





# **Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019**

**No. 40, 2019**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 40, 2019**

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

*[Assented to 5 April 2019]*

The Parliament of Australia enacts:

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*No. 40, 2019      Treasury Laws Amendment (Improving Accountability and Member  
Outcomes in Superannuation Measures No. 1) Act 2019      1*

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## 1 Short title

This Act is the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019*.

## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 April 2019
2. Schedules 1, 2 and 3	The day after this Act receives the Royal Assent.	6 April 2019
3. Schedule 4	3 months after the day on which this Act receives the Royal Assent.	5 July 2019
4. Schedules 5, 6, 7, 8 and 9	The day after this Act receives the Royal Assent.	6 April 2019

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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

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*No. 40, 2019 Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019 3*

## Schedule 1—Annual outcomes assessment

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

#### **1A Subsection 10(1) (after the definition of *authorised person*)**

Insert:

*benchmark* means a benchmark mentioned in, or specified in regulations made for the purposes of, subparagraphs 52(9)(a)(i) and (ii) and paragraph 52(9)(aa).

#### **1AA Subsection 10(1) (after the definition of *Commissioner*)**

Insert:

*comparable choice products*, in relation to a choice product, means a class of choice product specified in regulations made for the purposes of this definition that the choice product is to be compared with.

#### **1 Subsection 10(1) (subparagraph (a)(i) of the definition of *enhanced director obligations*)**

Repeal the subparagraph, substitute:

- (i) a covenant referred to in paragraph 52A(2)(f), as it relates to covenants referred to in subsection 52(9), (12) or (13); and

#### **2 Subsection 10(1) (subparagraph (a)(i) of the definition of *enhanced trustee obligations*)**

Omit “, as enhanced by the obligations imposed under section 29VN”.

#### **3 Subsection 10(1) (definition of *superannuation entity director*)**

Omit “29VO(3)”, substitute “52A(7)”.

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

Repeal the Division.

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**5 Section 51A**

Omit “, and each obligation referred to in sections 29VN and 29VO,”.

**6 At the end of section 52**

Add:

*Covenants relating to regulated superannuation funds—annual outcomes assessments*

- (9) If the entity is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members), the covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
- (a) to determine, in writing, on an annual basis, for each MySuper product and choice product offered by the entity, whether the financial interests of the beneficiaries of the entity who hold the product are being promoted by the trustee, having regard to:
    - (i) if the product is a MySuper product—a comparison of the MySuper product with other MySuper products offered by other regulated superannuation funds, based on the factors mentioned in subsection (10), and a comparison of the MySuper product with any other benchmarks specified in regulations made for the purposes of this subparagraph; and
    - (ii) if the product is a choice product—a comparison of the choice product with the comparable choice products in relation to the choice product, based on factors mentioned in subsection (10A), and a comparison of the choice product with any other benchmarks specified in regulations made for the purposes of this subparagraph; and
    - (iii) the factors mentioned in subsection (11);
  - (aa) to determine, in writing, on an annual basis, whether each trustee of the entity is promoting the financial interests of the beneficiaries of the fund, as assessed against benchmarks specified in regulations made for the purposes of this paragraph;

- (b) to make the determination referred to in paragraph (a), and a summary of the assessments and comparisons on which the determination is based, publicly available on the website of the entity;
  - (c) to do so within 28 days after the determination is made;
  - (d) to keep the determination, and the summary of the assessments and comparisons on which the determination is based, on the website until a new determination is made as referred to in paragraph (a).
- (10) In comparing a MySuper product with other MySuper products, the trustees must compare each of the following:
- (a) the fees and costs that affect the return to the beneficiaries holding the MySuper products;
  - (b) the return for the MySuper products (after the deduction of fees, costs and taxes);
  - (c) the level of investment risk for the MySuper products;
  - (d) any other matter set out in the prudential standards.
- (10A) In comparing a choice product with the comparable choice products in relation to the choice product, the trustees must compare each of the following:
- (a) the fees and costs that affect the return to the beneficiaries holding the choice products;
  - (b) the return for the choice products;
  - (c) the level of investment risk for the choice products;
  - (d) any other matter specified in the prudential standards.
- (11) In determining whether the financial interests of the beneficiaries of the entity who hold a MySuper product or choice product are being promoted by the trustee, the trustee must assess each of the following:
- (a) whether the options, benefits and facilities offered under the product are appropriate to those beneficiaries;
  - (b) whether the investment strategy for the product, including the level of investment risk and the return target, is appropriate to those beneficiaries;
  - (c) whether the insurance strategy for the product is appropriate to those beneficiaries;
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- (d) whether any insurance fees charged in relation to the product inappropriately erode the retirement income of those beneficiaries;
  - (e) any other relevant matters, including any matters set out in the prudential standards.

*Covenants relating to regulated superannuation funds—promoting financial interests of beneficiaries*

- (12) If the entity is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members), the covenants referred to in subsection (1) include a covenant by each trustee of the entity to promote the financial interests of the beneficiaries of the entity who hold a MySuper product or a choice product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).

*Covenants relating to regulated superannuation funds—MySuper products*

- (13) If the entity is a regulated superannuation fund that offers a MySuper product, the covenants referred to in subsection (1) include the following covenants by each trustee of the entity:
  - (a) to include in the investment strategy for the MySuper product the details of the trustee's determination of the matters mentioned in paragraph (9)(a);
  - (b) to include in the investment strategy for the MySuper product, and update each year:
    - (i) the investment return target over a period of 10 years for the assets of the entity that are attributed to the MySuper product; and
    - (ii) the level of risk appropriate to the investment of those assets.

## **7 At the end of section 52A**

Add:

*Superannuation entity director*

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

**8 Subsections 55(5) and (6)**

Omit “, and all of the obligations referred to in sections 29VN and 29VO,”.

**9 Subsection 55(7)**

Omit “, section 29VP”.

**10 After section 55C**

Insert:

**55D Governing rules void to the extent that they are inconsistent with obligations in relation to annual outcomes assessments and MySuper products**

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

- (a) a covenant referred to in subsection 52(9), (12) or (13) that is contained, or taken to be contained, in the governing rules of the fund; or
- (b) if the trustee of the fund is a body corporate—a covenant referred to in paragraph 52A(2)(f) that is contained, or taken to be contained, in the governing rules of the fund, to the extent that the covenant relates to a covenant referred to in subsection 52(9), (12) or (13).

**11 Paragraph 323(1)(b)**

Repeal the paragraph, substitute:

- (b) proceedings under subsection 55(3).

## **Schedule 2—Authority to offer a MySuper product**

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

#### **1 Paragraphs 29T(1)(h), (ha), (i) and (j)**

Repeal the paragraphs, substitute:

- (h) APRA has no reason to believe that:
  - (i) where the RSE licensee is a body corporate—the RSE licensee; or
  - (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may fail to comply with the enhanced trustee obligations for MySuper products; and
- (i) where the RSE licensee is a body corporate—APRA has no reason to believe that the directors of the RSE licensee may fail to comply with the enhanced director obligations for MySuper products; and
- (j) APRA has no reason to believe that:
  - (i) where the RSE licensee is a body corporate—the RSE licensee; or
  - (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may fail to comply with the general fees rules and the fees rules in relation to MySuper products; and
- (k) APRA has no reason to believe that:
  - (i) where the RSE licensee is a body corporate—the RSE licensee; or
  - (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may contravene section 29W, 29WA or 29WB.

#### **2 Paragraphs 29U(2)(c), (ca), (d) and (e)**

Repeal the paragraphs, substitute:

- (c) APRA has reason to believe that:

- (i) where the RSE licensee is a body corporate—the RSE licensee; or
- (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may not comply with the enhanced trustee obligations for MySuper products (whether because of a previous failure to do so, or for any other reason); or
- (ca) where the RSE licensee is a body corporate—APRA has reason to believe that the directors of the RSE licensee may not comply with the enhanced director obligations for MySuper products (whether because of a previous failure to do so, or for any other reason); or
- (d) APRA has reason to believe that:
  - (i) where the RSE licensee is a body corporate—the RSE licensee; or
  - (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may not comply with the general fees rules and the fees rules in relation to MySuper products (whether because of a previous failure to do so, or for any other reason); or
- (e) APRA has reason to believe that:
  - (i) where the RSE licensee is a body corporate—the RSE licensee; or
  - (ii) where the RSE licensee is made up of a group of individual trustees—any of those individual trustees; may contravene section 29W, 29WA or 29WB (whether because of a previous contravention of that section, or for any other reason); or

### **3 Application**

The amendment made by item 1 of this Schedule applies where an entity applies to APRA on or after the day on which this Schedule commences for authority to offer a class of beneficial interest in a regulated superannuation fund as a MySuper product.

## **Schedule 3—Penalties for contravening covenants**

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

#### **1 After section 54A**

Insert:

#### **54B Civil and criminal consequences for contravening sections 52 and 52A covenants**

##### *Section 52 covenants*

- (1) A person must not contravene a covenant that:
  - (a) is to the effect of a covenant set out in section 52; and
  - (b) is contained, or taken to be contained, in the governing rules of a superannuation entity.

##### *Section 52A covenants*

- (2) A person must not contravene a covenant that:
  - (a) is to the effect of a covenant set out in section 52A; and
  - (b) is contained, or taken to be contained, in the governing rules of a superannuation entity.

##### *Contravention has civil and criminal consequences*

- (3) Subsections (1) and (2) are civil penalty provisions as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or being involved in a contravention of, those subsections.
- (4) A contravention of subsection (1) or (2) does not result in the invalidity of a transaction.
- (5) This section does not limit the operation of section 55.

Note: A contravention of subsection (1) or (2) may result in an action to recover loss or damage under section 55.

#### **54C Other covenants must not be contravened**

- (1) A person must not contravene any other covenant contained, or taken to be contained, in the governing rules of a superannuation entity.
- (2) A contravention of subsection (1) is not an offence.
- (3) A contravention of subsection (1) does not result in the invalidity of a transaction.
- (4) This section does not limit the operation of section 55.

Note: A contravention of subsection (1) may result in an action to recover loss or damage under section 55.

#### **2 Section 55 (heading)**

Repeal the heading, substitute:

#### **55 Recovering loss or damage for contravention of covenant**

##### **3 Subsections 55(1) and (2)**

Repeal the subsections.

##### **4 Subsection 55(3)**

Omit “contravention of subsection (1)”, substitute “contravention of subsection 54B(1), 54B(2) or 54C(1)”.

##### **5 Paragraph 55(4A)(a)**

Omit “contravened subsection (1)”, substitute “contravened subsection 54B(2) or 54C(1)”.

##### **6 Before paragraph 193(a)**

Insert:

- (aa) subsection 54B(1);
- (ab) subsection 54B(2);

##### **6A Subsection 196(3)**

Omit “2,000”, substitute “2,400”.

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## **7 Application**

The amendments made by this Schedule apply in relation to contraventions occurring on or after the day this Schedule commences.

## Schedule 4—Approval to own or control an RSE licensee

### Part 1—Amendments

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

##### 1 Subsection 10(1)

Insert:

*controlling stake*: a person holds a *controlling stake* in an RSE licensee that is a body corporate if the person holds a stake of more than 15% in the RSE licensee.

*practical control* of an RSE licensee that is a body corporate has the meaning given by section 131EC.

##### 2 Subsection 10(1) (after paragraph (dl) of the definition of *reviewable decision*)

Insert:

(dla) a decision of APRA under section 29HD to refuse to give a person approval to hold a controlling stake in an RSE licensee; or

##### 3 Subsection 10(1) (after paragraph (taab) of the definition of *reviewable decision*)

Insert:

(taac) a decision of the Regulator under subsection 131EB(1) to give a person a direction to relinquish control of an RSE licensee; or

##### 4 Subsection 10(1)

Insert:

*stake* in an RSE licensee that is a body corporate, has the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

## **5 Paragraph 29E(1)(f)**

Repeal the paragraph, substitute:

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

## **6 Subsection 29E(2)**

Omit “*change in the composition of the RSE licensee*”, substitute “*change in the composition or control of the RSE licensee*”.

## **7 Paragraph 29E(2)(a)**

Repeal the paragraph, substitute:

- (a) if the RSE licensee is a body corporate:
  - (i) a person becoming, or ceasing to be, a director of the RSE licensee; or
  - (ii) a person’s stake in the RSE licensee changing; or

## **8 After Division 7 of Part 2A**

Insert:

### **Division 8—Approval to hold a controlling stake in an RSE licensee**

#### **Subdivision A—Application of this Division**

##### **29H Application**

This Division only applies in relation to an RSE licensee that is a body corporate.

#### **Subdivision B—Applying for approval**

##### **29HA Application for approval to hold a controlling stake**

- (1) A person may apply to APRA for approval to hold a controlling stake in an RSE licensee.
- (2) The application must:

- (a) be in the approved form; and
  - (b) contain the information required by the approved form.
- (3) If:
- (a) a person applies for approval to hold a controlling stake in an RSE licensee; and
  - (b) after the application is made, but before APRA decides the application, information contained in the application ceases to be correct;
- the person must give APRA the correct information, in writing, as soon as practicable after the information in the application ceases to be correct.
- (4) An application is taken not to comply with this section if subsection (3) is contravened.

### **29HB APRA may request further information**

APRA may give a person who has applied for approval to hold a controlling stake in an RSE licensee a notice requesting the person to give APRA, in writing, specified information relating to the application.

### **29HC Period for deciding applications for approval**

- (1) APRA must decide an application by a person for approval to hold a controlling stake in an RSE licensee:
- (a) within 90 days after receiving the application; or
  - (b) if the applicant was requested to provide information under section 29HB—within 90 days after:
    - (i) receiving from the person all of the information the person 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 a person for approval to hold a controlling stake in an RSE licensee by up to 30 days if APRA informs the person 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 an application for approval to hold a controlling stake in an RSE licensee by the end of the period by which it is required to decide the application, APRA is taken to have decided, at the end of the last day of that period, to refuse the application.

### **Subdivision C—Approval**

#### **29HD Approval to hold a controlling stake in an RSE licensee**

APRA must give approval for a person to hold a controlling stake in an RSE licensee if, and only if:

- (a) the application for approval complies with section 29HA; and
- (b) the applicant has provided to APRA all information that the applicant was requested under section 29HB to provide, or the request has been disposed of; and
- (c) APRA has no reason to believe that, because of the person's controlling stake in the RSE licensee, or the way in which that controlling stake is likely to be used, the RSE licensee may be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

#### **29HE Notice of approval**

If APRA gives a person approval to hold a controlling stake in an RSE licensee, APRA must notify the RSE licensee in writing of the approval.

#### **29HF APRA to give notice of refusal of approval**

If APRA refuses an application by a person for approval to hold a controlling stake in an RSE licensee, APRA must take all reasonable steps to ensure that the person 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.

## **9 After section 29JCA**

Insert:

### **29JCB Holding a controlling stake in an RSE licensee without approval**

- (1) A person commits an offence if:
- (a) the person holds a controlling stake in an RSE licensee; and
  - (b) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee.

Penalty: 400 penalty units for each day on which the person holds a controlling stake in the RSE licensee without approval.

- (2) Strict liability applies to subsection (1).

## **10 After Division 1 of Part 16A**

Insert:

### **Division 2—Directions to relinquish control over an RSE licensee**

#### **131E Object of this Division**

The object of this Division is to enable the Regulator to direct a person who is in control of an RSE licensee to relinquish that control if there has been, is or is likely to be interference with the ability of the RSE licensee to satisfy its obligations in relation to a superannuation entity.

#### **131EA Application of this Division**

This Division applies in relation to an RSE licensee that is a body corporate.

### **131EB Direction to relinquish control**

- (1) The Regulator may give a person a direction to relinquish control of an RSE licensee if:
  - (a) the Regulator has reason to believe that:
    - (i) the person has a controlling stake in the RSE licensee; or
    - (ii) the person has practical control of the RSE licensee; and
  - (b) the Regulator has reason to believe that because of:
    - (i) the person's controlling stake, or practical control, of the RSE licensee; or
    - (ii) the way in which control has been, is or is likely to be exercised;  
the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.
- (2) The Regulator may give a person a direction to relinquish control of an RSE licensee if:
  - (a) the Regulator has reason to believe that the person has a controlling stake in the RSE licensee; and
  - (b) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee.
- (3) The Regulator may give a person a direction to relinquish control of an RSE licensee if:
  - (a) the Regulator has reason to believe that that the person has a controlling stake in the RSE licensee; and
  - (b) the person has approval under section 29HD to hold a controlling stake in the RSE licensee; and
  - (c) information given to the Regulator in relation to the application for approval was false or misleading in a material particular.
- (4) To avoid doubt, a direction under subsection (1) or (3) to a person to relinquish a controlling stake in an RSE licensee may be given even if the person has approval to hold a controlling stake in the RSE licensee.

- (5) The direction must be given in writing.
- (6) The Regulator must give the person:
  - (a) a copy of the direction; and
  - (b) a statement of the Regulator's reasons for giving the direction.
- (7) The Regulator may revoke a direction to relinquish control of an RSE licensee.
- (8) The revocation must be in writing and a copy of the revocation must be given to the person.

### **131EC Meaning of practical control**

A person has *practical control* over an RSE licensee that is a body corporate if:

- (a) either of the following is satisfied:
  - (i) the directors of the RSE licensee are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates);
  - (ii) the person (either alone or together with associates) is in a position to exercise control over the RSE licensee; and
- (b) the person does not hold a controlling stake in the RSE licensee.

### **131ED Consequences of a direction to relinquish control**

- (1) If the Regulator gives a person a direction to relinquish control over an RSE licensee, the person must take such steps as are necessary to ensure that:
  - (a) the directors of the RSE licensee are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
  - (b) the person (either alone or together with associates) is not in a position to exercise control over the RSE licensee; and
  - (c) the person does not hold a controlling stake in the RSE licensee.

- (2) The person must take those steps:
- (a) within 90 days after being given a copy of the direction; or
  - (b) if the Regulator, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.
- (3) A person commits an offence if:
- (a) the person is subject to a requirement under this section; and
  - (b) the person intentionally or recklessly contravenes the requirement.

Penalty: 400 penalty units.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence under subsection (3), so a person commits an offence, after the period for relinquishment expires, on each day on which the person does not relinquish control.

### **131EE Interim orders**

*Orders where the direction is stayed by the Administrative Appeals Tribunal*

- (1) The Regulator may apply to the Federal Court of Australia (the **Federal Court**) for orders under subsection (2) if:
- (a) the Regulator has given a direction to relinquish control over an RSE licensee to a person; and
  - (b) an application has been made to the Administrative Appeals Tribunal for a review of the decision to give the direction; and
  - (c) the Tribunal has made an order or orders staying or otherwise affecting the operation or implementation of the decision to give the direction, or a part of that decision.
- (2) The Federal Court may make such orders as the court considers appropriate to ensure that the person does not, during the period to which an order of the Tribunal relates, exercise control over the RSE licensee in a manner that results in the RSE licensee being unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

*Orders to deal with conduct during the compliance period*

- (3) The Regulator may apply to the Federal Court of Australia (the ***Federal Court***) for orders under subsection (4) if:
  - (a) a direction to relinquish control over an RSE licensee is in force in relation to a person; and
  - (b) the Regulator has reason to believe that the person may, during the period under subsection 131ED(2) during which the person is required to take steps under the direction (the ***compliance period***), exercise control over the RSE licensee in a manner that results in the RSE licensee being unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.
- (4) The Federal Court may make such orders as the court considers appropriate to ensure that the person does not, during the compliance period, exercise control over the RSE licensee in a manner that results in the RSE licensee being unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A.

**131EF Remedial orders**

- (1) The Regulator may apply to the Federal Court of Australia (the ***Federal Court***) for orders under this section if a direction to relinquish control over an RSE licensee is in force in relation to a person.
- (2) The Federal Court may make such orders as the court considers appropriate to ensure that:
  - (a) the directors of the RSE licensee are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
  - (b) the person (either alone or together with associates) is not in a position to exercise control over the RSE licensee; and
  - (c) the person does not hold a controlling stake in the RSE licensee.

- (3) However, the Federal Court may only make orders under this section if the court is satisfied that:
- (a) both of the following are satisfied:
    - (i) the person holds a controlling stake in the RSE licensee, or has practical control of the RSE licensee;
    - (ii) because of the person's control of the RSE licensee, or the way in which that control has been, is or is likely to be exercised, the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A; or
  - (b) both of the following are satisfied:
    - (i) the person holds a controlling stake in the RSE licensee;
    - (ii) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee; or
  - (c) each of the following is satisfied:
    - (i) the person has a controlling stake in the RSE licensee;
    - (ii) the person has approval under section 29HD to hold a controlling stake in the RSE licensee;
    - (iii) information given to the Regulator in relation to the application for approval was false or misleading in a material particular.
- (4) The Federal Court's orders include:
- (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (5) Subsection (4) does not, by implication, limit subsection (2).
- (6) In addition to the Federal Court's powers under subsections (2) and (4), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order

directing any person to do or refrain from doing a specified act; and

- (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (7) The Federal Court may, before making an order under this section, direct that notice of the Regulator's application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (8) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

### **11 At the end of subsection 133(1)**

Add:

- ; or (f) the Regulator has reason to believe that:
  - (i) either a person holds a controlling stake in the RSE licensee or a person has practical control of the RSE licensee; and
  - (ii) because of the person's control of the RSE licensee, or the way in which that control has been, is or is likely to be exercised, the RSE licensee has been, is or is likely to be unable to satisfy one or more of the trustee's obligations contained in a covenant set out in sections 52 to 53, or prescribed under section 54A; or
- (g) the Regulator has reason to believe that:
  - (i) a person holds a controlling stake in an RSE licensee; and
  - (ii) the person does not have approval under section 29HD to hold a controlling stake in the RSE licensee.

### **12 After paragraph 223A(1)(a)**

Insert:

- (aa) subsection 29JCB(1);

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

### **13 Definitions**

In this Part:

*commencement day* means the day on which this Schedule commences.

### **14 Treatment of persons holding a controlling stake in an RSE licensee before the commencement day**

- (1) This item applies if:
  - (a) a person holds a controlling stake in an RSE licensee immediately before the commencement day; and
  - (b) the person continues to hold a controlling stake in the RSE licensee on, or on and after, the commencement day.
- (2) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, the person is taken to have approval under section 29HD to hold a controlling stake in the RSE licensee during the period:
  - (a) beginning on the commencement day; and
  - (b) ending when the period during which the person holds a controlling stake in the RSE licensee is broken.

### **15 Holding a controlling stake without approval**

Section 29JCB of the *Superannuation Industry (Supervision) Act 1993*, as inserted by item 9 of this Schedule, applies where a person begins to hold a controlling stake in an RSE licensee on or after the day that is 3 months after the commencement day.

## Schedule 5—APRA directions power

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

#### **1 Section 4 (after table item dealing with Part No. 16)**

Insert:

16A APRA’s powers to issue directions

#### **2 Subparagraph 6(1)(a)(vii)**

Repeal the subparagraph, substitute:

(vii) Parts 14 to 16A.

#### **2A Subsection 10(1) (definition of *connected entity*)**

Repeal the definition, substitute:

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

- (a) an associated entity (within the meaning of the *Corporations Act 2001*) of the RSE licensee; and
- (b) if the RSE licensee is a group of individual trustees—an entity that has the capacity to determine or influence decisions made by one or more members of the group in relation to the registrable superannuation entity; and
- (c) any other entity of a kind prescribed by the regulations.

#### **3 Subsection 10(1) (after paragraph (ta) of the definition of *reviewable decision*)**

Insert:

- (taaa) a decision of APRA to give a direction under subsection 131D(1), 131DA(1) or 131DA(3); or
- (taab) a decision of APRA to vary a direction under subsection 131DC(1); or

#### **4 Subsection 29E(1) (note 1)**

Omit “(see section 29EB)”, substitute “(see Division 1 of Part 16A)”.

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**5 Subsection 29EA(2) (note 1)**

Omit “(see section 29EB)”, substitute “(see Division 1 of Part 16A)”.

**6 Section 29EB**

Repeal the section.

**7 Paragraphs 29G(2)(e) and (f)**

Omit “under section 29EB”, substitute “under subsection 131D(1) or 131DA(1)”.

**8 Section 29JB**

Repeal the section.

**9 Section 29JD**

Omit “29JB”, substitute “131DD”.

**10 Subsection 29K(2) (note)**

Omit “(see section 29EB)”, substitute “(see paragraph 131D(2)(b))”.

**11 After Part 16**

Insert:

**Part 16A—APRA’s powers to issue directions****Division 1—General powers to issue directions****131D APRA may give directions to an RSE licensee in relation to licensee’s own conduct**

- (1) APRA may give an RSE licensee a direction of a kind mentioned in subsection (2) if APRA has reason to believe that:
  - (a) the RSE licensee has contravened a provision of:
    - (i) this Act; or
    - (ii) the regulations; or
    - (iii) the prudential standards; or
    - (ii) the *Financial Sector (Collection of Data) Act 2001*; or

- (b) the RSE licensee is likely to contravene a provision mentioned in paragraph (a), and the direction is reasonably necessary to deal with one or more prudential matters in relation to the RSE licensee; or
- (c) the RSE licensee has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
- (ca) the RSE licensee, or the registrable superannuation entity of the RSE licensee, has failed to meet a benchmark that relates to the licensee or entity; or
- (d) the direction is necessary in the interests of beneficiaries of a registrable superannuation entity of the RSE licensee; or
- (e) the RSE licensee is, or is about to become, unable to meet its liabilities (whether as trustee of a registrable superannuation entity or otherwise); or
- (f) there is, or there might be, a material risk to the security of the assets of the RSE licensee (whether held as trustee of a registrable superannuation entity or otherwise); or
- (g) there has been, or there might be, a material deterioration in the financial condition of:
  - (i) the RSE licensee; or
  - (ii) a registrable superannuation entity of which it is trustee; or
- (h) the RSE licensee is conducting:
  - (i) its affairs; or
  - (ii) the affairs of a registrable superannuation entity of which it is trustee;in an improper or financially unsound way; or
- (i) the failure to issue a direction would materially prejudice the interests or reasonable expectations of beneficiaries of a registrable superannuation entity of the RSE licensee; or
- (j) the RSE licensee is conducting:
  - (i) its affairs; or
  - (ii) the affairs of a registrable superannuation entity of which it is trustee;in a way that may cause or promote instability in the Australian financial system.

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- (2) APRA may give a direction to do one or more of the following:
- (a) to comply with the whole or a part of:
    - (i) this Act; or
    - (ii) the regulations; or
    - (iii) the prudential standards; or
    - (ii) the *Financial Sector (Collection of Data) Act 2001*;
  - (b) to comply with the whole or a part of a condition or direction referred to in paragraph (1)(c);
  - (c) if the RSE licensee is a body corporate, to do one or more of the following:
    - (i) to remove a responsible officer of the RSE licensee from office;
    - (ii) to ensure that a responsible officer of the RSE licensee does not take part in the management or conduct of the business of the RSE licensee, or the business of a registrable superannuation entity of the RSE licensee, except as permitted by APRA;
    - (iii) to appoint a person as a responsible officer of the RSE licensee for such term as APRA directs;
  - (d) to order an audit of:
    - (i) the affairs of the RSE licensee; or
    - (ii) the affairs of a registrable superannuation entity of the RSE licensee;at the expense of the RSE licensee, by an auditor chosen by APRA;
  - (e) to remove an auditor of the RSE licensee, or of a registrable superannuation entity of the RSE licensee, from office and appoint another auditor to hold office for such term as APRA directs;
  - (f) to order an actuarial investigation of the affairs of a registrable superannuation entity of the RSE licensee, at the expense of the RSE licensee and by an actuary chosen by APRA;
  - (g) to remove an actuary of a registrable superannuation entity of the RSE licensee from office and appoint another actuary to hold office for such term as APRA directs;
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- (h) not to accept, or to cease to accept (permanently or temporarily), contributions to a registrable superannuation entity of the RSE licensee;
  - (i) not to borrow any amount;
  - (j) not to pay or transfer any amount or asset to any person, or create an obligation (contingent or otherwise) to do so;
  - (k) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
  - (l) not to discharge any liability of:
    - (i) the RSE licensee; or
    - (ii) a registrable superannuation entity of the RSE licensee;
  - (m) to make changes to the RSE licensee's systems, business practices or operations (including the RSE licensee's systems business practices or operations in relation to a registrable superannuation entity of the RSE licensee);
  - (n) to do, or refrain from doing, anything else in relation to the affairs of:
    - (i) the RSE licensee; or
    - (ii) a registrable superannuation entity of the RSE licensee.
- (3) A direction under paragraph (2)(j) not to pay or transfer any amount or asset does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.
- (4) Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:
- (a) deal with some only of the matters referred to in that paragraph; or
  - (b) deal with a particular class or particular classes of those matters; or
  - (c) make different provision with respect to different matters or different classes of matters.
- (5) The direction may deal with the time by which, or period during which, it is to be complied with.

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**131DA APRA may give directions in relation to the conduct of a connected entity of an RSE licensee**

- (1) APRA may give an RSE licensee a direction of a kind mentioned in subsection (5), or a direction to cause a connected entity of the RSE licensee to do or not to do something of a kind mentioned in subsection (5), if APRA has reason to believe that:
- (a) a connected entity of the RSE licensee has contravened a provision of:
    - (i) this Act; or
    - (ii) the regulations; or
    - (iii) the prudential standards; or
    - (ii) the *Financial Sector (Collection of Data) Act 2001*; or
  - (b) a connected entity of the RSE licensee is likely to contravene a provision mentioned in paragraph (a); or
  - (c) the direction relates to a connected entity of the RSE licensee and is necessary in the interests of beneficiaries of a registrable superannuation entity of the RSE licensee; or
  - (d) a connected entity of the RSE licensee is, or is about to become, unable to meet the connected entity's liabilities; or
  - (e) there is, or there might be, a material risk to the security of the assets of a connected entity of the RSE licensee; or
  - (f) there has been, or there might be, a material deterioration in the financial condition of a connected entity of the RSE licensee; or
  - (g) a connected entity of the RSE licensee is conducting the entity's affairs in an improper or financially unsound way; or
  - (h) a connected entity of the RSE licensee is conducting the entity's affairs in a way that may cause or promote instability in the Australian financial system; or
  - (i) a connected entity of the RSE licensee is conducting the entity's affairs in a way that may cause it to be unable to continue to supply products or services to the RSE licensee, or a registrable superannuation entity of the RSE licensee; or
  - (j) the direction relates to a connected entity of the RSE licensee and the failure to issue a direction would materially prejudice the interests of beneficiaries of a registrable superannuation entity of the RSE licensee.

- (2) However, APRA can only make a direction under subsection (1) as a result of a ground referred to in paragraph (1)(d), (e), (f), (g), (h) or (i) if APRA considers that the direction is reasonably necessary to ensure that the RSE licensee's duties as trustee of a registrable superannuation entity are properly performed.
- (3) APRA may give a connected entity of an RSE licensee a direction of a kind mentioned in subsection (5) if:
  - (a) APRA has given the RSE licensee a direction under subsection (1) because one or more of the grounds referred to in that subsection have been satisfied in respect of the connected entity; or
  - (b) APRA may give the RSE licensee a direction under subsection (1) because one or more of the grounds referred to in that subsection have been satisfied in respect of the connected entity.
- (4) APRA cannot give a direction under subsection (3) to a connected entity of a kind specified in regulations (if any) made for the purposes of this subsection.
- (5) APRA may give a direction to do one or more of the following:
  - (a) to comply with the whole or a part of:
    - (i) this Act; or
    - (ii) the regulations; or
    - (iii) the prudential standards; or
    - (ii) the *Financial Sector (Collection of Data) Act 2001*;
  - (b) if the connected entity is a body corporate:
    - (i) to remove a responsible officer of the entity from office; or
    - (ii) to ensure that a responsible officer of the entity does not take part in the management or conduct of the business of the entity (including any business the entity conducts in relation to a registrable superannuation entity of the RSE licensee) except as permitted by APRA; or
    - (iii) to appoint a person as a responsible officer of the entity for such term as APRA directs;
  - (c) to order an audit of:
    - (i) the affairs of the connected entity; or

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- (ii) the affairs of a registrable superannuation entity of the RSE licensee;  
at the expense of the connected entity, by an auditor chosen by APRA;
  - (d) to:
    - (i) remove from office an auditor of the connected entity, or of a registrable superannuation entity of the RSE licensee; and
    - (ii) appoint another auditor to hold office for such term as APRA directs;
  - (e) to order an actuarial investigation of the affairs of a registrable superannuation entity of the RSE licensee, at the expense of the connected entity and by an actuary chosen by APRA;
  - (f) to:
    - (i) remove from office an actuary of a registrable superannuation entity of the RSE licensee; and
    - (ii) appoint another actuary to hold office for such term as APRA directs;
  - (g) not to borrow any amount;
  - (h) not to pay or transfer any amount or asset to any person, or create an obligation (contingent or otherwise) to do so;
  - (i) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
  - (j) not to discharge any liability of one or more of the following:
    - (i) the connected entity;
    - (ii) a registrable superannuation entity of the RSE licensee;
  - (k) to make changes to the connected entity's systems, business practices or operations (including the connected entity's systems, business practices or operations in relation to a registrable superannuation entity of the RSE licensee);
  - (l) to do, or refrain from doing, anything else in relation to the affairs of:
    - (i) the connected entity; or
    - (ii) a registrable superannuation entity of the RSE licensee.

- (6) A direction under paragraph (5)(h) not to pay or transfer any amount or asset does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.
- (7) Without limiting the generality of subsection (5), a direction referred to in a paragraph of that subsection may:
  - (a) deal with some only of the matters referred to in that paragraph; or
  - (b) deal with a particular class or particular classes of those matters; or
  - (c) make different provision with respect to different matters or different classes of matters.
- (8) The direction may deal with the time by which, or period during which, it is to be complied with.

**131DB Machinery provisions relating to directions under this Division**

- (1) A direction under this Division must:
  - (a) be given by notice in writing:
    - (i) in the case of a direction to an RSE licensee under subsection 131D(1) or 131DA(1)—to the RSE licensee; and
    - (ii) in the case of a direction to a connected entity of an RSE licensee under subsection 131DA(3)—to the connected entity of the RSE licensee and the RSE licensee; and
  - (b) specify:
    - (i) in the case of a direction under subsection 131DA(3)—the ground referred to in subsection 131DA(1) as a result of which the direction is given; or
    - (ii) otherwise—the ground referred to in subsection 131D(1) or 131DA(1) as a result of which the direction is given.
- (2) A direction under this Division is not a legislative instrument.

Note: Under paragraph 11(2)(c) of the *Legislation Act 2003*, APRA may register a direction under this Division as a notifiable instrument.

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- (3) In deciding whether to give a direction under subsection 131D(1) to an RSE licensee, APRA may disregard any external support for the RSE licensee.
  - (4) In deciding whether to give a direction under subsection 131DA(1) or (3), APRA may disregard any external support for the RSE licensee, or the connected entity of the RSE licensee, in relation to which the direction is given.
  - (5) The regulations may specify that a particular form of support is not external support for the purposes of subsection (3) or (4).

### **131DC Varying or revoking a direction under this Division**

- (1) APRA may:
  - (a) vary a direction given to an RSE licensee under this Division, by notice in writing to the RSE licensee; or
  - (b) vary a direction given to a connected entity of an RSE licensee under this Division, by notice in writing to the connected entity and the RSE licensee;if, at the time of the variation, APRA considers that the variation is necessary and appropriate.
- (2) A direction under this Division has effect until APRA revokes it.
- (3) APRA may:
  - (a) revoke a direction given to an RSE licensee under this Division, by notice in writing to the RSE licensee; or
  - (b) revoke a direction given to a connected entity of an RSE licensee under this Division, by notice in writing to the connected entity and the RSE licensee;if, at the time of revocation, APRA considers that the direction is no longer necessary or appropriate.

### **131DD Non-compliance with a direction**

*Failure to comply with a direction given to an RSE licensee—  
failure by the RSE licensee*

- (1) A person commits an offence if:

- (a) the person is an RSE licensee or a member of a group of individual trustees that is an RSE licensee; and
- (b) a direction is given to the RSE licensee under this Division; and
- (c) the RSE licensee does, or fails to do, something; and
- (d) doing, or failing to do, the thing results in a contravention of the direction.

Penalty: 100 penalty units.

Note: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

*Failure to comply with a direction given to an RSE licensee—  
failure by an officer of the RSE licensee*

- (2) A person commits an offence if:
  - (a) the person is an officer of an RSE licensee that is a body corporate; and
  - (b) the officer fails to take reasonable steps to ensure that the RSE licensee complies with a direction given to it under this Division; and
  - (c) the officer's duties include ensuring that the RSE licensee complies with the direction or with a class of directions that includes the direction; and
  - (d) the RSE licensee does not comply with the direction.

Penalty: 100 penalty units.

*Failure to comply with a direction given to a connected entity of an RSE licensee—failure by the connected entity*

- (3) A connected entity of an RSE licensee commits an offence if:
  - (a) a direction is given to the connected entity under this Division; and
  - (b) the connected entity does, or fails to do, something; and
  - (c) doing, or failing to do, the thing results in a contravention of the direction.

Penalty: 100 penalty units.

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Note: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

*Failure to comply with a direction given to a connected entity of an RSE licensee—failure by an officer of the connected entity*

- (4) A person commits an offence if:
- (a) the person is an officer of a body corporate that is a connected entity of an RSE licensee; and
  - (b) the officer fails to take reasonable steps to ensure that the connected entity complies with a direction given to it under this Division; and
  - (c) the officer's duties include ensuring that the connected entity complies with the direction or with a class of directions that includes the direction; and
  - (d) the connected entity fails to comply with the direction.

Penalty: 100 penalty units.

*Offence for each day on which a person continues to commit an offence*

- (5) If a person commits an offence against subsection (1), (2), (3) or (4), the person commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

*Strict liability*

- (6) Subsections (1), (2), (3) and (4) are offences of strict liability.

*Meaning of officer*

- (7) In this section, **officer** has the meaning given by section 9 of the *Corporations Act 2001*.
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### **Division 3—Provisions relating to all directions under this Act**

#### **131F APRA may give more than one direction**

- (1) APRA is not precluded from giving a direction under a provision of this Act because APRA has given, or may give, another direction under that or any other provision of this Act.
- (2) The kinds of direction that may be given under one provision of this Act are not limited by any direction given, or that may be given, under that or any other provision of this Act.

#### **131FA RSE licensee and connected entity have power to comply with a direction under this Act**

- (1) An RSE licensee has power to comply with a direction given to the RSE licensee under this Act despite anything in its constitution or any contract or arrangement to which it is a party.
- (2) If the direction requires the RSE licensee to cause a connected entity to do, or not to do, something:
  - (a) the RSE licensee has power to cause the connected entity to do, or to not to do, the thing; and
  - (b) the connected entity has power to do, or not to do, the thing; despite anything in the connected entity's constitution or any contract or arrangement to which the connected entity is a party.
- (3) A connected entity of an RSE licensee has power to comply with a direction given to the connected entity under this Act despite anything in its constitution or any contract or arrangement to which it is a party.

#### **131FB Protection from liability—general**

- (1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

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- (2) To avoid doubt, any information provided by a person to APRA under section 130A is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.
  - (3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

### **131FC Protection from liability—directions**

- (1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:
  - (a) the person does the thing, or omits to do the thing, for the purpose of complying with a direction under this Act given by APRA to an RSE licensee, or a connected entity of an RSE licensee; and
  - (b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and
  - (c) the person is any of the following:
    - (i) an officer of the RSE licensee, or of the connected entity of the RSE licensee;
    - (ii) an employee or agent of the RSE licensee, or of the connected entity of the RSE licensee.
- (2) In subsection (1):

***employee:***

- (a) of an RSE licensee, includes a person engaged to provide advice or services to the RSE licensee; or
- (b) of a connected entity of an RSE licensee, includes a person engaged to provide advice or services to the connected entity.

***officer*** has the meaning given by section 9 of the *Corporations Act 2001*.

### **131FD Protection from liability—provisions do not limit each other**

The following provisions do not limit the operation of each other:

- (a) section 336B;
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- (b) section 131FB;
- (c) section 131FC;
- (d) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

**131FE Informing the Treasurer about issue and revocation of directions**

- (1) If the Treasurer requests APRA to provide information about:
  - (a) any directions given under this Act to a particular entity; or
  - (b) any directions given under this Act, during a specified period, to any entity of a specified kind;APRA must comply with the request.
- (2) APRA may provide any information that it considers appropriate to the Treasurer about:
  - (a) any directions given under this Act at any time; or
  - (b) any revocations of any such directions.
- (3) If APRA provides the Treasurer with information about a direction and then later revokes the direction, APRA must notify the Treasurer of the revocation of the direction as soon as practicable after the revocation. Failure to notify the Treasurer does not affect the validity of the revocation.

**12 After subsection 349B(6)**

Insert:

- (6A) If, apart from this section, this Act would result in such an acquisition of property because it would require a person to comply with a direction given under this Act, then despite any other provision of this Act, the person is not required to comply with the direction in circumstances that would result in such an acquisition.

**13 At the end of subsection 349B(7)**

Add:

- ; and (f) a direction given under this Act.

## **14 Application**

The amendments made by this Schedule apply to events that occur, and anything that a person does or fails to do, on or after the commencement of this Schedule.

## Schedule 6—Portfolio holdings disclosure

### *Corporations Act 2001*

#### **1 Subsection 1017BB(1)**

Repeal the subsection, substitute:

##### *Obligation to publicise investment information*

- (1) The trustee, or the trustees, of a registrable superannuation entity (the **reporting entity**) must make the following information about each of the entity's investment options publicly available on the entity's website no later than 90 days after each reporting day:
- (a) sufficient information to identify each investment item (a **disclosable item**) allocated to the investment option at the end of the reporting day that:
    - (i) is held by the reporting entity, an associated entity of the reporting entity or a pooled superannuation trust; and
    - (ii) is neither an investment in an associated entity of the reporting entity, nor an investment in a pooled superannuation trust;
  - (b) sufficient information to identify the value, and the weighting or exposure, at the end of the reporting day of each disclosable item;
  - (c) the total value, and the total weighting or exposure, at the end of the reporting day of all disclosable items.
- (1A) However, the regulations may provide that subsection (1) applies for a prescribed kind of disclosable item so that:
- (a) paragraphs (1)(a) and (b) need not be complied with for each item of that kind; and
  - (b) instead, only the following need be disclosed:
    - (i) the name of that kind of item;
    - (ii) the total value, and the total weighting or exposure, at the end of the reporting day of all items of that kind.

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**2 Subsections 1017BB(4) and (5)**

Repeal the subsections, substitute:

*Full exemption*

- (4) Subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity if the entity is:
- (a) a pooled superannuation trust; or
  - (b) a single member fund; or
  - (c) a small APRA fund.

*Partial exemptions*

- (5) Subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity for:
- (a) an investment option of the entity that has been closed to new members for at least 5 years; or
  - (b) an investment item that is not a material investment in accordance with regulations prescribed for the purposes of this paragraph; or
  - (c) an investment item invested solely to support a defined benefit interest (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (d) an investment item invested in a life policy, or investment account contract, of a kind described in subparagraph 1017BA(4)(a)(i), (ii) or (iii); or
  - (e) an investment item of a kind prescribed by the regulations for the purposes of this paragraph.

Note: An investment item covered by any of paragraphs (b) to (e) will not be a disclosable item.

- (5A) Subject to subsection (1A), subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity for up to 5% of the investment items (other than derivatives) referred to in paragraph (1)(a) for the investment option if:
- (a) those investment items are commercially sensitive; and
  - (b) making information publicly available about those investment items would be detrimental to the interests of the entity's members.

The trustee, or the trustees, of the entity may determine which investment items make up that 5%.

Note: Regulations under subsection (1A) may require the disclosure of the total value of all investment items of this kind.

*Definitions*

**3 Subsection 1017BB(6)**

Insert:

*investment item* means an asset or a derivative.

*investment option*, for a registrable superannuation entity, means:

- (a) an investment pool maintained within the entity; or
- (b) a financial product made available to a member of the entity:
  - (i) that is a managed investment scheme or other pooled investment; and
  - (ii) in respect of which section 1012IA applies if there is, or will be, a regulated acquisition of the product (within the meaning of that section).

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

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

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

*small APRA fund* means a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) with less than 5 members.

**4 Sections 1017BC, 1017BD and 1017BE**

Repeal the sections.

**5 Paragraph 1020E(1)(c)**

Omit “, or provided under subsection 1017BC(3),”.

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**6 Subsection 1020E(11) (paragraph (d) of the definition of defective)**

Omit “or information provided under section 1017BC”.

**7 Section 1021NC**

Repeal the section.

**8 Subparagraph 1022B(1)(g)(iii)**

Omit “; or”, substitute “.”.

**9 Paragraph 1022B(1)(h)**

Repeal the paragraph.

**10 Paragraph 1022B(2)(f)**

Omit “, (g) or (h)”, substitute “or (g)”.

**11 Paragraph 1022B(3)(f)**

Omit “; or”, substitute “.”.

**12 Paragraph 1022B(3)(g)**

Repeal the paragraph.

**13 Subsection 1022B(7B)**

Omit “, (g)(ii) or (h)(ii)”, substitute “or (g)(ii)”.

**14 Subsection 1022B(7C)**

Omit “, (g)(iii) or (h)(iii)”, substitute “or (g)(iii)”.

**15 Subparagraph 1041H(3)(a)(iii)**

Omit “, 1021NB or 1021NC”, substitute “or 1021NB”.

**16 Subparagraph 1041K(1)(a)(iii)**

Omit “, 1021NB or 1021NC”, substitute “or 1021NB”.

**17 Section 1540**

Omit “30 June 2014”, substitute “31 December 2019”.

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**18 Section 1541**

Repeal the section.

**19 After Part 10.22 of Chapter 10**

Insert:

**Part 10.22A—Transitional provisions relating to  
the Treasury Laws Amendment (Improving  
Accountability and Member Outcomes in  
Superannuation Measures No. 1) Act 2019**

**1541A Application of amendments relating to portfolio holdings  
disclosure**

The amendments of section 1017BB made by Schedule 6 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* apply in relation to the reporting day that is 31 December 2019 and to later reporting days.

**20 Schedule 3 (table items 308AG, 308AH and 308AI)**

Repeal the items.

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

**21 Section 38A (subparagraph (c)(ii) of the definition of  
*regulatory provision*)**

Omit “(3);”, substitute “(3).”.

**22 Section 38A (subparagraph (c)(iii) of the definition of  
*regulatory provision*)**

Repeal the subparagraph.

## **Schedule 7—Annual members' meetings**

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

#### **1 Subparagraph 6(1)(a)(i)**

Omit “and sections 29QB and 29QC”, substitute “and sections 29P to 29QC”.

#### **2 Subparagraph 6(1)(c)(ia)**

Omit “and sections 29QB and 29QC”, substitute “and sections 29P to 29QC”.

#### **3 Subsection 10(1)**

Insert:

*annual members' meeting*, for a registrable superannuation entity, means a meeting of members of the entity held under subsection 29P(1) for a year of income of the entity.

#### **4 Division 5 of Part 2B (heading)**

Repeal the heading, substitute:

### **Division 5—RSE licensees must provide information about registrable superannuation entities**

#### **5 Before section 29QB**

Insert:

### **Subdivision A—Annual members' meetings**

#### **29P Annual members' meeting**

*RSE licensees must hold annual members' meetings*

- (1) The RSE licensee of a registrable superannuation entity must hold an annual meeting of members of the entity for each year of income of the entity.

*Notice of meeting*

- (2) The RSE licensee must give notice of the annual members' meeting to each of the following:
- (a) all members of the registrable superannuation entity;
  - (b) if the RSE licensee is a body corporate—all responsible officers of the body corporate;
  - (c) any person who has been an auditor of the registrable superannuation entity for the year of income of the entity;
  - (d) any person who has been an actuary of the registrable superannuation entity during the year of income of the entity.
- (3) The RSE licensee must:
- (a) include in the notice:
    - (i) the time and location of the annual members' meeting; and
    - (ii) if the annual members' meeting to be held by electronic means—details of how the meeting can be attended electronically; and
    - (iii) the agenda of matters to be discussed at the annual members' meeting; and
  - (b) include with the notice any other information prescribed by the regulations; and
  - (c) give the notice, and any information required to be included with the notice, in the manner (if any) prescribed by the regulations; and
  - (d) give the notice, and any information required to be included with the notice:
    - (i) no later than 6 months after the end of the year of income of the entity; and
    - (ii) at least 21 days before the meeting.
- (3A) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of paragraph (3)(b) may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a reporting standard, made by APRA under the *Financial Sector (Collection of Data) Act 2001*, as in force or existing from time to time.
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*Timing of meeting*

- (4) The meeting must be held within 3 months after the notice of the meeting is given in accordance with subsections (2) and (3).

*Conduct of an annual members' meeting*

- (5) At the annual members' meeting, the RSE licensee must give members of the registrable superannuation entity reasonable opportunities to ask questions about:
- (a) the registrable superannuation entity; and
  - (b) if the RSE licensee is a body corporate—the RSE licensee and the responsible officers of the RSE licensee; and
  - (c) if the RSE licensee is a group of individual trustees—each of the individual trustees; and
  - (d) any audit of the registrable superannuation entity for the year of income of the entity; and
  - (e) any actuarial investigation of the registrable superannuation entity during the year of income of the entity; and
  - (f) any information included with the notice of the meeting.

*Minutes of meeting*

- (6) The RSE licensee must ensure that:
- (a) minutes of the annual members' meeting are prepared; and
  - (b) those minutes include the answers to any questions asked at the meeting that a person is obliged to answer either at or after the meeting under sections 29PB, 29PC, 29PD or 29PE; and
  - (c) those minutes are made available to all members on the registrable superannuation entity's website.

*Subsection (1) does not apply in relation to certain entities*

- (7) Subsection (1) does not apply in relation to a registrable superannuation entity that is:
- (a) a superannuation fund with fewer than 5 members; or
  - (b) an excluded approved deposit fund; or
  - (c) a pooled superannuation trust; or
  - (d) an eligible rollover fund.

*Offence*

- (8) A person commits an offence if:
- (a) the person is:
    - (i) a body corporate that is an RSE licensee; or
    - (ii) a member of a group of individual trustees that is an RSE licensee; and
  - (b) the RSE licensee contravenes subsection (1), (2), (3), (4), (5) or (6).

Penalty: 50 penalty units.

**29PA Obligation to attend an annual members' meeting**

- (1) If:
- (a) the RSE licensee of a registrable superannuation entity is a body corporate; and
  - (b) any of the following persons is given notice of an annual members' meeting for the entity in accordance with subsections 29P(2) and (3):
    - (i) the Chair of the board of directors of the RSE licensee;
    - (ii) a director of the RSE licensee;
    - (iii) an executive officer of the RSE licensee;
- the person must attend the meeting.

Penalty: 50 penalty units.

- (2) A member of a group of individual trustees that is an RSE licensee of a registrable superannuation entity must attend an annual members' meeting for the entity.

Penalty: 50 penalty units.

- (3) A person who has been an auditor of a registrable superannuation entity for a year of income of the entity, must attend an annual members' meeting for the entity relating to that year if the person is given notice of the meeting in accordance with subsections 29P(2) and (3).

Penalty: 50 penalty units.

- (4) A person who has been an actuary of a registrable superannuation entity during a year of income of the entity must attend an annual members' meeting for the entity relating to that year if the person is given notice of the meeting in accordance with subsections 29P(2) and (3).

Penalty: 50 penalty units.

- (5) Subsections (1), (2), (3) and (4) do not apply to a person if the person has a reasonable excuse for not attending.
- (6) Subsection (1) does not apply to a director of an RSE licensee of a registrable superannuation entity, if:
- (a) other directors of the entity have attended the meeting; and
  - (b) the number of directors of the entity who attended the meeting is no less than the number of directors that would constitute a quorum for a meeting of the board of directors of the entity.

#### **29PB Obligation on responsible officers of RSE licensees to answer questions**

- (1) This section applies if a member of a registrable superannuation entity asks a responsible officer of the RSE licensee for the entity a question at the meeting.
- (2) The responsible officer of the RSE licensee must answer the question at the meeting or, if it is not reasonably practicable to do so, within 1 month after the meeting.

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply:
- (a) if the question is not relevant to:
    - (i) an action, or failure to act, by the RSE licensee in relation to the registrable superannuation entity or one or more members of the registrable superannuation entity; or
    - (ii) the registrable superannuation entity; or

- (b) if it would be in breach of the governing rules of the registrable superannuation entity, this Act or any other law to answer the question; or
- (c) if answering the question would result in detriment to the members of the registrable superannuation entity, taken as a whole; or
- (d) in any other circumstances prescribed by the regulations.

**29PC Obligation on individual trustees to answer questions**

- (1) This section applies if a member of a registrable superannuation entity asks an individual trustee for the entity a question at an annual members' meeting for the entity.
- (2) The individual trustee must answer the question at the meeting or, if it is not reasonably practicable to do so, within 1 month after the meeting.

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply:
  - (a) if the question is not relevant to:
    - (i) an action, or failure to act, by the RSE licensee in relation to the registrable superannuation entity or one or more members of the registrable superannuation entity; or
    - (ii) the registrable superannuation entity; or
  - (b) if it would be in breach of the governing rules of the registrable superannuation entity, this Act or any other law to answer the question; or
  - (c) if answering the question would result in detriment to the members of the registrable superannuation entity, taken as a whole; or
  - (d) in any other circumstances prescribed by the regulations.

**29PD Obligation on auditor to answer questions**

- (1) This section applies if a member of a registrable superannuation entity asks a person who has been an auditor of the registrable

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superannuation entity for a year of income of the entity a question at an annual members' meeting for the entity for the year.

- (2) The auditor must answer the question at the meeting or, if it is not reasonably practicable to do so, within 1 month after the meeting.

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply:
- (a) if the question is not relevant to:
    - (i) an action, or failure to act, by the RSE licensee in relation to the registrable superannuation entity or one or more members of the registrable superannuation entity; or
    - (ii) the registrable superannuation entity; or
    - (iii) an audit of the registrable superannuation entity carried out by the auditor; or
    - (iv) any matter that might reasonably be expected to be apparent to the auditor of the entity in relation to the entity; or
  - (b) if it would be in breach of the governing rules of the registrable superannuation entity, this Act or any other law to answer the question; or
  - (c) if answering the question would result in detriment to the members of the registrable superannuation entity, taken as a whole; or
  - (d) in any other circumstances prescribed by the regulations.

### **29PE Obligation on actuary to answer questions**

- (1) This section applies if a member of a registrable superannuation entity asks a person who has been an actuary of the registrable superannuation entity during a year of income of the entity a question at an annual members' meeting for the entity for the year.

- (2) The actuary must answer the question at the meeting or, if it is not reasonably practicable to do so, within 1 month after the meeting.

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply:

- (a) if the question is not relevant to:
  - (i) an action, or failure to act, by the RSE licensee in relation to the registrable superannuation entity or one or more members of the registrable superannuation entity; or
  - (ii) the registrable superannuation entity; or
  - (iii) an actuarial investigation of the registrable superannuation entity carried out by the actuary; or
  - (iv) any matter that might reasonably be expected to be apparent to the actuary of the entity in relation to the entity; or
- (b) if it would be in breach of the governing rules of the registrable superannuation entity, this Act or any other law to answer the question; or
- (c) if answering the question would result in detriment to the members of the registrable superannuation entity, taken as a whole; or
- (d) in any other circumstances prescribed by the regulations.

### **Subdivision B—Other obligations in relation to information**

#### **6 Application**

The amendments made by this Schedule apply in relation to years of income of a registrable superannuation entity beginning on or after the commencement of the Schedule.

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## Schedule 8—Reporting standards

### *Australian Prudential Regulation Authority Act 1998*

#### **1 Subsection 56(1) (paragraph (ca) of the definition of *protected document*)**

After “13(4A)”, insert “or (4D)”.

#### **2 Subsection 56(1) (paragraph (ca) of the definition of *protected information*)**

After “13(4A)”, insert “or (4D)”.

### *Financial Sector (Collection of Data) Act 2001*

#### **2A After paragraph 13(4A)(a)**

Insert:

- (aa) the extent to which the profits of the investor is attributable to deductions made by the investor;
- (ab) if the return on the investment made by the investor is passed on (in whole or in part) to members of a regulated superannuation entity of the RSE licensee—the effect of any deduction by the investor on the amount passed on to the members;
- (ac) if the investor is a person connected with the RSE licensee—the relationship between the RSE licensee and the investor;

#### **3 After subsection 13(4C)**

Insert:

- (4D) A reporting standard may require an RSE licensee to provide information in relation to any money, consideration or other benefit given to an entity (the *receiving entity*) by the RSE licensee or a person connected with the RSE licensee (the *paying entity*) out of the assets, or assets derived from assets, of a registrable superannuation entity of the RSE licensee, including information about the following:
  - (a) details of the receiving entity;

- (b) details of how the money, consideration or benefit is given to the receiving entity;
- (c) if the receiving entity is not the RSE licensee—the relationship between the receiving entity and the paying entity;
- (d) the purpose for which the money, consideration or other benefit is given;
- (e) the way in which the money, consideration or other benefit is used by the receiving entity, and any entity with which that entity deals, including the extent to which the receiving entity's profit is attributable to that money, consideration or other benefit.

(4E) If:

- (a) a reporting standard requires an RSE licensee to provide information (the **required information**) in relation to any money, consideration or other benefit given to a receiving entity by a paying entity out of the assets, or assets derived from assets, of a registrable superannuation entity of the RSE licensee; and
- (b) the money, consideration or other benefit is given under a contract or other arrangement between the paying entity and the receiving entity;

the contract or arrangement is taken to include:

- (c) a term requiring the paying entity, at the time the money, consideration or benefit is given or as soon as reasonably practicable after that time, to notify the receiving entity that the money, consideration or benefit is given out of assets, or assets derived from, a registrable superannuation entity; and
- (d) a term requiring the receiving entity, if notified by the paying entity in accordance with paragraph (c), to, as soon as reasonably practicable after being notified, provide the paying entity with the required information of which the receiving party is aware.

(4F) A person is **connected with** an RSE licensee for the purposes of subsection (4D) if the person is:

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

- 
- (b) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee; or
  - (c) a person who, under a contract or other arrangement with the RSE licensee or a person mentioned in paragraphs (a) or (b):
    - (i) invests assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities; or
    - (ii) provides a financial service (within the meaning of section 766A of the *Corporations Act 2001*) in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities.
- (4G) Subsections (4D) and (4E) do not apply in relation to any money, consideration or other benefit given to another entity by the RSE licensee if it is an investment of assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities by the RSE licensee.

#### **4 Application—reporting standards**

- (1) Subsection 13(4E) of the *Financial Sector (Collection of Data) Act 2001*, as inserted by this Schedule, applies in relation to a contract or arrangement whether entered into before, on or after this item commences.
- (2) Despite subitem (1), that subsection does not apply in relation to a contract or arrangement that is entered into before this item commences, to the extent that the operation of a reporting standard mentioned in that subsection would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).
- (3) If, because of subitem (2), an RSE licensee is unable to obtain particular information that a reporting standard (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) requires an RSE licensee to provide in relation to any money, consideration or other benefit given to an entity by the RSE licensee, or a person connected with the RSE licensee, out of the assets, or assets derived from assets, of a registrable superannuation entity of the RSE licensee, then the RSE

licensee is not required to comply with the reporting standard to the extent that it requires the RSE licensee to provide that particular information.

## **Schedule 9—Superannuation trustees not to incentivise employers**

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

#### **1 Subparagraph 6(1)(a)(ix)**

Repeal the subparagraph, substitute:

- (ix) Part 21 (except to the extent that it relates to section 68A);

#### **2 After subparagraph 6(1)(c)(iii)**

Insert:

- and (iv) Part 21, to the extent that it relates to section 68A;

#### **3 Section 68A (heading)**

Repeal the heading, substitute:

### **68A Trustees must not use goods or services to influence employers**

#### **4 Subsection 68A(1)**

Repeal the subsection, substitute:

- (1) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not:
  - (a) supply, or offer to supply, goods or services to a person, or a relative or associate of a person; or
  - (b) supply, or offer to supply, goods or services to a person, or a relative or associate of a person, at a particular price; or
  - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person, or a relative or associate of a person;if that action could reasonably be expected to:
  - (d) influence the choice of the fund into which the person pays superannuation contributions for employees of the person who have no chosen fund; or

- (e) influence the person to encourage one or more of the person's employees to remain, or apply or agree to be, a member of the fund.

Note: Under the *Superannuation Guarantee (Administration) Act 1992*, employers will need to pay contributions for an employee who has no chosen fund into a fund chosen by the employer, in order to meet the choice of fund requirement and so avoid an increased individual superannuation guarantee shortfall for the employee. There are other limits on the fund that may be chosen by the employer (see Part 3A of that Act).

### 5 Subsection 68A(3)

Repeal the subsection, substitute:

- (3) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not refuse to:
  - (a) supply, or offer to supply, goods or services to a person, or a relative or associate of a person; or
  - (b) supply, or offer to supply, goods or services to a person, or a relative or associate of a person, at a particular price; or
  - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person, or a relative or associate of a person;

if it is reasonable to conclude that the refusal is given because:

- (d) the person has not chosen the fund as the fund into which the person pays superannuation contributions for employees of the person who have no chosen fund; or
- (e) the person has not encouraged one or more of the person's employees to remain, or apply or agree to be, a member of the fund.

Note: Under the *Superannuation Guarantee (Administration) Act 1992*, employers will need to pay contributions for an employee who has no chosen fund into a fund chosen by the employer, in order to meet the choice of fund requirement and so avoid an increased individual superannuation guarantee shortfall for the employee. There are other limits on the fund that may be chosen by the employer (see Part 3A of that Act).

### 6 After subsection 68A(4)

Insert:

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*Civil penalty provisions*

- (4A) Subsections (1) and (3) are civil penalty provisions as defined in section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or being involved in a contravention of, those subsections.

**7 After paragraph 193(c)**

Insert:

- (caa) subsection 68A(1);
- (cab) subsection 68A(3);

**8 Changes to ban on incentives for choosing a default fund**

- (1) The amendments made by item 4 of this Schedule, and items 6 and 7 of this Schedule to the extent that the amendments relate to subsection 68A(1) of the *Superannuation Industry (Supervision) Act 1993*, apply where a trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund:
- (a) supplies, or offers to supply, goods or services to a person, or a relative or associate of a person; or
  - (b) supplies, or offers to supply, goods or services to a person, or a relative or associate of a person, at a particular price; or
  - (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person, or a relative or associate of a person;
- on or after the day on which this Schedule commences.
- (2) The amendments made by item 5 of this Schedule, and items 6 and 7 of this Schedule to the extent that the amendments relate to subsection 68A(3) of the *Superannuation Industry (Supervision) Act 1993*, apply where a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, refuses to:
- (a) supply, or offer to supply, goods or services to a person, or a relative or associate of a person; or
  - (b) supply, or offer to supply, goods or services to a person, or a relative or associate of a person, at a particular price; or
  - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed

**Schedule 9** Superannuation trustees not to incentivise employers

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supply, of goods or services to a person, or a relative or  
associate of a person;  
on or after the day on which this Schedule commences.

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*[Minister's second reading speech made in—  
Senate on 14 September 2017  
House of Representatives on 4 April 2019]*

(204/17)

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62 *Treasury Laws Amendment (Improving Accountability and Member  
Outcomes in Superannuation Measures No. 1) Act 2019* No. 40, 2019