Note: The heading to section 121A is replaced by the heading "**Certain persons not to be trustees of certain small funds**".

57 Subsection 133(1)

Repeal the subsection, substitute:

Suspension or removal

(1) The Regulator may suspend or remove a trustee of a superannuation entity if:

(a) the trustee is a disqualified person within the meaning of Part 15; or

(b) it appears to the Regulator that conduct that has been, is being, or is proposed to be, engaged in by the trustee or any other trustees of the entity may result in the financial position of the entity or of any other superannuation entity becoming unsatisfactory; or

(c) the Regulator:

(i) under section 28, revokes the approval of the trustee; or

(ii) under section 29G, cancels the RSE licence that enables the trustee to be a trustee of that entity; or

(d) if the superannuation entity is a superannuation fund with fewer than 5 members (other than a self managed superannuation fund)—the trustee is required by subsection 121A(1) to be, but is not, an approved trustee or an RSE licensee that is a constitutional corporation; or

(e) if the trustee is an RSE licensee—the RSE licensee breaches any of the conditions of its RSE licence.

58 After Part 17

Insert:

Part 18—Amalgamation of funds

143 Object of Part

The object of this Part is to empower APRA to approve, in certain circumstances, the transfer of all benefits of members and beneficiaries in a regulated superannuation fund or approved deposit fund to another regulated superannuation fund or approved deposit fund.

144 Benefits may be transferred to a new fund with APRA's approval etc.

(1) All benefits of members and beneficiaries in a regulated superannuation fund or approved deposit fund (the ***transferor fund***) may be transferred to another regulated superannuation fund or approved deposit fund (the ***transferee fund***) if:

(a) APRA approves the transfer under this Part; and

(b) the transfer takes place under an arrangement between all the trustees of the transferor fund and:

(i) if the trustee of the transferee fund is a body corporate—the approved trustee or the RSE licensee of the transferee fund; or

(ii) if there is a group of individual trustees of the transferee fund that is an RSE licensee—all of the individual trustees of the transferee fund.

(2) This section does not affect the transfer of any benefits in a superannuation fund or approved deposit fund under any other provision of this Act or under the regulations.

145 Application for approval of transfer

(1) An application to APRA for approval of the transfer of all benefits of members and beneficiaries in the transferor fund to the transferee fund may be made by all the trustees of the transferor fund and:

(a) if the trustee of the transferee fund is a body corporate—the approved trustee or the RSE licensee of the transferee fund; or

(b) if there is a group of individual trustees of the transferee fund that is an RSE licensee—all of the individual trustees of the transferee fund.

(2) The application must be in the approved form.

146 Approval of transfer

(1) APRA may approve the transfer of all benefits of members and beneficiaries in the transferor fund to the transferee fund in accordance with an application under section 145 if, and only if, APRA is satisfied that:

(a) either:

(i) reasonable attempts to bring about the transfer under another provision of this Act or under the regulations have failed; or

(ii) the transfer would take place under a scheme formulated under section 142; and

(b) the transfer is reasonable in all the circumstances, having regard to:

(i) the benefit entitlements of members and beneficiaries under the governing rules of the transferor fund; and

(ii) the likely effect on the amount of those entitlements if those members and beneficiaries were to remain members and beneficiaries of the transferor fund; and

(iii) the benefit entitlements of members and beneficiaries under the governing rules of the transferee fund; and

(iv) the value of the assets transferred from the transferor fund to the transferee fund under the arrangement referred to in paragraph 144(1)(b); and

(c) the transfer would not adversely affect the interests of the members and beneficiaries of the transferee fund; and

(d) the transferee fund has an approved trustee or an RSE licensee.

(2) APRA must not approve the transfer without the Minister's written consent.

147 Cessation of rights against transferor fund

If the benefits of members and beneficiaries in a transferor fund are transferred to a transferee fund under this Part:

(a) the members and beneficiaries cease to have rights against the transferor fund; and

(b) if:

(i) immediately before the transfer occurred, another person had a contingent right against the transferor fund to a death or disability benefit; and

(ii) the contingent right was derived from a member's or beneficiary's capacity as a member or beneficiary of the transferor fund;

the other person ceases to have the contingent right against the transferor fund.

To avoid doubt, a reference in paragraph (a) to a right against the transferor fund includes a reference to a contingent right to a death or disability benefit.

59 Paragraph 152(2A)(a)

Repeal the paragraph, substitute:

(a) the trustee:

(i) is the only trustee of the entity and is an approved trustee; or

(ii) is a constitutional corporation and is an RSE licensee; and

59A Section 327 (at the end of the definition of *modifiable provision*)

Add:

; or (d) subsection 63(7B), (7C) or (7D).

60 After section 338

Add:

338A Liability of trustees required to ensure thing occurs

A person who is a member of a group of individual trustees is not liable under any offence of strict liability or civil penalty provision of this Act or the regulations in respect of any contravention resulting from a failure by the person to ensure that a particular thing occurs if the person proves that he or she:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that his or her obligations were being complied with.

Note: In a prosecution for an offence of strict liability against a provision of this Act or the regulations, a defendant bears a legal burden in relation to the matters in this section (see section 13.4 of the *Criminal Code*).

61 Subsection 344(12)

After "(d),", insert "(dd), (de), (df), (dg), (dl), (dm), (dn),".

Part 2—Amendments commencing second

Superannuation Industry (Supervision) Act 1993

62 Section 4 (table item 2)

Repeal the item.

63 Subparagraph 6(1)(a)(i)

Repeal the subparagraph, substitute:

(i) Parts 2A and 2B;

64 Subsection 10(1) (paragraph (b) of the definition of *approved deposit fund*)

Repeal the paragraph, substitute:

(b) is maintained by an RSE licensee that is a constitutional corporation; and

65 Subsection 10(1) (definition of *approved trustee*)

Repeal the definition.

66 Subsection 10(1) (paragraphs (ba) to (dc) of the definition of *reviewable decision*)

Repeal the paragraphs.

67 Subsection 10(1) (paragraph (m) of the definition of *reviewable decision*)

Omit "or a trustee's subsection 92(5) approval".

68 Subsection 10(1) (paragraph (n) of the definition of *reviewable decision*)

Omit "or a trustee's subsection 92(5) approval".

69 Subsection 10(1) (definition of *written custody requirements*)

Repeal the definition.

70 Paragraph 17A(4)(a)

Omit “an approved trustee of the fund or”.

71 Part 2

Repeal the Part.

72 Subsection 29J(1)

Omit “who was not a trustee of a registrable superannuation entity at the start of the licensing transition period”.

73 Subsection 29J(1)

Omit “at a time during that period, unless at that time”, substitute “unless”.

74 Paragraph 29J(1)(b)

Omit “entity;”, substitute “entity.”.

75 Paragraphs 29J(1)(c), (d) and (e)

Repeal the paragraphs.

76 Paragraph 92(5)(c)

Omit “an approved trustee (under section 26) or”.

77 Paragraph 92(5)(ca)

Repeal the paragraph, substitute:

(ca) a condition imposed under section 29EA on the RSE licensee’s RSE licence requires the RSE licensee to ensure that the fund, or a class of funds to which the fund belongs, complies with the alternative agreed representation rule whenever this section applies to the fund; and

78 Subsections 92(6), (7), (8) and (9)

Repeal the subsections.

79 Section 121A

Repeal the section.

80 Paragraphs 133(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) if the trustee is a trustee of a registrable superannuation entity—the trustee is not an RSE licensee or a member of a group of individuals that is an RSE licensee; or

81 At the end of section 142

Add:

(9) Subsection (8) does not apply to an instrument relating to an appointment under this Part of a person as a trustee of a superannuation entity if the appointment arose because of the removal, under paragraph 133(1)(c), of another trustee that:

(a) was an approved trustee at any time during the licensing transition period; and

(b) was not an RSE licensee at the end of that period.

82 Subparagraph 144(1)(b)(i)

Omit "the approved trustee or".

83 Paragraph 145(1)(a)

Omit "the approved trustee or".

84 Paragraph 146(1)(d)

Omit "an approved trustee or".

85 Paragraph 152(2A)(a)

Repeal the paragraph, substitute:

(a) the trustee is a constitutional corporation and is an RSE licensee; and

86 Subsection 344(12)

Omit "(ba), (c), (d),".

Schedule 2—Clarification of the application of the law to groups of trustees

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1) (definition of *custodian*)

Omit "the trustee" (wherever occurring), substitute "a trustee".

2 Subsection 10(1) (paragraph (a) of the definition of *excluded instalment trust*)

Omit "the trustee", substitute "a trustee".

3 Subsection 10(1) (definition of *investment manager*)

Repeal the definition, substitute:

> ***investment manager*** means a person appointed by a trustee of a fund or trust to invest on behalf of the trustee, or the trustees, of the fund or trust.

4 Subsection 10(1) (definition of *lease arrangement*)

Omit "the trustee", substitute "a trustee".

5 Subsection 10(1) (paragraph (a) of the definition of *policy committee*)

Omit "the trustee", substitute "a trustee".

6 Subsections 16(2) and (5)

Omit "the trustee", substitute "a trustee".

7 Paragraph 17A(6)(c)

Omit "the trustee", substitute "a trustee".

8 Subparagraph 17A(6)(d)(iii)

Omit "the trustee", substitute "a trustee".

9 Subsection 19(4) (note)

After "the trustee", insert "or the trustees".

10 Subsection 34(1)

Omit "The trustee", substitute "Each trustee".

11 Section 35

Repeal the section, substitute:

35 Object of Part

The object of this Part is to require certain reports and returns relating to superannuation entities to be given to the Regulator.

12 Subsection 36(1)

Repeal the subsection (not including the note), substitute:

Lodgment

(1) Each trustee of a superannuation entity must, within the prescribed period after the year of income, ensure that APRA is given a copy of the report given to a trustee of the entity by an approved auditor under Part 13 in relation to the entity, and any RSE licensee of the entity, in respect of that year of income, certified to be a true copy of the report by:

(a) if the trustee is a body corporate—a responsible officer of the body corporate; or

(b) if the trustee is a member of a group of individual trustees—at least one of those trustees; or

(c) in any other case—the trustee.

13 Subsections 36(2) and (2A)

Omit "The trustee", substitute "A trustee".

14 Subsection 36A(1)

Omit "The trustee", substitute "Each trustee".

15 Subsection 36A(1)

Omit "give to the Commissioner of Taxation", substitute "ensure that the Commissioner of Taxation is given".

16 Subsection 36A(3) (note)

Omit "the trustee", substitute "a trustee".

17 Subsections 40(1) and (2)

Omit “the trustee”, substitute “a trustee”.

18 Subsection 40(4)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

19 Subsection 41(2)

Omit “the trustee of”, substitute “a trustee of”.

20 Paragraph 41(2)(b)

Omit “the trustee” (wherever occurring), substitute “a trustee of the entity”.

21 Subparagraph 42(1)(b)(i)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

22 Sub-subparagraph 42(1)(b)(ii)(A)

Omit “the trustee”, substitute “a trustee of the entity”.

23 Subparagraph 42(1AA)(c)(i)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

24 Subparagraph 42(1AA)(c)(ii)

Omit “the trustee contravened”, substitute “a trustee of the entity contravened”.

25 Subparagraph 42(1AA)(c)(ii)

Omit “the trustee satisfies APRA”, substitute “APRA is satisfied”.

26 Paragraph 42(1AC)(a)

Omit “the trustee of the entity has”, substitute “the trustee, or the trustees, of the entity have”.

27 Paragraph 42(1AC)(b)

Omit “the trustee”, substitute “a trustee of the entity”.

28 Paragraph 42(1AC)(c)

Omit “the trustee” (wherever occurring), substitute “a trustee of the entity”.

29 Subparagraph 42(1AC)(d)(i)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

30 Subparagraph 42(1AC)(d)(i)

After “when the trustee”, insert “, or the trustees,”.

31 Subparagraph 42(1AC)(d)(ii)

Omit “the trustee contravened”, substitute “a trustee of the entity contravened”.

32 Subparagraph 42(1AC)(d)(ii)

Omit “the trustee satisfies APRA”, substitute “APRA is satisfied”.

33 Paragraph 42(1AC)(e)

After “trustee”, insert “, or the trustees,”.

34 Subparagraph 42A(2)(b)(ii)

Omit “the trustee”, substitute “a trustee of the entity”.

35 Subparagraph 42A(3)(d)(i)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

36 Subparagraph 42A(3)(d)(ii)

Omit “the trustee contravened”, substitute “a trustee of the entity contravened”.

37 Subparagraph 42A(3)(d)(ii)

Omit “the trustee satisfies APRA”, substitute “APRA is satisfied”.

38 Paragraph 42A(3)(g)

Omit “the trustee”, substitute “a trustee of the entity”.

39 Paragraph 42A(4)(a)

Omit “the trustee of the entity has”, substitute “the trustee, or the trustees, of the entity have”.

40 Subparagraph 42A(4)(b)(i)

Omit “the trustee”, substitute “a trustee of the entity”.

41 Subparagraph 42A(4)(b)(ii)

Omit “the trustee” (wherever occurring), substitute “a trustee of the entity”.

42 Subparagraph 42A(4)(c)(i)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

43 Subparagraph 42A(4)(c)(i)

After “when the trustee”, insert “, or the trustees,”.

44 Subparagraph 42A(4)(c)(ii)

Omit “the trustee contravened”, substitute “a trustee of the entity contravened”.

45 Subparagraph 42A(4)(c)(ii)

Omit “the trustee satisfies the APRA”, substitute “APRA is satisfied”.

46 Paragraph 42A(4)(d)

After “trustee”, insert “, or the trustees,”.

47 Subparagraph 42A(4)(f)(ii)

Omit “the trustee”, substitute “a trustee of the entity”.

48 Paragraph 42A(5)(a)

Omit “the trustee did not contravene”, substitute “no trustee of the entity contravened”.

49 Paragraph 42A(5)(b)

Omit “the trustee”, substitute “a trustee of the entity”.

50 Paragraph 45(1)(a)

Omit “the trustee”, substitute “a trustee of the fund”.

51 Paragraph 45(1)(b)

Omit "the trustee" (wherever occurring), substitute "a trustee of the fund".

52 Paragraph 50(1)(a)

Omit "the trustee of a superannuation fund has lodged or lodges", substitute "the trustee, or the trustees, of a superannuation fund have lodged or lodge".

53 Paragraph 50(1)(c)

Omit "the trustee satisfies the Regulator", substitute "the Regulator is satisfied".

54 Paragraph 50(1)(d)

Omit "the trustee has", substitute "the trustee, or the trustees, of the fund have".

55 Paragraph 50(2)(c)

Omit "the trustee", substitute "a trustee".

56 Paragraph 50(2)(d)

Omit "the trustee", substitute "the trustee, or the trustees, of the fund".

57 Paragraph 50(2)(d)

Omit "it", substitute "they".

58 Paragraph 50(2)(e)

Omit "the trustee has", substitute "the trustee, or the trustees, have".

59 Subparagraph 50(2)(e)(ii)

Omit "the trustee", substitute "the trustee, or trustees, of the fund".

60 Paragraph 50(2)(f)

Omit "the trustee", substitute "a trustee of the fund".

61 Subsection 52(2)

Omit "covenants by the trustee", substitute "covenants by each trustee of the entity".

62 Subsections 55(5) and (6)

Omit “the trustee”, substitute “a trustee”.

63 Paragraph 56(1)(a)

Omit “the trustee”, substitute “a trustee of the entity”.

64 Subsection 56(2)

Omit “exempting the trustee”, substitute “exempting a trustee of the entity”.

65 Subsection 56(2)

Omit “indemnifying the trustee”, substitute “indemnifying a trustee of the entity”.

66 Subsection 56(3)

Omit “the trustee of”, substitute “a trustee of”.

67 Subsection 56(3)

Omit “of the trustee”, substitute “of a trustee”.

68 Subsection 56(3)

Omit “the trustee from”, substitute “a trustee of the entity from”.

69 Subsection 58(1)

Omit “permit the trustee”, substitute “permit a trustee”.

70 Subsection 59(1)

Omit “than the trustee”, substitute “than a trustee of the entity”.

71 Paragraph 59(1)(a)

After “the trustee”, insert “, or the trustees, of the entity”.

72 Subsection 59(1A)

Omit “the trustee” (wherever occurring), substitute “a trustee of the entity”.

73 Paragraph 60(1)(a)

Omit “the trustee has”, substitute “the trustee, or the trustees, of the entity have”.

74 Paragraph 60(1)(c)

Omit “the trustee”, substitute “the trustee, or the trustees,”.

75 Subsection 62(1)

Omit “The trustee”, substitute “Each trustee”.

76 Subsection 62(1A)

Omit “the trustee”, substitute “a trustee”.

77 Subsection 63(1)

Omit “the trustee of”, substitute “a trustee of”.

78 Subsection 63(1)

Omit “the trustee not”, substitute” the trustee, or the trustees, not”.

79 Subsection 63(3)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

80 Subsection 63(5)

Omit “the trustee of the fund concerned satisfies the Regulator”, substitute “the Regulator is satisfied”.

81 Subsection 63(5)

Omit “the trustee with”, substitute “each trustee of the fund with”.

82 Subsection 63(6)

After “the trustee of the fund is”, insert “, or the trustees of the fund are,”.

83 Subsection 63(8)

Omit “the trustee”, substitute “a trustee of the fund”.

84 Subsection 63(9)

Repeal the subsection, substitute:

Notification to employer-sponsors

(9) If a trustee of a fund is given a direction under this section, each trustee of the fund must ensure that all reasonable steps are taken to notify the direction to each employer-sponsor of the fund.

85 Subparagraph 64(1)(a)(ii)

Omit “the trustee”, substitute “a trustee”.

86 Subsection 64(2)

Omit “the trustee”, substitute “a trustee”.

87 Paragraph 64A(1)(b)

Omit “the trustee”, substitute “a trustee”.

88 Subsection 65(1)

Omit “The trustee”, substitute “A trustee”.

89 Subsections 66(1) and (2A)

Omit “the trustee”, substitute “a trustee”.

90 Paragraph 66(3)(a)

Omit “the trustee”, substitute “a trustee”.

91 Subsection 67(1)

Omit “the trustee”, substitute “a trustee”.

92 Subsections 67(2), (2A), (3) and (5)

Omit “the trustee” (first occurring), substitute “a trustee”.

93 Paragraph 68(1)(a)

Omit “the trustee”, substitute “a trustee”.

94 Subsection 68(2)

Omit “the trustee” (first occurring), substitute “a trustee”.

95 Subparagraph 68(8)(a)(i)

Omit “the trustee”, substitute “a trustee”.

96 Subsection 70A(2)

Omit “the trustee”, substitute “a trustee”.

97 Subsection 71(1)

Omit “between the trustee”, substitute “between a trustee”.

98 Paragraph 71(1)(c)

Omit “where the trustee”, substitute “where a trustee”.

99 Paragraphs 71(1)(e), (g) and (i)

Omit “the trustee”, substitute “a trustee”.

100 Subsection 71(4)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

101 Subsections 71B(1) and (2)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

102 Subsection 71C(2)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

103 Paragraph 71E(1)(e)

After “the trustee”, insert “, or the trustees,”.

104 Paragraph 71E(1)(e) (note)

After “the trustee”, insert “, or the trustees,”.

105 Subsection 71E(5)

Omit “the trustee of a fund makes”, substitute “the trustee, or the trustees, of a fund make”.

106 Subsection 82(2)

After “the trustee of the fund”, insert “, or, if the fund has a group of individual trustees, the trustees of the fund,”.

107 Subsection 82(4)

After “the trustee proposes”, insert “, or, if the fund has a group of individual trustees, the trustees propose,”.

108 Subsection 82(6)

Repeal the subsection, substitute:

(6) Each trustee of the fund must ensure that the steps in the plan are carried out.

109 Subsections 83(2) and (3)

Omit "the trustee", substitute "a trustee".

110 Paragraph 83B(1)(d)

Omit "the trustee of the fund has", substitute "the trustee, or the trustees, of the fund have".

111 Subsection 83B(2)

Omit "the trustee of the fund makes", substitute "the trustee, or the trustees, of the fund make".

112 Subsection 83B(2)

Omit "the trustee is to record the decision in writing", substitute "each trustee must ensure that the decision is recorded in writing".

113 Section 83E

Omit "the trustee", substitute "a trustee".

114 Subsection 84(1)

Omit "The trustee", substitute "Each trustee".

115 Subparagraph 89(1)(a)(i)

Omit "2 or more".

116 Paragraphs 92(4B)(b) and (4C)(b)

Omit "the trustee", substitute "a trustee of the fund".

117 Subsection 92(4D)

Omit "the trustee", substitute "a trustee of the fund".

118 Subsection 101(1)

Omit "The trustee", substitute "Each trustee".

119 Paragraph 101(1A)(c)

Omit “the trustee”, substitute “a trustee”.

120 Subsection 102(1)

Omit “the trustee of a superannuation entity enters”, substitute “the trustee of a superannuation entity, or if a superannuation entity has a group of individual trustees, the trustees of the entity, enter”.

121 Subsection 102(1)

Omit “the trustee must”, substitute “the trustee, or the trustees, must”.

122 Paragraph 102(1)(a)

After “the trustee” (wherever occurring), substitute “, or the trustees, of the entity”.

123 Subsection 102(2)

After “the trustee of a superannuation entity”, insert “, or if a superannuation entity has a group of individual trustees, the trustees of the entity,”.

124 Subsection 102(2)

After “the trustee” (second occurring), insert “, or the trustees, of the entity”.

125 Subsection 102(2)

After “practicable”, insert “ensure that”.

126 Paragraph 102(2)(c)

Omit “seek to have the agreement amended”, substitute “the agreement is amended”.

127 Paragraph 102(2)(d)

Omit “terminate the agreement”, substitute “the agreement is terminated”.

128 Subsection 102(3)

After “The trustee of a superannuation entity”, insert “, or if a superannuation entity has a group of individual trustees, the trustees of the superannuation entity”.

129 Paragraph 102(3)(b)

Omit “is”, substitute “are”.

130 Subsection 103(1)

Omit “2 or more”.

131 Subsection 104(1)

Repeal the subsection, substitute:

(1) Each trustee of a superannuation entity must ensure that up-to-date records of:

(a) all changes of trustees of the entity; and

(b) all changes of directors of any corporate trustee of the entity; and

(c) all consents given under section 118;

are kept and retained for at least 10 years.

132 Subsection 104(2)

Omit “The trustee”, substitute “A trustee”.

133 Subsection 105(1)

Omit “The trustee”, insert “Each trustee”.

134 Subsection 105(1)

After “must”, insert “ensure that”.

135 Paragraph 105(1)(a)

Repeal the paragraph, substitute:

(a) copies of all member or beneficiary reports are kept, and retained so long as they are relevant and in any event for at least 10 years; and

136 Paragraph 105(1)(b)

Omit “make those copies available”, substitute “those copies are made available”.

137 Subsection 105(2)

Omit “The trustee”, substitute “A trustee”.

138 At the end of section 105

Add:

(3) In this section:

member or beneficiary report means a report:

(a) given under this Act, the *Superannuation (Excluded Funds) Taxation Act 1987* or the governing rules; and

(b) given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given):

(i) in the case of a regulated superannuation fund—to all members of the fund, or to all members included in a particular class of members; or

(ii) in the case of an approved deposit fund—to all beneficiaries in the fund, or to all beneficiaries included in a particular class of beneficiaries.

139 Subsection 106(1)

Omit "If the trustee", substitute "If a trustee".

140 Subsection 106(1)

Omit "give", insert "ensure that a trustee of the entity gives".

141 Subsection 106(1)

Omit all the words after "particulars of the", substitute "event, no later than the third business day after the first-mentioned trustee becomes aware of the event.".

142 Subsection 106(2)

Omit "the trustee will", substitute "a trustee of the entity will".

143 Subsection 106(2)

After "by the trustee", insert ", or the trustees,".

144 Subsection 106A(1)

Repeal the subsection, substitute:

Trustee's duty to notify Commissioner of Taxation

(1) If a trustee of a superannuation entity:

(a) has knowledge that the superannuation entity has ceased to be a self managed superannuation fund; or

(b) has knowledge that the superannuation entity has become a self managed superannuation fund since first becoming a superannuation entity;

the trustee must ensure that a written notice is given to the Commissioner of Taxation.

Note: A trustee of a fund that was already a self managed superannuation fund when a trustee, or the trustees, of the fund made an election under section 19 does not have to ensure that a notice is given to the Commissioner of Taxation at that time, because the fund became a self managed superannuation fund before (not since) becoming a superannuation entity.

145 Subsection 107(1)

After "the trustee" (first occurring), insert ", or the trustees,".

146 Subsection 107(1)

Omit "is required", substitute "are required".

147 Paragraph 107(1)(b)

Omit "2 or more".

148 Subsection 107(2)

Omit "The trustee must:", substitute "Each trustee of the fund must ensure that:".

149 Paragraph 107(2)(a)

Omit all the words from and including "establish", to and including "rules:", substitute "rules are established (whether by inclusion in the governing rules or otherwise):".

150 Sub-subparagraph 107(2)(a)(ii)(F)

Repeal the sub-subparagraph, substitute:

(F) suspension or removal under Part 17; or

151 Paragraph 107(2)(b)

Omit “publish those rules”, substitute “those rules are published”.

152 Subsections 107(3) and (4)

Omit “The trustee”, substitute “A trustee”.

153 Subsection 108(2)

Omit “The trustee must:”, substitute “Each trustee of the fund must ensure that:”.

154 Paragraph 108(2)(a)

Omit “establish (whether by inclusion in the governing rules or otherwise) rules”, substitute “rules are established (whether by inclusion in the governing rules or otherwise)”.

155 Subparagraph 108(2)(a)(iv)

Repeal the subparagraph, substitute:

(iv) suspension or removal under Part 17; or

156 Paragraph 108(2)(b)

Omit “publish those rules”, substitute “those rules are published”.

157 Subsections 108(3) and (4)

Omit “The trustee”, substitute “A trustee”.

158 Subsection 109(1)

Omit “The trustee”, substitute “A trustee”.

159 Paragraph 109(1A)(a)

Omit “the trustee”, substitute “a trustee”.

160 Subsection 111(1)

Omit “The trustee of a superannuation entity must:”, substitute “Each trustee of a superannuation entity must ensure that:”.

161 Paragraph 111(1)(a)

Omit “keep”.

162 Paragraph 111(1)(a)

After “entity”, insert “are kept”.

163 Paragraph 111(1)(aa)

Omit “so keep”.

164 Paragraph 111(1)(aa)

After “accounts”, insert “are so kept”.

165 Paragraph 111(1)(b)

Omit “so keep”.

166 Paragraph 111(1)(b)

After “records”, insert “are kept”.

167 Paragraph 111(1)(c)

Omit “so keep”.

168 Paragraph 111(1)(c)

After “records”, insert “are kept”.

169 Subsection 111(2)

Omit “the trustee”, substitute “each trustee”.

170 Subsection 111(2)

Omit “must:”, substitute “must ensure that:”.

171 Paragraph 111(2)(a)

Omit “retain the records”, substitute “the records are retained”.

172 Paragraph 111(2)(b)

Omit “cause the records to be”, substitute “the records are”.

173 Paragraph 111(2)(c)

Omit ‘keep the records”, substitute “the records are kept”.

174 Subsections 111(3) and (4)

Omit “The trustee”, substitute “A trustee”.

175 Subsection 112(1)

Omit “The trustee”, substitute “Each trustee”.

176 Subsection 112(1)

Omit "prepare the following accounts and statements in respect of the entity:", substitute "ensure that the following accounts and statements are prepared in respect of the entity:".

177 Paragraph 112(3)(c)

Omit "2 or more".

178 Subsection 112(4)

Omit "The trustee must retain", substitute "Each trustee must ensure that".

179 Subsection 112(4)

After "subsection (1)", insert "are retained".

180 Subsection 113(1)

Omit "the trustee of", substitute "each trustee of".

181 Subsection 113(1)

Omit "appoint", insert "ensure that".

182 Subsection 113(1)

Omit "to give the trustee a report", insert "is appointed to give the trustee, or the trustees, a report".

183 Subsection 113(1A)

Repeal the subsection, substitute:

(1A) If an auditor requests, in writing, a trustee of a superannuation 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. Only documents that are relevant to the preparation of the report may be requested.

184 Subsections 113(2) and (2A)

Omit "The trustee", substitute "A trustee".

185 Paragraph 113(3)(b)

Omit "the trustee", substitute "each trustee of the entity".

186 Subsection 113(4)

Omit “the trustee”, substitute “each trustee of the entity”.

187 Subsection 115(1)

Omit “The trustee”, substitute “A trustee”.

188 Section 116

Omit “the trustee”, substitute “a trustee”.

189 Subsection 117(3)

Omit “the trustee”, substitute “a trustee”.

190 Subparagraph 117(5)(b)(ii)

Omit “2 or more”.

191 Subparagraph 117(5)(c)(i)

After “the trustee”, insert “, or the trustees, of the fund”.

192 Subparagraph 117(5)(c)(ii)

Omit “the trustee was”, substitute “the trustee, or the trustees, were”.

193 Paragraph 117(5)(d)

Omit “the trustee” (first occurring), substitute “a trustee of the fund”.

194 Subparagraph 117(5)(d)(ii)

After “to the trustee”, insert “, or the trustees, of the fund”.

195 Subparagraph 117(5)(e)(ii)

Omit “2 or more”.

196 Subsection 117(5A)

Omit “the trustee”, substitute “each trustee of the fund”.

197 Subsection 122(1)

After “the trustee”, insert “, or the trustees,”.

198 Subparagraph 123(1)(b)(ii)

Omit “the trustee”, substitute “a trustee”.

199 Paragraphs 123(1A)(a) and (2)(a)

Omit “the trustee”, substitute “a trustee”.

200 Paragraph 123(2)(c)

Omit “the trustee of the entity has made, or proposes to make”, substitute “the trustee, or the trustees, of the entity have made or propose to make”.

201 Paragraph 123(3)(a)

Omit “the trustee”, substitute “a trustee”.

202 Paragraphs 123(3)(b) and (c)

After “the trustee”, insert “, or the trustees,”.

203 Subsections 124(1) and (2)

Omit “The trustee”, substitute “A trustee”.

204 Section 132

Omit “the trustee”, substitute “a trustee”.

205 Subsections 134(1) and (2)

Omit “a trustee”, substitute “all of the trustees”.

206 Paragraph 134(4)(a)

Omit “2 or more”.

207 Subsection 215(1)

Omit “to the trustee”, substitute “to a trustee”.

208 Subsection 215(1)

Omit “is the trustee”, substitute “is a trustee of the entity”.

209 Subsections 215(2) and (3)

Omit “The trustee”, substitute “A trustee”.

210 Subsection 216(1)

Omit “to the trustee”, substitute “to a trustee of the entity”.

211 Subsection 216(1)

Omit “is the trustee”, substitute “is a trustee of the entity”.

212 Subsection 216(2)

Omit “to the trustee”, substitute “to a trustee of the entity”.

213 Subsection 216(2)

Omit “is the trustee”, substitute “is a trustee of the entity”.

214 Subsection 218(1)

Omit “the trustee, the trustee”, substitute “a trustee of the entity, a trustee of the entity”.

215 Section 228 (paragraph (a) of the definition of *defined benefit pension*)

Omit “the trustee”, substitute “a trustee”.

216 Subsection 229(1)

Omit “the trustee”, substitute “a trustee of the fund”.

217 Section 230

Omit “the trustee”, substitute “a trustee of the fund”.

218 Subsection 231(1)

Omit “the trustee” (wherever occurring), substitute “a trustee of the fund”.

219 Subsection 231(2)

Omit “the trustee”, substitute “a trustee”.

220 Section 232

Omit “the trustee”, substitute “a trustee of a fund”.

221 Section 233

Omit “to the trustee”, substitute “to a trustee”.

222 Paragraphs 233(c) and (d)

Omit “the trustee”, substitute “a trustee of the fund”.

223 Subsection 235(1)

Omit "the trustee", substitute "a trustee".

224 Subsection 238(1)

After "The trustee", insert ", or the trustees,".

225 Subsection 238(1)

Omit "is", substitute "are".

226 Subsection 238(3)

After "If the trustee", insert ", or the trustees,".

227 Subsection 238(3)

Omit "is liable", substitute "are liable".

228 Sections 239 and 240

Omit "the trustee", substitute "a trustee".

229 Subsection 243(2)

Omit "The trustee", substitute "A trustee".

230 Subsection 243(2)

Omit "the trustee", substitute "a trustee".

231 Subsection 243(3)

Omit "the trustee" (wherever occurring), substitute "a trustee".

232 Subsection 243(4)

Repeal the subsection, substitute:

Authorisation by beneficiary

(4) The first person is taken to have authorised:

(a) the trustee of the transferor fund who made the application to make the application; and

(b) the trustee of the transferor fund who paid the consideration to pay the consideration.

This rule has effect despite any direction to the contrary by the first person.

233 Subsection 244(1)

Omit "the trustee" (wherever occurring), substitute "a trustee".

234 Paragraph 244(2)(a)

Omit "the trustee" (wherever occurring), substitute "a trustee".

235 Paragraph 244(2)(b)

Repeal the paragraph, substitute:

(b) requiring each trustee of the transferor fund to ensure that a record of the application is kept and retained.

236 Subsection 248(2)

Omit "the trustee", substitute "a trustee".

237 Section 252

Omit "the trustee", substitute "a trustee".

238 Subsection 252A(1)

Omit "the trustee", substitute "a trustee".

239 Subsection 252A(2)

Omit "require the trustee", substitute "require each trustee of the fund".

240 Subsection 252A(2)

Omit "to inform APRA or the Commissioner of Taxation:", substitute "to ensure that APRA or the Commissioner of Taxation is informed:".

241 Paragraph 252A(2)(a)

Omit "the trustee so informed".

242 Paragraph 252A(2)(a)

After "Taxation", insert "was so informed".

243 Paragraphs 252A(2)(b) and (c)

Omit ", in the trustee's opinion,", substitute "the trustee, or the trustees, of the fund consider that".

244 Paragraph 252G(1)(b)

Omit ", the trustee", substitute ", a trustee".

245 Paragraph 252G(1)(b)

Omit "give to APRA", substitute "ensure that APRA is given".

246 Subsection 252G(1)

Omit "the trustee of the fund is taken", substitute "each trustee of the fund is taken".

247 Subsection 252G(1)

Omit "give the annual return, report or information", substitute "ensure that the annual return, report or information is given".

248 Subsection 252G(1) (note)

Omit "The", substitute "A".

249 Paragraph 252G(2)(b)

Omit ", the trustee", substitute ", a trustee".

250 Paragraph 252G(2)(b)

Omit "give to the Commissioner of Taxation", substitute "ensure that the Commissioner of Taxation is given".

251 Subsection 252G(2)

Omit "the trustee of the fund is taken", substitute "each trustee of the fund is taken".

252 Subsection 252G(2)

Omit "give the annual return, report or information", substitute "ensure that the annual return, report or information is given".

253 Subsection 252G(2) (note)

Omit "The", substitute "A".

254 Paragraphs 252G(3)(b), (3)(c), (4)(b) and (4)(c)

After "the trustee", insert ", or the trustees,".

255 Paragraphs 252G(5)(a) and (b)

Omit "the trustee", substitute "a trustee".

256 Paragraph 253(b)

After "the trustee", insert ", or the trustees,".

257 Subsection 254(1)

Omit "The trustee", substitute "Each trustee".

258 Subsection 254(1)

After "must", insert "ensure that".

259 Subsection 254(1)

Omit "give such information to APRA, or to", substitute "APRA, or".

260 Subsection 254(1)

After "regulations,", insert "is given such information".

261 Subsection 254(2)

Omit all the words (not including the note) after "written notice", substitute "to a trustee of a superannuation entity, require each trustee of the entity to ensure that, within a specified period, the Regulator or an authorised person is given, in relation to a specified year of income of the entity, such information, or a report on such matters, as is set out in the notice.".

262 Subsection 254(3)

Omit "If the trustee", substitute "If a trustee".

263 Subsections 254(4) and (5)

Omit "The trustee", substitute "A trustee".

264 Subsection 257(1)

Omit "to the trustee", substitute "to a trustee".

265 Subsection 257(1)

After "require the trustee", insert ", or the trustees, of the entity".

266 Subsection 257(2)

Omit "The trustee must give a copy of the notice", substitute "Each trustee of the entity must ensure that a copy of the notice is given".

267 Subsection 259(1)

Omit "The trustee must", substitute "Each trustee of the entity must ensure that".

268 Subsection 259(1)

Omit "advise APRA", substitute "APRA is advised".

269 Subsection 259(2)

Omit "notifies the trustee", substitute "notifies a trustee of the entity".

270 Subsection 259(2)

After ", the trustee", insert ", or trustees, of the entity".

271 Subsection 259(3)

Omit "notify the trustee", substitute "notify a trustee of the entity".

272 Subsections 262(1) and (2)

Omit "The trustee", substitute "A trustee".

273 Paragraph 263(1)(c)

After "the trustee", insert ", or the trustees,".

274 Paragraph 263(1)(c)

Omit "has", substitute "have".

275 Subsections 263(1) and (2)

Omit "to the trustee", substitute "to a trustee".

276 Subsection 264(1)

Omit "the trustee", substitute "a trustee".

277 Subsection 264(3)

Omit "the trustee or investment manager, direct that person", substitute "a trustee, direct the trustee, or the trustees, of the entity".

278 After subsection 264(3)

Insert:

(3A) The Regulator may, by written notice given to an investment manager of the entity, direct that person, subject to such conditions (if any) as are stated in the notice:

(a) not to acquire assets on behalf of the entity; or

(b) not to dispose of, or otherwise deal, or deal in a particular way, in:

(i) any of the assets of the entity; or

(ii) any of the assets of the entity included in a specified class of assets; or

(iii) a specified asset or assets of the entity;

until the notice is revoked or for a period, or until the occurrence of an event, referred to in the notice.

Note: For example, the Regulator may direct an investment manager not to make any withdrawals from a bank account without prohibiting the making of deposits to the credit of the account.

279 Subsection 264(4)

Omit "the trustee or", substitute "a trustee or an".

280 Subsections 264(4A), (5) and (6)

After "(3)", insert ", (3A)".

281 Paragraph 275(b)

Omit "the trustee", substitute "a trustee".

282 Paragraph 284(3)(a)

Omit "the trustee", substitute "each trustee".

283 Section 285 (paragraph (a) of the penalty)

After "(3)", insert ", (3A)".

284 Section 299B

Omit "the trustee", substitute "a trustee".

285 Subsection 299C(1)

Omit "the trustee" (wherever occurring), substitute "a trustee".

286 Section 299D

Omit "the trustee", substitute "a trustee".

287 Subsection 299E(1)

Omit "The trustee", substitute "A trustee".

288 Subsection 299E(1)

Omit "the trustee", substitute "a trustee of the entity or scheme".

289 Subsection 299E(2)

Omit "the trustee" (wherever occurring), substitute "a trustee".

290 Paragraph 299F(1)(b)

Omit "the trustee", substitute "a trustee of the entity".

291 Subsection 299F(1)

Omit "the trustee must", substitute "each trustee must ensure that".

292 Subsection 299F(1)

Omit "request", substitute "a request is made".

293 Subsection 299F(1)

After "Regulator,", insert "to".

294 Subsection 299F(1)

Omit "the trustee in", substitute "a trustee of the entity in".

295 Subsection 299F(3)

Repeal the subsection, substitute:

Exception

(3) A trustee of the entity is not required to ensure that a request is made if the person has already quoted his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of:

(a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or

(b) otherwise—this Act and the Surcharge Acts.

296 Subsection 299F(4)

Repeal the subsection (not including the penalty), substitute:

(4) A trustee is guilty of an offence if the trustee contravenes subsection (1).

297 Subsection 299F(4A)

Repeal the subsection (not including the penalty or notes), substitute:

(4A) A trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

298 Subsection 299F(5)

Repeal the subsection, substitute:

No obligation to quote tax file number

(5) If a person requests another person to quote his or her tax file number under this section, the other person is not obliged to comply with the request.

299 Subsection 299F(6)

Omit "entity the trustee", substitute "entity a trustee".

300 Subsection 299F(7)

Omit "the trustee", substitute "a trustee".

301 Paragraph 299G(1)(b)

Omit "the trustee", substitute "a trustee of the entity".

302 Subsection 299G(1)

Omit "the trustee must", substitute "each trustee must ensure that".

303 Subsection 299G(1)

Omit "request", substitute "a request is made".

304 Subsection 299G(1)

After "Regulator,", insert "to".

305 Subsection 299G(1)

Omit "the trustee in", substitute "a trustee of the entity in".

306 Subsection 299G(3)

Repeal the subsection, substitute:

Exception

(3) A trustee of the entity is not required to ensure that a request is made if the person has already quoted his or her tax file number to a trustee of the entity in connection with the operation or the possible future operation of:

(a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or

(b) otherwise—this Act and the other Superannuation Acts.

307 Subsection 299G(4)

Repeal the subsection (not including the penalty), substitute:

(4) A trustee is guilty of an offence if the trustee contravenes subsection (1).

308 Subsection 299G(4A)

Repeal the subsection (not including the penalty or the notes), substitute:

(4A) A trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

309 Subsection 299G(5)

Repeal the subsection, substitute:

No obligation to quote tax file number

(5) If a person requests another person to quote his or her tax file number under this section, the other person is not obliged to comply with the request.

310 Subsection 299H(1)

Omit "the trustee", substitute "a trustee".

311 Subsections 299H(2) and (3)

Repeal the subsections, substitute:

Obligation to record tax file number

(2) If the trustee, or the trustees, of the entity do not already have a record of the tax file number, as soon as is reasonably practicable after the quotation, the trustee to whom the quotation is made must make a record of the number.

Obligation to retain and later destroy tax file number

(3) Each trustee of the entity must ensure that:
  (a) the record is retained until the person ceases to be a beneficiary of the entity; and
  (b) the record is destroyed as soon as is reasonably practicable after the person ceases to be a beneficiary of the entity.

312 Subsection 299H(4)

Omit "the trustee" (wherever occurring), substitute "a trustee".

313 Subsection 299H(5)

Omit "If the trustee", substitute "If a trustee of the entity".

314 Paragraph 299H(5)(b)

Omit "to the trustee", substitute "to a trustee of the entity".

315 Subsection 299H(6)

Repeal the subsection (not including the penalty), substitute:

(6) A trustee of the entity commits an offence if a requirement of subsection (2), (3) or (5) is contravened by the trustee of the entity.

316 Subsection 299H(7)

Repeal the subsection (not including the penalty and notes), substitute:

(7) A trustee of the entity commits an offence if a requirement of (2), (3) or (5) is contravened by the trustee of the entity. This is an offence of strict liability.

317 Subsection 299J(1)

Omit "the trustee", substitute "a trustee".

318 Subsection 299J(2)

Omit “the trustee does”, substitute “the trustee, or the trustees, do”.

319 Subsection 299J(2)

Omit “the trustee may”, substitute “a trustee of the scheme may”.

320 Subsection 299J(3)

Repeal the subsection, substitute:

Obligation to retain and later destroy tax file number

(3) Each trustee of the scheme must ensure that:

(a) the record is retained until the person ceases to be a beneficiary of the scheme; and

(b) the record is destroyed as soon as is reasonably practicable after the person ceases to be a beneficiary of the scheme.

321 Subsection 299J(4)

Omit “the trustee” (wherever occurring), substitute “a trustee”.

322 Subsection 299J(5)

Omit “If the trustee”, substitute “If a trustee of the scheme”.

323 Paragraph 299J(5)(b)

Omit “to the trustee”, substitute “to a trustee of the scheme”.

324 Subsection 299J(6)

Repeal the subsection (not including the penalty), substitute:

(6) A trustee of the scheme commits an offence if a requirement of subsection (3) or (5) is contravened by the trustee.

325 Subsection 299J(7)

Repeal the subsection (not including the penalty and notes), substitute:

(7) A trustee of the scheme commits an offence if a requirement of subsection (3) or (5) is contravened by the trustee. This is an offence of strict liability.

326 Subsection 299K(1)

Omit “to the trustee”, substitute “to a trustee”.

327 Subsections 299K(2) and (3)

Repeal the subsections, substitute:

Obligation to record tax file number

(2) If the trustee, or the trustees, of the entity do not already have a record of the tax file number, as soon as is reasonably practicable after the quotation, the trustee to whom the quotation is made must make a record of the number.

Obligation to retain and later destroy tax file number

(3) Each trustee of the entity must ensure that:
  (a) the record is retained until the time (the ***last retention time***) at which:
    (i) if the person becomes a beneficiary of the entity—the person ceases to be a beneficiary of the entity; or
    (ii) if not—the person ceases to be an applicant; and
  (b) the record is destroyed as soon as is reasonably practicable after the last retention time.

328 Subsection 299K(4)

Omit "the trustee" (wherever occurring), substitute "a trustee".

329 Subsection 299K(5)

Omit "If the trustee", substitute "If a trustee".

330 Paragraph 299K(5)(b)

Omit "to the trustee", substitute "to a trustee of the entity".

331 Subsection 299K(6)

Repeal the subsection (not including the penalty), substitute:

(6) A trustee of the entity commits an offence if a requirement of subsection (2), (3) or (5) is contravened by the trustee.

332 Subsection 299K(7)

Repeal the subsection (not including the penalty and notes), substitute:

(7) A trustee of the entity commits an offence if a requirement of subsection (2), (3) or (5) is contravened by the trustee. This is an offence of strict liability.

333 Subsection 299L(1)

Omit "to the trustee", substitute "to a trustee".

334 Subsection 299L(2)

Omit "the trustee does", substitute "the trustee, or the trustees, do".

335 Subsection 299L(2)

Omit "the trustee may", substitute "a trustee of the scheme may".

336 Subsection 299L(3)

Repeal the subsection, substitute:

Obligation to retain and later destroy tax file number

(3) Each trustee of the scheme must ensure that:

(a) the record is retained until the time (the ***last retention time***) at which:

(i) if the person becomes a beneficiary of the scheme—the person ceases to be a beneficiary of the scheme; or

(ii) if not—the person ceases to be an applicant; and

(b) the record is destroyed as soon as is reasonably practicable after the last retention time.

337 Subsection 299L(4)

Omit "the trustee" (wherever occurring), substitute "a trustee".

338 Subsection 299L(5)

Omit "If the trustee", substitute "If a trustee of the scheme".

339 Paragraph 299L(5)(b)

Omit "to the trustee", substitute "to a trustee of the scheme".

340 Subsection 299L(6)

Repeal the subsection (not including the penalty), substitute:

(6) A trustee of the scheme commits an offence if a requirement of subsection (3) or (5) is contravened by the trustee.

341 Subsection 299L(7)

Repeal the subsection (not including the penalty and notes), substitute:

(7) A trustee of the scheme commits an offence if a requirement of subsection (3) or (5) is contravened by the trustee. This is an offence of strict liability.

342 Paragraph 299M(1)(b)

Omit "the trustee", substitute "a trustee".

343 Subsection 299M(2)

Omit "if the trustee", substitute "if a trustee of the entity".

344 Subsection 299M(2)

Omit ", the trustee of", substitute " or a trustee of".

345 Subsections 299M(4) and (5)

Omit "The trustee", substitute "A trustee".

346 Paragraph 299N(1)(b)

Omit "the trustee", substitute "a trustee".

347 Subsection 299N(2)

Omit "if the trustee", substitute "if a trustee of the scheme".

348 Subsection 299N(2)

Omit ", the trustee of", substitute "or a trustee of".

349 Paragraph 299N(4)(a)

Omit "the trustee" (wherever occurring), substitute "a trustee".

350 Paragraph 299Q(b)

Omit "the trustee", substitute "a trustee".

351 Subsections 299R(1) and (2)

Omit "the trustee" (wherever occurring), substitute "a trustee".

352 Subsection 299U(1)

After "the trustee", insert ", or the trustees,".

353 Subsection 299U(3)

Omit "the trustee", substitute "a trustee".

354 Subsection 299U(9)

Omit "by the trustee of a superannuation entity", substitute "in relation to a superannuation entity".

355 Subsection 299Y(1)

Omit "the trustee of the scheme must", substitute "each trustee of the scheme must ensure that".

356 Subsection 299Y(1)

Omit "destroy".

357 At the end of subsection 299Y(1)

Add "are destroyed".

358 Subsections 299Y(2) and (3)

Omit "The trustee", substitute "A trustee".

359 Paragraph 313(1A)(b)

Omit "the trustee", substitute "a trustee".

360 Subsection 342(1)

Omit "The trustee", substitute "A trustee".

361 Subsection 342(4)

Omit "the trustee" (wherever occurring), substitute "a trustee".

362 Paragraph 342(6)(b)

Omit "the trustee", substitute "a trustee".

363 Subsection 342(6)

Omit "to the trustee", substitute "to a trustee".

364 Subsection 342(9)

Omit "the trustee" (wherever occurring), substitute "a trustee".

365 Subsection 344(12)

Omit "the trustee", substitute "a trustee".

366 Subsection 347A(4)

Omit "to the trustee", substitute "to a trustee".

367 Subsection 347A(4)

Omit "the trustee is a participant", insert "the trustee is a participant, or trustees of the entity are participants".

368 Subsection 347A(5)

Omit "to the trustee", substitute "to a trustee".

369 Subsection 347A(6)

Omit "The trustee", substitute "A trustee".

370 Subsection 347A(7)

Omit "the trustee of", substitute "a trustee of".

371 Subsection 347A(8)

Omit "the trustee", substitute "a trustee".

372 Section 349A

Omit "the trustee of", substitute "a trustee of".

373 Regulations may make modifications etc.

(1) The regulations under the *Superannuation Industry (Supervision) Act 1993* may make such modification to provisions mentioning "the trustee" in the *Superannuation Industry (Supervision) Act 1993* or regulations made under that Act as are necessary or convenient to clarify how those provisions apply in relation to groups of individual trustees.

(2) The regulations under the *Superannuation Industry (Supervision) Act 1993* may make such transitional provision as is necessary because of an amendment made by this Schedule.

Schedule 3—Actuaries, auditors and defined benefit funds

Part 1—Actuaries and auditors

Retirement Savings Accounts Act 1997

2 Subsection 66(3)

Repeal the subsection, substitute:

RSA provider and Regulator to be told about the matter

(3) Subject to subsection (4), the person must, as soon as practicable after forming the opinion mentioned in paragraph (1)(a):

(a) tell the RSA provider about the matter in writing; and

(b) if the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) is of such a nature that it may affect the interests of holders of RSAs—tell the Regulator about the matter in writing.

3 Subsections 66(4), (5), (6), (7), (8) and (9)

Repeal the subsections, substitute:

The person may not have to tell the RSA provider or Regulator about the matter

(4) The person does not have to:

(a) tell the RSA provider about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the RSA provider about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person; or

(b) tell the Regulator about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

(5) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to an RSA provider; and

(c) the first person tells another person to whom this section applies that the first person has told the RSA provider about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(5A) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to the Regulator; and

(c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

No civil liability for telling about a matter

(6) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or the RSA provider, about a matter as required by this section.

Offences

(7) A person is guilty of an offence if the person contravenes subsection (3).

Penalty: 50 penalty units.

(8) A person is guilty of an offence if the person contravenes subsection (3). This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility.

4 After section 66

Insert:

66A Auditor may give information to the Regulator

(1) A person who is or was an auditor of an RSA provider may give to the Regulator information about the RSA provider obtained in the course of, or in connection with, the performance by the person of audit functions under:

(a) this Act; or

(b) the regulations; or

(c) the *Financial Sector (Collection of Data) Act 2001*;

if the person considers that giving the information will assist the Regulator in performing its functions under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*.

(2) A person who, in good faith, gives information to the Regulator in accordance with this section is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

66B Self incrimination

(1) An individual is not excused from complying with a requirement under section 66 to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:

(a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

Superannuation Industry (Supervision) Act 1993

6 Subsection 129(3)

Repeal the subsection, substitute:

Trustee and Regulator to be told about the matter

(3) Subject to subsection (3A), the person must, as soon as practicable after forming the opinion mentioned in paragraph (1)(a):

(a) tell a trustee of the entity about the matter in writing; and

(b) if the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

7 Subsections 129(3A), (3B), (4), (5), (6) and (7)

Repeal the subsections, substitute:

The person may not have to tell a trustee or the Regulator about the matter

(3A) The person does not have to:

(a) tell a trustee of the entity about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the entity about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person; or

(b) tell the Regulator about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

(3B) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to a trustee; and

(c) the first person tells another person to whom this section applies that the first person has told a trustee about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3C) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to the Regulator; and

(c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

No civil liability for telling about a matter

(4) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

(5) A person is guilty of an offence if the person contravenes subsection (3).

Penalty: 50 penalty units.

(6) A person is guilty of an offence if the person contravenes subsection (3). This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility.

8 Subsection 130(2)

Omit "tell the trustee of the entity", substitute ", as soon as practicable after forming the opinion mentioned in paragraph (1)(a), tell the Regulator, and a trustee of the entity,".

Note: The heading to subsection 130(2) is altered by omitting "*Trustee*" and substituting "*Regulator and trustee*".

9 Subsections 130(2A), (2B), (3), (4), (5) and (6)

Repeal the subsections, substitute:

The person may not have to tell the Regulator or a trustee about the matter

(2A) The person does not have to:

(a) tell the Regulator about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person; or

(b) tell a trustee of the entity about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the entity about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalty for misinformation

(2B) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to the Regulator and a trustee; and

(c) the first person tells another person to whom this section applies that the first person has told either or both the Regulator and a trustee about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

No civil liability for telling about a matter

(3) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

(4) A person is guilty of an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

(5) A person is guilty of an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility.

10 After section 130

Insert:

130A Auditor or actuary may give information to the Regulator

(1) A person who is or was an auditor or actuary of a superannuation entity may give to the Regulator information about the entity or a trustee of the entity obtained in the course of, or in connection with, the performance by the person of audit or actuarial functions under:

(a) this Act; or

(b) the regulations; or

(c) the *Financial Sector (Collection of Data) Act 2001*;

if the person considers that giving the information will assist the Regulator in performing its functions under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*.

(2) A person who, in good faith, gives information to the Regulator in accordance with this section is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

130B Self incrimination

(1) An individual is not excused from complying with a requirement under section 129 or 130 to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(2) The information given by the individual in compliance with such a requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, if:

(a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

11 Transitional provision

(1) On and after the commencement of this Part:

(a) the amendments made by this Part do not apply in relation to a matter that was told to an RSA provider, under section 66 of the *Retirement Savings Accounts Act 1997*, before that commencement; and

(b) section 66 of that Act, as in force immediately before that commencement, continues to apply in relation to that matter.

(2) On and after the commencement of this Part:

(a) the amendments made by this Part do not apply in relation to a matter that was told to the trustee of a superannuation entity, under section 129 or 130 of the *Superannuation*

Industry (Supervision) Act 1993, before that commencement; and

(b) section 129 or 130 (as the case requires) of that Act, as in force immediately before that commencement, continues to apply in relation to that matter.

Part 2—Defined benefit funds

Superannuation Industry (Supervision) Act 1993

12 Subsection 10(1)

Insert:

defined benefit fund has (except in Division 3A of Part 8 and in Part 23) the meaning given by the regulations.

13 Subsection 10(1)

Insert:

defined benefit member has (except in Division 3A of Part 8 and in Part 23) the meaning given by the regulations.

14 Before section 131

Insert:

130C Actuaries and auditors—failure to implement actuarial recommendations

When section applies

(1) This section applies to a person in relation to a defined benefit fund that is a registrable superannuation entity if:

(a) the person forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer-sponsor that a trustee of the fund, or an employer-sponsor of the fund, was required to implement and that was contained in:

(i) a report of an actuary obtained under the regulations; or

(ii) a report of an actuary obtained in accordance with a requirement under the regulations; or

(iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and

(b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions in relation to the entity under this Act or

the regulations or the *Financial Sector (Collection of Data) Act 2001*.

Trustee and Regulator to be told about the matter

(2) Subject to subsection (3), the person must, as soon as practicable after forming the opinion mentioned in paragraph (1)(a):

(a) tell a trustee of the fund about the matter in writing; and

(b) if the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) is of such a nature that it may affect the interests of members or beneficiaries of the fund—tell the Regulator about the matter in writing.

The person may not have to tell a trustee or the Regulator about the matter

(3) The person does not have to:

(a) tell a trustee of the fund about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the fund about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person; or

(b) tell the Regulator about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

(4) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to a trustee; and

(c) the first person tells another person to whom this section applies that the first person has told a trustee about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to the Regulator; and

(c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

No civil liability for telling about a matter

(5) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the fund, about a matter as required by this section.

Offences

(6) A person is guilty of an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

(7) A person is guilty of an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 25 penalty units.

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 responsibility.

[*Minister's second reading speech made in—*
House of Representatives on 27 November 2003
Senate on 11 February 2004]

(184/03)