

# EXPOSURE DRAFT

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Inserts for  
**Financial Sector Reform (Hayne Royal  
Commission Response—Stronger  
Regulators (2020 Measures)) Bill 2020:  
ASIC regulation of superannuation  
(FSRC Rec 3.8, 6.3, 6.4, 6.5)**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule 3.8, 6.3, 6.4, 6.5	1 July 2020	1 July 2020

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## Schedule 3.8, 6.3, 6.4, 6.5—Adjustment of APRA and ASIC’s roles in superannuation

### Part 1—Adjustments relating to industry supervision

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

##### **1 Sections 4 and 6**

Repeal the sections, substitute:

##### **4 Simplified outline of supervision responsibilities**

Sections 5 and 6 set out the functions, powers and duties of APRA, ASIC and the Commissioner of Taxation in administering this Act.

APRA is generally responsible for prudential regulation and member outcomes. It is also generally responsible for licensing and supervision of RSE licensees.

ASIC is generally responsible for protecting consumers from harm, market integrity, disclosure and record keeping.

The Commissioner of Taxation is generally responsible for self managed superannuation funds, data and payment standards, tax file numbers and the compassionate release of superannuation amounts.

##### **5 General administration of Act**

- (1) Subject to this section, the general administration of a provision is determined under the general administration table in section 6. If a provision is covered by column 1 of the table, the general administration of the provision is conferred on a person, body or bodies in accordance with column 3 of the table.
- (2) Powers and duties are also conferred by the provisions referred to in subsection (3) of this section on:

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- 1 (a) APRA for the purposes of APRA's administration of the  
2 provisions it administers (including provisions both APRA  
3 and ASIC administer); and  
4 (b) ASIC for the purposes of ASIC's administration of the  
5 provisions it administers (including provisions both APRA  
6 and ASIC administer); and  
7 (c) the Commissioner of Taxation for the purposes of the  
8 administration of the provisions the Commissioner of  
9 Taxation administers.

- 10 (3) The provisions are Parts 1, 25, 26, 27, 28, 29, 29A and 30, but not  
11 including any of the following provisions:  
12 (a) Division 3 of Part 25 (see instead item 58 of the general  
13 administration table);  
14 (b) sections 328 and 332 (see instead subsection (8) of this  
15 section).

16 Note: Generally APRA, ASIC and the Commissioner of Taxation are not  
17 referred to in these provisions, Regulator is used instead. See the  
18 definition of *Regulator* in section 10.

19 *Special rules about ASIC*

- 20 (4) Despite paragraph (2)(b):  
21 (a) powers and duties conferred on ASIC by section 255 are  
22 conferred only in relation to persons who are relevant  
23 persons in relation to superannuation entities; and  
24 (b) powers and duties conferred on ASIC by section 256 are  
25 conferred only in relation to the affairs of superannuation  
26 entities.

27 *Special rules about the Commissioner of Taxation*

- 28 (5) Despite paragraph (2)(c):  
29 (a) powers and duties conferred on the Commissioner of  
30 Taxation by Divisions 4 to 8 of Part 25 (other than  
31 section 285) are conferred only in relation to:  
32 (i) persons who are relevant persons in relation to  
33 superannuation entities; and  
34 (ii) the affairs of superannuation entities; and  
35 (b) powers and duties are not conferred on the Commissioner of  
36 Taxation by section 342 (about pre-1 July 88 funding credits  
37 and debits).

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(6) Nothing in subsection (5) limits the powers and duties conferred on the Commissioner of Taxation by Part 25 (as mentioned in paragraph (2)(c)) in relation to contributing employers.

Note: The Commissioner of Taxation's powers and duties under Part 25 in relation to contributing employers are found in sections 255 and 256, with related provisions in Divisions 7, 8 and 9 of that Part.

(7) To avoid doubt, for the purposes of the definition of *taxation law* in subsection 995-1(1) of the *Income Tax Assessment Act 1997*, the Commissioner of Taxation is taken to have the general administration of a provision of this Act or the regulations that confers powers and duties on the Commissioner of Taxation.

Note: An effect of a provision being administered by the Commissioner of Taxation is that people who acquire information under the provision are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

## *Modification and exemption powers*

(8) Powers and duties are also conferred by sections 328 and 332 on:

(a) APRA for the purposes of the administration of provisions administered by APRA (including provisions both APRA and ASIC administer) or by the Commissioner of Taxation; and

(b) ASIC for the purposes of the administration of provisions administered solely by ASIC.

## *Directions*

(9) The Minister may, by legislative instrument, give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

## **6 General administration table**

(1) The following table has effect for the purposes of subsection 5(1).

Note: Under that subsection, the general administration of a provision referred to in column 1 of the table is conferred as set out in column 3.

### **General administration table**

<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
1	Part 2A, to the extent it	licensing of RSE	APRA

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
	is not covered by item 2 of this table	licensees	
2	Section 29JCA	false representation about RSE status	both APRA and ASIC
3	Part 2B, to the extent it is not covered by item 4 of this table	registrable superannuation entities	APRA
4	Sections 29P to 29QC	obligations of RSE licensees	ASIC
5	Part 2C, to the extent it is not covered by item 6 of this table	MySuper	APRA
6	Subsection 29SAA(3)	MySuper notice requirements	ASIC
7	Part 3, to the extent it is not covered by item 8 or 9 of this table	operating standards	(a) ASIC, to the extent the provisions relate to disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent
8	Division 3 of Part 3	portability forms	the Commissioner of Taxation
9	Regulations made under Part 3	release on compassionate grounds	the Commissioner of Taxation, to the extent that the regulations relate to the making and notification of determinations that an amount of benefits in a superannuation entity may be released on compassionate grounds
10	Part 3A	prudential standards	APRA

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
11	Part 3B, to the extent it is not covered by item 12 or 13 of this table	superannuation data and payment	APRA
12	Divisions 1 and 4 of Part 3B	superannuation data and payment	the Commissioner of Taxation
13	Division 2 of Part 3B	compliance with superannuation data and payment regulations and standards	(a) the Commissioner of Taxation, to the extent the provisions relate to any of the following: (i) employers; (ii) payments and information given to the Commissioner of Taxation; (iii) self managed superannuation funds; and (b) APRA, to the remaining extent
14	Part 4	accounts, audit and reporting obligations for superannuation entities	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
15	Part 5, to the extent it is not covered by item 16 of this table	notices about complying fund status	(a) the Commissioner of Taxation, to the extent the provisions do any of the following: (i) relate to self managed superannuation funds; (ii) require or permit the Commissioner of Taxation to do something;

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
			and (b) APRA, to the remaining extent
16	Sections 40 and 41	notices about complying superannuation fund status	(a) in relation to an entity that is a self managed superannuation fund on the last day of the most recently ended year of income—the Commissioner of Taxation; and (b) in relation to an entity that is not a self managed superannuation fund on the last day of the most recently ended year of income—APRA; and (c) subject to paragraphs (a) and (b), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (d) APRA, to the remaining extent
17	Part 6, to the extent it is not covered by items 18 to 21 of this table	governing rules of superannuation entities	(a) ASIC, to the extent the provisions relate to disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent



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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
18	Sections 52, 52A and 54B	covenants and consequences of breaching covenants	both APRA and ASIC
19	Sections 52B and 52C	covenants of SMSFs	the Commissioner of Taxation
20	Section 54A	prescribed covenants	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
21	Section 60A	dismissal of trustee of public offer entity	APRA
22	Part 7, to the extent it is not covered by items 23 to 26 of this table	regulated superannuation funds	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
23	Sections 62 and 68	sole purpose test; victimisation of trustees	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
24	Section 64A	compliance with tribunal determination	(a) the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (b) ASIC, to the remaining extent
25	Section 68A	use of goods or	ASIC

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
		services to influence employers	
26	Section 68B	promotion of illegal early release schemes	(a) the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (b) ASIC, to the remaining extent
27	Part 8	in-house asset rules	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
28	Part 9	equal representation of employers and members— employer-sponsored funds	APRA
29	Part 10	approved deposit funds	APRA
30	Part 11	pooled superannuation trusts	APRA
31	Part 11A, to the extent it is not covered by item 32 of this table	general fees rules	APRA
32	Sections 99F and 99FA	cost of financial product advice	ASIC
33	Part 12, to the extent it is not covered by items 34 to 36 of this table	duties of trustees and investment managers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
34	Sections 101 and 103	dispute resolution systems; duty to keep minutes and records	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) ASIC, to the remaining extent
35	Section 105	duty to keep reports	(a) ASIC, to the extent the provision relates to disclosure or record-keeping (see subsection (2)); and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provision relates to self managed superannuation funds; and (c) APRA, to the remaining extent
36	Section 108A	duty to identify multiple accounts	both APRA and ASIC
37	Part 14	other provisions applying to superannuation entities	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
38	Part 15, to the extent it is not covered by item 39 of this table	standards for trustees, custodians and investment managers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
39	Section 126K	disqualified persons	(a) the Commissioner of

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
			Taxation, to the extent the provision relates to self managed superannuation funds; and (b) both APRA and ASIC, to the remaining extent
40	Part 16, to the extent it is not covered by items 41 to 43 of this table	actuaries and auditors	(a) ASIC, to the extent the provisions relate to auditors of self managed superannuation funds; and (b) subject to paragraph (a), the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (c) APRA, to the remaining extent
41	Section 128N	actuaries and auditors—ASIC may disclose information	ASIC
42	Section 128P	actuaries and auditors—Commissioner of Taxation may refer matter to ASIC	the Commissioner of Taxation
43	Division 2 of Part 16	actuaries and auditors—obligations	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
44	Part 16A	APRA’s powers to issue directions	APRA
45	Part 17, to the extent it	suspension or	(a) the Commissioner of

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
	is not covered by item 46 of this table	removal of trustee	Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
46	Section 140	notice by acting trustee	APRA
47	Part 18	amalgamation of funds	APRA
48	Part 19	public offer entities	ASIC
49	Part 20	contraventions relating to SMSFs	the Commissioner of Taxation
50	Part 21	civil and criminal consequences of contravening civil penalty provisions	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) both APRA and ASIC, to the extent the provisions relate to a provision administered by both those bodies; and (c) ASIC, to the extent the provisions relate to a provision administered by ASIC; and (d) APRA, to the remaining extent
51	Part 22	infringement notices	APRA
52	Part 23	financial assistance	APRA
53	Part 24, to the extent it is not covered by item 54 of this table	eligible rollover funds	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and

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<b>General administration table</b>			
<b>Item</b>	<b>Column 1 Provisions</b>	<b>Column 2 Topic</b>	<b>Column 3 Regulator</b>
			(b) APRA, to the remaining extent
54	sections 242K, 242L and 242M	obligations relating to eligible rollover funds	both APRA and ASIC
55	Part 24A	pre-1 July 1995 transitional provisions	APRA
56	Part 24B	funds with fewer than 5 members	as provided by the provisions of Part 24B
57	Part 25, to the extent it is not covered by item 58 of this table	monitoring and investigation	see section 5
58	Division 3 of Part 25	monitoring and investigation—APRA requirements	APRA
59	Part 25A, to the extent it is not covered by item 60 of this table	tax file numbers	(a) the Commissioner of Taxation, to the extent the provisions relate to self managed superannuation funds; and (b) APRA, to the remaining extent
60	Divisions 1 and 3A of Part 25A, section 299NA and subsection 299U(2A)	tax file numbers	the Commissioner of Taxation
61	Part 32	transitional provisions for tax file numbers	APRA

1 Note: Subsection 10(4) extends the meaning of *self managed*  
 2 *superannuation fund* for the purposes of this section, sections 5, 42  
 3 and 42A, and Part 20.

4 *Disclosure and record-keeping provisions*

5 (2) For the purposes of the general administration table, a provision  
 6 relates to disclosure or record-keeping to the extent to which the  
 7 provision relates to:

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- 1 (a) keeping of reports to members of, or beneficiaries in, funds;  
2 or  
3 (b) disclosure of information to members of, or beneficiaries in,  
4 funds; or  
5 (c) disclosure of information about funds (including disclosure  
6 of information to ASIC but not including disclosure of  
7 information to APRA); or  
8 (d) any other matter prescribed by regulations for the purposes of  
9 this paragraph.

## 10 2 Subsection 10(1)

11 Insert:

12 *general administration table* means the table in section 6.

## 13 3 Subsection 10(1) (definition of *Regulator*)

14 Repeal the definition, substitute:

15 *Regulator* means:

- 16 (a) if the provision in which it occurs is, or is being applied for  
17 the purposes of, a provision that is administered by APRA  
18 (other than a provision that is administered by both APRA  
19 and ASIC)—APRA; or  
20 (b) if the provision in which it occurs is, or is being applied for  
21 the purposes of, a provision that is administered by ASIC  
22 (other than a provision that is administered by both APRA  
23 and ASIC)—ASIC; or  
24 (c) if the provision in which it occurs is, or is being applied for  
25 the purposes of, a provision that is administered by both  
26 APRA and ASIC—either APRA or ASIC, but, if the context  
27 requires the reference to be particularly to one of those  
28 bodies, then *Regulator* means that body; or  
29 (d) if the provision in which it occurs is, or is being applied for  
30 the purposes of, a provision that is administered by the  
31 Commissioner of Taxation—the Commissioner of Taxation.

32 Note: In relation to paragraph (c), the context may require *Regulator* to  
33 mean the same body as has been referred to elsewhere. For example,  
34 in subsection 344(1), the Regulator who may be requested to  
35 reconsider a decision is required by the context to be a reference to the  
36 body who made the reviewable decision.

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1 **4 Subsection 10(1) (note to the definition of *self managed***  
2 ***superannuation fund*)**  
3 Omit “sections 6, 42 and 42A,” substitute “sections 5, 6, 42 and 42A  
4 and Part 20”.

5 **5 Subsection 10(4)**  
6 Omit “6,” substitute “5, 6.”

7 **6 Subsection 19(4)**  
8 Omit “APRA, or such other body or person as is specified in the  
9 regulations,” substitute “the Commissioner of Taxation”.

10 **7 Subsection 19(4A)**  
11 Repeal the subsection (including the heading).

12 **8 Subsection 40(4) (note)**  
13 Repeal the note, substitute:

14 Note: Because “the Regulator” is whichever of APRA or the Commissioner  
15 of Taxation is administering this provision in respect of a fund, a  
16 notice given by one of those Regulators could revoke a notice given  
17 by the other Regulator. This might happen if a fund became, or  
18 stopped being, a self managed superannuation fund after the first  
19 notice was given.

20 **9 Subparagraphs 42(1AA)(b)(ii) and (c)(ii)**  
21 Omit “APRA”, substitute “the Commissioner of Taxation”.

22 **10 Paragraphs 42(1AC)(b) and (c)**  
23 Omit “APRA” (wherever occurring), substitute “the Commissioner of  
24 Taxation”.

25 **11 Subparagraph 42(1AC)(d)(ii)**  
26 Omit “APRA”, substitute “the Commissioner of Taxation”.

27 **12 Subsection 42(3)**  
28 Repeal the subsection.

29 **13 Subparagraphs 42A(3)(c)(ii) and (d)(ii)**  
30 Omit “APRA”, substitute “the Commissioner of Taxation”.



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## 14 Subsection 42A(4)

Omit “APRA” (wherever occurring), substitute “the Commissioner of Taxation”.

## 15 Subsection 42A(7)

Repeal the subsection (including the heading).

## 16 Paragraphs 193(l), (m) and (n)

Repeal the paragraphs, substitute:  
(l) subsection 242M(1).

## 17 Section 253 (note 2)

Omit “subsection 6(2AA)”, substitute “subsection 5(4)”.

## 18 Section 253 (note 3)

Omit “subsection 6(2AB)”, substitute “subsection 5(5)”.

## 19 Section 253 (note 3)

Omit “subsection 6(2AC)”, substitute “subsection 5(6)”.

## 20 Subsection 265(1)

Omit “member of the staff” (wherever occurring), substitute “member of staff”.

## 21 Subsection 265(1)

Omit “the other Regulator”, substitute “another person or body referred to in the definition of *Regulator* in subsection 10(1)”.

## 22 Subsection 298A(1)

Omit “the other Regulator”, substitute “another person or body referred to in the definition of *Regulator* in subsection 10(1)”.

## 23 Paragraphs 315(1)(a) to (f)

Omit “by APRA or the Regulator”.

## 24 Subsection 315(3)

Omit “by APRA or the Regulator”.

## 25 Subsection 336F(1)

Omit “APRA”, substitute “the Regulator”.

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1 **26 Parts 33 and 34**

2 Repeal the Parts.

3 **27 Saving**

4 *Appointments*

5 (1) An appointment:

6 (a) made under subsection 265(1) of the *Superannuation*  
7 *Industry (Supervision) Act 1993*; and

8 (b) in force immediately before the commencement of this item;  
9 has effect, from that commencement, as if it had been made under that  
10 subsection as amended by this Part.

11 *Authorisations*

12 (2) An authorisation:

13 (a) made under subsection 298A(1) of the *Superannuation*  
14 *Industry (Supervision) Act 1993*; and

15 (b) in force immediately before the commencement of this item;  
16 has effect, from that commencement, as if it had been made under that  
17 subsection as amended by this Part.

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## 1 **Part 2—Adjustments relating to financial services**

### 2 *Australian Securities and Investments Commission Act 2001*

#### 3 **28 Subsection 12BA(1)**

4 Insert:

5 *registrable superannuation entity* has the same meaning as in the  
6 *Superannuation Industry (Supervision) Act 1993*.

7 *superannuation trustee service* has the same meaning as in  
8 Chapter 7 of the *Corporations Act 2001*.

#### 9 **29 After paragraph 12BAB(1)(e)**

10 Insert:

11 (ea) provide a superannuation trustee service; or

#### 12 **30 At the end of subsection 12GBB(5)**

13 Add:

14 ; and (e) in the case of a contravention by the trustee of a registrable  
15 superannuation entity—the impact that the penalty under  
16 consideration would have on the beneficiaries of the entity.

#### 17 **31 Section 93C**

18 Before “A person”, insert “(1)”.

#### 19 **32 At the end of section 93C**

20 Add:

21 (2) If:

22 (a) a person commits an offence against this Act in the person’s  
23 capacity as trustee of a registrable superannuation entity; and

24 (b) the penalty applicable to the offence is, or includes, a fine;  
25 then, in determining the fine for the offence, the court must take  
26 into account the impact that the fine under consideration would  
27 have on the beneficiaries of the entity.

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## 1 *Corporations Act 2001*

### 2 **33 Section 9**

3 Insert:

4 *registrable superannuation entity* has the same meaning as in the  
5 *Superannuation Industry (Supervision) Act 1993*.

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

### 8 **34 Section 761A (definition of *registrable superannuation*** 9 ***entity*)**

10 Repeal the definition.

### 11 **35 Section 761A**

12 Insert:

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

15 *superannuation trustee service* that a person provides has the  
16 meaning given by section 766H.

### 17 **36 Section 761A (definition of *trustee*)**

18 Repeal the definition, substitute:

19 *trustee* means:

- 20 (a) in relation to a superannuation entity to which paragraph (b)  
21 does not apply—the person who is the trustee of the entity  
22 for the purposes of the *Superannuation Industry*  
23 *(Supervision) Act 1993*; or  
24 (b) in relation to a regulated superannuation fund that is the  
25 scheme provided for by the *Australian Defence Force Cover*  
26 *Act 2015*—CSC (within the meaning of the *Governance of*  
27 *Australian Government Superannuation Schemes Act 2011*).

### 28 **37 Subsection 761G(6) (heading)**

29 Repeal the heading, substitute:

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*Products and services relating to superannuation and RSAs*

1  
2 **38 Paragraphs 761G(6)(b) and (c)**

3 After “or an RSA product,” insert “or is a superannuation trustee  
4 service.”

5 **39 Subsection 761G(7)**

6 After “traditional trustee company service”, insert “or a superannuation  
7 trustee service”.

8 **40 Section 761GA**

9 Omit “or a crowd-funding service”, substitute “, a crowd-funding  
10 service or a superannuation trustee service”.

11 **41 Before paragraph 766A(1)(f)**

12 Insert:

13 (ec) provide a superannuation trustee service (see section 766H);  
14 or

15 **42 At the end of section 766A**

16 Add:

17 *Overlap between financial services*

18 (5) The fact that conduct constitutes the provision of a financial  
19 service is not to be taken to imply that the conduct does not also  
20 constitute the provision of another financial service.

21 Note: For example, conduct may constitute providing a superannuation  
22 trustee service and also providing another financial service (such as  
23 dealing in a financial product that is a superannuation product).

24 **43 Before Division 5 of Part 7.1**

25 Insert:

26 **766H Meaning of provides a *superannuation trustee service***

27 (1) A person provides a *superannuation trustee service* if the person  
28 operates a registrable superannuation entity as trustee of the entity.

29 Note 1: The meaning of *person* here is affected by section 761FA (about  
30 multiple trustees).

31 Note 2: To determine whether a person to whom the service is provided is a  
32 retail client, see subsection 761G(6).

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1 (2) However, the following do not constitute the provision of a  
2 *superannuation trustee service*:

- 3 (a) the operation of an exempt public sector superannuation  
4 scheme;  
5 (b) conduct of a kind prescribed by regulations made for the  
6 purposes of this paragraph.

## 7 **44 After paragraph 911A(2)(g)**

8 Insert:

- 9 (ga) the service is a superannuation trustee service that is  
10 provided only to wholesale clients;

## 11 **45 After subsection 911A(4)**

12 Insert:

- 13 (4A) A person is not exempt under any paragraph of subsection (2) for a  
14 superannuation trustee service unless the exemption expressly  
15 covers a superannuation trustee service.

## 16 **46 Before paragraph 914A(4)(a)**

17 Insert:

- 18 (aa) ASIC cannot impose, vary or revoke a condition on the  
19 licence if the licensee is authorised to provide a  
20 superannuation trustee service and doing so would, in  
21 ASIC's opinion, have the result of preventing the licensee  
22 from providing that service, unless:  
23 (i) APRA has agreed in writing with the proposed action;  
24 or  
25 (ii) the licensee applied under paragraph 914A(2)(b) for  
26 ASIC to take the proposed action; or  
27 (iii) the licensee's RSE licence is not in effect, and is not  
28 treated by section 29GB of the *Superannuation Industry*  
29 (*Supervision*) Act 1993 as if it were in effect;

## 30 **47 Paragraph 914A(4)(a)**

31 Before "ASIC cannot", insert "if paragraph (aa) does not apply,".

## 32 **48 Paragraph 914A(4)(b)**

33 Omit "paragraph (a) does not", substitute "paragraphs (aa) and (a) do  
34 not".

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## 49 Subsection 914A(5A)

Repeal the subsection, substitute:

- (5A) A failure to comply with a requirement of this section to consult or inform APRA about, or to consider advice from ASIC about, or to get the agreement of APRA about, an imposition, variation or revocation of a condition does not invalidate the action taken.

## 50 Before paragraph 915I(1)(a)

Insert:

- (aa) ASIC cannot suspend or cancel the licensee's licence if the licensee is authorised to provide a superannuation trustee service unless:
- (i) APRA has agreed in writing with the proposed action; or
  - (ii) the licensee applied under paragraph 915B(1)(e), (2)(d), (3)(d) or (4)(d) for ASIC to take the proposed action; or
  - (iii) the licensee's RSE licence is not in effect, and is not treated by section 29GB of the *Superannuation Industry (Supervision) Act 1993* as if it were in effect;

## 51 Paragraph 915I(1)(a)

Before "ASIC cannot", insert "if paragraph (aa) does not apply,".

## 52 Paragraph 915I(1)(b)

Omit "paragraph (a) does not", substitute "paragraphs (aa) and (a) do not".

## 53 Subsection 915I(3)

Repeal the subsection, substitute:

- (3) A failure to comply with a requirement of this section to consult or inform APRA about, or to consider advice from ASIC about, or to get the agreement of APRA about, a suspension or cancellation, or a revocation of a suspension, of a licence does not invalidate the action taken.

## 54 After subsection 920A(3)

Insert:

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*Special procedure for RSE licensees*

- 1  
2 (3A) If a person against whom ASIC proposes to make a banning order  
3 is a financial services licensee who is authorised to provide a  
4 superannuation trustee service, the following provisions apply:  
5 (a) ASIC cannot make the banning order if doing so would, in  
6 ASIC's opinion, have the result of preventing the licensee  
7 from providing that service, unless:  
8 (i) APRA agrees in writing to the making of the banning  
9 order; or  
10 (ii) the licensee's RSE licence is not in effect, and is not  
11 treated by section 29GB of the *Superannuation Industry*  
12 *(Supervision) Act 1993* as if it were in effect;  
13 (b) if ASIC makes the banning order and paragraph (a) does not  
14 apply to that action, ASIC must, within one week, inform  
15 APRA of the action that has been taken.
- 16 (3B) A failure to comply with a requirement of subsection (3A) to get  
17 the agreement of APRA about a banning order does not invalidate  
18 the action taken.

## 55 After subsection 941C(3A)

19 Insert:  
20

21 *Providing entity is merely providing a superannuation trustee*  
22 *service*

- 23 (3B) The providing entity does not have to give the client a Financial  
24 Services Guide if:  
25 (a) the providing entity is the trustee of a registrable  
26 superannuation entity; and  
27 (b) the financial service consists only of a superannuation trustee  
28 service.

## 56 Section 960

29 Repeal the following definitions:

- 30 (a) definition of *registrable superannuation entity*;  
31 (b) definition of *RSE licensee*.  
32

## 57 Section 1311A

33 Before "A person", insert "(1)".  
34

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## 58 At the end of section 1311A

Add:

(2) If:

(a) a person commits an offence in the person's capacity as trustee of a registrable superannuation entity; and

(b) the penalty applicable to the offence is, or includes, a fine; then, in determining the fine for the offence, the court must take into account the impact that the fine under consideration would have on the beneficiaries of the entity.

## 59 At the end of subsection 1317G(6)

Add:

; and (e) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

## 60 In the appropriate position in Chapter 10

Insert:

### **Part 10.48—Transitional provisions relating to Schedule 3.8, 6.3, 6.4, 6.5 to the Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Act 2020**

#### **1675 Definitions**

In this Part:

*amending Schedule* means Schedule 3.8, 6.3, 6.4, 6.5 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Act 2020*.

#### **1675A Automatic extension of licence conditions on 1 July 2020—licensees who are authorised to deal**

(1) This section applies to an Australian financial services licensee if, just before 1 July 2020:

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- 1 (a) the licensee's Australian financial services licence authorised  
2 the licensee to deal in a superannuation product; and  
3 (b) the licensee was also an RSE licensee.
- 4 (2) The licensee's Australian financial services licence is taken from  
5 1 July 2020 to be subject to a condition authorising the licensee to  
6 provide a superannuation trustee service.

## 7 **1675B Automatic extension of licence conditions—licence** 8 **applications pending on 30 June 2020**

- 9 (1) This section applies if:
- 10 (a) on or before 30 June 2020, a person lodges an application for  
11 an Australian financial services licence authorising the  
12 person to deal in a superannuation product; and  
13 (b) on or after 1 July 2020, ASIC decides the application by  
14 granting the person an Australian financial services licence  
15 authorising the person to deal in superannuation product; and  
16 (c) at the time the licence is granted, the person is an RSE  
17 licensee.
- 18 (2) The licensee's Australian financial services licence is taken from  
19 the time it is granted to also be subject to a condition authorising  
20 the licensee to provide a superannuation trustee service.

## 21 **1675C Automatic extension of licence conditions—variation** 22 **applications pending on 30 June 2020**

- 23 (1) This section applies if:
- 24 (a) on or before 30 June 2020, a person lodges an application for  
25 ASIC to vary the conditions on the person's Australian  
26 financial services licence by authorising the person to deal in  
27 a superannuation product; and  
28 (b) on or after 1 July 2020, ASIC decides the application by  
29 varying the conditions on the person's licence to authorise  
30 the person to deal in a superannuation product; and  
31 (c) at the time the licence is varied, the person is an RSE  
32 licensee.
- 33 (2) The licensee's Australian financial services licence is taken from  
34 the time it is so varied to also be subject to a condition authorising  
35 the licensee to provide a superannuation trustee service.

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## 1675D Automatic licence conditions may be varied etc.

If an Australian financial services licence is subject to a condition authorising a licensee to provide a superannuation trustee service as a result of the operation of this Part, ASIC or the Minister may, in accordance with the provisions of Part 7.6:

- (a) vary or revoke the condition; or
- (b) vary, suspend or cancel the licence;

as if the authorisation to provide a superannuation trustee service had been specified by ASIC under subsection 914A(6).

## *Superannuation Industry (Supervision) Act 1993*

### 61 After subsection 29EA(2A)

Insert:

(2B) If:

- (a) a condition is expressed to have effect as mentioned in subsection (2A); and
- (b) a provision of the prudential standards (the *inconsistent provision*) is inconsistent with the condition to any extent; the inconsistent provision is to be disregarded to the extent of the inconsistency in determining, for the purposes of any law of the Commonwealth, whether the RSE licensee has complied with its obligations under the prudential standards.

### 62 Subsection 29JA(1)

Omit “no later than 10 business days”, substitute “within 30 days”.

### 63 Subsection 56(2)

Repeal the subsection, substitute:

- (2) A provision in the governing rules of a superannuation entity is void in so far as it would have the effect of exempting a trustee of the entity from, or indemnifying a trustee of the entity against:
  - (a) liability for breach of trust if the trustee:
    - (i) fails to act honestly in a matter concerning the entity; or
    - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the entity, the degree of care and diligence that the trustee was required to exercise; or
  - (b) liability for an amount of a criminal, civil or administrative penalty incurred by the trustee of the entity in relation to a

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- 1 contravention of a law of the Commonwealth (including this  
2 Act); or  
3 (c) the payment of any amount payable under an infringement  
4 notice (however described) given under a law of the  
5 Commonwealth (including this Act); or  
6 (d) liability for the costs of undertaking a course of education in  
7 compliance with an education direction (within the meaning  
8 of this Act).

## 9 **64 Subsection 57(2)**

10 Repeal the subsection, substitute:

- 11 (2) A provision of the governing rules of a superannuation entity is  
12 void in so far as it would have the effect of indemnifying a director  
13 of the trustee against:
- 14 (a) a liability that arises because the director:
    - 15 (i) fails to act honestly in a matter concerning the entity; or
    - 16 (ii) intentionally or recklessly fails to exercise, in relation to  
17 a matter affecting the entity, the degree of care and  
18 diligence that the director is required to exercise; or
  - 19 (b) liability for an amount of a criminal, civil or administrative  
20 penalty incurred by the director in relation to a contravention  
21 of a law of the Commonwealth (including this Act); or
  - 22 (c) the payment of any amount payable under an infringement  
23 notice (however described) given under a law of the  
24 Commonwealth (including this Act); or
  - 25 (d) liability for the costs of undertaking a course of education in  
26 compliance with an education direction (within the meaning  
27 of this Act).

## 28 **65 Application—breach reporting**

29 The amendment of section 29JA of the *Superannuation Industry*  
30 *(Supervision) Act 1993* made by item 62 of this Schedule applies in  
31 relation to breaches of which the RSE licensee becomes aware on or  
32 after 1 April 2021.

## 33 **66 Application and transitional—indemnification**

34 The amendments of sections 56 and 57 of the *Superannuation Industry*  
35 *(Supervision) Act 1993* made by items 63 and 64 of this Schedule apply  
36 in relation to liabilities that arise, and amounts that become payable,  
37 before, on or after the commencement of those items.