

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (External Dispute Resolution) Bill 2017

No. , 2017

(Treasury)

A Bill for an Act to amend the *Corporations Act 2001* and repeal the *Superannuation (Resolution of Complaints) Act 1993*, and for related purposes

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1
2 **A Bill for an Act to amend the *Corporations Act***
3 ***2001* and repeal the *Superannuation (Resolution of***
4 ***Complaints) Act 1993, and for related purposes***

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Treasury Laws Amendment (External Dispute*
8 *Resolution) Act 2017*.

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.
14

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	
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3. Schedule 3	A day or days to be fixed by Proclamation.	
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15 Note: This table relates only to the provisions of this Act as originally
16 enacted. It will not be amended to deal with any later amendments of
17 this Act.

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

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1 **3 Schedules**

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3 repealed as set out in the applicable items in the Schedule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

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External dispute resolution **Schedule 1**
Amendments applying from the day after Royal Assent **Part 1**

Schedule 1—External dispute resolution

Part 1—Amendments applying from the day after Royal Assent

Corporations Act 2001

1 Section 761A

Insert:

annuity policy means a life policy in relation to an annuity that is declared to be a superannuation policy under regulations made for the purposes of paragraph (b) of the definition of ***superannuation policy*** in the Dictionary in the *Life Insurance Act 1995*.

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

authorised external dispute resolution scheme means an external dispute resolution scheme authorised under Part 7.10A.

holder, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

insurer, in relation to a complaint referred to in section 1052, means the life company (within the meaning of the *Life Insurance Act 1995*) that is a party to the policy to which the complaint relates.

investigating authority means a tribunal, authority or person having power to require the production of documents or the answering of questions.

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

life policy fund means a regulated superannuation fund for the purpose of which the trustee maintains, in relation to at least some of the members of the fund:

- (a) individual life policies covering each of those members; or
- (b) a single life policy covering all of those members.

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Schedule 1 External dispute resolution

Part 1 Amendments applying from the day after Royal Assent

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

3 *RSA* has the same meaning as in the *Retirement Savings Accounts*
4 *Act 1997*.

5 *RSA provider* has the same meaning as in the *Retirement Savings*
6 *Accounts Act 1997*.

7 *sale*, in relation to an annuity policy, includes any activity
8 undertaken, or representation made:

- 9 (a) at the time of, or preliminary to, the entry into the policy, so
10 that the policy as so entered into extends to a particular
11 person; and
12 (b) at the time of, or preliminary to, the variation of the policy,
13 so that the policy as so varied affects a particular person.

14 *superannuation complaint* has the meaning given by section 1052.

15 *superannuation provider* means a person who is a superannuation
16 provider within the meaning of the *Superannuation Contributions*
17 *Tax (Assessment and Collection) Act 1997* or the *Superannuation*
18 *Contributions Tax (Members of Constitutionally Protected*
19 *Superannuation Funds) Assessment and Collection Act 1997*.

20 **2 After Part 7.10**

21 Insert:

22 **Part 7.10A—External dispute resolution**

23 **Division 1—Authorisation of external dispute resolution** 24 **schemes**

25 **1046 Minister may authorise an external dispute resolution scheme**

- 26 (1) The Minister may, by notifiable instrument, authorise an external
27 dispute resolution scheme.
- 28 (2) The Minister must take into account the following matters when
29 considering whether to authorise an external dispute resolution
30 scheme:
-

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External dispute resolution **Schedule 1**
Amendments applying from the day after Royal Assent **Part 1**

- 1 (a) whether the scheme includes, and whether the operator of the
2 scheme can perform, the scheme functions set out in
3 section 1047;
- 4 (b) how a person makes a complaint under the scheme, and how
5 the complaint is managed under the scheme;
- 6 (c) the extent to which complainants are exempt from payment
7 of any fee or charge, to the operator of the scheme or to any
8 other entity, in relation to a complaint;
- 9 (d) the accessibility of the scheme;
- 10 (e) the independence of the scheme;
- 11 (f) the fairness of the scheme;
- 12 (g) the accountability of the scheme;
- 13 (h) the efficiency of the scheme;
- 14 (i) the effectiveness of the scheme;
- 15 (j) the capacity of the scheme to deal with complaints in a timely
16 manner;
- 17 (k) the expertise available to the scheme in dealing with
18 complaints;
- 19 (l) the extent to which the scheme complies with the matters
20 prescribed in the regulations;
- 21 (m) any other matter the Minister considers relevant (whether or
22 not those other matters are consistent with matters referred to
23 in paragraphs (a) to (l)).
- 24 (3) The Minister may, by notifiable instrument, revoke an
25 authorisation of an external dispute resolution scheme.

1047 Scheme functions of an external dispute resolution scheme

26
27 For the purposes of paragraph 1046(2)(a), the following are the
28 scheme functions:

- 29 (a) to make membership of the scheme open to every entity that
30 is required, under a law of the Commonwealth or under the
31 conditions of a licence or permission issued under such a law,
32 to be a member of an external dispute resolution scheme
33 authorised under this Part;
- 34 (b) to ensure that the complaints mechanism under the scheme is
35 accessible to any persons dissatisfied with members of the
36 scheme;
-

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Schedule 1 External dispute resolution

Part 1 Amendments applying from the day after Royal Assent

- 1 (c) to consider complaints against members of the scheme;
2 (d) to ensure that complaints are dealt with in a timely manner;
3 (e) to ensure that appropriate expertise is available to deal with
4 complaints;
5 (f) as far as practicable, to resolve complaints (including by
6 making determinations relating to such complaints);
7 (g) to take reasonable steps to ensure compliance by members of
8 the scheme with those determinations;
9 (h) to report to ASIC on:
10 (i) contraventions of any law that may have occurred; or
11 (ii) contraventions of the governing rules of any regulated
12 superannuation fund or approved deposit fund that may
13 have occurred; or
14 (iii) breaches in the terms and conditions relating to any
15 annuity policy, life policy or RSA that may have
16 occurred; or
17 (iv) refusals or failures, by any parties to complaints, to give
18 effect to determinations;
19 (v) systemic issues affecting the complaints management
20 functions of members of the scheme;
21 (i) to finance its operations through contributions by members of
22 the scheme;
23 (j) to deal with complaints in a way that is fair, equitable and
24 independent;
25 (k) to commission the conducting of independent reviews of the
26 scheme's operations and procedures.

27 **1048 Authorisations are subject to conditions**

- 28 (1) An authorisation of an external dispute resolution scheme under
29 this Part is subject to the following conditions:
30 (a) a condition that the operator of the scheme must be a
31 company limited by guarantee;
32 (b) a condition that the operator of the scheme must:
33 (i) perform the scheme functions set out in section 1047;
34 and
35 (ii) comply with the regulatory requirements under
36 section 1049; and
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External dispute resolution **Schedule 1**
Amendments applying from the day after Royal Assent **Part 1**

- 1 (iii) comply with any direction given to the operator by
2 ASIC under subsection (3) of this section or under
3 section 1051;
- 4 (c) a condition that the scheme must have an independent
5 assessor;
- 6 (d) a condition that material changes to the scheme must not be
7 made without the approval of ASIC under section 1050;
- 8 (e) such other conditions as the Minister specifies in the
9 instrument under subsection 1046(1).
- 10 (2) The Minister may, by written notice given to the operator of the
11 scheme, revoke or vary a condition under paragraph (1)(e).
- 12 (3) If, under an authorised external dispute resolution scheme, there
13 are one or more limits on the value of claims that may be made
14 under the scheme, ASIC may give the operator a written direction
15 requiring the limit, or some or all of the limits, to be increased.
- 16 (4) However:
- 17 (a) ASIC must not give a direction under subsection (3) unless
18 ASIC has given the operator at least 3 months written notice
19 of ASIC's intention to issue the direction; and
- 20 (b) a direction under subsection (3) must not apply in relation to
21 complaints the operator received before ASIC gives the
22 direction.

23 **Division 2—ASIC's role in regulating external dispute** 24 **resolution schemes**

25 **1049 Regulatory requirements for external dispute resolution** 26 **schemes**

27 ASIC may, by legislative instrument, issue regulatory requirements
28 relating to the performance of the scheme functions set out in
29 section 1047 in relation to the operation of authorised external
30 dispute resolution schemes.

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Schedule 1 External dispute resolution

Part 1 Amendments applying from the day after Royal Assent

1 **1050 Approval of material changes to external dispute resolution**
2 **schemes**

- 3 (1) The operator of an authorised external dispute resolution scheme
4 may request ASIC to approve a material change to the scheme.
- 5 (2) ASIC may, by written notice given to the operator, approve the
6 change.
- 7 (3) In considering whether to approve the change, ASIC must take into
8 account the matters mentioned in subsection 1046(2) in relation to
9 the scheme as it is proposed to be changed.

10 **1051 Directions to operators of external dispute resolution schemes**

11 *Advice of intention to issue a direction*

- 12 (1) If ASIC considers that the operator of an authorised external
13 dispute resolution scheme has not done all things reasonably
14 practicable to ensure that a condition of the authorisation of the
15 scheme under this Part is complied with, ASIC may give the
16 operator written advice that it intends to give the operator a
17 specified direction under this section.
- 18 (2) The advice must set out:
19 (a) the specific measures that the direction will require the
20 operator to take to comply with the condition; and
21 (b) the reasons for ASIC's intention to give the direction.

22 *Issuing a direction*

- 23 (3) If, after receiving ASIC's advice and reasons:
24 (a) the operator does not take those specific measures; and
25 (b) ASIC still considers that it is appropriate to give the direction
26 to the operator;
27 ASIC may give the operator the direction, in writing, with a
28 statement setting out the reasons for giving the direction.
- 29 (4) The direction may deal with the time by which, or the period
30 during which, it is to be complied with. The time or period must be
31 reasonable.

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1 *Compliance*

2 (5) The operator must comply with the direction.

3 Note: Failure to comply with this subsection is an offence (see
4 subsection 1311(1)).

5 (6) If the operator fails to comply with the direction, ASIC may apply
6 to the Court for, and the Court may make, an order that the
7 operator comply with the direction.

8 *Varying or revoking a direction*

9 (7) ASIC may vary the direction by giving written notice to the
10 operator.

11 (8) The direction has effect until ASIC revokes it by giving written
12 notice to the operator.

13 (9) ASIC may revoke the direction, by giving written notice to the
14 operator, if, at the time of revocation, it considers that the direction
15 is no longer necessary or appropriate.

16 **Division 3—Additional provisions relating to**
17 **superannuation complaints**

18 **1052 Meaning of *superannuation complaint***

19 (1) A *superannuation complaint* is a complaint, made under an
20 authorised external dispute resolution scheme, that:

21 (a) the trustee of a regulated superannuation fund or of an
22 approved deposit fund has made a decision (whether before
23 or after the commencement of this section) in relation to:
24 (i) a particular member or a particular former member of a
25 regulated superannuation fund; or
26 (ii) a particular beneficiary or a particular former
27 beneficiary of an approved deposit fund;
28 that is or was unfair or unreasonable; or

29 (b) a decision, by a trustee maintaining a life policy that covers a
30 member of a life policy fund, to admit the member to the
31 fund was unfair or unreasonable; or

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- 1 (c) the conduct (including any act, omission or representation) of
2 an insurer, or of a representative of an insurer, in relation to
3 the sale of an annuity policy was unfair or unreasonable; or
4 (d) a decision of an insurer under an annuity policy is or was
5 unfair or unreasonable; or
6 (e) a decision of a superannuation provider to set out, in a
7 statement to which subsection (2) applies, an amount or
8 amounts in respect of a person was unfair or unreasonable; or
9 (f) the conduct (including any act, omission or representation) of
10 an RSA provider, or of a representative of an RSA provider,
11 in relation to the opening of an RSA was unfair or
12 unreasonable; or
13 (g) a decision of an RSA provider in relation to a particular RSA
14 holder or former RSA holder is or was unfair or
15 unreasonable; or
16 (h) the conduct (including any act, omission or representation) of
17 an insurer, or of a representative of an insurer, in relation to
18 the sale of insurance benefits in relation to a contract of
19 insurance where the premiums are paid from an RSA, was
20 unfair or unreasonable; or
21 (i) a decision of an insurer in relation to a contract of insurance
22 where the premiums are paid from an RSA is or was unfair or
23 unreasonable.
- 24 (2) This subsection applies to a statement given to the Commissioner
25 of Taxation under:
- 26 (a) section 13 of the *Superannuation Contributions Tax*
27 *(Assessment and Collection) Act 1997*; or
28 (b) section 12 of the *Superannuation Contributions Tax*
29 *(Members of Constitutionally Protected Superannuation*
30 *Funds) Assessment and Collection Act 1997*; or
31 (c) subsection 133-120(2) in Schedule 1 to the *Taxation*
32 *Administration Act 1953*; or
33 (d) subsection 133-140(1) in that Schedule; or
34 (e) section 390-5 in that Schedule; or
35 (f) section 390-20 in that Schedule.
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- 1 (3) However, a complaint is not a *superannuation complaint* if it
2 relates to a self-managed superannuation fund (within the meaning
3 of the *Superannuation Industry (Supervision) Act 1993*).
- 4 (4) For the purposes of this section, a trustee, an insurer, an RSA
5 provider or another decision-maker, makes a decision if:
6 (a) the trustee, insurer, RSA provider or other decision-maker, or
7 a person acting for the trustee, insurer, RSA provider or other
8 decision-maker, makes, or fails to make, a decision; or
9 (b) the trustee, insurer, RSA provider or other decision-maker, or
10 a person acting for the trustee, insurer, RSA provider or other
11 decision-maker, engages in any conduct, or fails to engage in
12 any conduct, in relation to making a decision.
- 13 (5) To avoid doubt, a complaint relating to a decision or conduct may
14 be a *superannuation complaint* whether or not the decision or
15 conduct involved the exercise of a discretion.

16 **1053 Other parties may be joined to the superannuation complaint**

- 17 (1) The person who is to determine a superannuation complaint (the
18 *EDR decision-maker*) may join, as a party to the complaint, any of
19 the following persons whom the EDR decision-maker decides
20 should be a party to the complaint:
21 (a) a person who has applied to become a party to the complaint;
22 (b) an insurer, if:
23 (i) the subject matter of the complaint relates to a benefit,
24 in respect of death or disability, under a contract of
25 insurance with the insurer; or
26 (ii) the subject matter of the complaint relates to admitting a
27 person to membership of a life policy fund, and the
28 insurer issued to the trustee of the fund a life policy
29 covering that person;
30 and the insurer is not the person against whom the complaint
31 is made;
32 (c) an RSA provider of an RSA, if the subject matter of the
33 complaint relates to a benefit, in respect of death or
34 disability, under a contract of insurance where the premiums
35 are paid from the RSA;

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- 1 (d) a person whom the EDR decision-maker decides is
2 responsible for determining either or both of the existence
3 and the extent of a disability (whether total and permanent or
4 otherwise), if the subject matter of the complaint relates to a
5 benefit in respect of the disability, whether under a contract
6 of insurance or otherwise.
- 7 (2) If the EDR decision-maker decides under subsection (1) that a
8 person should be a party to the complaint, the EDR decision-maker
9 must give the new party, and all of the existing parties to the
10 complaint, written notice of the decision and of the reasons for the
11 decision.
- 12 (3) The notice given to the new party under subsection (2) must also
13 tell the new party of the party's obligations under section 1054.
- 14 (4) If the EDR decision-maker decides that a person who has applied
15 to become a party to the complaint should not be a party to the
16 complaint, the EDR decision-maker must give the person written
17 notice of the decision and of the reasons for the decision.
- 18 (5) Nothing in this section implies that a person cannot be joined under
19 this section as a party to a complaint after the EDR decision-maker
20 has started to deal with the complaint.

21 **1054 Power to obtain information and documents**

- 22 (1) If the EDR decision-maker has reason to believe that a person is
23 capable of giving information or producing documents relevant to
24 a superannuation complaint, the EDR decision-maker may, by
25 written notice to the person, require the person:
- 26 (a) to give to the EDR decision-maker, by writing signed by the
27 person or, in the case of a body corporate, by an officer of the
28 body corporate, any such information; or
- 29 (b) to produce to the EDR decision-maker such documents or
30 copies of such documents as are stated in the notice;
31 at such place, and within such period or on such date and at such
32 time, as are stated in the notice.
- 33 (2) If documents (whether originals or copies) are so produced, the
34 EDR decision-maker:

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- 1 (a) may take possession of, and may make copies of, or take
2 extracts from, the documents; and
3 (b) may keep the documents for as long as is necessary for the
4 purpose of dealing with the complaint; and
5 (c) must, while keeping the documents, permit a person who
6 would be entitled to inspect any one or more of them (if they
7 were not in the possession of the EDR decision-maker) to
8 inspect at all reasonable times such of the documents as that
9 person would be so entitled to inspect.

- 10 (3) A person must not refuse to comply with a requirement made by
11 the EDR decision-maker under subsection (1).

12 Penalty: 30 penalty units.

- 13 (4) A person must not fail to comply with a requirement made by the
14 EDR decision-maker under subsection (1).

15 Penalty: 30 penalty units.

- 16 (5) Subsection (4) is an offence of strict liability.

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

- 18 (6) Subsections (3) and (4) do not apply to the extent that the person
19 has a reasonable excuse.

20 Note: A defendant bears an evidential burden in relation to the matter in
21 subsection (6), see subsection 13.3(3) of the *Criminal Code*.

22 **1055 Power to require attendance at conciliation conferences**

- 23 (1) The EDR decision-maker may, if he or she thinks it desirable to do
24 so after considering any documents given to him or her, by notice
25 in writing given to:

26 (a) each party to a superannuation complaint; and

27 (b) any other person:

28 (i) who, in the EDR decision-maker's opinion, is likely to
29 be able to provide information relevant to the settlement
30 of the complaint; or

31 (ii) whose presence at a conciliation conference would, in
32 the EDR decision-maker's opinion, be likely to be
33 conducive to settling the complaint;

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- 1 require the party or other person to attend the conference.
- 2 (2) The notice must also fix the date, time and place for the
3 conference.
- 4 (3) If the complainant fails to attend the conference, the EDR
5 decision-maker may deal with the complaint as if it had been
6 withdrawn by the complainant.
- 7 (4) A person commits an offence if he or she does not attend a
8 conference when required to do so under this section.
- 9 Penalty: 30 penalty units.
- 10 (5) The EDR decision-maker must formulate in writing, and make
11 available to the public in any way that he or she thinks appropriate,
12 guidelines indicating the kinds of circumstances in which he or she
13 would ordinarily require persons to attend a conciliation
14 conference.

15 **1056 Reference of questions of law to Federal Court**

- 16 (1) The EDR decision-maker may, on his or her own initiative or on
17 the request of a party to a superannuation complaint, refer a
18 question of law arising in relation to the complaint to the Federal
19 Court for decision.
- 20 (2) The Federal Court has jurisdiction to hear and determine a question
21 of law referred to it under this section.
- 22 (3) If a question of law in relation to a complaint has been so referred
23 to the Federal Court, the EDR decision-maker must not:
24 (a) make a determination to which the question is relevant while
25 the reference is pending; or
26 (b) do anything that is inconsistent with the opinion of the
27 Federal Court on the question.

28 **1057 Making of a determination**

- 29 (1) In making a determination of a superannuation complaint, the EDR
30 decision-maker has all the powers, obligations and discretions that

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- 1 are conferred on the trustee, insurer, RSA provider or other
2 decision-maker who:
- 3 (a) made a decision to which the complaint relates; or
4 (b) engaged in conduct (including any act, omission or
5 representation) to which the complaint relates.
- 6 (2) If the EDR decision-maker:
- 7 (a) is considering making a determination of a superannuation
8 complaint; and
9 (b) is satisfied that unfairness, unreasonableness, or both, exist in
10 relation to the decision or conduct that is the subject of the
11 complaint;
- 12 the EDR decision-maker may only make a determination of a
13 superannuation complaint for the purpose of placing the
14 complainant as nearly as practicable in such a position that the
15 unfairness, unreasonableness, or both, no longer exists.
- 16 (3) The EDR decision-maker must not make a determination of a
17 superannuation complaint that would be contrary to:
- 18 (a) law; or
19 (b) if the complaint relates to a regulated superannuation fund or
20 an approved deposit fund—the governing rules of the fund;
21 or
22 (c) if the complaint relates to a contract of insurance—the terms
23 of the contract.

24 **1058 EDR decision-maker to give reasons**

25 The EDR decision-maker must give written reasons for his or her
26 determination of a superannuation complaint.

27 **1059 Operation of determination of superannuation complaint**

- 28 (1) Subject to subsection (2), a determination of a superannuation
29 complaint by the EDR decision-maker comes into operation
30 immediately upon the making of the determination.
- 31 (2) The EDR decision-maker may specify in the determination that the
32 determination is not to come into operation until a later date

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1 specified in the determination and, if a later date is so specified, the
2 determination comes into operation on that date.

3 (3) If the determination varies a decision of another person, or
4 substitutes a decision for a decision of another person, that decision
5 as varied or substituted:

6 (a) is, for all purposes (other than the making of a complaint
7 about the decision) taken to be a decision of the other person;
8 and

9 (b) on the coming into operation of the determination by the
10 EDR decision-maker, unless the EDR decision-maker
11 otherwise orders, has effect, and is taken to have had effect,
12 on and from the day on which the original decision has or
13 had effect.

14 **1060 Evidence of determination of superannuation complaint**

15 (1) A document purporting to be a copy of the EDR decision-maker's
16 determination of a superannuation complaint, and purporting to be
17 certified by the EDR decision-maker to be a true copy of the
18 determination, is, in any proceeding, prima facie evidence of the
19 determination.

20 (2) This section does not affect any other method available by law for
21 the proof of determinations of the EDR decision-maker.

22 **1061 Appeals to Federal Court from determination of** 23 **superannuation complaint**

24 (1) A party to a superannuation complaint may appeal to the Federal
25 Court, on a question of law, from the EDR decision-maker's
26 determination of the complaint.

27 (2) An appeal by a person under subsection (1) is to be instituted:

28 (a) not later than the 28th day after the day on which a copy of
29 the determination of the EDR decision-maker is given to the
30 person, or within such further period as the Federal Court
31 (whether before or after the end of that day) allows; and

32 (b) in accordance with rules of court made under the *Federal*
33 *Court of Australia Act 1976*.

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying from the day after Royal Assent **Part 1**

- 1 (3) The Federal Court is to hear and determine the appeal and may
2 make such order as it thinks appropriate.
- 3 (4) Without limiting subsection (3), the orders that may be made by
4 the Federal Court on an appeal include:
5 (a) an order affirming or setting aside the determination of the
6 EDR decision-maker; and
7 (b) an order remitting the matter to be determined again by the
8 EDR decision-maker in accordance with the directions of the
9 Court.
- 10 (5) The Federal Court must not make an order awarding costs against a
11 complainant if the complainant does not defend an appeal
12 instituted by another party to the complaint.

13 **1062 Operation and implementation of a determination that is** 14 **subject to appeal**

- 15 (1) Subject to this section, the institution of an appeal to the Federal
16 Court from the EDR decision-maker's determination of a
17 superannuation complaint does not affect the operation of the
18 determination or prevent the taking of action to implement the
19 determination.
- 20 (2) If an appeal is brought to the Federal Court from the determination,
21 the Court or a Judge of the Court may make such order or orders
22 staying or otherwise affecting the operation or implementation of
23 either or both of the following:
24 (a) the determination or a part of the determination;
25 (b) if the complaint relates to a decision of another person—the
26 whole or part of the decision that is complained of, or of a
27 decision of an insurer or other person who is a party to the
28 complaint;
29 as the Court thinks appropriate to secure the effectiveness of the
30 hearing and determination of the appeal.
- 31 (3) If an order is in force under subsection (2) (including an order that
32 has previously been varied on one or more occasions under this
33 subsection), the Court or a Judge of the Court may make an order
34 varying or revoking the first-mentioned order.

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 1 Amendments applying from the day after Royal Assent

- 1 (4) An order in force under subsection (2) (including an order that has
2 previously been varied on one or more occasions under
3 subsection (3)):
4 (a) is subject to such conditions as specified in the order; and
5 (b) has effect until:
6 (i) if a period for the operation of the order is specified in
7 the order—the end of that period or, if a decision is
8 given on the appeal before the end of that period, the
9 giving of the decision; or
10 (ii) if no period is so specified—the giving of a decision on
11 the appeal.

12 **1063 Sending of documents to, and disclosure of documents by, the** 13 **Federal Court**

- 14 If an appeal is instituted in the Federal Court from the EDR
15 decision-maker's determination of a superannuation complaint:
16 (a) the EDR decision-maker must send to the Court all
17 documents that were before the EDR decision-maker in
18 connection with the consideration of the matter to which the
19 appeal relates; and
20 (b) at the conclusion of the proceeding before the Court in
21 relation to the appeal, the Court must return the documents to
22 the EDR decision-maker.

23 **1064 Secrecy**

- 24 (1) Subject to section 1065, the EDR decision-maker, or a member of
25 staff of the EDR decision-maker, must not directly or indirectly:
26 (a) make a record of, or disclose to any person, court or
27 investigating authority, any information acquired by the EDR
28 decision-maker or staff member in connection with a
29 superannuation complaint; or
30 (b) produce to any person, court or investigating authority a
31 document so acquired; or
32 (c) permit any person, court or investigating authority to have
33 access to a document so acquired.

34 Penalty: 10 penalty units.

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying from the day after Royal Assent **Part 1**

- 1 (2) Subsection (1) is an offence of strict liability.
2 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 3 (3) Subsection (1) does not apply to the extent that the EDR
4 decision-maker or staff member makes the record of the
5 information, discloses the information, produces the document or
6 permits access to the document for the purposes of this Part.
7 Note: A defendant bears an evidential burden in relation to the matters in
8 subsection (3), see subsection 13.3(3) of the *Criminal Code*.
- 9 (4) Subsection (1) does not prohibit the EDR decision-maker or staff
10 member from disclosing information, producing a document or
11 permitting access to a document:
12 (a) to ASIC; or
13 (b) to APRA; or
14 (c) to a particular party to the complaint if the person who
15 provided the information or document to the EDR
16 decision-maker or staff member consents in writing to the
17 disclosure, production or access.
- 18 (5) Subsection (1) does not prevent the EDR decision-maker or staff
19 member from disclosing information in a way that does not enable
20 the identification of the parties to a complaint.

21 **Division 4—Miscellaneous**

22 **1065 Referring matters to ASIC and APRA**

- 23 (1) If the person who is to determine, or who has determined, a
24 complaint made under an authorised external dispute resolution
25 scheme becomes aware, in connection with the complaint, that:
26 (a) a contravention of any law may have occurred; or
27 (b) a contravention of the governing rules of a regulated
28 superannuation fund or an approved deposit fund may have
29 occurred; or
30 (c) a breach in the terms and conditions relating to an annuity
31 policy, a life policy or an RSA may have occurred; or
32 (d) a party to a complaint may have refused or failed to give
33 effect to a determination made by the person;

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 1 Amendments applying from the day after Royal Assent

- 1 the person must give particulars of the contravention, breach,
2 refusal or failure to APRA, to ASIC or to both APRA and ASIC, as
3 he or she thinks appropriate.
- 4 (2) If the parties to a complaint made under an authorised external
5 dispute resolution scheme agree to a settlement of the complaint,
6 the person who would, but for the agreement, have determined the
7 complaint may give particulars of the settlement to one or more of
8 the following:
- 9 (a) APRA;
 - 10 (b) ASIC;
 - 11 (c) the Commissioner of Taxation;
- 12 if the person thinks the settlement may require investigation.

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying once the first external dispute resolution scheme is authorised
Part 2

1 **Part 2—Amendments applying once the first external**
2 **dispute resolution scheme is authorised**

3 *Australian Defence Force Cover Act 2015*

4 **3 Subsection 57(2) (note)**

5 Repeal the note, substitute:

- 6 Note: A person affected by the outcome of the reconsideration of the
7 decision may make a complaint:
- 8 (a) under an external dispute resolution scheme, of which CSC is a
9 member, that is authorised under Part 7.10A of the *Corporations*
10 *Act 2001*; or
 - 11 (b) under the *Superannuation (Resolution of Complaints) Act 1993*,
12 but not after the day after which complaints cannot be made
13 because of section 14AB of that Act.

14 *Australian Prudential Regulation Authority Act 1998*

15 **4 After paragraph 56(5)(a)**

16 Insert:

- 17 (aa) occurs when the person is satisfied that the disclosure of the
18 information, or the production of the document, will assist
19 the operator of an external dispute resolution scheme
20 authorised under Part 7.10A of the *Corporations Act 2001* to
21 perform its functions or exercise its powers, and the
22 disclosure or production is to that operator; or

23 *Australian Securities and Investments Commission Act 2001*

24 **5 Before subparagraph 127(4)(aa)(ii)**

25 Insert:

- 26 (i) the operator of an external dispute resolution scheme
27 that is authorised under Part 7.10A of the *Corporations*
28 *Act 2001*; or

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 2 Amendments applying once the first external dispute resolution scheme is authorised

1 ***Corporations Act 2001***

2 **6 Paragraph 912A(2)(b)**

3 Repeal the paragraph, substitute:

4 (b) membership of one or more external dispute resolution
5 schemes that is, or are, authorised by the Minister under
6 Part 7.10A.

7 **7 Subsection 912A(3)**

8 Omit “or (2)(b)(i)”.

9 **8 Paragraph 1017G(2)(b)**

10 Repeal the paragraph, substitute:

11 (b) membership of one or more external dispute resolution
12 schemes that is, or are, authorised by the Minister under
13 Part 7.10A.

14 **9 Subsection 1017G(3)**

15 Omit “or (2)(b)(i)”.

16 **10 Schedule 3 (after table item 310)**

17 Insert:

311	Subsection 1051(5)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.
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18 ***Income Tax Assessment Act 1997***

19 **11 Section 292-330 (note)**

20 Repeal the note, substitute:

21 Note: If a person is dissatisfied with a statement given to the Commissioner
22 by a superannuation provider under section 390-5 in Schedule 1 to the
23 *Taxation Administration Act 1953*, the person may make a complaint:
24 (a) under an external dispute resolution scheme, of which the
25 superannuation provider is a member, that is authorised under
26 Part 7.10A of the *Corporations Act 2001*; or
27 (b) under section 15CA of the *Superannuation (Resolution of*
28 *Complaints) Act 1993*, but not after the day after which
29 complaints cannot be made because of section 14AB of that Act.

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying once the first external dispute resolution scheme is authorised
Part 2

1 ***National Consumer Credit Protection Act 2009***

2 **12 Subsection 5(1) (definition of *approved external dispute***
3 ***resolution scheme*)**

4 Repeal the definition.

5 **13 Subsection 5(1)**

6 Insert:

7 *authorised external dispute resolution scheme*: see section 11.

8 **14 Section 11 (heading)**

9 Repeal the heading, substitute:

10 **11 Meaning of *authorised external dispute resolution scheme***

11 **15 Subsection 11(1)**

12 Omit “*approved*”, substitute “*authorised*”.

13 **16 Paragraph 11(1)(a)**

14 Repeal the paragraph, substitute:

15 (a) is, or are, authorised under Part 7.10A of the *Corporations*
16 *Act 2001*; and

17 **17 Paragraphs 47(1)(i), 64(5)(c) and 65(6)(c)**

18 Omit “*approved*”, substitute “*authorised*”.

19 **18 Subparagraphs 113(2)(h)(ii), 126(2)(e)(ii), 127(2)(e)(ii),**
20 **136(2)(h)(ii), 149(2)(e)(ii) and 150(2)(e)(ii)**

21 Omit “*approved*”, substitute “*authorised*”.

22 **19 Paragraph 158(2)(h)**

23 Omit “*approved*”, substitute “*authorised*”.

24 **20 Subparagraph 160(3)(f)(ii)**

25 Omit “*approved*”, substitute “*authorised*”.

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 2 Amendments applying once the first external dispute resolution scheme is authorised

1 **21 Section 245 (heading)**

2 Repeal the heading, substitute:

3 **245 Operator of authorised external dispute resolution scheme may**
4 **give information to ASIC**

5 **22 Section 245**

6 Omit “approved”, substitute “authorised”.

7 **23 Subparagraphs 72(4)(b)(iii), 88(3)(g)(i), 94(2)(b)(i),**
8 **177B(4)(b)(iii), 179D(2)(f)(i) and 179H(2)(b)(i) of**
9 **Schedule 1**

10 Omit “approved”, substitute “authorised”.

11 **24 Subsection 204(1) (definition of *approved external dispute***
12 ***resolution scheme*) of Schedule 1**

13 Repeal the definition.

14 **25 Subsection 204(1) of Schedule 1**

15 Insert:

16 *authorised external dispute resolution scheme* has the same
17 meaning as in section 11 of the National Credit Act.

18 ***National Consumer Credit Protection (Transitional and***
19 ***Consequential Provisions) Act 2009***

20 **26 Paragraph 12(1)(b) of Schedule 2**

21 Omit “approved”, substitute “authorised”.

22 **27 Subitem 16(1) of Schedule 2 (heading)**

23 Repeal the heading, substitute:

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying once the first external dispute resolution scheme is authorised
Part 2

1 *Obligation to be a member of an authorised external dispute*
2 *resolution scheme*

3 **28 Subitem 16(1) of Schedule 2**

4 Omit “approved”, substitute “authorised”.

5 ***Retirement Savings Accounts Act 1997***

6 **29 At the end of subsection 38(2)**

7 Add:

8 ; (o) compliance, by RSA providers, with external dispute
9 resolution schemes.

10 **30 Subsection 47(1) (note)**

11 Omit “The *Superannuation (Resolution of Complaints) Act 1993* deals”,
12 substitute “Part 7.10A of the *Corporations Act 2001*, and the
13 *Superannuation (Resolution of Complaints) Act 1993*, deal”.

14 **31 Subsection 95(1A)**

15 Repeal the subsection, substitute:

16 (1A) If it appears to ASIC that an RSA provider has refused or failed to
17 give effect to:

18 (a) a determination of the Superannuation Complaints Tribunal
19 under sections 37D to 37G of the *Superannuation*
20 *(Resolution of Complaints) Act 1993*; or

21 (b) a determination made under an external dispute resolution
22 scheme:

23 (i) that is authorised under Part 7.10A of the *Corporations*
24 *Act 2001*; and

25 (ii) of which the RSA provider is a member;

26 ASIC may, by written notice, tell the RSA provider that ASIC
27 proposes to conduct an investigation of the whole or a part of the
28 affairs of the RSA provider.

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 2 Amendments applying once the first external dispute resolution scheme is authorised

1 **32 Subsection 163(12) (paragraph (a) of the definition of *do***
2 ***an act or thing*)**

3 After “Superannuation Complaints Tribunal”, insert “, or made under an
4 external dispute resolution scheme that is authorised under Part 7.10A
5 of the *Corporations Act 2001*”.

6 **33 Subsection 163(12) (at the end of paragraph (b) of the**
7 **definition of *do an act or thing*)**

8 Add “, or with a determination made under such an external dispute
9 resolution scheme”.

10 ***Superannuation Contributions Tax (Assessment and***
11 ***Collection) Act 1997***

12 **34 Subsection 24(3) (note)**

13 Repeal the note, substitute:

14 Note: If a member is dissatisfied with an assessment in so far as it relates to
15 the calculation of the member’s surchargeable contributions, as based
16 on an amount or amounts set out in a statement given to the
17 Commissioner by a superannuation provider under section 13, the
18 member may make a complaint:

- 19 (a) under an external dispute resolution scheme, of which the
20 superannuation provider is a member, that is authorised under
21 Part 7.10A of the *Corporations Act 2001*; or
22 (b) under section 15CA of the *Superannuation (Resolution of*
23 *Complaints) Act 1993*, but not after the day after which
24 complaints cannot be made because of section 14AB of that Act;

25 about the unfairness or unreasonableness of the superannuation
26 provider’s decision to set out the amount or any of the amounts in the
27 statement.

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

29 **35 Subparagraph 6(1)(a)(vi)**

30 Omit “101,”.

31 **36 Subparagraph 6(1)(c)(ii)**

32 Repeal the subparagraph, substitute:

33 (ii) section 103; and

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying once the first external dispute resolution scheme is authorised
Part 2

1 **37 After paragraph 58(2)(f)**

2 Insert:

3 (fa) a direction given under an external dispute resolution
4 scheme:

- 5 (i) that is authorised under Part 7.10A of the *Corporations*
6 *Act 2001*; and
7 (ii) of which the entity is a member; or

8 **38 Section 101**

9 Repeal the section.

10 **39 After paragraph 263(1)(c)**

11 Insert:

12 or (d) the trustee, or the trustees, of a regulated superannuation fund
13 or an approved deposit fund have refused or failed to give
14 effect to a determination made under an external dispute
15 resolution scheme:

- 16 (i) that is authorised under Part 7.10A of the *Corporations*
17 *Act 2001*; and
18 (ii) of which the trustee is, or the trustees are, a member;

19 **40 Subsection 315(12) (paragraph (a) of the definition of *do***
20 ***an act or thing*)**

21 After “Superannuation Complaints Tribunal”, insert “, or made under an
22 external dispute resolution scheme that is authorised under Part 7.10A
23 of the *Corporations Act 2001*”.

24 **41 Subsection 315(12) (at the end of paragraph (b) of the**
25 **definition of *do an act or thing*)**

26 Add “, or with a determination made under such an external dispute
27 resolution scheme”.

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

29 **42 After section 14AA**

30 Insert:

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 2 Amendments applying once the first external dispute resolution scheme is authorised

14AB When complaints can no longer be made

- (1) A complaint cannot be made under this Part on or after the day occurring:
- (a) 6 months; or
 - (b) such longer period as is prescribed by the regulations;
- after the day on which the first authorisation of an external dispute resolution scheme under Part 7.10A of the *Corporations Act 2001* commences.
- (2) This section has effect despite any other provision of this Part.

Taxation Administration Act 1953

43 Subsection 133-120(2) in Schedule 1 (note)

Repeal the note, substitute:

- Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint:
- (a) under an external dispute resolution scheme, of which the superannuation provider is a member, that is authorised under Part 7.10A of the *Corporations Act 2001*; or
 - (b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not after the day after which complaints cannot be made because of section 14AB of that Act.

44 Subsection 133-140(1) in Schedule 1 (note)

Repeal the note, substitute:

- Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint:
- (a) under an external dispute resolution scheme, of which the superannuation provider is a member, that is authorised under Part 7.10A of the *Corporations Act 2001*; or
 - (b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not after the day after which complaints cannot be made because of section 14AB of that Act.

45 Section 155-90 in Schedule 1 (note)

Repeal the note, substitute:

- Note: If an individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule, the individual may make a complaint:

EXPOSURE DRAFT

External dispute resolution **Schedule 1**
Amendments applying once the first external dispute resolution scheme is authorised
Part 2

- 1 (a) under an external dispute resolution scheme, of which the
2 superannuation provider is a member, that is authorised under
3 Part 7.10A of the *Corporations Act 2001*; or
4 (b) under section 15CA of the *Superannuation (Resolution of*
5 *Complaints) Act 1993*, but not after the day after which
6 complaints cannot be made because of section 14AB of that Act.

7 **46 Subsection 355-65(3) in Schedule 1 (cell at table item 3,**
8 **column headed “The record is made for or the**
9 **disclosure is to ...”)**

10 Repeal the cell, substitute:

- (a) the Superannuation
Complaints Tribunal
established by
section 6 of the
Superannuation
(Resolution of
Complaints) Act
1993; or
(b) the operator of an
external dispute
resolution scheme
that is authorised
under Part 7.10A of
the *Corporations Act*
2001

11 **47 Subsection 390-5(1) in Schedule 1 (note 2)**

12 Repeal the note, substitute:

- 13 Note 2: If a person is dissatisfied with a statement given to the Commissioner
14 by a superannuation provider under this section, the person may make
15 a complaint:
16 (a) under an external dispute resolution scheme, of which the
17 superannuation provider is a member, that is authorised under
18 Part 7.10A of the *Corporations Act 2001*; or
19 (b) under section 15CA of the *Superannuation (Resolution of*
20 *Complaints) Act 1993*, but not after the day after which
21 complaints cannot be made because of section 14AB of that Act.

22 **48 Application of amendments**

- 23 (1) The amendments made by this Part do not apply until the day (the
24 ***application day***) after the day on which the first authorisation of an
-

EXPOSURE DRAFT

Schedule 1 External dispute resolution

Part 2 Amendments applying once the first external dispute resolution scheme is authorised

- 1 external dispute resolution scheme, under Part 7.10A of the
2 *Corporations Act 2001* as amended by this Part, commences.
- 3 (2) Despite subitem (1), if, immediately before the application day, an
4 approval of an external dispute resolution scheme by ASIC, in
5 accordance with regulations made for the purposes of
6 subparagraph 912A(2)(b)(i) or 1017G(2)(b)(i) of the *Corporations Act*
7 *2001*, is in force:
- 8 (a) the amendments made to the *Corporations Act 2001* by this
9 Part do not apply in relation to the approval, until the day
10 occurring:
- 11 (i) 6 months; or
12 (ii) such longer period as is prescribed for the purposes of
13 paragraph 14AB(1)(b) of the *Superannuation*
14 *(Resolution of Complaints) Act 1993* as amended by this
15 Part;
- 16 after the application day; and
- 17 (b) while that approval continues to be in force on or after the
18 application day because of paragraph (a) of this subitem, a
19 person who:
- 20 (i) was, immediately before the application day, a member
21 of that scheme; and
22 (ii) is still a member of that scheme;
- 23 is taken, for the purposes of any Act, to be a member of an
24 authorised external dispute resolution scheme (within the
25 meaning of Part 7.10A of the *Corporations Act 2001* as
26 amended by this Part).

Schedule 2—Internal dispute resolution

Corporations Act 2001

1 Paragraph 912A(1)(g)

Repeal the paragraph, substitute:

(g) if those financial services are provided to persons as retail clients:

(i) have a dispute resolution system complying with subsection (2); and

(ii) give ASIC the information specified in any instrument under subsection (2A); and

2 After subsection 912A(2)

Insert:

(2A) ASIC may, by legislative instrument, specify information that financial services licensees must give ASIC relating to their internal dispute resolution procedures and the operation of their internal dispute resolution procedures.

(2B) An instrument under subsection (2A) must not specify any information that is personal information within the meaning of the *Privacy Act 1988*.

3 Subsection 1017G(1)

Repeal the subsection, substitute:

(1) If:

(a) particular financial products are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of those products is not covered by an Australian financial services licence;

both the issuer, and any regulated person obliged under subsection 1012C(5), (6) or (8) to give a retail client a Product Disclosure Statement for one or more of those financial products, must each:

EXPOSURE DRAFT

Schedule 2 Internal dispute resolution

- 1 (c) have a dispute resolution system complying with
2 subsection (2); and
3 (d) give to ASIC the same information as the issuer or regulated
4 person would be required to give under
5 subparagraph 912A(1)(g)(ii) of that Act if the issuer or
6 regulated person were a financial services licensee.
- 7 Note 1: If the issue of particular financial products is covered by an Australian
8 financial services licence, the requirement to have a dispute resolution
9 system relating to the issue of the products is imposed by
10 paragraph 912A(1)(g).
- 11 Note 2: Failure to comply with this subsection is an offence (see
12 subsection 1311(1)).

13 *National Consumer Credit Protection Act 2009*

14 **4 After paragraph 47(1)(h)**

15 Insert:

- 16 (ha) give to ASIC the same information it would be required to
17 give under subparagraph 912A(1)(g)(ii) of the *Corporations*
18 *Act 2001* if it were a financial services licensee (within the
19 meaning of Chapter 7 of that Act); and

EXPOSURE DRAFT

Repeal of the Superannuation (Resolution of Complaints) Act 1993 **Schedule 3**
Repeal of the Superannuation (Resolution of Complaints) Act 1993 **Part 1**

1 **Schedule 3—Repeal of the Superannuation**
2 **(Resolution of Complaints) Act 1993**

3 **Part 1—Repeal of the Superannuation (Resolution of**
4 **Complaints) Act 1993**

5 *Superannuation (Resolution of Complaints) Act 1993*

6 **1 The whole of the Act**

7 Repeal the Act.

EXPOSURE DRAFT

Schedule 3 Repeal of the Superannuation (Resolution of Complaints) Act 1993

Part 2 Consequential amendments

1 **Part 2—Consequential amendments**

2 *Australian Defence Force Cover Act 2015*

3 **2 Subsection 57(2) (note)**

4 Repeal the note, substitute:

5 Note: A person affected by the outcome of the reconsideration of the
6 decision may make a complaint under an external dispute resolution
7 scheme, of which CSC is a member, that is authorised under
8 Part 7.10A of the *Corporations Act 2001*.

9 *Australian Defence Force Superannuation Act 2015*

10 **3 Paragraph 29(1)(f)**

11 Repeal the paragraph.

12 *Australian Securities and Investments Commission Act 2001*

13 **4 Paragraph 12A(1)(d)**

14 Repeal the paragraph.

15 **5 Subparagraph 127(4)(aa)(iii)**

16 Repeal the subparagraph.

17 *Income Tax Assessment Act 1997*

18 **6 Section 292-330 (note)**

19 Repeal the note, substitute:

20 Note: If a person is dissatisfied with a statement given to the Commissioner
21 by a superannuation provider under section 390-5 in Schedule 1 to the
22 *Taxation Administration Act 1953*, the person may make a complaint
23 under an external dispute resolution scheme, of which the
24 superannuation provider is a member, that is authorised under
25 Part 7.10A of the *Corporations Act 2001*.

EXPOSURE DRAFT

Repeal of the Superannuation (Resolution of Complaints) Act 1993 **Schedule 3**
Consequential amendments **Part 2**

1 ***Insurance Act 1973***

2 **7 Section 129C**

3 Repeal the section.

4 ***Life Insurance Act 1995***

5 **8 Division 3A of Part 7**

6 Repeal the Division.

7 ***Retirement Savings Accounts Act 1997***

8 **9 Subparagraph 3(1)(c)(iii)**

9 Repeal the subparagraph.

10 **10 Paragraph 3(2)(d)**

11 Omit “sections 183 and 184”, substitute “section 183”.

12 **11 Section 16 (definition of *Superannuation Complaints***
13 ***Tribunal*)**

14 Repeal the definition.

15 **12 Paragraph 38(2)(n)**

16 Repeal the paragraph.

17 **13 Subsection 47(1) (note)**

18 Omit “, and the *Superannuation (Resolution of Complaints) Act 1993*,

19 deal”, substitute “deals”.

20 **14 Subsection 95(1A)**

21 Repeal the subsection, substitute:

22 (1A) If it appears to ASIC that an RSA provider has refused or failed to
23 give effect to a determination made under an external dispute
24 resolution scheme:

25 (a) that is authorised under Part 7.10A of the *Corporations Act*
26 *2001*; and

EXPOSURE DRAFT

Schedule 3 Repeal of the Superannuation (Resolution of Complaints) Act 1993

Part 2 Consequential amendments

1 (b) of which the RSA provider is a member;
2 ASIC may, by written notice, tell the RSA provider that ASIC
3 proposes to conduct an investigation of the whole or a part of the
4 affairs of the RSA provider.

5 **15 Subsection 163(12) (paragraph (a) of the definition of *do***
6 ***an act or thing*)**

7 Omit “made by the Superannuation Complaints Tribunal, or”.

8 **16 Subsection 163(12) (at the end of paragraph (b) of the**
9 **definition of *do an act or thing*)**

10 Omit “with the directions of the Superannuation Complaints Tribunal,
11 or”.

12 **17 Section 184**

13 Repeal the section.

14 ***Superannuation Act 1976***

15 **18 Subsection 155C(3) (paragraph (c) of the definition of**
16 ***eligible regulatory law*)**

17 Repeal the paragraph.

18 ***Superannuation Act 1990***

19 **19 Subsection 49(3) (paragraph (c) of the definition of *eligible***
20 ***regulatory law*)**

21 Repeal the paragraph.

22 ***Superannuation Act 2005***

23 **20 Paragraph 46(1)(f)**

24 Repeal the paragraph.

EXPOSURE DRAFT

Repeal of the Superannuation (Resolution of Complaints) Act 1993 **Schedule 3**
Consequential amendments **Part 2**

1 ***Superannuation Contributions Tax (Assessment and***
2 ***Collection) Act 1997***

3 **21 Subsection 24(3) (note)**

4 Repeal the note, substitute:

5 Note: If a member is dissatisfied with an assessment in so far as it relates to
6 the calculation of the member's surchargeable contributions, as based
7 on an amount or amounts set out in a statement given to the
8 Commissioner by a superannuation provider under section 13, the
9 member may make a complaint under an external dispute resolution
10 scheme:

- 11 (a) that is authorised under Part 7.10A of the *Corporations Act 2001*;
12 and
13 (b) of which the superannuation provider is a member;

14 about the unfairness or unreasonableness of the superannuation
15 provider's decision to set out the amount or any of the amounts in the
16 statement.

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

18 **22 Subparagraph 6(1)(a)(iv)**

19 Omit "sections 64A and 68A", substitute "section 68A".

20 **23 Subparagraph 6(1)(c)(i)**

21 Repeal the subparagraph, substitute:

- 22 (i) section 68A; and

23 **24 Subsection 10(1) (definition of *Superannuation***
24 ***Complaints Tribunal*)**

25 Repeal the definition.

26 **25 Paragraph 58(2)(f)**

27 Repeal the paragraph.

28 **26 Section 64A**

29 Repeal the section.

EXPOSURE DRAFT

Schedule 3 Repeal of the Superannuation (Resolution of Complaints) Act 1993

Part 2 Consequential amendments

1 **27 Paragraph 263(1)(c)**

2 Repeal the paragraph.

3 **28 Subsection 315(12) (paragraph (a) of the definition of *do***
4 ***an act or thing*)**

5 Omit “made by the Superannuation Complaints Tribunal, or”.

6 **29 Subsection 315(12) (at the end of paragraph (b) of the**
7 **definition of *do an act or thing*)**

8 Omit “with the directions of the Superannuation Complaints Tribunal,
9 or”.

10 **30 Paragraph 337A(a)**

11 Before “Superannuation Complaints Tribunal”, insert “former”.

12 ***Superannuation (Unclaimed Money and Lost Members) Act***
13 ***1999***

14 **31 Section 8 (definition of *Superannuation Complaints***
15 ***Tribunal*)**

16 Repeal the definition.

17 ***Taxation Administration Act 1953***

18 **32 Subsection 133-120(2) in Schedule 1 (note)**

19 Repeal the note, substitute:

20 Note: If a person is dissatisfied with a notice given to the Commissioner
21 under this subsection, the person may make a complaint under an
22 external dispute resolution scheme, of which the superannuation
23 provider is a member, that is authorised under Part 7.10A of the
24 *Corporations Act 2001*.

25 **33 Subsection 133-140(1) in Schedule 1 (note)**

26 Repeal the note, substitute:

27 Note: If a person is dissatisfied with a notice given to the Commissioner
28 under this subsection, the person may make a complaint under an
29 external dispute resolution scheme, of which the superannuation

EXPOSURE DRAFT

Repeal of the Superannuation (Resolution of Complaints) Act 1993 **Schedule 3**
Consequential amendments **Part 2**

1 provider is a member, that is authorised under Part 7.10A of the
2 *Corporations Act 2001*.

3 **34 Section 155-90 in Schedule 1 (note)**

4 Repeal the note, substitute:

5 Note: If an individual is dissatisfied with a statement given to the
6 Commissioner by a superannuation provider under section 390-5 in
7 this Schedule, the individual may make a complaint under an external
8 dispute resolution scheme, of which the superannuation provider is a
9 member, that is authorised under Part 7.10A of the *Corporations Act*
10 *2001*.

11 **35 Subsection 355-65(3) in Schedule 1 (cell at table item 3,**
12 **column headed “The record is made for or the**
13 **disclosure is to ...”)**

14 Repeal the cell, substitute:

the operator of an
external dispute
resolution scheme that is
authorised under
Part 7.10A of the
Corporations Act 2001

15 **36 Subsection 390-5(1) in Schedule 1 (note 2)**

16 Repeal the note, substitute:

17 Note 2: If a person is dissatisfied with a statement given to the Commissioner
18 by a superannuation provider under this section, the person may make
19 a complaint under an external dispute resolution scheme, of which the
20 superannuation provider is a member, that is authorised under
21 Part 7.10A of the *Corporations Act 2001*.

EXPOSURE DRAFT

Schedule 3 Repeal of the Superannuation (Resolution of Complaints) Act 1993

Part 3 Application provisions

1 **Part 3—Application provisions**

2 **37 Existing determinations unaffected**

3 (1) The repeal of the *Superannuation (Resolution of Complaints) Act 1993*
4 by Part 1 of this Schedule, does not affect a determination made under
5 that Act before the commencement of that Part.

6 (2) The amendments of Acts made by Part 2 of this Schedule do not apply
7 in relation to such a determination, and those Acts continue to apply
8 after the commencement of that Part in relation to such a determination
9 as if those amendments had not been made.
10