





# **Treasury Laws Amendment (Your Future, Your Super) Act 2021**

**No. 46, 2021**

**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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# Treasury Laws Amendment (Your Future, Your Super) Act 2021

No. 46, 2021

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

[Assented to 22 June 2021]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Your Future, Your Super) Act 2021*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <b>Commencement information</b>   |   |  |
|---|---|--|
| <b>Column 1</b>   | <b>Column 2</b>   | <b>Column 3</b>                        |
| <b>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.   | 22 June 2021                           |
| 2. Schedule 1   | The day after this Act receives the Royal Assent.   | 23 June 2021                           |
| 3. Schedule 2, Parts 1 and 2  | The day after this Act receives the Royal Assent.   | 23 June 2021                           |
| 4. Schedule 2, Part 3, Division 1   | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 3; and<br>(b) immediately after the commencement of Schedule 1 to the <i>Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021</i> .<br><br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 July 2021<br>(paragraph (b) applies) |
| 5. Schedule 2, Part 3, Division 2   | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 3; and<br>(b) immediately after the commencement of the <i>Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020</i> .<br><br>However, the provisions do not commence  |  |

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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> |
|                                 | at all if the event mentioned in paragraph (b) does not occur. |                     |
| 6. Schedule 3                   | 1 July 2021.   | 1 July 2021         |

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

## Schedule 1—Single default account

### Part 1—Main amendments

#### *Superannuation Guarantee (Administration) Act 1992*

##### 1 Subsection 6(1)

Insert:

*stapled fund* has the meaning given by section 32Q.

##### 2 Subsection 19(2E) (note)

Repeal the note, substitute:

Note: The Commissioner must have regard to guidelines in force under subsection 21(1) when deciding whether or not to make a decision under this subsection.

##### 3 After subsection 19(2E)

Insert:

(2F) If:

- (a) subsection (2G) applies to one or more contributions for a quarter that were not able to be made by an employer to a particular fund for the benefit of an employee; and
- (b) after the period of 28 days after the end of the quarter, the employer made those contributions to any fund for the benefit of the employee;

the Commissioner may reduce (including to nil) so much of the amount of the employer's individual superannuation guarantee shortfall for the employee for the quarter as is due to the lateness of those contributions.

Note: The Commissioner must have regard to guidelines in force under subsection 21(2) when deciding whether or not to make a decision under this subsection.

- (2G) This subsection applies to a contribution for a quarter that was not able to be made by an employer to a particular fund for the benefit of an employee if:

- (a) the employer attempts to make the contribution at a particular time; and
- (b) at that time, there is no chosen fund for the employee; and
- (c) at that time, the most recent notification to the employer:
  - (i) by the Commissioner; and
  - (ii) relating to a request by the employer (or by the employer's agent) for the Commissioner to identify any stapled fund for the employee;is that the Commissioner is satisfied that the fund is the stapled fund for the employee; and
- (d) the fund does not accept the contribution from the employer for the benefit of the employee.

#### **4 Subsection 21(1)**

Omit "must develop written guidelines that he or she", substitute "must, by legislative instrument, make guidelines that the Commissioner".

#### **5 Subsection 21(2)**

Repeal the subsection, substitute:

- (2) The Commissioner must, by legislative instrument, make guidelines that the Commissioner must have regard to when deciding whether or not to make a decision under subsection 19(2F).

Note: Subsection 19(2F) allows the Commissioner to reduce (including to nil) the amount of an individual superannuation guarantee shortfall when a fund that has been notified as the stapled fund for an employee is unable to accept contributions.

#### **6 After subsection 23(8)**

Insert:

- (8AA) A contribution:
  - (a) to a complying superannuation fund or an RSA made by an employer for the benefit of an employee after the end of a quarter; and
  - (b) in relation to which the employer's individual superannuation guarantee shortfall for the employee for the quarter is reduced under subsection 19(2F);

is not to be taken into account under this section in relation to any other quarter.

**7 Section 32B (after table item dealing with Division 6)**

Insert:

Division 7                      Stapled funds

**8 After subsection 32C(1)**

Insert:

*Contributions to stapled funds*

- (1A) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if, at the time the contribution is made:
- (a) there is no chosen fund for the employee; and
  - (b) the most recent notification to the employer:
    - (i) by the Commissioner; and
    - (ii) relating to a request by the employer (or by the employer's agent) for the Commissioner to identify any stapled fund for the employee;
- is that the Commissioner is satisfied that the fund is the stapled fund for the employee.

**9 Subsection 32C(2) (heading)**

Repeal the heading, substitute:

*Contributions to certain eligible choice funds*

**10 After paragraph 32C(2)(a)**

Insert:

- (aa) the most recent notification to the employer:
- (i) by the Commissioner; and
  - (ii) relating to a request by the employer (or by the employer's agent) for the Commissioner to identify any stapled fund for the employee;
- is that the Commissioner is satisfied that there is no stapled fund for the employee; and

**11 Subparagraph 32C(2)(ba)(ii)**

Omit “fund; or”, substitute “fund; and”.

**12 Subparagraph 32C(2)(ba)(iii)**

Repeal the subparagraph.

**13 Subsection 32C(2AB)**

Repeal the subsection, substitute:

*Contributions to certain successor funds*

(2AB) A contribution to a fund (the *new fund*) by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if:

- (a) the employee’s interest in the new fund was transferred to the new fund from another fund (the *original fund*) without the employee’s consent; and
- (b) at the time of the most recent contribution before the transfer to the original fund by the employer for the benefit of the employee, the original fund was a fund:
  - (i) to which subparagraph (2)(ba)(i) applies; or
  - (ii) to which subparagraph (2)(ba)(ii) applies, or would have applied if the transfer had not occurred; or
  - (iii) to which subsection (1A) applies; and
- (c) the new fund is a successor fund (within the meaning of the *Income Tax Assessment Act 1997*) in relation to the transfer.

**14 Paragraph 32C(6)(g)**

Before “a workplace determination”, insert “if subsection (6AAA) applies—”.

**15 Paragraph 32C(6)(h)**

Before “an enterprise agreement”, insert “if subsection (6AAA) applies—”.

**16 After subsection 32C(6)**

Insert:

(6AAA) For the purposes of paragraph (6)(g) or (h), this subsection applies if, at the time the contribution (or part of the contribution) is made, the most recent notification to the employer:

- (a) by the Commissioner; and
- (b) relating to a request by the employer (or by the employer's agent) for the Commissioner to identify any stapled fund for the employee;

is that the Commissioner is satisfied that there is no stapled fund for the employee.

### **17 Subsection 32NA(1A)**

Repeal the subsection.

Note: Despite this repeal, subsection 32NA(1A) of the *Superannuation Guarantee (Administration) Act 1992* will continue to apply in relation to an employee's employment if that employment starts before 1 November 2021, even if the fund became a successor fund on or after 1 November 2021 (see item 23 of this Schedule).

### **18 After Division 6 of Part 3A**

Insert:

## **Division 7—Stapled funds**

### **32Q What is the stapled fund for an employee**

A fund is the *stapled fund*, for an employee at a particular time, if the requirements prescribed by the regulations for the purposes of this section are met in relation to the fund at that time.

### **32R Identifying any stapled funds for employees**

*Requesting Commissioner to identify any stapled fund*

- (1) An employer, or the employer's agent, may request the Commissioner to identify any stapled fund for an employee of the employer. Such a request must be:
  - (a) in the approved form; and
  - (b) made in accordance with any requirements prescribed by the regulations for the purposes of this paragraph.

*Considering and responding to requests*

- (2) Upon being given such a request by an employer (or by the employer's agent), the Commissioner must:
- (a) consider the request; and
  - (b) notify in writing the employer (and the employer's agent if the agent made the request):
    - (i) whether the Commissioner is satisfied that there is a stapled fund for the employee; and
    - (ii) if the Commissioner is satisfied that there is a stapled fund for the employee—about the details necessary for the employer to make contributions to that fund for the benefit of the employee;
- as soon as practicable and in accordance with any requirements prescribed by the regulations for the purposes of this subsection.

*Changes to earlier notifications*

- (3) The Commissioner may, in any circumstances prescribed by the regulations for the purposes of this subsection, change an earlier notification given in relation to the employee. The Commissioner must give written notice of the change as soon as practicable to:
- (a) the employer; and
  - (b) if the earlier notification arose from a request by the employer's agent—the employer's agent.

**19 Section 32Y**

Repeal the section.

**20 Section 32Z (heading)**

Repeal the heading, substitute:

**32Z Contributions satisfy Commonwealth or Territory industrial award requirements—chosen funds and stapled funds etc.**

**21 Section 32Z**

Omit “, in compliance with this Part, to another superannuation fund that is a chosen fund.”, substitute:  
to another superannuation fund:

- (a) in compliance with this Part in a case where the other fund is a chosen fund for the employee; or
- (b) in compliance with subsection 32C(1A) (about contributions to stapled funds); or
- (c) in compliance with subsection 32C(2AB) in a case where subparagraph 32C(2AB)(b)(iii) applies (about contributions to a successor fund of a stapled fund).

## **22 Section 32ZAA (heading)**

Repeal the heading, substitute:

### **32ZAA Contributions satisfy State or Territory law requirements—chosen funds and stapled funds etc.**

## **23 Subsection 32ZAA(2)**

Omit “, in compliance with this Part, to another superannuation fund that is a chosen fund.”, substitute:

to another superannuation fund:

- (a) in compliance with this Part in a case where the other fund is a chosen fund for the employee; or
- (b) in compliance with subsection 32C(1A) (about contributions to stapled funds); or
- (c) in compliance with subsection 32C(2AB) in a case where subparagraph 32C(2AB)(b)(iii) applies (about contributions to a successor fund of a stapled fund).

## **24 Application of amendments**

The amendments made by this Schedule (other than items 3 and 16) apply in relation to an employee’s employment by an employer if that employment starts on or after 1 November 2021.

## **25 Saving—guidelines for reducing an increase in an individual superannuation guarantee shortfall**

An instrument made under subsection 21(1) of the *Superannuation Guarantee (Administration) Act 1992* that is in force immediately before the commencement of this Schedule continues in force (and may be dealt with) as if it had been made under subsection 21(1) of that Act as amended by this Schedule.

## **Part 2—Consequential amendments**

### ***Superannuation Act 1990***

#### **26 Paragraph 6(5)(f)**

Omit “subsection 32C(2) or (6) of that Act”, substitute “a provision mentioned in subsection (5A)”.

#### **27 After subsection 6(5)**

Insert:

(5A) For the purposes of paragraph (5)(f), the provisions are:

- (a) subsection 32C(2) or (6) of the *Superannuation Guarantee (Administration) Act 1992*; or
- (b) subsection 32C(2AB) of that Act in a case where subparagraph 32C(2AB)(b)(i) or (ii) of that Act applies.

### ***Superannuation Act 2005***

#### **28 Subparagraph 14(4)(a)(iv)**

Omit “subsection 32C(2) or (6) of that Act”, substitute “a provision mentioned in subsection (4A)”.

#### **29 After subsection 14(4)**

Insert:

(4A) For the purposes of subparagraph (4)(a)(iv), the provisions are:

- (a) subsection 32C(2) or (6) of the *Superannuation Guarantee (Administration) Act 1992*; or
- (b) subsection 32C(2AB) of that Act in a case where subparagraph 32C(2AB)(b)(i) or (ii) of that Act applies.

Note: Subsection 32C(2), or paragraph 32C(6)(g) or (h), of that Act can only be relied on if the most recent notification from the Commissioner is that there is no stapled fund for the person.

#### **30 Subsection 17(2) (note 2)**

After “chosen fund”, insert “or stapled fund”.

**31 Subsection 18(2) (at the end of the heading)**

Add “*or stapled fund*”.

**32 Paragraph 18(2)(c)**

Repeal the paragraph, substitute:

- (c) assuming that the person’s employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on:
  - (i) subsection 32C(1) or (1A) of that Act; or
  - (ii) subsection 32C(2AB) of that Act in a case where subparagraph 32C(2AB)(b)(iii) of that Act applies;to satisfy the choice of fund requirements in relation to the contribution; and

**33 Paragraph 18(3)(d)**

Repeal the paragraph, substitute:

- (d) assuming that the person’s employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a basic employer contribution to PSSAP for the benefit of the person, the employer would rely on:
  - (i) subsection 32C(2) or (6) of that Act; or
  - (ii) subsection 32C(2AB) of that Act in a case where subparagraph 32C(2AB)(b)(i) or (ii) of that Act applies;to satisfy the choice of fund requirements in relation to the contribution; and

## **Schedule 2—Addressing underperformance in superannuation**

### **Part 1—Main amendments**

#### ***Superannuation Guarantee (Administration) Act 1992***

##### **1 Subsection 5B(1)**

After “nothing in this Act”, insert “(other than Part 3A)”.

##### **2 After subsection 23(6)**

Insert:

- (6A) A contribution (the *actual contribution*) to a complying superannuation fund or an RSA made by an employer for the benefit of an employee may be taken into account under this section as having been made in a quarter if:
- (a) the employer attempted to make a contribution to any complying superannuation fund for the benefit of the employee at a particular time within the period of 28 days after the end of the quarter; and
  - (b) at that time, the making of the attempted contribution was prevented by the operation of section 60F of the *Superannuation Industry (Supervision) Act 1993* (consequences of 2 consecutive fail assessments); and
  - (c) the actual contribution is in fact made within the period of 56 days after the end of the quarter.

##### **3 After section 32ZAA**

Insert:

#### **32ZAB Effect of blocking contributions to PSSAP etc.—eligible choice funds**

- (1) This section applies if:
- (a) an employer cannot make contributions to a superannuation fund on behalf of an employee because of section 60F of the

**Schedule 2** Addressing underperformance in superannuation  
**Part 1** Main amendments

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*Superannuation Industry (Supervision) Act 1993*

(consequences of 2 consecutive fail assessments); and

- (b) the superannuation fund is any of the following:
- (i) PSSAP;
  - (ii) ADF Super (within the meaning of the *Australian Defence Force Superannuation Act 2015*);
  - (iii) if the regulations made for the purposes of this subparagraph specify another superannuation fund—that superannuation fund.

- (2) The following provisions do not have effect in relation to the superannuation fund:
- (a) if the superannuation fund is PSSAP—section 16 of the *Superannuation Act 2005*;
  - (b) if the superannuation fund is ADF Super (within the meaning of the *Australian Defence Force Superannuation Act 2015*)—section 15 of that Act;
  - (c) if the superannuation fund is another superannuation fund—a provision that:
    - (i) is specified in regulations made for the purposes of this subparagraph; and
    - (ii) is analogous to the provisions mentioned in paragraphs (a) and (b).

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

**4 Subsection 6(1) (after table item 21)**

Insert:

|     |  |   |  |
|-----|--|---|--|
| 21A | Part 6A, to the extent it is not covered by item 21B, 21C or 21D of this table | annual performance assessments  | (a) ASIC, to the extent the provisions relate to disclosure or record-keeping (see subsection (2)); and<br>(b) APRA, to the remaining extent |
| 21B | Section 60E  | annual performance assessments—trustee to notify beneficiaries of fail assessment | both APRA and ASIC   |

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|     |                                 |  |                              |
|-----|---------------------------------|--|------------------------------|
| 21C | Subsection 60F(2)               | annual performance assessments—<br>consequence of 2 consecutive fail assessments | both APRA and ASIC           |
| 21D | Subsections 60J(4), (5) and (6) | formulas for ranking products—making information available on website            | the Commissioner of Taxation |

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## 5 Subsection 10(1)

Insert:

**Part 6A product** has the meaning given by section 60B.

**resolution**, of an entity, means the process by which APRA or other relevant persons manage or respond to the entity:

- (a) being unable to meet its obligations; or
- (b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or
- (c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

## 6 After paragraph 34C(4)(e)

Insert:

- (ea) the conduct by an RSE licensee of a registrable superannuation entity, or by a connected entity of such an RSE licensee, of the affairs of the licensee, the registrable superannuation entity, or any connected entity of the licensee, in such a way as to:
  - (i) facilitate resolution of the RSE licensee; or
  - (ii) facilitate resolution of the registrable superannuation entity; or
  - (iii) facilitate resolution of the connected entity that is reasonably necessary to facilitate resolution of the RSE licensee; or

- (iv) facilitate resolution of the connected entity that is reasonably necessary to facilitate resolution of the registrable superannuation entity; or
- (v) facilitate resolution of the connected entity that is reasonably necessary to protect the interests of the beneficiaries of the registrable superannuation entity; or
- (vi) facilitate resolution of the connected entity that is reasonably necessary to meet the reasonable expectations of the beneficiaries of the registrable superannuation entity; or

**7 At the end of paragraph 52(9)(a)**

Add:

- and (iv) the latest determination (if any) made by APRA under subsection 60C(2) for the product;

**8 At the end of section 52**

Add:

*Covenants relating to regulated superannuation funds—failing annual performance assessments*

- (14) 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 comply with subsection 60E(2) (notifying beneficiaries);
  - (b) to comply with subsection 60F(2) (consequences of 2 consecutive fail assessments).

**9 After Part 6**

Insert:

**Part 6A—Annual performance assessments etc.**

**60B Meaning of *Part 6A* product**

*A Part 6A product* is:

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- (a) a MySuper product; or
- (b) a class of beneficial interest in a regulated superannuation fund, if that class is identified by regulations made for the purposes of this paragraph.

### **60C Regulator to make annual performance assessments**

- (1) This section applies in relation to each entity that is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members).
- (2) APRA must determine in relation to each financial year, for each Part 6A product offered by the entity, whether the requirement in subsection 60D(1) has been met.
- (3) APRA must give the trustee or trustees of the entity a notification of the determination. The notification must include a copy of the determination.
- (4) APRA must make the determination and give the notification:
  - (a) in writing; and
  - (b) within a period, starting after the end of the financial year, worked out under regulations made for the purposes of this subsection.
- (5) APRA must ensure that a description of the contents of every notification it gives under subsection (3) in relation to a financial year is published, within the period mentioned in paragraph (4)(b), on a website maintained by APRA.

### **60D Requirements for assessment**

#### *Meeting requirements specified in regulations*

- (1) The requirement in this subsection is met for a Part 6A product in relation to a financial year if:
  - (a) where the Part 6A product is in a class of Part 6A products specified in regulations made for the purposes of this subsection—the requirements (if any) specified in regulations made for the purposes of this subsection for that class of

Part 6A product are met for the Part 6A product in relation to the financial year; or

- (b) the Part 6A product is not in a class of Part 6A products specified in regulations made for the purposes of this subsection.

*Requirements specified in regulations*

- (2) Regulations made for the purposes of subsection (1) may specify requirements in respect of:
  - (a) investment returns; and
  - (b) any other matter (whether or not related to investment returns).
- (3) The investment returns mentioned in paragraph (2)(a) may be investment returns net of fees and/or tax.
- (4) Regulations made for the purposes of subsection (1) may do any of the following:
  - (a) specify requirements that depend on the exercise of a discretion by APRA;
  - (b) if the regulations specify requirements that depend on the exercise of such a discretion—specify matters that APRA must or may take into account in exercising that discretion;
  - (c) if the regulations specify requirements that depend on the exercise of such a discretion—allow APRA to make specified assumptions in exercising that discretion.

*Comparing actual return and benchmark return*

- (5) Regulations made for the purposes of subsection (1) may specify requirements based on a comparison of the actual return for a Part 6A product for a period with a benchmark return for the Part 6A product, or a class of Part 6A products, for the period.

*Methods for determining return—general*

- (6) In specifying requirements mentioned in subsection (5), regulations made for the purposes of subsection (1) may:

- (a) specify one or more methods for determining the actual return for a Part 6A product, or a class of Part 6A products, for a period; and
- (b) specify one or more methods for determining the benchmark return for a Part 6A product, or a class of Part 6A products, for a period.

*Methods for determining return—assumptions*

- (7) In specifying a method or methods mentioned in subsection (6), regulations made for the purposes of subsection (1) may:
  - (a) specify assumptions to be made in applying that method or methods; and
  - (b) allow APRA to determine, by legislative instrument, specified alternative assumptions that:
    - (i) are to be made in applying that method or methods; and
    - (ii) replace one or more of the assumptions mentioned in paragraph (a); and
  - (c) require specified conditions to be met before APRA can make such a determination.
- (8) The assumptions mentioned in subsection (7) may include assumptions as to any of the following matters:
  - (a) rates of fees for a period;
  - (b) rates of taxation for a period;
  - (c) any other matter (whether or not related to a matter mentioned in paragraphs (a) and (b)).

*Methods for determining return—regulations to replace assumptions*

- (9) Subsections (10) and (11) apply if:
  - (a) APRA makes a determination mentioned in paragraph (7)(b) that specifies an assumption (the **earlier assumption**); and
  - (b) the earlier assumption is to be made in applying a method or methods in relation to a matter in respect of a period (the **relevant period**).
- (10) Regulations made for the purposes of subsection (1) may later specify an assumption (the **later assumption**) that:

- (a) is to be made in applying that method or methods in relation to that matter in respect of the relevant period; and
  - (b) replaces the earlier assumption.
- (11) However, if the regulations mentioned in subsection (10) are made after the end of the relevant period, the later assumption must be the same as the earlier assumption.

*Scope of regulations not limited*

- (12) Subsections (2) to (11) do not limit the scope of regulations that may be made for the purposes of subsection (1).

*Incorporation by reference*

- (13) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**60E Trustee to notify beneficiaries of fail assessment**

- (1) This section applies if:
- (a) APRA gives the trustee or trustees of an entity a notification of a determination under subsection 60C(2); and
  - (b) the determination is that the requirement in subsection 60D(1) has not been met for a Part 6A product offered by the entity, in relation to a financial year.
- (2) Each trustee of the entity must ensure that each beneficiary of the entity who holds the Part 6A product is given notice of the determination in accordance with subsections (3), (5) and (6).
- (3) The notice must be given no later than:
- (a) 28 days after APRA gave the notification; or
  - (b) if APRA or ASIC informs the trustee or trustees of the entity of a later day in accordance with subsection (4)—that later day.

- (4) For the purposes of paragraph (3)(b), APRA or ASIC may, no later than 28 days after APRA gave the notification, inform the trustee or trustees of the entity in writing of a later day.
- (5) The notice must consist of:
- (a) unless paragraph (b) applies—both of the following:
    - (i) a letter sent to the beneficiary by pre-paid post or by courier to the address of the place of residence or business of the beneficiary last known to the trustee;
    - (ii) an electronic communication (within the meaning of the *Corporations Act 2001*) sent to the beneficiary to the nominated electronic address (within the meaning of that Act) in relation to the beneficiary; or
  - (b) if there is no nominated electronic address (within the meaning of that Act) in relation to the beneficiary—a letter sent to the beneficiary by pre-paid post or by courier to the address of the place of residence or business of the beneficiary last known to the trustee.
- (6) The notice must:
- (a) be in the form specified in regulations made for the purposes of this subsection; and
  - (b) contain information of a kind specified in regulations made for the purposes of this subsection that relates to:
    - (i) the ranking of Part 6A products according to relative fee levels, investment returns or any other criterion; or
    - (ii) any other matter (whether or not related to the matter mentioned in subparagraph (i)).
- Note: Regulations made for the purposes of this subsection may refer to regulations made for the purposes of section 60J, which may specify formulas as a basis for ranking such products.
- (7) Regulations made for the purposes of subsection (6) may specify kinds of information by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on a website maintained by the Australian Taxation Office.
- (8) Regulations made for the purposes of subsection (6) may specify information that is a standard text or standard texts.

- (9) Subsection (8) does not limit the scope of regulations that may be made for the purposes of subsection (6).

## **60F Consequences of 2 consecutive fail assessments**

### *Application of section*

- (1) Subsection (2) applies if both of the following conditions are satisfied:
- (a) APRA gives the trustee or trustees of an entity a notification of a determination under subsection 60C(2) that the requirement in subsection 60D(1) has not been met for a Part 6A product offered by the entity, in relation to a financial year;
  - (b) APRA gives the trustee or trustees of the entity a notification (the **second notification**) of another determination under subsection 60C(2) that the requirement in subsection 60D(1) has not been met for that Part 6A product, in relation to the next financial year.

### *No new beneficiaries for the Part 6A product*

- (2) Each trustee of the entity must ensure that:
- (a) a person who, on the day when the second notification is given, is not a beneficiary of the entity does not become a beneficiary of the entity who holds the Part 6A product; and
  - (b) a person who, on that day, is a beneficiary of the entity who does not hold the Part 6A product does not start to hold the Part 6A product.

### *Exemption determination*

- (3) Subsection (2) does not apply in relation to a Part 6A product offered by an entity if a determination made by APRA under subsection (4) that specifies the Part 6A product and the entity is in force.
- (4) APRA may make a determination, in writing, that specifies a Part 6A product offered by a specified entity, if APRA considers that requirements specified in regulations made for the purposes of

this subsection have been met in relation to the Part 6A product and the entity.

- (5) The determination comes into force on:
  - (a) the day on which the determination is made; or
  - (b) a later day specified in the determination.
- (6) APRA must give a copy of the determination to the entity as soon as practicable after making it.
- (7) A determination under subsection (4) is not a legislative instrument.
- (8) To avoid doubt, if APRA makes a determination under subsection (4) in relation to a Part 6A product:
  - (a) APRA may later give notifications for the purposes of subsection (1) in relation to the Part 6A product in relation to financial years ending after APRA made the determination; and
  - (b) subsection (3) does not prevent subsection (2) from applying in relation to the Part 6A product as a result of those notifications.

*Family law payment splits*

- (9) Subsection (2) does not apply in relation to:
  - (a) a person becoming a beneficiary of an entity who holds a Part 6A product, if this occurs as a result of a payment split (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
  - (b) a person starting to hold a Part 6A product, if this occurs as a result of such a payment split.

*Notifications to Fair Work Commission*

- (10) If:
  - (a) subsection (2) starts to apply in relation to a Part 6A product that is a MySuper product offered by an entity; or
  - (b) APRA makes a determination under subsection (4) in relation to a Part 6A product that is a MySuper product offered by an entity;

APRA must notify the Fair Work Commission in writing of that fact.

**60G Multiple Part 6A products treated as one Part 6A product in certain circumstances**

- (1) This section applies if regulations made for the purposes of this subsection:
  - (a) specify one or more kinds of circumstances; and
  - (b) specify provisions of this Part in relation to each of those kinds of circumstances.
- (2) In circumstances of a kind specified in the regulations, for the purposes of provisions of this Part specified in the regulations in relation to that kind of circumstances:
  - (a) treat 2 or more Part 6A products (the ***single Part 6A products***) as being one Part 6A product (the ***combined Part 6A product***); and
  - (b) treat anything that happened in relation to a single Part 6A product as having happened in relation to the combined Part 6A product; and
  - (c) treat a person who holds a single Part 6A product as holding the combined Part 6A product.
- (3) Subsection (4) applies if a Part 6A product (the ***replaced product***) ceased to exist because it was incorporated into one or more single Part 6A products (whether or not the entity that offered the replaced product before it ceased to exist is the entity offering the single Part 6A product or any of the single Part 6A products).
- (4) For the purposes of paragraph (2)(b), treat anything that happened in relation to the replaced product as having happened in relation to the single Part 6A product.
- (5) Regulations made for the purposes of subsection (1) may:
  - (a) specify different provisions of this Part in relation to different kinds of circumstances; and
  - (b) in specifying provisions of this Part, specify all the provisions of this Part (apart from this section).

- (6) Regulations made for the purposes of subsection (1) may do any of the following:
- (a) specify requirements that depend on the exercise of a discretion by APRA;
  - (b) if the regulations specify requirements that depend on the exercise of such a discretion—specify matters that APRA must or may take into account in exercising that discretion;
  - (c) if the regulations specify requirements that depend on the exercise of such a discretion—allow APRA to make specified assumptions in exercising that discretion.
- (7) Subsections (5) and (6) do not limit the scope of regulations made for the purposes of subsection (1).

### **60H Requirements for contributions to blocked fund not enforceable**

- (1) This section applies if there is a requirement in:
- (a) a Commonwealth law or a Territory law; or
  - (b) a Commonwealth industrial award or a Territory industrial award;
- that an employer make contributions to a specified superannuation fund (or to a superannuation fund in a specified class or group of superannuation funds) on behalf of an employee.
- (2) This section also applies if there is a requirement in
- (a) a State law; or
  - (b) a State industrial award;
- that an employer make contributions to a specified superannuation fund (or to a superannuation fund in a specified class or group of superannuation funds) on behalf of an employee.
- (3) The requirement is not enforceable to the extent that the employer cannot make contributions to the superannuation fund (or to any of those superannuation funds) on behalf of the employee because of section 60F (consequences of 2 consecutive fail assessments).
- (4) In this section, the following terms have the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*:
- (a) ***Commonwealth industrial award***;
  - (b) ***employee***;

- (c) *employer*;
- (d) *State industrial award*;
- (e) *Territory industrial award*.

### **60J Formulas for ranking products**

- (1) APRA may give the following, in writing, to the Australian Taxation Office in relation to a period or periods:
  - (a) a description of one or more methods for ranking Part 6A products;
  - (b) information relating to all Part 6A products that allows that method or those methods to be used to rank those Part 6A products.
- (2) In giving the description mentioned in paragraph (1)(a), APRA may take into account regulations mentioned in subsection (3).
- (3) Regulations made for the purposes of this section may:
  - (a) specify one or more formulas as a basis for ranking Part 6A products, or classes of Part 6A products, according to relative fee levels, investment returns or any other criterion; and
  - (b) specify one or more methods for ranking Part 6A products according to that formula or those formulas.
- (4) As soon as practicable after receiving the information, the Commissioner of Taxation must ensure that the information, to the extent that it relates to Part 6A products that are MySuper products, is made available on a website maintained by the Commissioner of Taxation.

Note: If the disclosure of information is for the purposes of this Act, subsection 56(3) of the *Australian Prudential Regulation Authority Act 1998* provides an exception to the secrecy offence in subsection 56(2) of that Act.
- (5) For the purposes of subsection (4), the information may be made available by:
  - (a) making it available only in response to a query by a particular person; and
  - (b) making it available in the form of a ranked list or ranked lists of Part 6A products, or classes of Part 6A products.

- (6) Subsection (5) does not limit the ways in which the information may be made available for the purposes of subsection (4).

## **Part 2—Application**

### **10 Application**

- (1) Subject to subitem (2), the amendments made by this Schedule apply:
  - (a) in relation to MySuper products—on and after 1 July 2021;  
and
  - (b) in relation to other Part 6A products identified by regulations made for the purposes of paragraph 60B(b) of the *Superannuation Industry (Supervision) Act 1993*—on and after 1 July 2022.
- (2) The amendments made by items 1, 5 and 6 of this Schedule apply on and after the commencement of this item.

## **Part 3—Contingent amendments**

### **Division 1—Amendments contingent on Schedule 1 to the Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021**

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

##### **11 Subsection 52(14)**

Omit “fewer than 5 members”, substitute “no more than 6 members”.

##### **12 Subsection 60C(1)**

Omit “fewer than 5 members”, substitute “no more than 6 members”.

### **Division 2—Amendments contingent on the Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020**

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

##### **13 Paragraph 60F(9)(a)**

After “Part VIIIB”, insert “or VIIC”.

## Schedule 3—Best financial interests duty

### Part 1—Main amendments

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

##### **1 Subsection 6(1) (table item 7, column 1)**

Omit “item 8 or 9”, substitute “item 7A, 8 or 9”.

##### **2 Subsection 6(1) (after table item 7)**

Insert:

|    |                   |  |                    |
|----|-------------------|--|--------------------|
| 7A | Subsection 34(2A) | offence for breaching standards relating to record keeping obligations | both APRA and ASIC |
|----|-------------------|--|--------------------|

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

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

##### **6 After subsection 34(2)**

Insert:

*Standards relating to record keeping obligations*

(2A) If standards are prescribed by the regulations for the purposes of paragraph 31(2)(n), 32(2)(g) or 33(2)(e), each trustee of a superannuation entity must ensure that those standards are, when applied to the operation of the entity, complied with at all times.

Penalty: 50 penalty units.

(2B) Subsection (2A) is an offence of strict liability.

##### **7 Subsection 34(3)**

Repeal the subsection, substitute:

*Validity of transaction not affected by contravention*

- (3) A contravention of subsection (1) or (2A) does not affect the validity of a transaction.

**8 At the end of subsection 52(1)**

Add:

Note: There are civil and criminal consequences for contravening a covenant: see sections 54B, 54C, 55 and 202. Civil consequences may arise from an act or omission resulting in a contravention of a covenant regardless of whether or not the act or omission was intentional. Criminal consequences under section 202 require proof of dishonesty or intention in relation to a contravention of a covenant.

**9 Paragraph 52(2)(c)**

Omit “best interests”, substitute “best financial interests”.

**11 After subsection 52(3)**

Insert:

*Payments to third parties must be in best financial interests of beneficiaries*

- (3A) To avoid doubt, the obligations of the trustee under paragraph (2)(c) apply in respect of payments to a third party by, or on behalf of, the entity.

**12 At the end of subsection 52A(1)**

Add:

Note: There are civil and criminal consequences for contravening a covenant: see sections 54B, 54C, 55 and 202. Civil consequences may arise from an act or omission resulting in a contravention of a covenant regardless of whether or not the act or omission was intentional. Criminal consequences under section 202 require proof of dishonesty or intention in relation to a contravention of a covenant.

**13 Paragraph 52A(2)(c)**

Omit “best interests”, substitute “best financial interests”.

**15 After subsection 52A(2)**

Insert:

*Payments to third parties must be in best financial interests of beneficiaries*

- (2A) To avoid doubt, the obligations of the director under paragraph (2)(c) apply in respect of payments to a third party by, or on behalf of, the entity.

**16 Paragraph 52B(2)(c)**

Omit “best interests”, substitute “best financial interests”.

**17 After subsection 52B(2)**

Insert:

*Payments to third parties must be in best financial interests of beneficiaries*

- (2A) To avoid doubt, the obligations of the trustee under paragraph (2)(c) apply in respect of payments to a third party by, or on behalf of, the fund.

**20 Before section 221**

Insert:

**220A Burden of proof—civil proceedings relating to duty to act in best financial interests of beneficiaries**

- (1) In civil proceedings for a contravention of subsection 54B(1) in relation to a covenant set out in paragraph 52(2)(c), it is presumed that a trustee did not perform the trustee’s duties and exercise the trustee’s powers in the best financial interests of beneficiaries, unless the trustee adduces evidence to the contrary.
- (2) If, in such proceedings:
- (a) a trustee wishes to adduce evidence to the contrary—the trustee bears an evidential burden in relation to the matter; and
  - (b) in the case that evidence to the contrary is so adduced—the Regulator must prove, on the balance of probabilities, that the trustee did not perform the trustee’s duties and exercise the trustee’s powers in the best financial interests of beneficiaries.

## **21 Application—duty to act in best financial interests of beneficiaries**

### *Registrable superannuation entities and self managed superannuation funds*

- (1) The amendments made by items 9, 11, 16 and 17 of this Schedule apply in relation to the performance of duties, or the exercise of powers, by a trustee on or after the commencement of this item.

### *Directors of corporate trustees of registrable superannuation entities*

- (2) The amendments made by items 13 and 15 of this Schedule apply in relation to the performance of duties, or the exercise of powers, by a director of a corporate trustee on or after the commencement of this item.

### *Application to contracts*

- (3) The amendments mentioned in subitems (1) and (2) do not apply in relation to the performance of duties, or the exercise of powers, under a contract entered into before the commencement of this item. However, the amendments apply in relation to:
- (a) a decision to renew or vary the contract, where the decision to renew or vary is made on or after that commencement; and
  - (b) if the contract is renewed on or after that commencement—the performance of duties, or the exercise of powers, under the contract as renewed, on and from the day on which the renewal takes effect; and
  - (c) if the contract is varied on or after that commencement—the performance of duties, or the exercise of powers, under the contract as varied, on and from the day on which the variation takes effect.
- (4) Despite paragraphs (3)(a), (b) and (c), the amendments do not apply in relation to a contract entered into before the commencement of this item to the extent that the operation of the amendments 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).

**22 Application—burden of proof in proceedings relating to duty to act in best financial interests of beneficiaries**

The amendment made by item 20 of this Schedule applies to a contravention of subsection 54B(1) of the *Superannuation Industry (Supervision) Act 1993* that occurs on or after the commencement of this item in relation to a covenant set out in paragraph 52(2)(c) of that Act, as amended by this Schedule.

## **Part 2—Other amendments**

### *Corporations Act 2001*

#### **23 Subsection 1017BB(5A)**

Repeal the subsection.

#### **24 In the appropriate position in Chapter 10**

Insert:

## **Part 10.55—Transitional provisions relating to the Treasury Laws Amendment (Your Future, Your Super) Act 2021**

### **1682 Application of amendment relating to portfolio holdings disclosure**

The amendment of section 1017BB made by Schedule 3 to the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* applies in relation to the reporting day that is 31 December 2021 and to later reporting days.

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[*Minister's second reading speech made in—  
House of Representatives on 17 February 2021  
Senate on 15 June 2021*]

(13/21)

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