



Retirement Savings Accounts Act 1997

No. 61, 1997

**An Act to provide for retirement savings accounts,
and for related purposes**

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Retirement Savings Accounts Act 1997

No. 61, 1997

An Act to provide for retirement savings accounts, and for related purposes

[Assented to 28 May 1997]

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Retirement Savings Accounts Act 1997*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

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3 General administration of Act

- (1) Subject to subsection (2), the Commissioner has the general administration of this Act.
- (2) The Minister may give directions to the Commissioner about the performance or exercise of the Commissioner's functions or powers under this Act.

4 Application of Act not to be excluded or modified

This Act applies in relation to RSAs despite any provision in the terms and conditions of the RSA, including any provision that purports to substitute, or has the effect of substituting, the provisions of the law of a State or Territory or of a foreign country for all or any of the provisions of this Act.

5 Act extends to external Territories

This Act extends to all the external Territories.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) The Crown is not liable to be prosecuted for an offence against, or arising out of, this Act.

Division 2—Summary and outline of the Act

7 Brief summary of the Act

The following is a brief summary of the Act:

Brief summary of the Act

Main purpose—provision for RSAs

This Act provides for retirement savings accounts, or RSAs, to be offered by certain financial institutions.

RSAs will provide benefits upon retirement or death and may also provide a limited range of other benefits.

RSAs will have certain restrictions placed upon them to make them similar to other superannuation products.

Concessional taxation and social security treatment of RSAs

RSAs are subject to concessional rules under income tax and social security law.

Supervision of RSA business of providers

The Act also provides for the approval of the entities that can offer RSAs and provides for supervision of the RSA business of those entities.

The general prudential supervision of these entities is not dealt with in this Act.

Part 2—Key concepts and other definitions

Division 1—Key concepts

8 Definition of *RSA*

An *RSA*, or *retirement savings account*, is an account or a policy:

- (a) that is described as an *RSA*; and
- (b) that is provided by an entity that is an *RSA* institution at the time the account is opened or the policy is issued; and
- (c) that is capital guaranteed (see section 14); and
- (d) that is held by a person who is an eligible person at the time the account is opened or the policy is issued (see section 13); and
- (e) that, at the time that it is opened or issued, satisfies:
 - (i) the requirements in section 15; and
 - (ii) any prescribed criteria; and
- (f) that is opened or issued on or after 1 July 1997 or such later day as is prescribed.

9 Meaning of *hold* and *holder*

- (1) A person *holds* an account if the account is opened in the person's name. The person is the *holder* of the account.
- (2) A person *holds* a policy if the person is the person who is the owner of the policy. The person is the *holder* of the policy.

10 Meaning of *provide* and *provider*

- (1) A person *provides* an account if the person accepts, or has accepted, contributions to the account. The person is the *provider* of the account.
- (2) A person *provides* a policy if the policy is issued by the person. The person is the *provider* of the policy.

11 Who is an *RSA institution*?

- (1) A person is an *RSA institution* at a particular time if there is an approval under section 26 in force in relation to the person at that time which has not been suspended or revoked under section 33.

- (2) Only a bank, building society, credit union, life insurance company or a prescribed financial institution can be approved as an RSA institution.

12 Who is an *RSA provider*?

A person is an *RSA provider* at a particular time if, at that time, the person is the provider of one or more RSAs.

Note: Most RSA providers will also be RSA institutions. However, although every RSA provider must have been an RSA institution at one time, some may have ceased to be an RSA institution.

13 Who is an *eligible person*?

A person is an *eligible person* at a particular time if, at that time, the person satisfies any prescribed criteria.

14 What *capital guaranteed* means

- (1) An RSA that is an account is *capital guaranteed* if the balance of the account may not be reduced by the crediting of any negative interest.
- (2) An RSA that is a policy is *capital guaranteed* if the contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested.

15 RSA benefits

- (1) An RSA must be maintained to provide one or more of the benefits specified in subsections (2) and (3). It may also be maintained to provide one or more of the benefits specified in subsection (4).
- (2) The benefits specified in this subsection are benefits for the holder of the RSA on or after one of, or the earlier of, the following:
- (a) the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged (whether the holder's retirement occurred before, or occurred after, the holder's account was opened);
 - (b) the holder's attainment of an age not less than the age specified in the regulations.

Note: A prescribed criterion under paragraph 8(e), or an operating standard under section 38, may prevent any benefits being provided before the holder attains a specified age.

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- (3) The benefits specified in this subsection are benefits in respect of the holder of the RSA on or after the holder's death, if:
- (a) the death occurred before:
 - (i) the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged; or
 - (ii) the holder attained the age prescribed for the purposes of paragraph (2)(b); and
 - (b) the benefits are provided to the holder's legal personal representative, to any or all of the holder's dependants, or to both.

Note: These benefits may be provided directly from the RSA or from policies paid for using money from the RSA.

- (4) As long as the RSA is maintained to provide one or more of the benefits set out in subsections (2) and (3), it may also be maintained to provide one or more of the following:
- (a) benefits for the holder on or after the termination of the holder's employment with an employer who had, or any of whose associates had, at any time, contributed amounts in the account;
 - (b) benefits for the holder on or after the holder's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged and the cessation is on account of ill-health (whether physical or mental);

Note: These benefits may be provided directly from the RSA or from policies paid for using money from the RSA.

- (c) benefits in respect of the holder on or after the holder's death, if the benefits are provided to the holder's legal personal representative, to any or all of the holder's dependants, or to both and:
 - (i) the death occurred after the holder's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the holder was engaged (whether the holder's retirement occurred before, or occurred after, the account was opened); or
 - (ii) the death occurred after the holder attained the age prescribed for the purposes of paragraph (2)(b);
- (d) such other benefits as the Commissioner approves in writing.

Division 2—Interpretation

16 Definitions

In this Act, unless the contrary intention appears:

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

approved auditor means a person included in a class of persons specified in regulations made for the purposes of this definition, but does not include a person in respect of whom a disqualification order is in force under section 67.

approved deposit fund means a fund that is an approved deposit fund for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

approved form means a form approved by the Commissioner, in writing, for the purposes of the provision in which the expression appears.

associate has the meaning given by section 18.

Australian court means:

- (a) the High Court; or
- (b) a court created by the Parliament; or
- (c) a court of a State or Territory.

AFIC Codes means the following:

- (a) the AFIC (NSW) Code of New South Wales;
- (b) the AFIC (Victoria) Code of Victoria;
- (c) the AFIC (Queensland) Code of Queensland;
- (d) the AFIC (Western Australia) Code of Western Australia;
- (e) the AFIC (South Australia) Code of South Australia;
- (f) the AFIC (Tasmania) Code of Tasmania;
- (g) the AFIC (ACT) Code of the Australian Capital Territory;
- (h) the AFIC (NT) Code of the Northern Territory.

authorised person means an officer of the Australian Public Service authorised by the Commissioner, in writing, for the purposes of the provision in which the expression appears;

bank means a body corporate authorised under Part II of the *Banking Act 1959* to carry on banking business in Australia.

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books includes:

- (a) any record; or
- (b) any accounts or accounting records, however compiled, recorded or stored; or
- (c) a document.

building society means a financial institution that is a building society for the purposes of any of the AFIC Codes.

capital guaranteed has the meaning given by section 14.

Commissioner means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987*, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act.

constitutional corporation means a body corporate that is:

- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution).

contribution includes a deposit into an account held at a bank or financial institution and a payment of a premium to a life insurance company.

Corporations Law means the Corporations Law set out in the *Corporations Act 1989*.

court means any court, when exercising jurisdiction under this Act.

Court means the Federal Court of Australia or the Supreme Court of a State or a Territory.

credit union means a financial institution that is a credit union for the purposes of any of the AFIC Codes.

data processing device means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

dependant has the meaning given by section 20.

director, in relation to a body corporate, has the same meaning as in the Corporations Law.

disclose, in relation to information, means give, reveal or communicate in any way.

eligibility age, in relation to an age pension, means:

- (a) in the case of a man—65 years or, if another age is prescribed by the regulations in place of 65 years, the age so prescribed; or
- (b) in the case of a woman—60 years or, if another age is prescribed by the regulations in place of 60 years, the age so prescribed.

eligible person has the meaning given by section 13.

employee has the meaning given by section 19.

employer has the meaning given by section 19.

executive officer, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body.

expert, in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter.

financial institution means:

- (a) a society or a special services provider for the purposes of any of the AFIC Codes; or
- (b) if any of the AFIC Codes apply to friendly societies—a friendly society for the purposes of any of the AFIC Codes.

function includes duty.

half-year means a period of 6 months ending on 30 June or 31 December.

holder has the meaning given by section 9.

holds has the meaning given by section 9.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936*.

inspector has the meaning given by section 96.

investment means any mode of application of money or other property for the purpose of gaining interest, income or profit.

involved, in relation to a contravention, has the meaning given by section 21.

lawyer means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

legal personal representative means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

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life insurance company means:

- (a) a body corporate registered under the *Life Insurance Act 1995*; or
- (b) a public authority:
 - (i) that is constituted by a law of a State or Territory; and
 - (ii) that carries on life insurance business within the meaning of section 11 of that Act.

lodge means lodge with the Commissioner.

modifications includes additions, omissions and substitutions.

occurrence of an event includes the coming into existence of a state of affairs.

old-age pension has the same meaning as in paragraph 51(xxiii) of the Constitution.

owner, in relation to a policy, has the same meaning as in the *Life Insurance Act 1995*.

pension (except in the expression “old-age pension”) means a benefit, if the benefit is taken, under the regulations, to be a pension for the purposes of this Act.

person affected by a reviewable decision, in relation to a reviewable decision, means the person in relation to which the decision was made.

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

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) any land or place (whether enclosed or built on or not); and
- (c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

premium means a premium in respect of a policy and includes an instalment of premium.

prescribed means prescribed by the regulations.

procure includes cause.

produce includes permit access to.

protected document means a document given or produced to, or obtained by, the Commissioner under or for the purposes of this Act, being a document containing information relating to the affairs of any RSA provider other than information that has already been lawfully made available to the public from other sources.

protected information means information disclosed to, or obtained by, the Commissioner under or for the purposes of this Act, being

information relating to the affairs of any RSA provider other than information that has already been lawfully made available to the public from other sources.

provide has the meaning given by section 10.

provider has the meaning given by section 10.

regulated document, in relation to an RSA provider, means a document:

- (a) issued, or authorised to be issued, by the RSA provider; and
- (b) that the RSA provider knows, or ought reasonably to know (having regard to the RSA provider's abilities, experience, qualifications and other attributes), may influence a person's decision:
 - (i) to apply to become a holder of an RSA; or
 - (ii) to make an application, on behalf of an employee, for the employee to become the holder of an RSA.

regulated exempt public sector superannuation scheme means an exempt public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) in respect of which either of the following applies:

- (a) the trustee of the scheme is a constitutional corporation;
- (b) the sole or primary purpose of the scheme is the provision of old-age pensions.

regulated superannuation fund means a fund that is a regulated superannuation fund for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

relevant person in relation to bodies corporate, means:

- (a) a responsible officer of the RSA provider; or
- (b) an auditor of the RSA provider.

responsible officer, in relation to a body corporate, means:

- (a) a director of the body; or
- (b) a secretary of the body; or
- (c) an executive officer of the body.

retirement savings account has the meaning given by section 8.

reviewable decision means:

- (a) a decision of the Commissioner under subsection 24(2) to treat an application as having been withdrawn; or
- (b) a decision of the Commissioner under subsection 26(2) refusing an application for approval; or

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- (c) a decision of the Commissioner under subsection 26(4) to specify conditions in an instrument of approval; or
- (d) a decision of the Commissioner under subsection 28(4) to treat an application as having been withdrawn; or
- (e) a decision of the Commissioner under section 29 or 30 to vary the approval of an RSA institution; or
- (f) a decision of the Commissioner under section 29 to refuse to vary the approval of an RSA institution; or
- (g) a decision of the Commissioner under section 57 to make a stop order; or
- (h) a decision of the Commissioner under section 59 to revoke a stop order; or
- (i) a decision of the Commissioner to make a disqualification order under section 67; or
- (j) a decision of the Commissioner refusing to revoke a disqualification order under section 67; or
- (k) a decision of the Commissioner under section 174 to make an exemption; or
- (l) a decision of the Commissioner under section 177 to make a declaration; or
- (m) a decision of the Commissioner under section 179 to revoke an exemption or declaration; or
- (n) a decision of the Commissioner to give a direction under section 182; or
- (o) a decision of the Commissioner refusing to revoke a direction under section 182; or
- (p) a decision of the Commissioner under subsection 193(9).

RSA has the meaning given by section 8.

RSA institution has the meaning given by section 11.

RSA provider has the meaning given by section 12.

RSA standards officer means a person who is or has been appointed or employed by the Commonwealth and who, because of that appointment or employment, or in the course of that employment:

- (a) may acquire, or has acquired, protected information; or
- (b) may have, or has had, access to protected documents; otherwise than by reason only of the operation of paragraph 191(7)(h), and includes a person who is or has been:
 - (c) an inspector; or
 - (d) a delegate of the Commissioner under section 193.

statement, in Parts 5 and 7, includes a promise, estimate or forecast.

stop order means an order under section 57.

Superannuation Complaints Tribunal means the Superannuation Complaints Tribunal established by the *Superannuation (Resolution of Complaints) Act 1993*.

superannuation entity means:

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund.

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

taxation officer means a person who is an officer for the purposes of section 16 of the *Income Tax Assessment Act 1936*.

tax file number has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

trustee, in relation to a fund, scheme or trust, means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund, scheme or trust—the trustee; or
- (b) in any other case—the person who manages the fund, scheme or trust.

unclaimed money has the meaning given by section 81.

year of income in relation to a person, means a period that is, for the purposes of the *Income Tax Assessment Act 1936*, a year of income of the person (subsection 6(2A) of that Act applies accordingly).

17 Approvals, determinations etc. by Commissioner

If:

- (a) a provision of this Act refers to an approval given, determination made or other act or thing done by the Commissioner; and
- (b) there is no other provision of this Act expressly authorising the Commissioner to give the approval, make the determination or do the act or thing;

the Commissioner is authorised to give the approval, make the determination or do the act or thing.

Section 18

18 Associates

- (1) The question whether a person is an associate of another person for the purposes of this Act is to be determined in the same way as that question would be determined under the Corporations Law if the assumptions set out in subsection (2) were made.
- (2) The assumptions are as follows:
 - (a) that sections 12 and 14 and paragraphs 15(1)(b) and 16(1)(b) and (c) of the Corporations Law had not been enacted;
 - (b) that section 13 of the Corporations Law were not limited to Chapter 7, but extended to all provisions of the Corporations Law.

19 Definitions of *employee* and *employer*

- (1) Subject to this section, in this Act, *employee* and *employer* have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (10):
 - (a) expand the meaning of those terms; and
 - (b) make particular provision to avoid doubt as to the status of certain persons.
- (2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.
- (3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.
- (4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth.
- (5) A member of the Parliament of a State is an employee of the State.
- (6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.
- (7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.
- (8) For the purposes of this Act:
 - (a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual,

- artistic, musical, physical or other personal skills is an employee of the person liable to make the payment; and
- (b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment; and
 - (c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disk or of any television or radio broadcast is an employee of the person liable to make the payment.
- (9) Subject to subsection (10), a person who:
- (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or
 - (b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);
- is an employee of the Commonwealth, the State or the Territory, as the case requires.
- (10) A person who holds office as a member of a local government council is an employee of the council.

20 Definition of *dependant*

- (1) For the purposes of this Act, *dependant*, in relation to a person, includes the spouse and any child of the person.
- (2) The *spouse*, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.
- (3) Any *child*, in relation to a person, includes a step-child, an ex-nuptial child or an adopted child of the person.
- (4) An *adopted child*, in relation to a person, means a person adopted by that person:
 - (a) under the law of a State or Territory relating to the adoption of children; or
 - (b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or Territory.

Section 21

21 Persons involved in contravention

For the purposes of this Act, a person is involved in a contravention if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention;
or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Part 3—Approval of RSA institutions

22 Object of Part

- (1) The object of this Part is to provide for constitutional corporations that can be relied on to conduct RSAs in accordance with this Act and the regulations to be approved as RSA institutions for the purposes of this Act and to provide for the variation, suspension and revocation of those approvals.
- (2) The significance of the approval of RSA institutions is that only RSA institutions can offer RSAs.

Note: In certain circumstances, an entity may cease to be approved as an RSA institution. Many provisions of this Act may continue to apply to that entity.

23 Application for approval

- (1) A constitutional corporation that is a bank, building society, credit union, life insurance company or prescribed financial institution may apply to the Commissioner for approval as an RSA institution for the purposes of this Act.
- (2) An application must:
 - (a) be in the approved form; and
 - (b) contain the information required by the form; and
 - (c) be accompanied by an application fee of the prescribed amount.

Note: The approved form of application may require the applicant to set out the applicant's tax file number. See subsection 144(1).

24 Further information may be requested

- (1) If the Commissioner needs further information to decide the application for approval, the Commissioner may request the applicant, in writing, to supply the Commissioner with such further information as is specified in the request within such time as is specified in the request.
- (2) If, without reasonable excuse, the applicant refuses or fails to comply with the request, the Commissioner may decide to treat the application as having been withdrawn.

Section 25

- (3) If the Commissioner decides, under subsection (2), to treat the application as having been withdrawn, the Commissioner must, as soon as practicable after so deciding, inform the applicant in writing to that effect.

25 Period within which application for approval is to be decided

- (1) Subject to this section, the Commissioner must decide an application for approval within 60 days after receiving it.
- (2) If the Commissioner thinks that it will take longer to decide the application, the Commissioner may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 60 days after the Commissioner receives the application.
- (4) If the Commissioner makes an extension, the Commissioner must decide the application within the extended period.
- (5) If the Commissioner has not decided the application by the end of the day by which the Commissioner is required to decide it, the Commissioner is taken to have decided, at the end of that day, to approve the application.

26 Deciding an application for approval

- (1) If an application that satisfies section 23 is made, the Commissioner must, in writing, approve an applicant as an RSA institution for the purposes of this Act unless the Commissioner is satisfied that the applicant cannot be relied on to conduct RSAs in accordance with this Act and the regulations.
- (2) The Commissioner must consult with the prescribed regulatory agency, if any, before he or she can be satisfied that the applicant cannot be relied on to conduct RSAs in accordance with this Act and the regulations.
- (3) If the Commissioner is so satisfied, he or she must, in writing, refuse the application.
- (4) The approval is subject to any conditions specified in the instrument of approval.
- (5) If the Commissioner refuses the application, the Commissioner must set out the reasons for the refusal in the instrument of refusal.

- (6) The Commissioner must cause the applicant to be given a copy of the instrument of approval or refusal.

27 When an approval is in force

An approval under section 26:

- (a) comes into force when it is granted, or, if a later time is specified in the instrument of approval as the time when the approval comes into force, at that later time; and
- (b) remains in force, subject to any variation under section 29 or 30, until it is revoked under section 33.

28 Application for variation of an approval

- (1) An RSA institution may apply to the Commissioner for variation of the approval by requesting a variation of any conditions to which the approval is subject.
- (2) An application must:
 - (a) be made in writing; and
 - (b) specify the variation requested by the RSA institution; and
 - (c) set out the reasons for the application; and
 - (d) be signed by a responsible officer of the RSA institution.
- (3) If the Commissioner needs further information to decide an application, the Commissioner may request the RSA institution, in writing, to supply the Commissioner with such further information as is specified in the request within such time as is specified in the request.
- (4) If, without reasonable excuse, the RSA institution refuses or fails to comply with the request, the Commissioner may decide to treat the application as having been withdrawn.
- (5) If the Commissioner decides, under subsection (4), to treat the application as having been withdrawn, the Commissioner must, as soon as practicable after so deciding, inform the RSA institution in writing to that effect.

29 An application must be decided within a period of time

- (1) Subject to this section, the Commissioner must decide an application for variation of the approval of an RSA institution within 60 days after receiving it.
- (2) The Commissioner is not required to vary the approval of an RSA institution in the terms requested by the RSA institution.

Section 30

- (3) If the Commissioner thinks that it will take longer than 60 days to decide the application, the Commissioner may extend the period for deciding it by no more than 60 days.
- (4) An extension must be notified in writing to the RSA institution within 60 days after the Commissioner receives the application.
- (5) If the Commissioner makes an extension, the Commissioner must decide the application within the extended period.
- (6) If the Commissioner has not decided the application by the end of the day by which the Commissioner is required to decide it, the Commissioner is taken to have decided, at the end of that day, to refuse the application.

30 Commissioner may vary an approval on his or her own initiative

The Commissioner may, on his or her own initiative, vary the approval of an RSA institution by varying any conditions to which the approval is subject.

31 Notifying the RSA institution of the outcome of an application

- (1) If, under section 29 or 30, the Commissioner decides to vary the approval of an RSA institution, the Commissioner must:
 - (a) by notice in writing, vary the approval; and
 - (b) give a copy of that notice, and a statement of the reasons for the variation, to the RSA institution.
- (2) A notice varying an approval must:
 - (a) identify the approval being varied; and
 - (b) specify the day, not earlier than the day on which the notice of variation is made, when the variation begins; and
 - (c) specify any conditions to which the approval of the RSA institution is subject after the variation begins.
- (3) If, under section 29, the Commissioner decides to refuse to vary the approval of an RSA institution, the Commissioner must:
 - (a) by notice in writing, record that he or she has so decided; and
 - (b) give a copy of that notice, and a statement of the reasons for the refusal to vary the approval, to the RSA institution.

32 When a variation of approval comes into force

If, under section 29 or 30, the Commissioner decides to vary an approval of an RSA institution:

- (a) that variation comes into force on the day specified in the notice under paragraph 31(2)(b); and
- (b) the variation remains in force until the revocation of the approval to which it relates or the coming into force of a later variation of that approval.

33 Suspension or revocation of approval

- (1) The Commissioner may suspend or revoke the approval of an RSA institution by written notice given to the RSA institution.
- (2) Without limiting subsection (1), the Commissioner may suspend or revoke an approval under that subsection if the Commissioner is satisfied, on reasonable grounds, that:
 - (a) the RSA institution has requested in writing that the approval be suspended or revoked; or
 - (b) the RSA institution ceases to be a bank, building society, credit union, life insurance company or prescribed financial institution; or
 - (c) there has been a contravention of any condition to which the approval is subject; or
 - (d) the RSA institution can no longer be relied on to conduct RSAs in compliance with this Act and the regulations.
- (3) Except in a case covered by paragraph (2)(a), the Commissioner must not make a decision under subsection (1) without consulting with the prescribed regulatory agency, if any, and obtaining the written consent of the Minister.
- (4) The Commissioner may lift a suspension of an approval of an RSA institution by written notice given to the RSA institution.

34 Consequences of suspension or revocation

- (1) If the approval of an RSA institution is suspended or revoked:
 - (a) the RSA provider must, within the prescribed period, notify the holder of each RSA, and any employer who makes contributions to those RSAs, that the approval has been suspended or revoked; and
 - (b) the RSA provider must not accept any additional contributions to existing RSAs unless, and until, the suspension is lifted or the RSA provider is later approved as an RSA institution.

Section 35

Note: It is not possible for the entity to allow any person to become the holder of a new RSA because it ceases to be an RSA institution. See paragraph 8(b) and subsection 11(1).

- (2) Despite the suspension or revocation of an approval, RSAs that were being provided by that entity immediately before the suspension or revocation continue to be RSAs.

Note: Many provisions of this Act apply to an entity that was formerly an RSA institution, despite the suspension or revocation of an approval.

Offence of contravening subsection (1)

- (3) An RSA provider must not, without reasonable excuse, contravene subsection (1).

Penalty: 250 penalty units.

Refund of contributions

- (4) Accepting a contribution in contravention of subsection (1) does not result in the invalidity of a transaction. However, the RSA provider must refund the contribution within 28 days or such further period as the Commissioner allows.

Note: Some amounts that are given to an RSA provider will not be accepted as a contribution but will be held and dealt with in the manner prescribed by the regulations. See section 61.

Offence of contravening subsection (4)

- (5) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.
- (6) For the purposes of the Income Tax Assessment Act and the *Superannuation Guarantee (Administration) Act 1992*, if a contribution is refunded under this section, the contribution is taken never to have been made.

35 Notification of breach of conditions

- (1) An RSA institution must, as soon as practicable, and in any event within 30 days, after becoming aware of a contravention of a condition to which the approval of the RSA institution is subject, give the Commissioner a written notice setting out particulars of the contravention.

- (2) An RSA institution must not, without reasonable excuse, contravene subsection (1).

Penalty: 250 penalty units.

36 Interpretation

A reference in section 28, 29, 30, 31, 32, 33, 34 or 35 to an approval includes a reference to an approval as varied under section 29 or 30.

Section 37

Part 4—Operating standards etc. and annual returns for RSAs

37 Object of Part

The object of this Part is to provide for a system of prescribed standards and specific rules applicable to the operation of RSAs and to require RSA providers to provide an annual return to the Commissioner.

38 Operating standards for RSAs

- (1) The regulations may prescribe standards applicable to the operation of RSAs.
- (2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:
 - (a) the persons who may hold RSAs;
 - (b) the circumstances in which an RSA institution may accept contributions to an RSA;
 - (c) the minimum benefits to be provided by RSAs;
 - (d) the form in which benefits may be provided by RSA providers;
 - (e) the preservation of certain benefits arising directly or indirectly from amounts contributed to RSAs;
 - (f) the payment by RSA providers of benefits arising directly or indirectly from amounts contributed to RSAs;
 - (g) the payment by RSA providers of death benefits;
 - (h) the portability of benefits arising directly or indirectly from amounts contributed to RSAs;
 - (i) the fees that may be charged for the provision of RSAs;
 - (j) the keeping and retention of records in relation to RSAs;
 - (k) the disclosure of information to holders of RSAs;
 - (l) the disclosure of information about RSAs to the Commissioner;
 - (m) the disclosure of information about RSAs to persons other than holders of RSAs or the Commissioner;
 - (n) compliance, by RSA providers, with determinations of the Superannuation Complaints Tribunal.

- (3) Regulations made in accordance with paragraph (2)(i) must further the objective of ensuring that RSAs are a low-cost product.

39 Prescribed operating standards must be complied with

Standards must be complied with

- (1) An RSA provider must ensure that the prescribed standards applicable to the operation of the RSA provider are complied with at all times.

Offence

- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

Validity of transaction not affected by contravention of subsection (1)

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

40 Interest off-set arrangements etc. not permitted

- (1) An RSA provider must not enter into any interest off-set arrangements or combination account arrangements where one of the accounts involved is an RSA.

Penalty: 100 penalty units.

- (2) A contravention of subclause (1) does not affect the validity of a transaction to the extent that the transaction relates to an account other than an RSA.

41 Certain uses of RSAs prohibited

- (1) Any term or condition in a contract or other agreement providing for a charge over, or in relation to, an RSA is of no effect.
- (2) Benefits provided under an RSA in relation to an RSA cannot be assigned.
- (3) An RSA provider must not recognise, or in any way encourage or sanction, a charge over an RSA or an assignment of benefits provided under an RSA.

Section 42

- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.
- (5) For the purposes of subsections (1) and (3), a charge includes the placing of mortgage, lien or other encumbrance on the RSA.

42 RSA provider not to breach capital guarantee

An RSA provider must not:

- (a) reduce the balance of an RSA that is an account by the crediting of any negative interest; or
- (b) reduce the contributions or accumulated earnings of an RSA that is a policy by negative investment returns or any reduction in the value of assets in which the policy is invested.

Penalty: 100 penalty units.

43 Civil liability where section 42 contravened

- (1) Subject to subsection (2), if a person (the *plaintiff*) suffers loss or damage because of a contravention of section 42 by another person (the *primary defendant*), the plaintiff may recover the amount of the loss or damage by action against:
 - (a) the primary defendant; or
 - (b) a person involved in the contravention.
- (2) The action may be begun even if the defendant has been convicted of an offence in respect of the conduct constituting the contravention.
- (3) The action must be begun within 6 years after the day on which the cause of action arose.
- (4) This section does not affect any liability that the defendant or another person has under any other provision of this Act or under any other law.

44 RSA provider to lodge annual returns

Lodgment

- (1) An RSA provider must, within the prescribed period after each year of income, give to the Commissioner:

- (a) a return, in the approved form, containing such information as is required by that form in relation to the RSA provider in respect of that year of income; and

Note: The approved form of return may require the RSA provider to set out the tax file number of the RSA provider. See subsection 144(2).

- (b) a certificate, in the approved form, by the RSA provider in respect of that year of income; and
- (c) a copy of the report given to the RSA provider by an approved auditor under Part 6 in relation to the RSA provider in respect of that year of income, certified to be a true copy of the report by a responsible officer of the RSA provider.

Offence

- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Electronic returns

- (3) An approval given by the Commissioner of a form of return for the purposes of paragraph (1)(a) may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

Endorsement of certificate or report

- (4) If the return is not given on a data processing device, or by way of electronic transmission, the certificate referred to in paragraph (1)(b) or the report referred to in paragraph (1)(c) may be endorsed on the return.

Part 5—Duties etc. of RSA providers and employers

Division 1—Preliminary

45 Object of Part

- (1) The objects of this Part are:
 - (a) to impose special duties on RSA providers; and
 - (b) to ensure that holders of RSAs and employers who apply, on behalf of employees, for the employees to become the holders of RSAs, and prospective holders and employers who may make such applications, are treated fairly and honestly and are adequately informed.
- (2) To that end, this Part contains:
 - (a) provisions imposing special duties on RSA providers (Division 2); and
 - (b) provisions requiring certain documents to be provided to people before they open RSAs (Divisions 3 and 4); and
 - (c) provisions allowing the Commissioner to prevent RSA institutions from opening new RSAs in certain circumstances (Division 5); and
 - (d) provisions imposing requirements in relation to money received in respect of certain applications (Division 6); and
 - (e) provisions providing for a cooling-off period in certain circumstances (Division 7).

46 Contravention of Part does not affect validity of a transaction or any other act

A contravention of this Part does not affect the validity of a transaction or any other act.

Division 2—Duties of RSA providers

47 Duty to establish arrangements for dealing with inquiries or complaints

- (1) An RSA provider must take all reasonable steps to ensure that there are at all times in force arrangements under which:
 - (a) a holder, or former holder, of an RSA; or
 - (b) the executor or administrator of the estate of a former holder of an RSA;

has the right to make an inquiry into, or a complaint about, the operation or management of the RSA, and that the inquiry or complaint will be properly considered and dealt with within 90 days after it was made.

Note: The *Superannuation (Resolution of Complaints) Act 1993* deals with situations where complaints are not resolved by the RSA provider.

- (2) Without limiting the generality of subsection (1), any person may make an inquiry into, or a complaint about, a decision of the RSA provider that relates to the payment of a death benefit if:
 - (a) the person has an interest in the death benefit; or
 - (b) the person claims to be, or to be entitled to death benefits through, a person referred to in paragraph (a).
- (3) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

48 Duty to keep minutes and records

- (1) An RSA provider must keep, and retain for at least 10 years, minutes of all matters that relate to decisions of the RSA provider in relation to the operation of this Act and the regulations that are discussed at meetings of the RSA provider.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

49 Duty to keep reports

- (1) An RSA provider must:
 - (a) keep, and retain so long as they are relevant and in any event for at least 10 years, copies of reports that were given in the

Section 50

same form (apart from differences relating to the names and addresses of the persons to whom the notices were given) to all RSA holders, or to all holders included in a particular class of holders, if the reports were given under this Act or under terms and conditions of the RSA; and

- (b) make those copies available for inspection by a member of the staff of the Commissioner if requested to do so by a member of that staff.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

50 Duty to transfer balance of RSA

- (1) An RSA provider must, if requested to do so by the holder of an RSA, transfer the amount of the RSA to:
 - (a) another RSA provided by an RSA institution; or
 - (b) a superannuation entity or regulated exempt public sector superannuation scheme; or
 - (c) a deferred annuity.
- (2) The RSA provider must transfer the amount of the RSA:
 - (a) if the contract or agreement for the provision of the RSA specifies a period, within the period so specified; or
 - (b) as soon as practicable;but in any case within 12 months, after the receipt of the written request.
- (3) The amount of the RSA is worked out in accordance with the regulations.
- (4) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Division 3—Offering RSAs and applications for RSAs

51 Application forms

- (1) An RSA institution must not, intentionally or recklessly, allow a person to become a holder of an RSA unless the person who will be the holder of the RSA, or the employer of that person, has made an eligible application or has applied in prescribed circumstances.

Penalty: 100 penalty units.

- (2) An application is an *eligible application* if:
 - (a) the application was made in writing on a form made available by or on behalf of the RSA institution; and
 - (b) the form is in accordance with the requirements (if any) specified in a determination made under subsection (3); and
 - (c) if the application is made by the person who will be the holder—when the person received the form, the person also received such additional information (if any) and such additional documents (if any) as are required by a determination made under subsection (3); and
 - (d) if the application is made by the employer and the employer has not previously made such an application to the RSA institution on behalf of any employee—when the employer received the form, the employer had also received such additional information (if any) and such additional documents (if any) as are required by a determination made under subsection (3).
- (3) The Commissioner may make a written determination for the purposes of subsection (2).
- (4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

52 Employers must provide employees with alternative options

- (1) This section sets out the procedures that an employer must go through:
 - (a) if the employer gives an application form for an RSA to an employee; or
 - (b) before an employer makes an application for an RSA on behalf of an employee.

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- (2) An employer who gives an application form for an RSA to an employee must, at the same time, give the employee:
- (a) any prescribed information about that RSA; and
 - (b) if the employee is paid by means of electronic funds transfer to a financial institution that is an RSA institution—an application form for an RSA provided by that RSA institution; and
 - (c) if there is an industry-based regulated superannuation fund that the employee is eligible to join—an application form for that industry fund; and
 - (d) if there is no industry-based regulated superannuation fund that the employee is eligible to join—an application form for a regulated superannuation fund; and
 - (e) a written notice stating that, unless the employer is currently making contributions for the benefit of the employee to another RSA or to a regulated superannuation fund, the employer may make an application for the RSA on behalf of the employee if the employee does not, within 28 days:
 - (i) make an application for the RSA, for another RSA, or to become a member of a regulated superannuation fund;
or
 - (ii) give the employer a written notice electing to become the holder of the RSA, the holder of another RSA or a member of a specified regulated superannuation fund.
- (3) An employer must not make an application, on behalf of any particular employee, for an RSA unless the conditions in subsection (4) or (5) are satisfied.
- (4) The conditions in this subsection for an employer to be able to make an application, on behalf of any particular employee, for an RSA are that:
- (a) the employer has given the employee an application form for the RSA together with the other documents specified in subsection (2); and
 - (b) the 28 day period referred to in paragraph (2)(e) has ended; and
 - (c) the employee has not made an application for the RSA, for another RSA, or to become a member of a regulated superannuation fund; and
 - (d) the employee has not given the employer a written notice electing to become the holder of the RSA, the holder of

another RSA or a member of a specified regulated superannuation fund; and

- (e) the employer is not making contributions for the benefit of the employee to another RSA or to a regulated superannuation fund.
- (5) The conditions in this subsection for an employer to be able to make an application, on behalf of any particular employee, for an RSA (the *nominated RSA*) are that:
- (a) the employer has given the employee an application form for an RSA (which may be the nominated RSA or another RSA) together with the other documents specified in subsection (2); and
- (b) the employee has given the employer a written notice electing to become the holder of the nominated RSA.
- (6) An employer who intentionally or recklessly contravenes subsection (2) or (3) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (7) Where an employee has become the holder of an RSA as a result of:
- (a) an application that was made using an application form provided by the employee's employer in contravention of subsection (2); or
- (b) as a result of an application that was made by the employee's employer in contravention of subsection (3);
- the RSA provider must, at the request of the employee, transfer the balance in the RSA to another RSA, or a superannuation entity, specified by the employee. The request must be made within 6 months of the RSA being opened. The balance must be transferred as soon as is practicable. No exit fees may be imposed.
- (8) An RSA provider who intentionally or recklessly contravenes subsection (7) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Division 4—Provisions relating to information given to prospective RSA holders

53 Information to be given to a person before becoming an RSA holder

- (1) Subject to subsections (2), (3) and (4), an RSA institution must not, intentionally or recklessly, allow a person to become the holder of an RSA unless the RSA institution is satisfied, on reasonable grounds, that the person has received documents issued, or authorised to be issued, by the RSA institution that:
 - (a) contain all the information that the regulations referred to in section 56 require to be given to the person; and
 - (b) comply with the formal requirements specified in those regulations.

Penalty: 100 penalty units.

- (2) Despite subsection (1), the RSA institution does not have to be satisfied that the person has received information that relates to an event or change of circumstances that happened after the RSA institution received the application to become an RSA holder.
- (3) Subsection (1) does not apply if the application is made by an employer on behalf of an employee and the RSA provider is satisfied, on reasonable grounds, that section 52 has been complied with.
- (4) Subsection (1) does not apply if the RSA is provided in circumstances specified in the regulations.

54 Information to be given to employers who apply for RSAs on behalf of employees

- (1) An RSA institution must ensure that an employer who makes an application, on behalf of an employee, for an RSA for the employee, has received documents issued, or authorised to be issued, by the RSA institution that:
 - (a) contain all the information that the regulations referred to in section 56 require to be given to the employer; and
 - (b) comply with the formal requirements specified in those regulations;

unless the employer received such material from the RSA institution in respect of another application made to the RSA institution.

- (2) Despite subsection (1), the RSA institution does not have to be satisfied that the person has received information that relates to an event or change of circumstances that happened after the RSA institution first received an application from that employer.
- (3) Subsection (1) does not apply if the person makes an application in circumstances specified in the regulations.
- (4) An RSA provider who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

55 Documents to be given to employees

- (1) If a person becomes the holder of an RSA as the result of an application referred to in subsection 54(1), the RSA provider must, as soon as practicable after first providing the RSA, provide the prescribed information to the RSA holder.
- (2) An RSA provider who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

56 Regulations requiring the giving of information

- (1) For the purposes of sections 52, 53 and 54, the regulations may:
 - (a) require that particular information is to be given to persons; and
 - (b) specify formal requirements that documents used to give information to persons must comply with.
- (2) In this section:
formal requirements includes, for example, requirements about layout or type size.

Division 5—Stop orders

57 Order to stop contracts etc. for provision of new RSAs

If it appears to the Commissioner that there is a material statement in a regulated document that is false or misleading in relation to an RSA provider, the Commissioner may, by written order (a *stop order*) given to the RSA provider, direct that no contract or agreement for the provision of RSAs by the RSA provider may be entered into while the stop order is in force.

58 When a stop order is in force

A stop order:

- (a) comes into force when it is made, or, if a later time is specified in the order as the time when the order comes into force, at that later time; and
- (b) remains in force until it is revoked under section 59.

59 Revocation of stop order

The Commissioner may, in writing, revoke a stop order if the Commissioner is satisfied, for whatever reason, that the stop order should no longer have effect.

60 Effect of stop order

While a stop order is in force in relation to an RSA provider, the RSA provider must not, intentionally or recklessly, enter into a contract or agreement for provision of an RSA by the RSA provider.

Penalty: Imprisonment for 2 years.

Division 6—How certain money to be held

61 RSA provider to comply with requirements of the regulations in relation to certain money

- (1) This section applies if:
 - (a) an RSA provider receives an amount of money from a person (the *applicant*) in respect of an application (or a purported application) for an RSA; and
 - (b) for whatever reason (for example, because the application has not been received) an RSA is not provided immediately after receiving the money.
- (2) This section also applies if:
 - (a) an RSA provider receives an amount of money from a person (the *employer*); and
 - (b) the amount is intended as a contribution to an RSA; and
 - (c) the employer is the employer of the holder of the RSA; and
 - (d) if the amount were accepted as a contribution, the RSA provider would contravene section 34 or 182.
- (3) The RSA provider must comply with the requirements of the regulations in relation to how the money is to be held and is to be dealt with (including, for example, requirements about payment to a person of the money and any interest that has accrued).
- (4) The RSA provider must not, intentionally or recklessly, contravene subsection (3).

Penalty: Imprisonment for 1 year.

Division 7—Cooling-off period

62 Cooling-off period where employer applies for RSA

- (1) This section applies where an RSA is provided as the result of an application by an employer on behalf of an employee.
- (2) The employee may, at any time before the end of 14 days after the employee receives the documents in accordance with section 55, give the RSA provider written notice that he or she wants to close the RSA and requires the balance to be transferred to another RSA provided by an RSA institution, or a superannuation entity, specified in the notice.
- (3) If an RSA provider receives a notice under subsection (2), the RSA provider must, as soon as practicable, and in any case within 28 days, comply with the request.
- (4) The balance to be transferred is the sum of all amounts contributed to the RSA reduced only by any amounts of taxation paid, or that the RSA provider will have to pay, in respect of those amounts. No fees may be deducted.
- (5) The RSA provider must not, intentionally or recklessly, contravene subsection (3).

Penalty: Imprisonment for 1 year.

Part 6—Records, audits and auditors

63 Object of Part

The object of this Part is to set out rules about the records, audits and auditors of RSA providers.

64 Records

- (1) An RSA provider must keep such records as correctly record and explain the transactions related to RSAs provided by the RSA provider and must:
 - (a) retain the records for at least 5 years after the end of the year of income to which the transactions relate; and
 - (b) cause the records to be kept in Australia; and
 - (c) keep the records in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language.
- (2) Records kept by the RSA provider must be sufficient to enable the RSA provider to prepare returns in accordance with section 44.
- (3) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

65 Audit of records

- (1) An RSA provider must make such arrangements as are necessary to enable an approved auditor to give the RSA provider, within the prescribed period after the end of each year of income, a report in the approved form on the degree of compliance by the RSA provider with the provisions of this Act and the regulations specified in the form.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for 2 years.
- (3) Without limiting the generality of subsection (1), an approved form must include a statement by the auditor as to whether, in the opinion of the auditor, the RSA provider has complied with the provisions of this Act and the regulations, specified in the form, during that year of income.

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- (4) The auditor must give the report to the RSA provider within the period referred to in subsection (1).
- (5) A person who intentionally or recklessly contravenes subsection (4) is guilty of an offence punishable on conviction by imprisonment for 6 months.

66 Obligations of auditors—compliance

When section applies

- (1) This section applies to a person in relation to an RSA provider if:
 - (a) the person forms the opinion that it is likely that a contravention of this Act or the regulations may have occurred, may be occurring, or may occur, in relation to the RSA provider; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of audit functions under this Act or the regulations in relation to the RSA provider.

Section does not apply if the person believes that his or her opinion is not relevant to the performance of audit functions

- (2) This section does not apply to the person if the person has an honest belief that the opinion is not relevant to the performance of those functions.

RSA provider to be told about the contravention

- (3) Subject to subsection (4), the person must tell the RSA provider about the matter in writing.

The person may not have to tell the RSA provider about the contravention

- (4) The person does not have to tell the RSA provider about the matter if:
 - (a) the person has been told by another person who is subject to this section that:
 - (i) that other person has already told the RSA provider about the matter; and
 - (ii) that other person has also told the Commissioner about the matter or has given the RSA provider a written notice under subsection (7); and

- (b) the first-mentioned person has no reason to disbelieve that other person.

Penalty for misleading information

- (5) If:
- (a) this section applies to a person; and
 - (b) that person is aware of a matter that must, under this section, be told to the RSA provider; and
 - (c) the person knowingly tells another person that he or she has taken the action described in subparagraphs (4)(a)(i) and (ii) when the person has not taken that action;
- the person is guilty of an offence against this subsection.

Penalty: Imprisonment for 12 months.

Commissioner may be told

- (6) The person may tell the Commissioner about the matter. The person is not liable in a civil action or civil proceeding in relation to the telling.

RSA provider's report

- (7) If a person:
- (a) tells the RSA provider about the matter; and
 - (b) does not tell the Commissioner about the matter;
- the person must, as soon as practicable, give the RSA provider a written notice requesting the RSA provider to give the person, before the end of the period specified in the notice, a written report about the action (if any) the RSA provider has taken, or proposes to take, to deal with the matter. The period specified in the notice must be reasonable. The RSA provider must comply with the request.

Report to Commissioner

- (8) If a person makes such a request, and either:
- (a) the RSA provider does not comply with the request; or
 - (b) the RSA provider complies with the request, but the person is dissatisfied with:
 - (i) the action taken, or proposed to be taken, by the RSA provider to deal with the matter concerned; or
 - (ii) the inaction of the RSA provider in relation to the matter concerned;

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the person must give the Commissioner a written report about the matter as soon as practicable after:

- (c) if paragraph (a) applies—the expiry of the deadline for the receipt of the report; or
- (d) if paragraph (b) applies—the person becomes dissatisfied as mentioned in that paragraph.

Offence

- (9) A person who intentionally or recklessly contravenes subsection (3), (7) or (8) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

67 Auditors—disqualification orders

Disqualification order

- (1) The Commissioner may make a written order (the *disqualification order*) disqualifying a person from being an approved auditor for the purposes of this Act if:
 - (a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor under this Act or the regulations; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
 - (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations; or
 - (b) the person is otherwise not a fit and proper person to be an approved auditor for the purposes of this Act.

Date of effect

- (2) The disqualification order takes effect on the day specified in the order. The specified day must be within the 28 day period beginning on the day on which the order was made.

Notification

- (3) The Commissioner must give a copy of the order to the person.

Gazettal

- (4) The Commissioner must cause to be published in the *Gazette* particulars of:

- (a) the disqualification order; and
- (b) any action taken under section 189 of this Act, or under the *Administrative Appeals Tribunal Act 1975*, in relation to the decision to make the order.

Revocation

- (5) The Commissioner may revoke a disqualification order. The Commissioner's power to revoke may be exercised:
 - (a) on the Commissioner's own initiative; or
 - (b) on written application made by the disqualified person.

Revocation—decision on application

- (6) If an application is made for the revocation of a disqualification order, the Commissioner must decide to:
 - (a) revoke the order; or
 - (b) refuse to revoke the order.

Revocation—grounds

- (7) The Commissioner must not revoke a disqualification order unless the Commissioner is satisfied that the person concerned:
 - (a) is likely to carry out and perform adequately and properly the duties of an auditor under this Act or the regulations; and
 - (b) is otherwise a fit and proper person to be an approved auditor for the purposes of this Act.

Revocation—date of effect

- (8) A revocation of a disqualification order takes effect on the day the revocation is made.

Reasons for revocation

- (9) If the Commissioner decides to refuse an application for revocation of a disqualification order, the Commissioner must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

Gazettal

- (10) The Commissioner must cause to be published in the *Gazette* particulars of the revocation of a disqualification order.

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68 Commissioner may refer matters to a professional association

- (1) If the Commissioner is of the opinion that an approved auditor:
 - (a) has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor under this Act or the regulations; or
 - (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
 - (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations; or
 - (b) is otherwise not a fit and proper person to be an approved auditor for the purposes of this Act;the Commissioner:
 - (c) may refer the details of the matter to the persons specified in subsection (2); and
 - (d) if the Commissioner does so—must inform the person to whom the details are referred of the person's obligations under subsection 191(12).
- (2) The persons specified in relation to an approved auditor for the purposes of subsection (1) are those members of the auditor's professional association whom the Commissioner believes will be involved:
 - (a) in deciding whether the professional association should take any disciplinary or other action against the auditor in respect of the matter referred; or
 - (b) in taking that action.
- (3) The power of the Commissioner under subsection (1) may be exercised whether or not the Commissioner has made a written order disqualifying the auditor under subsection 67(1).
- (4) If, under this section, the Commissioner refers details of a matter involving an approved auditor, the Commissioner must, as soon as practicable but, in any event, not later than 7 days after the referral, by notice in writing given to the auditor, inform the auditor:
 - (a) of the fact that a matter has been referred under subsection (1); and
 - (b) of the nature of the matter so referred.

Part 7—Prohibited conduct in relation to RSAs

69 Object of Part

- (1) The object of this Part is to prohibit false, improper and misleading conduct in relation to RSAs.
- (2) To that end, this Part contains provisions about:
 - (a) criminal liability arising from certain conduct relating to RSAs (sections 70 and 71); and
 - (b) civil liability arising from certain conduct relating to RSAs (sections 70, 72, 73, 74 and 78).

70 Regulated acts

For the purposes of sections 71 and 72, the following are regulated acts:

- (a) applying to become a holder of an RSA;
- (b) applying, on behalf of an employee, for the employee to become the holder of an RSA;
- (c) opening an RSA or accepting a contribution, or other payment, to an RSA;
- (d) publishing or broadcasting a statement or advertisement in relation to an RSA;
- (e) issuing a regulated document in relation to an RSA;
- (f) making payments out of, or providing benefits in relation to, an RSA;
- (g) doing anything preparatory to, or in any other way related to, an act mentioned in any of the above paragraphs.

71 Fraudulently inducing a person to engage in a regulated act—criminal liability

A person must not:

- (a) by making, publishing or broadcasting a statement or advertisement that the person knows to be false or misleading; or
- (b) by dishonestly concealing or withholding material facts; or
- (c) by recording or storing in, or by means of, any mechanical, electronic or other device, information that the person knows to be:

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- (i) false in a material particular; or
 - (ii) materially misleading;
- intentionally induce another person to engage in a regulated act.

Penalty: Imprisonment for 5 years.

72 Misleading conduct in connection with a regulated act—civil liability

- (1) A person must not, in connection with the performance by the person of a regulated act, engage in conduct that is:
 - (a) misleading; or
 - (b) likely to mislead.
- (2) A contravention of subsection (1) is not an offence, but it may give rise to civil liability under section 74.
- (3) The generality of subsection (1) is not limited by any other provision of this Act.

73 Misleading conduct by RSA providers—civil liability

- (1) This section applies if an RSA provider is dealing with:
 - (a) a holder of an RSA as such a holder; or
 - (b) an employer, or an associate of an employer, who makes an application, on behalf of an employee of the employer, for the employee to become the holder of an RSA, as such an employer.
- (2) When so dealing with the holder of the RSA, the employer or the associate, the RSA provider must not engage in conduct that is:
 - (a) misleading; or
 - (b) likely to mislead.
- (3) A contravention of subsection (2) is not an offence, but it may give rise to civil liability under section 74.

74 Civil liability where section 72, 73 or 78 contravened

- (1) Subject to subsection (2), if a person (the *plaintiff*) suffers loss or damage because of a contravention of section 72, 73 or 78 by another person (the *primary defendant*), the plaintiff may recover the amount of the loss or damage by action against:
 - (a) the primary defendant; or
 - (b) a person involved in the contravention.

- (2) The person must not begin an action under this section in respect of the contravention if the person could, instead, bring an action under section 76 in respect of the conduct constituting the contravention.
- (3) The action may be begun even if the defendant has been convicted of an offence in respect of the conduct constituting the contravention.
- (4) The action must be begun within 6 years after the day on which the cause of action arose.
- (5) This section does not affect any liability that the defendant or another person has under any other provision of this Act or under any other law.

75 Regulated documents not to be false or misleading—criminal liability

An RSA provider must not, intentionally or recklessly, issue, or authorise the issue of, a regulated document in relation to the RSA if the RSA provider knows that the document contains a material statement that is false or misleading.

Penalty: Imprisonment for 5 years.

76 Regulated documents not to be false or misleading—civil liability

- (1) An RSA provider must not issue, or authorise the issue of, a regulated document in relation to the RSA provider in which there is a material statement that is false or misleading.
- (2) If:
 - (a) an RSA provider contravenes subsection (1); and
 - (b) a person suffers loss or damage because of the contravention;the person may recover the amount of the loss or damage by action against the RSA provider.
- (3) The action may be begun even if the RSA provider has been convicted of an offence in respect of the conduct constituting the contravention.
- (4) The action must be begun within 6 years after the day on which the cause of action arose.
- (5) It is a defence to the action if the RSA provider proves that, before the person suffered the loss or damage, the person knew that the statement was false or misleading.

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- (6) This section does not affect any liability under any other provision of this Act or under any other law.

77 Statements by experts

- (1) An RSA provider must not, intentionally or recklessly, issue, or authorise the issue of, a regulated document in relation to the RSA provider that includes a statement made by, or purporting to be based on a statement made by, an expert, unless:
- (a) the expert has given written consent to the issue of the document with the statement included in the form and context in which it is included; and
 - (b) that consent has not been withdrawn before the issue of the document.

Penalty: Imprisonment for 6 months.

- (2) An RSA provider must not, without reasonable excuse, fail to keep the consent, or a copy of it, for the period, and in the manner, required by the regulations.

Penalty: 10 penalty units.

78 Improper conduct in the provision of RSAs

- (1) An RSA provider, or an associate of an RSA provider, must not:
- (a) supply, or offer to supply, goods or services to a person; or
 - (b) supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;
- on the condition that one or more of the employees of the person will hold, or has applied or agreed to hold, an RSA provided by the RSA provider.
- (2) An RSA provider, or an associate of an RSA provider, must not refuse:
- (a) to supply, or offer to supply, goods or services to a person; or
 - (b) to supply, or offer to supply, goods or services to a person at a particular price; or
 - (c) to give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;

for the reason that one or more of the employees of the person does not hold, or has not applied or agreed to hold, an RSA provided by the RSA provider.

- (3) A contravention of subsection (1) or (2) is not an offence, but it does give rise to civil liability under section 74.

79 Contravention of Part does not affect validity of transactions etc.

A contravention of this Part does not affect the validity of any transaction or of any other act.

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Part 8—Payment of unclaimed RSA money to the Commissioner of Taxation

80 Object of Part

The object of this Part is to set out a procedure for dealing with unclaimed money in RSAs.

81 Meaning of *unclaimed money*

(1) If:

- (a) the holder of an RSA has reached the eligibility age for an age pension; and
- (b) the RSA provider determines that, under the terms and conditions of the RSA, a benefit (other than a pension or annuity) is immediately payable in respect of the holder; and
- (c) the holder has not applied to the RSA provider to have the amount of his or her benefits paid to him or her; and
- (d) the RSA provider is unable to pay those benefits to the holder because the RSA provider, after making reasonable efforts, is unable to find the holder;

any amount payable to the holder is taken to be *unclaimed money*.

(2) If:

- (a) the holder of an RSA has died; and
- (b) the RSA provider determines that, under the terms and conditions of the RSA, a benefit (other than a pension or annuity) is immediately payable in respect of the holder; and
- (c) the holder had not applied to the RSA provider to have the amount of his or her benefits paid to him or her or has died after making such an application; and
- (d) the RSA provider is unable to pay those benefits because the RSA provider, after making reasonable efforts, is unable to find a person (the *beneficiary*) to whom the RSA provider is required to pay the benefit;

any amount payable to the beneficiary is taken to be *unclaimed money*.

RSA provider must make reasonable efforts to find the holder

- (3) If paragraphs (1)(a), (b) and (c) are satisfied in relation to the holder of an RSA, the RSA provider must make reasonable efforts to find the holder and pay the benefit to him or her.

RSA provider must make reasonable efforts to find the beneficiary

- (4) If paragraphs (2)(a), (b) and (c) are satisfied in relation to the holder of an RSA, the RSA provider must make reasonable efforts to find the beneficiary and pay the benefit to him or her.

RSA provider not to contravene section

- (5) An RSA provider must not intentionally or recklessly contravene this section.

Penalty: 100 penalty units.

82 Statement of unclaimed money

- (1) An RSA provider must give to the Commissioner of Taxation a statement, in a form approved by the Commissioner of Taxation, of all unclaimed money as at the end of that half-year.

Note: The approved form may require the RSA provider to set out:

- (a) the tax file number of any RSA holder to whom the statement relates, who has quoted his or her tax file number to the RSA provider; and
- (b) the tax file number of the RSA provider.

See subsection 144(3).

- (2) If, between the end of the half-year and the day on which the statement is given to the Commissioner of Taxation, the RSA provider pays any of the unclaimed money to a person who is entitled to it, the statement must contain such particulars relating to the amounts paid as are required by the form.
- (3) An approval by the Commissioner of Taxation of a form of statement for the purposes of subsection (1) may require or permit the statement to be given on a specified kind of data processing device in accordance with specified software requirements.

When statement must be given

- (4) A statement under subsection (1) must be given on or before:
- (a) in relation to a half-year ending on 30 June in a calendar year—31 October in that calendar year; or

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- (b) in relation to a half-year ending on 31 December in a calendar year—30 April in the following calendar year.

Commissioner of Taxation may extend time for lodging statement

- (5) The Commissioner of Taxation may, in writing, provide for a later day to apply under paragraph (4)(a) or (b). This may be done before or after the day specified in the paragraph concerned.

RSA provider not to contravene section

- (6) An RSA provider must not intentionally or recklessly contravene this section.

Penalty: 100 penalty units.

83 Payment of unclaimed money to Commissioner of Taxation

- (1) The RSA provider must, when the statement is given, pay to the Commissioner of Taxation the amount worked out using the following formula:

$$\text{Amount of unclaimed money specified in statement} = \text{Unclaimed money paid by provider}$$

where:

amount of unclaimed money specified in statement means the amount specified in the statement provided in accordance with subsection 82(1).

unclaimed money paid by provider means any amounts specified in the statement in accordance with subsection 82(2).

Payment where money later claimed

- (2) If:
- (a) any unclaimed money has been paid to the Commissioner of Taxation under this section; and
 - (b) the Commissioner of Taxation is satisfied on application made by a person in the approved form that, if this section had not been enacted, that person would have been paid that unclaimed money by the RSA provider by whom it was paid to the Commissioner of Taxation;

the Commissioner of Taxation must pay that unclaimed money to that person.

Refund of excess payments

- (3) If an RSA provider, after paying an amount to the Commissioner of Taxation under this section, satisfies the Commissioner of Taxation that the amount so paid exceeds the amount that would have been paid to the person concerned, the Commissioner of Taxation must refund to the RSA provider the amount of the excess.

Discharge of RSA provider from liability

- (4) The RSA provider is, upon payment to the Commissioner of Taxation of an amount as required by this section, discharged from further liability in respect of that amount.

Appropriation of Consolidated Revenue Fund

- (5) The Consolidated Revenue Fund is appropriated for the purposes of this section.

RSA provider not to contravene section

- (6) An RSA provider must not intentionally or recklessly contravene this section.

Penalty: 100 penalty units.

84 Payment of unclaimed money to a State or Territory authority

- (1) If a law of a State or Territory satisfies the requirements of this section, then the RSA provider must, instead of complying with subsections 82(1) and 83(1), pay the amount worked out under paragraph (2)(c) to a State or Territory authority in accordance with that law.
- (2) The first requirement is that the law requires:
 - (a) an RSA provider to prepare, at the end of each half-year, a statement, in a form approved by a State or Territory authority, of all unclaimed money (within the meaning of subsection 81(1) or (2)) that is held in RSAs provided by the RSA provider; and
 - (b) that the statement be given to a State or Territory authority on or before:
 - (i) in relation to a half-year ending on 30 June in a calendar year—31 October in that calendar year; and

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- (ii) in relation to a half-year ending on 31 December in a calendar year—30 April in the following calendar year; and
 - (c) the RSA provider to pay to the State or Territory authority, when the statement is given, an amount worked out in accordance with a formula corresponding to the formula in subsection 83(1); and
 - (d) the State or Territory authority to keep a register that contains particulars of:
 - (i) the unclaimed money paid to it by the RSA provider; and
 - (ii) particulars of the holder of each RSA in respect of which there is unclaimed money.
- (3) The second requirement is that the law contains provisions:
 - (a) corresponding to subsection 82(2), that require the statement to contain particulars relating to any unclaimed money paid after the end of the half-year as are required by the form approved by the State or Territory authority; and
 - (b) corresponding to subsection 82(3), that authorise the approval of the form of the statement to require or permit the statement to be given on a data processing device; and
 - (c) corresponding to subsection 82(5), that empower the State or Territory authority to extend the period in which the statement must be lodged; and
 - (d) corresponding to subsection 83(2), that require the State or Territory authority to pay unclaimed money to a person in circumstances corresponding to those set out in that subsection; and
 - (e) corresponding to subsection 83(3), that require the State or Territory authority to return amounts in circumstances corresponding to those set out in that subsection.

Discharge of RSA provider from liability

- (4) The RSA provider is, upon payment to a State or Territory authority of an amount as required by this section, discharged from further liability in respect of that amount.

RSA provider not to contravene section

- (5) An RSA provider must not intentionally or recklessly contravene this section.

Penalty: 100 penalty units.

85 Register of unclaimed money

The Commissioner of Taxation must keep a register that contains:

- (a) particulars of unclaimed money paid by an RSA provider to the Commissioner of Taxation under this Part; and
- (b) particulars of the holder of each RSA in respect of which there is unclaimed money.

Note: The particulars of a person may include the person's tax file number. See subsection 144(4).

86 Meaning of *State or Territory authority*

In this Part:

State or Territory authority means a State, a Territory, an authority of a State or an authority of a Territory.

Section 87

Part 9—Facility to pay benefits to eligible rollover funds

87 Object of Part

The object of this Part is to provide for a facility for the payment of benefits to eligible rollover funds.

88 Interpretation

In this Part:

eligible rollover fund has the same meaning as in Part 24 of the *Superannuation Industry (Supervision) Act 1993*.

89 Payment of benefits to eligible rollover fund

When section applies

- (1) This section applies at a particular time if the conditions specified in the regulations are satisfied.

Application to eligible rollover fund

- (2) The RSA provider may apply to the trustee of an eligible rollover fund, on behalf of the holder of an RSA, for the issue to the holder of a superannuation interest in the eligible rollover fund.

Consideration for issue

- (3) The application is to be made on the basis that:
 - (a) the consideration for the issue is to be paid, on behalf of the holder, by the RSA provider; and
 - (b) the amount of the consideration is equal to the amount ascertained in accordance with the regulations; and
 - (c) the RSA provider is not entitled to recover the consideration from the holder (except as a result of the operation of subsection (5)).

Authorisation by holder

- (4) The holder is taken to have authorised the RSA provider:
- (a) to make the application; and
 - (b) to pay the consideration.

This rule has effect despite any direction to the contrary by the holder.

RSA holder ceases to have rights against RSA provider etc.

- (5) If the superannuation interest is issued in accordance with the application:
- (a) the holder ceases to have rights against the RSA provider; and
 - (b) if:
 - (i) immediately before the interest was issued in accordance with the application, another person had a contingent right against the RSA provider to a death or disability benefit; and
 - (ii) the contingent right was derived from the holder's capacity as the holder of an RSA provided by the RSA provider;

the other person ceases to have the contingent right against the RSA provider.

Note: To avoid doubt, a reference in paragraph (a) to a right against the RSA provider includes a reference to a contingent right to a death or disability benefit.

Terms and conditions overridden

- (6) This section has effect despite anything in the terms and conditions of the RSA.

90 Operating standards for RSA providers—information and records

When section applies

- (1) This section applies if an application is made under section 89 by an RSA provider to the trustee of an eligible rollover fund, on behalf of the holder of an RSA, for the issue to the holder of a superannuation interest in the eligible rollover fund.

Section 90

Operating standards

- (2) Without limiting, by implication, the generality of the standards that may be prescribed under section 38, those standards may include standards relating to the following matters:
 - (a) requiring the RSA provider to give to the trustee of the eligible rollover fund such information about the holder as is specified in the standards;
 - (b) requiring the RSA provider to keep and retain a record of the application.

Part 10—Monitoring and investigating RSA providers

Division 1—Objects of Part

91 Objects of Part

The objects of this Part are:

- (a) to ensure that the Commissioner has sufficient power to monitor RSA providers in relation to the provision of RSAs (Division 2); and
- (b) to authorise the Commissioner to conduct an investigation of the whole or a part of the affairs of an RSA provider to the extent that those affairs relate to the provision of RSAs (Divisions 3, 4, 5, 6, 7 and 8).

Division 2—Monitoring RSA providers

92 Information to be given to Commissioner

For the purposes of this Act, the Commissioner or an authorised person may, by written notice to an RSA provider, require the RSA provider, within a specified period, to give to the Commissioner or to an authorised person in relation to a specified year of income of the RSA provider such information that relates to the provision of RSAs, or a report on such matters, as are set out in the notice.

Note: The information may include the tax file number of the RSA provider. See subsection 144(5).

93 Commissioner may require production of books

- (1) For the purposes of this Act, the Commissioner or an authorised person may, by written notice to a relevant person in relation to an RSA provider, require the relevant person to produce to the Commissioner or an authorised person, at such reasonable time and reasonable place as are specified in a notice, any books relating to the affairs of the RSA provider to the extent that those books relate to the provision of RSAs.
- (2) If any book produced to the Commissioner or an authorised person under subsection (1) is not in writing in the English language, the Commissioner or an authorised person may require the relevant person to produce to the Commissioner or an authorised person a version of the book that is in writing in the English language.
- (3) The Commissioner or an authorised person may inspect, take extracts from and make copies of any book, or of any version of any book, produced to the Commissioner or an authorised person under this section.

94 Access to premises

- (1) For the purposes of this Act, an authorised person may enter, at any reasonable time, any premises at which the person has reason to believe books relating to the provision of RSAs are kept and may:
 - (a) inspect any book found on the premises that relates to the provision of RSAs or that the authorised person believes on reasonable grounds to relate to the provision of RSAs; and
 - (b) make copies of, or take extracts from, any such book.

- (2) An authorised person may not, under subsection (1), enter premises unless the occupier of the premises has consented to the entry.

Division 3—Investigations by Commissioner

95 Investigation of RSA provider

- (1) If it appears to the Commissioner that:
 - (a) a contravention of this Act or the regulations may have occurred or be occurring in relation to an RSA provider; or
 - (b) an RSA provider has refused or failed to give effect to a determination of the Superannuation Complaints Tribunal under sections 37D to 37G of the *Superannuation (Resolution of Complaints) Act 1993*;the Commissioner may, by written notice to the RSA provider, tell the RSA provider that the Commissioner proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.
- (2) If a notice is given under subsection (1) to an RSA provider, the following provisions of this Division apply in relation to the RSA provider.

96 Inspectors

- (1) The Commissioner may, by signed writing, appoint:
 - (a) a member of the staff of the Commissioner; or
 - (b) a consultant appointed under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
 - (c) a member of staff of a prescribed regulatory agency;to be an inspector for the purposes of the conduct of investigations under this Division in relation to the affairs of RSA providers.
- (2) The Commissioner must cause to be issued to each person appointed under subsection (1) an identity card that sets out the name and appointment of the person and to which is attached a recent photograph of the person.
- (3) A person who was appointed under subsection (1) must not, upon ceasing to be an inspector, fail, without reasonable excuse, to return to the Commissioner the identity card issued to him or her under this section.

Penalty for a contravention of this subsection: One penalty unit.

97 Delegation by inspector

- (1) An inspector may, by signed writing, delegate to a member of the staff of the Commissioner any of the inspector's powers under this Part.
- (2) A delegate must, on the request of a person in relation to whom the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.
- (3) A reference in this Part to an inspector includes a reference to a delegate of an inspector.

98 Commissioner may exercise powers of inspector

The Commissioner may exercise any of the powers of an inspector under this Part and, if he or she does so, then, for the purposes of the exercise of those powers by the Commissioner, a reference in this Part to an inspector is taken to be a reference to the Commissioner.

99 Inspector may enter premises for purposes of an investigation

If an inspector believes on reasonable grounds that it is necessary to enter premises for the purposes of an investigation of the whole or a part of the affairs of an RSA provider, the inspector may, at any reasonable time, enter the premises and:

- (a) inspect any book found on the premises that relates to the affairs of the RSA provider or that he or she believes on reasonable grounds to relate to those affairs; and
- (b) make copies of, or take extracts from, any such book.

100 Inspector may require production of books

For the purposes of an investigation of the whole or a part of the affairs of an RSA provider, an inspector may, by written notice given to a person who:

- (a) is a relevant person in relation to the RSA provider; or
- (b) the inspector believes on reasonable grounds has the custody or control of any books relating to those affairs;

require the person to produce all or any of those books to the inspector.

Section 101

101 Powers of inspector to require assistance from, and examine, current and former relevant persons and other persons

An inspector may, by written notice given to a person:

- (a) who is, or has been, a relevant person in relation to an RSA provider whose affairs or a part of whose affairs the Commissioner is investigating; or
- (b) who the inspector, on reasonable grounds, suspects or believes can give information relevant to the investigation of that entity;

require the person to do either or both of the following:

- (c) to give the inspector all reasonable assistance in connection with the investigation;
- (d) to appear before the inspector for examination concerning matters relevant to the investigation.

102 Application for warrant to seize books not produced

- (1) If an inspector has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, books:
 - (a) whose production has been required under this Part; and
 - (b) that have not been produced in compliance with that requirement;he or she may:
 - (c) lay before a magistrate an information or complaint on oath setting out those grounds; and
 - (d) apply for the issue of a warrant to search the premises for those books.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

103 Grant of warrant

Section applies if magistrate satisfied of certain things

- (1) This section applies if, on an application under section 102, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books:
 - (a) whose production has been required under this Part; and
 - (b) that have not been produced in compliance with that requirement.

Issue of warrant

- (2) The magistrate may issue a warrant authorising:
- (a) a member of the Australian Federal Police; or
 - (b) that member together with the inspector who applied for the issue of the warrant;
- with such assistance, and by such force, as is necessary and reasonable, to do the acts set out in subsection (3).

Acts authorised by warrant

- (3) The acts are:
- (a) entering on or into the premises; and
 - (b) searching the premises; and
 - (c) breaking open and searching anything, whether a fixture or not, in or on the premises; and
 - (d) taking possession of, or securing against interference, books that appear to be any or all of those books.

Grounds for issuing warrant to be set out

- (4) If the magistrate issues such a warrant, he or she must set out on the information or complaint laid before him or her under subsection 102(1) for the purposes of the application:
- (a) which of the grounds set out in the information; and
 - (b) particulars of any other grounds;
- he or she has relied on to justify the issue of the warrant.

Contents of warrant

- (5) A warrant under this section must:
- (a) specify the premises and books referred to in subsection (1); and
 - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
 - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

104 Powers if books produced or seized

Section applies if books produced, seized etc.

- (1) This section applies if:

Section 104

- (a) books are produced to a person under a requirement made under this Part; or
- (b) under a warrant issued under section 103, a person:
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
- (c) because of a previous application of subsection (8) of this section, books are delivered into a person's possession.

Possession in (1)(a) case

- (2) If paragraph (1)(a) applies, the person may take possession of any of the books.

Power to inspect etc.

- (3) The person may inspect, and may make copies of, or take extracts from, any of the books.

Power to use for proceedings

- (4) The person may use, or permit the use of, any of the books for the purposes of a proceeding.

Retaining possession

- (5) The person may retain possession of any of the books for so long as is necessary:
 - (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
 - (b) for the purposes of the investigation; or
 - (c) for a decision to be made about whether or not a proceeding to which the books concerned would be relevant should be begun; or
 - (d) for such a proceeding to be begun and carried on.

Claims or liens

- (6) No-one is entitled, as against the person, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

Right of inspection

- (7) While the books are in the person's possession, the person must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the first-mentioned person's possession.

Delivery into possession of Commissioner etc.

- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of the Commissioner or of a person authorised by the Commissioner to receive them.

Explanation of matters relating to books

- (9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the books under subsection (8), may require:
- (a) if paragraph (1)(a) applies—a person who so produced any of the books; or
 - (b) in any case—a person who was a party to the compilation of any of the books;
- to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

105 Powers if books not produced

If a person fails to produce particular books in compliance with a requirement made by another person under this Part, the other person may require the first-mentioned person to state, to the best of his or her knowledge and belief:

- (a) where the books may be found; or
- (b) who last had possession, custody or control of the books and where that person may be found.

Section 106

Division 4—Examinations

106 Application of Division

This Division applies if, pursuant to a requirement made under paragraph 101(d), a person (the *examinee*) appears before an inspector.

107 Requirements made of an examinee

- (1) The inspector may examine the examinee on oath or affirmation and may, for that purpose:
 - (a) require the examinee either to take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the examinee.
- (2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.
- (3) The inspector may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Commissioner is investigating, or is to investigate.

108 Examination to be in private

- (1) The examination is to take place in private and the inspector may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present at the examination unless he or she:
 - (a) is the inspector or the examinee; or
 - (b) is a member of the staff of the Commissioner authorised by the Commissioner to attend the examination; or
 - (c) is entitled to be present under:
 - (i) a direction under subsection (1); or
 - (ii) subsection 109(1).
- (3) A person who knowingly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

109 Examinee's lawyer may attend

- (1) The examinee's lawyer may be present at the examination and may, at such times during it as the inspector determines:
 - (a) address the inspector; and
 - (b) examine the examinee;about matters about which the inspector has examined the examinee.
- (2) If, in the inspector's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.

110 Record of examination

- (1) The inspector must cause a written record to be made of statements made at the examination.
- (2) The inspector may require the examinee to read the written record, or to have it read to him or her, and may require him or her to sign it.
- (3) The inspector must give to the examinee a copy of the written record, without charge, but subject to such conditions (if any) as the inspector imposes.

111 Giving copies of record to other persons

Copies for proceedings

- (1) If a person's lawyer satisfies the Commissioner that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related, the Commissioner may give the lawyer:
 - (a) a copy of a written record of the examination; or
 - (b) a copy of that record together with a copy of any related book.

Copies to be used only for proceedings

- (2) If the Commissioner gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, a proceeding, intentionally:

Section 112

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

Penalty: Imprisonment for 6 months.

112 Copies given subject to conditions

- (1) If a copy is given to a person under subsection 110(3) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.
- (2) A person who intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

113 Record to accompany report

- (1) When a report about the investigation is prepared under section 114, each record (if any) of the examination is to accompany the report.
- (2) If:
 - (a) in the Commissioner's opinion, a statement made at an examination is relevant to any other investigation under Division 3; and
 - (b) a record of the statement was made under section 110; and
 - (c) a report about the other investigation is prepared under section 114;a copy of the record must accompany the report.

Division 5—Reports

114 Report of inspector

- (1) An inspector must, on completion or termination of an investigation, prepare a report about the investigation.
- (2) The report must set out:
 - (a) the inspector's findings about the matters investigated; and
 - (b) the evidence and other material on which these findings were based; and
 - (c) such other matters relating to or arising out of, the investigation as the inspector thinks fit.
- (3) The Commissioner:
 - (a) must give a copy of the report to the RSA provider to which the investigation related; and
 - (b) if the report, or a part of the report, relates to the affairs of another person to a material extent—may, on the Commissioner's own initiative or at the request of that person, give a copy of the report or part of that report, to that person; and
 - (c) if the report, or a part of the report, relates to a contravention of a law of the Commonwealth, of a State or of a Territory—may give a copy of the whole or a part of the report to:
 - (i) the Australian Federal Police; or
 - (ii) the National Crime Authority; or
 - (iii) the Director of Public Prosecutions; or
 - (iv) a prescribed agency.

Section 115

Division 6—Offences

115 Persons to comply with requirements made under this Act

A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a requirement of the Commissioner, an authorised person or an inspector under this Act.

Penalty: 30 penalty units.

116 Concealing books relevant to investigation

A person who knows that the Commissioner is investigating, or is about to investigate, a matter must not, with intent to delay or obstruct the investigation or proposed investigation:

- (a) in any case—conceal, destroy, mutilate or alter a book relating to that matter; or
- (b) if a book relating to that matter is in a particular State or Territory—take or send the book out of that State or Territory or out of Australia.

Penalty: Imprisonment for 6 months.

117 Self-incrimination

Self-incrimination not a reasonable excuse

- (1) For the purposes of this Part, it is not a reasonable excuse for an individual to refuse or fail:

- (a) to give information; or
- (b) to sign a record; or
- (c) to produce a book;

in accordance with a requirement made of the individual, that the information, signing the record or production of the book, as the case may be, might tend to incriminate the individual or make the individual liable to a penalty.

Self-incrimination as grounds for inadmissibility

- (2) Subsection (3) applies if:

- (a) before:
 - (i) making an oral statement giving information; or
 - (ii) signing a record; or
 - (iii) producing a book;

as required under this Part, an individual claims that the making of the statement, signing the record, or production of the book, as the case may be, might tend to incriminate the individual or make the individual liable to a penalty; and

- (b) the making of the statement, signing the record, or production of the book, as the case may be, might in fact tend to incriminate the individual or make the individual liable to a penalty.

Inadmissibility of statements etc.

- (3) Subject to subsection (4), none of the following:
 - (a) the making of the statement;
 - (b) the fact that the individual has signed the record or produced the book, as the case may be;
 - (c) in the case of the making of a statement or the signing of a record—any information, document or other thing obtained as a direct or indirect consequence of the individual making the statement or signing the record, as the case may be;is admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty.

Exceptions

- (4) Subsection (3) does not apply to admissibility in proceedings in respect of:
 - (a) in the case of the making of a statement—the falsity of the statement; or
 - (b) in the case of the signing of a record—the falsity of any statement contained in the record.

118 Legal professional privilege

- (1) This section applies if:
 - (a) under this Act, a person requires a lawyer:
 - (i) to give information; or
 - (ii) to produce a book; and
 - (b) giving the information would involve disclosing, or the book contains, as the case may be, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.

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- (2) The lawyer is entitled to refuse to comply with the requirement unless:
 - (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under official management or administration or is being wound up—the official manager or administrator, or the liquidator, of the body; or
 - (b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;consents to the lawyer complying with the requirement.
- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:
 - (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
 - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and
 - (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the book, or the part of the book, containing the communication.
- (4) A person who intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

119 Powers of Court where non-compliance with this Act

- (1) This section applies if the Commissioner is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Act.
- (2) The Commissioner may by writing certify the failure to the Court.
- (3) If the Commissioner does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Division 7—Evidentiary use of certain material

120 Statements made at an examination: proceedings against examinee

Admissibility of statements made at examination

- (1) Subject to this section, a statement that a person makes at an examination of the person is admissible in evidence against the person in a proceeding.

Self-incrimination exception

- (2) The statement is not admissible if:
 - (a) the proceeding is:
 - (i) a criminal proceeding; or
 - (ii) a proceeding for the imposition of a penalty; other than a proceeding in respect of the falsity of the statement; and
 - (b) before making the statement, the person claimed that it might tend to incriminate the person or make the person liable to a penalty.

Irrelevant statement exception

- (3) The statement is not admissible if it is not relevant to the proceeding and the person objects to the admission of evidence of the statement.

Related statement exception

- (4) The statement (the *subject statement*) is not admissible if:
 - (a) it is qualified or explained by some other statement made at the examination; and
 - (b) evidence of the other statement is not tendered in the proceeding; and
 - (c) the person objects to the admission of evidence of the subject statement.

Legal professional privilege exception

- (5) The statement is not admissible if:
 - (a) it discloses a matter in respect of which the person could claim legal professional privilege in the proceeding if subsection (1) did not apply in relation to the statement; and

Section 121

- (b) the person objects to the admission of evidence of the statement.

Joint proceedings

- (6) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.

Record is prima facie evidence

- (7) If a written record of an examination of a person is signed by the person under subsection 110(2) or authenticated in any other prescribed manner, the record is, in a proceeding, prima facie evidence of the statements it records.

Admissibility of other evidence

- (8) This Part does not limit or affect the admissibility in the proceeding of other evidence to statements made at the examination.

121 Statements made at an examination: other proceedings

Admissibility of absent witness evidence

- (1) If direct evidence by a person (the *absent witness*) of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination of the absent witness and that tends to establish that matter is admissible in the proceeding as evidence of that matter in accordance with subsection (2).

Requirement for admissibility

- (2) The statement is admissible:
- (a) if it appears to the court or tribunal that:
 - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
 - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or
 - (iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or
 - (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a

witness in the proceeding and the tendering party does not so call the absent witness.

122 Weight of evidence admitted under section 121

- (1) This section applies if evidence of a statement made by a person at an examination of the person is admitted under section 121 in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
 - (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
 - (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
 - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.
- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

123 Objection to admission of statements made at examination

Notice of intention to apply to admit evidence and statements

- (1) A party (the *adducing party*) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
 - (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
 - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.

Section 123

Notice to set out etc. statements

- (2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.

Notice of objection

- (3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
- (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
 - (b) specifying, in relation to each of those statements, the grounds of objection.

Extension of objection period

- (4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.

Notice etc. to be given to court or tribunal

- (5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:
- (a) the notice under subsection (1) and any writing that subsection (2) requires to accompany that notice; and
 - (b) the notice under subsection (3).

Action by court or tribunal

- (6) If subsection (5) is complied with, the court or tribunal may either:
- (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
 - (b) defer determination of the objections until the hearing.

Right to object to admission of statement

- (7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding unless:
- (a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
 - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

124 Copies of, or extracts from, certain books

- (1) A copy of, or an extract from, a book relating to affairs of an RSA provider is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the original book, as the case may be, whether or not the copy or extract was made under section 104.
- (2) A copy of, or an extract from, a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book, or of the relevant part of the book, as the case may be.
- (3) For the purposes of subsection (2), a person who has compared:
 - (a) a copy of a book with the book; or
 - (b) an extract from a book with the relevant part of the book;may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the book or relevant part, as the case may be.

125 Report under Division 5

Subject to section 126, if a copy of a report under Division 5 purports to be certified by the Commissioner as a true copy of such a report, the copy is admissible in a proceeding (other than a criminal proceeding) as prima facie evidence of any facts or matters that the report states an inspector to have found to exist.

126 Exceptions to admissibility of report

- (1) This section applies if a party to a proceeding tenders a copy of a report as evidence against another party.
- (2) The copy is not admissible under section 125 in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:
 - (a) a copy of the report has been given to the other party; and
 - (b) the other party, and the other party's lawyer, have had a reasonable opportunity to examine that copy and to take its contents into account in preparing the other party's case.
- (3) Before or after the copy referred to in subsection (1) is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or 2 or more specified persons each of whom:

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- (a) was concerned in preparing the report or making a finding about a fact or matter that the report states the inspector to have found to exist; or
 - (b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, on the basis of which, or on the basis of matters including which, such a finding was made.
- (4) The court or tribunal must grant an application made under subsection (3) unless it considers that, in all the circumstances, it is not appropriate to do so.
- (5) If:
- (a) the court or tribunal grants an application or applications made under subsection (3); and
 - (b) a person to whom the application or any of the applications relate, or 2 or more such persons, is or are unavailable, or does not or do not attend, to be cross-examined in relation to the report; and
 - (c) the court or tribunal is of the opinion that to admit the copy under section 125 in the proceeding as evidence against the other party without the other party having the opportunity so to cross-examine the person or persons would unfairly prejudice the other party;

the court or tribunal must refuse so to admit the copy, or must treat the copy as not having been so admitted, as the case requires.

127 Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

Division 8—Miscellaneous

128 Commissioner may cause civil proceeding to be begun

If, as a result of an investigation or from a record of an examination (being an investigation or examination conducted under this Part), it appears to the Commissioner to be in the public interest for a person to begin and carry on a proceeding for:

- (a) the recovery of damages for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the investigation or examination related; or
 - (b) recovery of property of the person;
- the Commissioner:
- (c) if the person is a body corporate—may cause; or
 - (d) otherwise—may, with the person's written consent, cause: such a proceeding to be begun and carried on in the person's name.

129 Person complying with requirement not to incur liability to another person

A person who complies with a requirement made of the person under this Part does not incur any liability to any other person merely because of that compliance.

Part 11 Tax file numbers

Division 1 Object of Part

Section 130

Part 11—Tax file numbers

Division 1—Object of Part

130 Object of Part

The object of this Part is to provide for the quotation and provision of tax file numbers in relation to RSAs.

Division 2—Quotation of holder's tax file number

131 Employee may quote to employer

An employee may quote his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act.

Note: Section 139 sets out the method of quoting.

132 Employer may inform RSA provider of tax file number

If:

- (a) an employer makes a contribution to an RSA for the benefit of an employee; and
- (b) after the contribution is made, the employee quotes or first quotes his or her tax file number to the employer in connection with the operation or the possible future operation of this Act;

the employer may inform the RSA provider of the employee's tax file number.

133 Employer must inform RSA provider of tax file number

(1) If:

- (a) an employee quotes or first quotes his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; and
- (b) after the employee quotes or first quotes the tax file number, the employer makes a contribution to an RSA for the benefit of the employee; and
- (c) the employer has not previously informed the RSA provider of the employee's tax file number;

the employer must inform the RSA provider of the employee's tax file number before the required time (see subsection (2)).

(2) The *required time* is:

- (a) if the quotation or first quotation of the tax file number takes place more than 14 days before the employer makes the contribution—the end of the day on which the employer makes the contribution; or

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- (b) in any other case—the end of the 14th day after the day on which the quotation or first quotation of the tax file number takes place.
- (3) If the employer intentionally or recklessly contravenes subsection (1), the employer is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Division 3—Quotation, use and transfer of holder's tax file number

134 Holder or applicant may quote tax file number

A holder, or a person applying to become a holder, of an RSA may quote his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

Note: Section 139 sets out the method of quoting.

135 RSA provider may request holder's or applicant's tax file number

- (1) An RSA provider may, at any time, request, in a manner approved by the Commissioner, a holder, or a person applying to be a holder, of an RSA to quote his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

No obligation to quote tax file number

- (2) If the RSA provider requests a holder or applicant to quote his or her tax file number, the holder or applicant is not obliged to comply with the request.

136 RSA provider must request person becoming holder of an RSA to quote tax file number

- (1) Subject to subsection (3), if:
 - (a) a person becomes a holder of an RSA; and
 - (b) the person has not quoted his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act, by the time he or she becomes a holder;

the RSA provider must, before the required time (see subsection (2)), request, in a manner approved by the Commissioner, the person to quote his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

Required time

- (2) The *required time* is the end of the 30th day after the day on which the person becomes a holder of an RSA.

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Exception

- (3) The RSA provider is not required to make the request if, before the request is made, and before the required time, the person quotes his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

Offence

- (4) If the RSA provider intentionally or recklessly contravenes the requirement to make the request, it is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

No obligation to quote tax file number

- (5) If the RSA provider requests the person to quote his or her tax file number to the RSA provider, the person is not obliged to comply with the request.

137 Use of tax file number for certain purposes

- (1) This section applies if a holder, or a person applying to become a holder, of an RSA quotes his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

Obligation to record tax file number

- (2) If the RSA provider does not already have a record of the tax file number, the RSA provider must, as soon as is reasonably practicable after the quotation, make a record of it.

Obligation to retain and later destroy tax file number

- (3) The RSA provider must:
- (a) retain the record until the time (the *last retention time*) at which:
 - (i) if the person is, or becomes, a holder of an RSA—the person ceases to be a holder of an RSA provided by the RSA provider; or
 - (ii) if not—the person ceases to be an applicant; and
 - (b) unless the tax file number has also been provided for another purpose and is still required for that purpose—destroy the record as soon as is reasonably practicable after the last retention time.

Use of tax file numbers to locate amounts

- (4) Subject to subsection (5), the RSA provider may use tax file numbers quoted to it as mentioned in subsection (1) in order to locate, in the records or accounts of the RSA provider, amounts held in RSAs provided by it.

Use of tax file numbers to identify RSAs held by a particular person

- (5) If the RSA provider needs to identify the RSAs held by a particular person:
- (a) the RSA provider must first use information (other than tax file numbers) to identify the RSAs; and
 - (b) the RSA provider may only use the tax file number quoted by the person to the RSA provider:
 - (i) if the information referred to in paragraph (a) is insufficient to identify the RSAs; or
 - (ii) to confirm the identification of the RSAs resulting from the use of the other information.

Offence

- (6) An RSA provider that intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

138 RSA provider must inform other RSA provider or trustee of certain superannuation entities of tax file number for certain purposes

- (1) This section applies if:
- (a) a person is the holder of an RSA provided by an RSA provider; and
 - (b) the holder has quoted (whether as a holder or as a person applying to become a holder) his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act.

Transfer of amounts in an RSA to another RSA provider or to a superannuation entity or regulated exempt public sector superannuation scheme

- (2) Subject to subsection (3), if the RSA provider transfers any part of the amount to another RSA or to a superannuation entity or regulated exempt public sector superannuation scheme for the

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benefit of the holder, the RSA provider must, at the time of the transfer and in the manner approved by the Commissioner, inform the other RSA provider or the trustee of the superannuation entity or regulated exempt public sector superannuation scheme of the holder's tax file number.

Exception

- (3) Subsection (2) does not apply where an amount is transferred to another RSA or to a superannuation entity or regulated exempt public sector superannuation scheme if, before the transfer, the holder gives the RSA provider a written statement requesting the RSA provider not to inform any other RSA provider or any trustee of the holder's tax file number.

Offence

- (4) An RSA provider that intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

Division 4—Method of quotation of tax file numbers, including deemed quotation

139 Method of quoting tax file number

A person quotes his or her tax file number to another person in connection with the operation or the possible future operation of this Act if:

- (a) the person informs the other person of the number in a manner approved by the Commissioner; or
- (b) the person is taken to have quoted the number to the other person in connection with the operation or the possible future operation of this Act under any of the following provisions of this Division.

140 Employee taken to have quoted to RSA provider where RSA provider informed by employer

If:

- (a) an employee is a holder, or is applying to become a holder, of an RSA; and
- (b) the employer informs the RSA provider of the employee's tax file number in accordance with section 132 or 133;

the employee is:

- (c) taken to have quoted the tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and
- (d) taken to have quoted the tax file number at the time when the employer informs the RSA provider.

141 Information provided by RSA provider taken to have been provided by holder

If an RSA provider (the *first RSA provider*) informs another RSA provider (the *second RSA provider*) or the trustee of a superannuation entity or regulated exempt public sector superannuation scheme of the tax file number of a holder of an RSA provided by the first RSA provider in accordance with subsection 138(2), the holder is:

- (a) taken to have quoted the tax file number to the second RSA provider or the trustee in connection with the operation or the

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possible future operation of this Act or the *Superannuation Industry (Supervision) Act 1993*; and

- (b) taken to have quoted that tax file number at the time when the first RSA provider informs the second RSA provider or the trustee.

142 Person claiming benefit taken to have quoted where he or she provided tax file number in connection with claim

- (1) This section applies if a person who considers that he or she is entitled to an RSA benefit applies to an RSA provider for payment of the benefit and sets out in a manner approved by the Commissioner his or her tax file number in the application.
- (2) The person is:
 - (a) taken to have quoted the tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and
 - (b) taken to have quoted that tax file number at the time when the RSA provider received or receives the application.

143 Holder or applicant taken to have quoted if he or she quoted for other purposes

If a holder, or a person applying to become a holder, of an RSA has quoted his or her tax file number to an RSA provider under a provision of the Income Tax Assessment Act, that person is taken, for the purposes of this Act:

- (a) to have quoted the tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and
- (b) to have quoted the tax file number to the RSA provider at the later of the time at which the quotation took place and the commencement of this section.

Division 5—Provision of tax file numbers in forms etc.

144 Forms etc. may require tax file number

Application for approval

- (1) The approved form of an application for approval as an RSA institution under section 23 may require the application to contain the tax file number of the applicant.

Annual return

- (2) The approved form of return by the RSA provider for the purposes of paragraph 44(1)(a) may require the return to contain the tax file number of the RSA provider.

Unclaimed money statement

- (3) The approved form of statement by an RSA provider for the purposes of section 82 may require the statement to contain the tax file number of:
 - (a) a holder of an RSA where:
 - (i) the statement relates to the holder; and
 - (ii) the holder has quoted his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and
 - (b) the RSA provider.

Particulars in register

- (4) Particulars of persons that may be included in the register mentioned in section 85 include their tax file numbers.

Notice to give information

- (5) Information that may be required to be given by an RSA provider under section 92 may include the tax file number of the RSA provider.

145 Failure to quote tax file number

For the purposes of paragraph 150(1)(b), a person does not omit a matter or thing from a statement made to an RSA officer (within the meaning of section 149) merely because the person has, in making the statement, failed to quote his or her tax file number.

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Division 6—General

146 State insurance

This Part does not apply with respect to State insurance that does not extend beyond the limits of the State concerned.

147 This Part to be superannuation law

This Part is taken to be a superannuation law for the purposes of any guidelines in force under section 17 of the *Privacy Act 1988*.

Part 12—Offences relating to statements, records etc.

148 Object of Part

The object of this Part is to protect the integrity of the system of supervision provided for by this Act by penalising the making of false or misleading statements, the keeping of incorrect records and the falsification or concealment of identity.

149 Interpretation

In this Part:

RSA officer means a person exercising powers or performing functions under or in relation to this Act or the regulations.

statement made to an RSA officer means a statement made to an RSA officer orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes a statement:

- (a) made in an application, notification, return or other document made, prepared, given or purporting to be made, prepared or given, under this Act or the regulations; or
- (b) made in answer to a question asked of a person under this Act or the regulations; or
- (c) made in any information given, or purporting to be given, under this Act or the regulations; or
- (d) made in a document given to an RSA officer otherwise than under this Act or the regulations;

but does not include a statement made in a document produced under subsection 93(1) or section 100.

150 False or misleading statements

(1) A person who:

- (a) makes a statement to an RSA officer that is false or misleading in a material particular; or
- (b) omits from a statement made to an RSA officer any matter or thing without which the statement is misleading in a material particular;

is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty units.

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Note: In the case of a person failing to quote his or her tax file number, see section 145.

- (2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that he or she:
- (a) did not know; and
 - (b) could not reasonably be expected to have known;
- that the statement to which the prosecution relates was false or misleading.

151 Incorrectly keeping records etc.

- (1) Where:
- (a) a person who is required under this Act or the regulations to keep any records keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
 - (b) a person who is required under this Act or the regulations to make a record of any matter, transaction, act or operation makes it in such a way that it does not correctly record the matter, transaction, act or operation;
- the person is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty units.
- (2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that the person:
- (a) did not know; and
 - (b) could not reasonably be expected to have known;
- that:
- (c) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (1)(a)—the records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; or
 - (d) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (1)(b)—the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

152 Recklessly making false or misleading statements

A person who recklessly:

- (a) makes a statement to an RSA officer that is false or misleading in a material particular; or

- (b) omits from a statement made to an RSA officer any matter or thing without which the statement is misleading in a material particular;

is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

153 Intentionally making false or misleading statements

A person who intentionally:

- (a) makes a statement to an RSA officer that is false or misleading in a material particular; or
- (b) omits from a statement made to an RSA officer any matter or thing without which the statement is misleading in a material particular;

is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

154 Intentionally or recklessly incorrectly keeping records etc.

If:

- (a) a person who is required under this Act or the regulations to keep any records intentionally or recklessly keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
- (b) a person who is required under this Act or the regulations to make a record of any matter, transaction, act or operation, intentionally or recklessly makes it in such a way that it does not correctly record the matter, transaction, act or operation;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

155 Incorrectly keeping records with intention of deceiving or misleading etc.

- (1) A person is guilty of an offence if the person:
 - (a) keeps any records in such a way that they:
 - (i) do not correctly record and explain the matters, transactions, acts or operations to which they relate; or
 - (ii) are (whether in whole or in part) illegible, indecipherable, incapable of identification or, if they are kept in the form of a data processing device, incapable of being used to reproduce information; or

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- (b) makes a record of any matter, transaction, act or operation in such a way that it does not correctly record the matter, transaction, act or operation; or
- (c) alters, defaces, mutilates, falsifies, damages, removes, conceals or destroys any records (whether in whole or in part); or
- (d) does or omits to do any other act or thing to any records; with any of the following intentions (whether or not the person had any other intention):
 - (e) deceiving or misleading the Commissioner or a particular RSA officer;
 - (f) hindering or obstructing the Commissioner or a particular RSA officer (otherwise than in the investigation of an offence against, or arising out of, this Act or the regulations);
 - (g) hindering or obstructing the investigation of an offence against, or arising out of, this Act or the regulations;
 - (h) hindering, obstructing or defeating the administration, execution or enforcement of this Act or the regulations;
 - (i) defeating the purposes of this Act or the regulations.

(2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

156 Falsifying or concealing identity with intention of deceiving or misleading etc.

- (1) A person is guilty of an offence if the person:
- (a) falsifies or conceals the identity of, or the address or location of a place of residence or business of, the person or another person; or
 - (b) does or omits to do any act or thing the doing or omission of which facilitates the falsification or concealment of the identity of, or the address or location of a place of residence or business of, the person or another person;
- with any of the following intentions (whether or not the person had any other intention):
- (c) deceiving or misleading the Commissioner or a particular RSA officer;
 - (d) hindering or obstructing the Commissioner or a particular RSA officer (otherwise than in the investigation of an offence against, or arising out of, this Act or the regulations);

- (e) hindering or obstructing the investigation of an offence against, or arising out of, this Act or the regulations;
 - (f) hindering, obstructing or defeating the administration, execution or enforcement of this Act or the regulations;
 - (g) defeating the purposes of this Act or the regulations.
- (2) The offence is punishable on conviction by imprisonment for a term not exceeding 2 years.

Part 13—Powers of courts

157 Object of Part

The object of this Part is to set out rules about the powers of the courts to deal with matters arising under this Act.

158 Power to grant relief

Court may relieve liability for misconduct

- (1) If, in a civil proceeding against an RSA official for official misconduct in a capacity as such a person, it appears to the court that the official is or may be liable in respect of the official misconduct, the court may, if subsection (2) is satisfied, relieve the official either wholly or partly from the liability, on such terms as the court thinks fit.

Basis for granting relief

- (2) The court may only relieve the official from the liability if it appears to the court that:
 - (a) the official has acted honestly; and
 - (b) having regard to all the circumstances of the case, including those connected with the official's appointment, he or she ought fairly to be excused for the official misconduct.

Withdrawal of case from jury

- (3) If:
 - (a) the case is being tried by a judge with a jury; and
 - (b) after hearing the evidence, the judge is satisfied that relief ought to be given under subsection (1);the judge may withdraw the case in whole or in part from the jury and immediately direct judgment to be entered for the RSA official on such terms as to costs or otherwise as the judge thinks proper.

Where claim yet to be made

- (4) If an RSA official has reason to believe that a claim will or might be made against the official in respect of any official misconduct in a capacity as such a person:
 - (a) the official may apply to the Court for relief; and

- (b) the Court has the same power to grant relief as it would have under subsection (1) if it had been a court before which proceedings against the official for official misconduct had been brought.

Definitions

- (5) In this section:

officer in relation to an RSA provider, means:

- (a) a responsible officer or employee of the RSA provider; or
- (b) a receiver, or receiver and manager, of property of the RSA provider; or
- (c) an official manager, deputy official manager or administrator of the RSA provider; or
- (d) a liquidator or provisional liquidator of the RSA provider; or
- (e) a trustee or other person administering a compromise or arrangement made between the RSA provider and another person or other persons.

official misconduct means negligence, default, breach of trust or breach of duty.

RSA official means:

- (a) an officer of an RSA provider; or
- (b) an auditor of an RSA provider.

Special meaning of employee

- (6) The meaning of *employee*, when used in this section, is to be determined as if subsections (3) and (8) of the definition in section 19 had not been enacted. Those subsections deem certain contractors to be employees.

159 Power of Court to give directions with respect to meetings ordered by the Court

If, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

160 Irregularities

Definitions

- (1) In this section:

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procedural irregularity includes:

- (a) the absence of a quorum at a meeting of the directors of an RSA provider;
- (b) a defect, irregularity or deficiency of notice or time;

proceeding under this Act means any proceeding, whether a legal proceeding or not, under this Act.

Effect of irregularities on proceedings

- (2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court:
 - (a) is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court; and
 - (b) by order declares the proceeding to be invalid.

Effect of failure to give notice etc. on meetings

- (3) Subject to subsection (4), none of the following:
 - (a) a meeting held for the purposes of this Act;
 - (b) any proceeding at such a meeting;is invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting.

Court may declare proceedings at meeting void

- (4) In spite of subsection (3), the Court may declare proceedings at the meeting to be void on application of:
 - (a) the person concerned; or
 - (b) a person entitled to attend the meeting; or
 - (c) the Commissioner.

Court may make certain orders

- (5) Subject to the remainder of this section, but without limiting any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders (either unconditionally or subject to any conditions imposed by the Court):
 - (a) an order declaring that:
 - (i) any act, matter or thing purporting to have been done; or
 - (ii) any proceeding purporting to have been instituted or taken;

under this Act or in relation to an RSA provider is not invalid because of any contravention of a provision of:

- (iii) this Act; or
 - (iv) the terms and conditions of an RSA provider;
- (b) an order relieving a person in whole or in part from any civil liability in respect of a contravention mentioned in paragraph (a);
- (c) an order:
- (i) extending the period for doing any act, matter or thing or for instituting or taking any proceeding under this Act or in relation to an RSA provider (including extending a period if it ended before the application for the order was made); or
 - (ii) shortening the period for doing such an act, matter or thing or for instituting or taking such a proceeding.

Consequential and ancillary orders

- (6) The Court may also make any consequential or ancillary order that it thinks fit.

Orders where offence

- (7) An order may be made under paragraph (5)(a) or (b) even though the contravention referred to in the paragraph concerned resulted in the commission of an offence.

Restrictions on making orders

- (8) The Court must not make an order under this section unless it is satisfied:
- (a) in the case of an order referred to in paragraph (5)(a):
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or
 - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
 - (iii) that it is in the public interest that the order be made; and
 - (b) in the case of an order referred to in paragraph (5)(b)—that the person subject to the civil liability concerned acted honestly; and
 - (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

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161 Power of Court to prohibit payment or transfer of money or property

Court's power to protect interests of certain creditors etc.

- (1) If:
- (a) any of the following applies:
 - (i) an investigation is being carried out under this Act in relation to an act or omission by a person (the ***contravening person***), being an act or omission that constitutes or may constitute a contravention of this Act; or
 - (ii) a prosecution has begun against a person (also the ***contravening person***) for a contravention of this Act; or
 - (iii) a civil proceeding has begun against a person (also the ***contravening person***) under this Act; and
 - (b) the Commissioner or a person (an ***aggrieved person***) to whom the contravening person is liable, or may become liable:
 - (i) to pay money (whether in respect of a debt, by way of damages or compensation or otherwise); or
 - (ii) to account for property;applies to the Court; and
 - (c) the Court considers it necessary or desirable to make such an order for the purpose of protecting the interests of an aggrieved person;
- the Court may make one or more of the orders specified in subsection (4).

Court's power to protect the interests of holders

- (2) If:
- (a) the Commissioner is of the opinion that it is necessary for the Court to make one or more of the orders specified in subsection (4) to protect the interests of any or all of the holders of an RSA; and
 - (b) the Commissioner applies to the Court for such an order in relation to the RSA provider; and
 - (c) the Court considers it necessary or desirable to protect the interests of any or all of the holders;
- the Court may make one or more of the orders specified in subsection (4).

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- (3) For the purposes of subsection (2), subsection (4) has effect as if any reference to the contravening person were a reference to the RSA provider.

Orders that Court may make

- (4) The orders that the Court may make are the following:
- (a) an order prohibiting a person who is indebted to the contravening person or to an associate of the contravening person from making a payment in total or partial discharge of the debt to:
 - (i) the contravening person or associate; or
 - (ii) another person at the direction or request of the contravening person or associate;
 - (b) an order prohibiting a person holding money or property on behalf of the contravening person or of an associate of the contravening person from:
 - (i) paying all or any of the money; or
 - (ii) transferring or otherwise parting with possession of the property;to:
 - (iii) the contravening person or associate; or
 - (iv) another person at the direction or request of the contravening person or associate;
 - (c) an order prohibiting the taking or sending out of Australia by a person of money of the contravening person or of an associate of the contravening person;
 - (d) an order prohibiting the taking, sending or transfer by a person of property of the contravening person, or of an associate of the contravening person from a place in Australia to a place outside Australia (including the transfer of interests from a register in Australia to a register outside Australia);
 - (e) if the contravening person is an individual—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
 - (f) if the contravening person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.

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Meaning of property in paragraph (4)(d)

- (5) A reference in paragraph (4)(d) to *property* of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - (b) in a fiduciary capacity.

Purpose of subsection (5)

- (6) Subsection (5) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.

Absolute or conditional orders

- (7) An order made under subsection (1) or (2) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

Interim orders

- (8) If an application is made to the Court for an order under subsection (1) or (2), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order (being an order of the kind applied for that is expressed to have effect pending the determination of the application).

Damages undertakings

- (9) On an application under subsection (1) or (2), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (8), to give an undertaking as to damages.

Further orders

- (10) If the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

Period of order

- (11) An order made under subsection (1), (2) or (8) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Court's other powers not affected

- (12) This section does not affect the powers that the Court has apart from this section.

Section subject to Bankruptcy Act

- (13) This section has effect subject to the *Bankruptcy Act 1966*.

Offence to contravene orders

- (14) A person who intentionally or recklessly contravenes an order by the Court under this section that is applicable to the person is guilty of an offence punishable on conviction by imprisonment for a term of not more than 6 months.

162 Court may order the disclosure of information or the publication of advertisements—contravention of provisions relating to provision of RSAs etc.

- (1) If a person (the *alleged offender*) has engaged, is engaging or is proposing to engage in conduct in contravention of Part 5 or 7, the Court may, on the Commissioner's application, make an order or orders under either or both of subsections (2) and (3).
- (2) The Court may make an order:
- (a) requiring the alleged offender, or a person involved in the contravention, to disclose information to:
 - (i) the public; or
 - (ii) a specified person; or
 - (iii) persons included in a specified class of persons; and
 - (b) specifying the information, or the kind of information, that is to be disclosed, being information:
 - (i) in the possession of the person to whom the order is directed; or
 - (ii) to which that person has access; and
 - (c) specifying the way in which it is to be disclosed.
- (3) The Court may make an order:
- (a) requiring the alleged offender, or a person involved in the contravention, to publish advertisements and pay the expenses; and
 - (b) specifying the terms of the advertisements, or the way in which the terms of the advertisements are to be determined; and

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- (c) specifying the way in which, and times at which, the advertisements are to be published.
- (4) A person who intentionally or recklessly contravenes an order under subsection (2) or (3) is guilty of an offence punishable on conviction by imprisonment for a term of not more than 6 months.

163 Injunctions

Restraining injunctions

- (1) If a person (the *perpetrator*) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
 - (a) a contravention of this Act; or
 - (b) attempting to contravene this Act; or
 - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
 - (f) conspiring with others to contravene this Act;the Court may grant an injunction in accordance with subsection (2).

Nature of injunction

- (2) If granted, the injunction:
 - (a) is to restrain the perpetrator from engaging in the conduct; and
 - (b) if in the opinion of the Court it is desirable to do so, may also require that person to do any act or thing.

The Court may only grant the injunction on the application of the Commissioner, or of a person whose interests have been, are, or would be, affected by the conduct and may grant it on such terms as the Court thinks appropriate.

Performance injunctions

- (3) If a person (the *unwilling person*) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:
 - (a) the Commissioner; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing; grant an injunction, on such terms as the Court thinks appropriate, requiring the unwilling person to do that act or thing.

Consent injunctions

- (4) If an application for an injunction under subsection (1) or (3) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

Interim injunctions

- (5) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

Variation or discharge of injunctions

- (6) The Court may discharge or vary an injunction granted under subsection (1), (3) or (5).

Restraining injunctions

- (7) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

Performance injunctions

- (8) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and

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- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

Damages undertakings

- (9) If the Commissioner applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

Section 161 orders

- (10) In proceedings under this section against a person, the Court may make an order under section 161 in respect of the person.

Damages orders

- (11) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Definition

- (12) In this section:

do an act or thing includes:

- (a) give effect to a determination made by the Superannuation Complaints Tribunal; or
(b) reconsider a matter in accordance with the directions of the Superannuation Complaints Tribunal.

164 Effect of sections 161, 162 and 163

Nothing in any one of section 161, 162 or 163 limits the generality of anything else in any other of those sections.

165 Power of Court to punish for contempt of court

Nothing in a provision of this Act that provides:

- (a) that a person must not contravene an order of the Court; or
(b) that a person who contravenes an order of the Court contravenes a provision of this Act or is guilty of an offence; affects the powers of the Court in relation to the punishment of contempts of the Court.

166 Court may resolve transitional difficulties

- (1) If any difficulty:
 - (a) arises in applying a provision of this Act in relation to a particular case in relation to which, if this Act had not been enacted, a provision of another law corresponding to the first-mentioned provision would have applied; or
 - (b) arises, because of a provision of this Act, in applying, in relation to a particular case, another provision of this Act or a provision of another law corresponding to another provision of this Act;the Court may, on the application of an interested person, make such order as it thinks proper to remove the difficulty.
- (2) An order under this section has effect despite anything in a provision of this Act.
- (3) This section has effect subject to the Constitution.

Part 14—Proceedings

167 Object of Part

The object of this Part is to set out various rules about court proceedings.

168 Power of Commissioner to intervene in proceeding

- (1) The Commissioner may intervene in any proceeding relating to a matter arising under this Act.
- (2) If the Commissioner intervenes in a proceeding referred to in subsection (1), the Commissioner is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.
- (3) Without limiting the generality of subsection (2), the Commissioner may appear and be represented in any proceeding in which he or she wishes to intervene under subsection (1):
 - (a) by a member of the staff of the Commissioner; or
 - (b) by an individual to whom, or by an officer or employee of a person or body to whom or to which, the Commissioner has delegated his or her functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or
 - (c) by solicitor or counsel.

169 Civil proceeding not to be stayed

No civil proceeding under this Act is to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

170 Evidence of contravention

For the purposes of this Act, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states that:
 - (i) a person was convicted by that court on a specified day of a specified offence; or

- (ii) a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;
- is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:
- (c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and
 - (d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

171 Vesting of property

- (1) If an order is made by a court under this Act vesting property in a person:
 - (a) subject to subsections (2) and (3), the property immediately vests in law and in equity in the person named in the order by force of this Act; and
 - (b) if the order is made by a court—the person who applied for the order must, within 7 days after the entering of the order, lodge an office copy of the order with such person (if any) as is specified in the order.
- (2) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the registration of such an order;the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.
- (3) If:
 - (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the person named in the order to be registered as the owner of that property;the property does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

Part 15—Exemptions and modifications

172 Object of Part

The object of this Part is to empower the Commissioner to grant exemptions from, and make modifications of, certain provisions of this Act and the regulations.

173 Interpretation

In this Part:

modifiable provision means a provision of:

- (a) sections 38, 39, 75, 76 or 77; or
- (b) Division 1, 3, 4, 5, 6 and 7 of Part 5; or
- (c) Part 8 or 9; or
- (d) regulations made for the purposes of a provision of any of those sections, Divisions or Parts.

174 Commissioner's powers of exemption—modifiable provisions

The Commissioner may, in writing, exempt a particular person or class of persons from compliance with any or all of the modifiable provisions.

175 Commissioner's powers of exemption—general issues

- (1) An exemption under this Part may be made either generally or as otherwise provided in the exemption.
- (2) An exemption under this Part may be unconditional or subject to conditions specified in the exemption.
- (3) Without limiting this section, an exemption under this Part may relate to a particular RSA provider or class of RSA providers.

176 Enforcement of conditions to which exemption is subject

- (1) A person must not, without reasonable excuse, contravene a condition of an exemption under this Part.

Penalty: 5 penalty units.

- (2) If a person has contravened a condition of an exemption under this Part, the Court may, on the application of the Commissioner, order the person to comply with the condition.

177 Commissioner's powers of modification—modifiable provisions

The Commissioner may, in writing, declare that a modifiable provision is to have effect, in relation to a particular person or class of persons, as if it were modified as specified in the declaration.

178 Commissioner's powers of modification—general issues

- (1) A declaration under this Part may have effect either generally or as otherwise provided in the declaration.
- (2) Without limiting this section, a declaration under this Part may relate to a particular RSA provider or class of RSA providers.

179 Revocation of exemptions and modifications

The Commissioner may, in writing, revoke an exemption or declaration under this Part.

180 Publication of exemptions and modifications etc.

The Commissioner must cause a copy of an exemption or declaration under this Part, or a revocation of such an exemption or declaration, to be published in the *Gazette*.

Part 16—Miscellaneous

181 Object of Part

The object of this Part is to set out miscellaneous rules about various matters relating to the operation of this Act.

182 Commissioner may direct RSA institutions not to accept employer contributions

Directions

- (1) The Commissioner may give an RSA institution a written notice directing the RSA institution not to accept any contributions made to RSAs by a specified employer.

When direction may be given

- (2) The Commissioner must not give a direction under this section to an RSA institution unless:
 - (a) the RSA institution has contravened this Act or the regulations on one or more occasions; and
 - (b) the Commissioner, after consulting with the prescribed regulatory agency, if any, is satisfied that the seriousness or frequency, or both, of the contraventions warrants the giving of the direction.

Reasons

- (3) A direction under this section must be accompanied by, or included in the same document as, a statement giving the reasons for the direction.

Revocation

- (4) The Commissioner may revoke a direction under this section if the RSA institution satisfies the Commissioner that there is, and is likely to continue to be, substantial compliance by the RSA institution with the provisions of this Act and the regulations applicable to the RSA institution.

Offence of contravening direction

- (5) An RSA institution must not, without reasonable excuse, contravene a direction under this section.

Penalty: 100 penalty units.

Refund of contributions

- (6) A contravention of subsection (5) does not result in the invalidity of a transaction. However, if a contribution is accepted in contravention of that subsection, the RSA institution must refund the contribution within 28 days or such further period as the Commissioner allows.

Note: Some amounts that are given to an RSA institution will not be accepted as a contribution but will be held and dealt with in the manner prescribed by the regulations. See section 61.

Notification to employer

- (7) If an RSA institution is given a direction under this section, the RSA institution must take all reasonable steps to notify the direction to each employer specified in the direction.

Offence of contravening subsection (6) or (7)

- (8) A person who, without reasonable excuse, contravenes subsection (6) or (7) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Refunded contributions to be ignored for the purposes of income tax and superannuation guarantee charge

- (9) For the purposes of the Income Tax Assessment Act and the *Superannuation Guarantee (Administration) Act 1992*, if a contribution is refunded under this section, the person who made the contribution is taken never to have made the contribution.

Superannuation guarantee charge—shortfall component to be treated as employer contribution

- (10) This section has effect as if the payment of a shortfall component to a fund under section 65 of the *Superannuation Guarantee (Administration) Act 1992* were a contribution made to the RSA by an employer.

183 RSA contributions—deductions from salary or wages to be remitted promptly

Application

- (1) This section applies if:

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- (a) an employer of an employee is authorised (whether by the employee, by force of law or otherwise) to:
 - (i) deduct an amount from salary or wages payable by the employer to the employee; and
 - (ii) contribute the amount to an RSA held by the employee; and
- (b) the employer makes such a contribution.

Prompt remittance

- (2) The employer must contribute to the RSA the amount of the deduction before the end of the 28 day period beginning immediately after the end of the month in which the deduction was made.

Offence

- (3) A person who intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

Definition

- (4) In this section:
salary or wages has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

Part-time domestic workers counted

- (5) For the purposes of this section, the *Superannuation Guarantee (Administration) Act 1992* has effect as if subsection 11(2) of that Act had not been enacted.

184 Compliance with determinations of the Superannuation Complaints Tribunal

If:

- (a) a complaint has been made to the Superannuation Complaints Tribunal under section 15F or 15J of the *Superannuation (Resolution of Complaints) Act 1993* concerning a disability benefit (whether under a contract of insurance or otherwise); and
- (b) the Tribunal decides that a person other than the RSA provider or an insurer is responsible for determining the existence of the disability; and

(c) the Tribunal joins the person under paragraph 18(3A)(d) or 18(3B)(d) of that Act as a party to the complaint; the person must comply with any determination made in respect of the person by the Tribunal.

185 Conduct by directors, servants and agents

State of mind of body corporate

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.

Conduct of director, servant or agent

- (2) Subject to subsection (3), any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate.

Exception to subsection (2)

- (3) Subsection (2) does not apply if the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

State of mind of individual

- (4) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.

Conduct of servant or agent

- (5) Subject to subsection (6), any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes

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of a prosecution for an offence against this Act, to have been engaged in also by the individual.

Exception to subsection (5)

- (6) Subsection (5) does not apply if the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

No imprisonment in subsection (4) or (5) cases

- (7) If:
- (a) an individual is convicted of an offence; and
 - (b) the individual would not have been convicted of the offence if subsections (4) and (5) had not been enacted;
- the individual is not liable to imprisonment for that offence.

Reference to state of mind

- (8) A reference in subsection (1) or (4) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Reference to director

- (9) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Reference to engaging in conduct

- (10) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

Reference to offence against this Act

- (11) A reference in this section to an *offence against this Act* includes a reference to:
- (a) an offence created by the regulations; and
 - (b) an offence created by section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*, being an offence that relates to this Act or the regulations.

186 Conviction does not relieve defendant from civil liability

- (1) A person is not relieved from any liability to any other person merely because the person has been convicted of an offence against this Act.
- (2) In this section:
offence against this Act has the same meaning as in section 185.

187 Liability for damages

None of the following:

- (a) the Commissioner;
- (b) a member of the staff of the Commissioner;
- (c) an authorised person;
- (d) an inspector;
- (e) a person to whom the Commissioner or an inspector has delegated a function or power under this Act;

is liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred by this Act or the regulations.

188 Civil immunity where defendant was complying with this Act

A person is not liable in a civil action or civil proceeding in relation to an act done in fulfilment of an obligation imposed by this Act or the regulations.

189 Review of certain decisions

Request for review

- (1) A person who is affected by a reviewable decision of the Commissioner may, if dissatisfied with the decision, request the Commissioner to reconsider the decision.

How request must be made

- (2) The request must be made by written notice given to the Commissioner within the period of 21 days after the day on which the person first receives notice of the decision, or within such further period as the Commissioner allows.

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Request must set out reasons

- (3) The request must set out the reasons for making the request.

Commissioner to reconsider decision

- (4) Upon receipt of the request, the Commissioner must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the Commissioner thinks fit.

Deemed confirmation of decision if delay

- (5) If the Commissioner does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the Commissioner received the request under subsection (1) to reconsider the decision, the Commissioner is taken, at the end of that period, to have confirmed the decision under subsection (4).

Notice of Commissioner's action

- (6) If the Commissioner confirms, revokes or varies a decision before the end of the period referred to in subsection (5), the Commissioner must give written notice to the person telling the person:
- (a) the result of the reconsideration of the decision; and
 - (b) the reasons for confirming, varying or revoking the decision, as the case may be.

AAT review of Commissioner's decisions

- (7) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner that have been confirmed or varied under subsection (4).

Period for making certain AAT applications

- (8) If a decision is taken to be confirmed because of subsection (5), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

Section 41 of AAT Act

- (9) If a request is made under subsection (1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an

application to the Administrative Appeals Tribunal for a review of that decision.

190 Statements to accompany notification of decisions

- (1) If a written notice is given to a person affected by a reviewable decision telling the person that the reviewable decision has been made, that notice is to include a statement to the effect that:
 - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Commissioner in accordance with subsection 189(1); and
 - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Commissioner upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (2) If the Commissioner confirms or varies a reviewable decision under subsection 189(4) and gives to the person written notice of the confirmation or variation of the decision, that notice is to include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to comply with the requirements of subsections (1) and (2) in relation to a reviewable decision or a decision under subsection 189(4) does not affect the validity of that decision.

191 Secrecy

RSA standards officers not to disclose information

- (1) Subject to this section, a person who is or has been an RSA standards officer must not, except for the purposes of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly:
 - (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as an RSA standards officer; or
 - (b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 2 years.

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Exceptions—public contact information

- (2) Subsection (1) does not prohibit the Commissioner from disclosing:
- (a) the names of entities that are RSA providers or RSA institutions for the purposes of this Act; and
 - (b) the addresses at which business relating to entities referred to in paragraph (a) is conducted; and
 - (c) any other information that is reasonably necessary to enable members of the public to contact a person who performs functions in relation to RSAs.

Exceptions—compliance information

- (3) Subsection (1) does not prevent the Commissioner from disclosing any or all of the following information about an RSA provider:
- (a) whether or not the RSA provider has lodged a return under section 44 in respect of a particular year of income;
 - (b) whether or not a notice, or a particular kind of notice, has been given by the Commissioner under section 92 in relation to an RSA provider in respect of a particular year of income.

Exception—notifying the professional association of an approved auditor

- (4) Subsection (1) does not prevent the Commissioner from disclosing protected information, or producing a protected document, to persons in accordance with subsection 68(1).

Exception—consent to disclosures relating to an RSA provider

- (5) Subsection (1) does not prohibit an RSA standards officer from disclosing information, or producing a document (other than a report of an inspector), relating to the affairs of an RSA provider if the RSA provider agrees in writing to the disclosure of the information or the production of the document, as the case may be.

Exception—consent to disclosures relating to an individual

- (6) Subsection (1) does not prohibit an RSA standards officer from disclosing personal information relating to an individual, or producing a document that contains such information, if the individual agrees in writing to the disclosure of the information or the production of the document, as the case may be.

Exceptions—disclosure to specified persons or bodies

- (7) Subsection (1) does not prohibit an RSA standards officer from disclosing protected information, or producing a protected document (other than a report of an inspector), to:
- (a) the Commissioner of Taxation or a taxation officer authorised by the Commissioner of Taxation for the purposes of this section; or
 - (b) the Minister, the Secretary of the Department or an officer of the Department authorised by the Secretary of the Department for the purposes of this section; or
 - (c) a court for the purposes of this Act or any other Act of which the Commissioner has the general administration; or
 - (d) the Superannuation Complaints Tribunal for the purposes of the performance of any of its functions or the exercise of any of its powers; or
 - (e) the Australian Securities Commission for the purposes of the performance of any of its functions or the exercise of any of its powers; or
 - (f) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
 - (g) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
 - (h) the Australian Statistician, or an officer of the Australian Bureau of Statistics, for purposes in connection with statistics; or
 - (i) if the Minister states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person; or
 - (j) if the Minister states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.

Limitation on disclosure of personal information

- (8) Paragraphs (7)(i) and (j) do not authorise the disclosure of information, or the production of a document, relating to the personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.

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- (9) Subsection (1) does not prohibit an RSA standards officer from disclosing protected information, or producing a protected document, to:
- (a) a law enforcement agency; or
 - (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
 - (c) a person engaged under subsection 13(3) of that Act.
- (10) A person who is or has been an RSA standards officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence against a law of the Commonwealth, of a State or of a Territory.
- (11) A person who is or has been an RSA standards officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (9)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.

Members of the professional association not to disclose information

- (12) If, under subsection (4), the Commissioner discloses protected information, or produces a protected document, to persons in accordance with subsection 68(1), those persons:
- (a) must not disclose the information, or produce the document, to any other person; and
 - (b) must not use the information or those documents for any purpose other than deciding whether or not to take disciplinary or other action or taking that action.

Penalty: Imprisonment for 2 years.

- (13) Subsection (12) does not prevent disclosure of protected information or protected documents to a court for the purpose of proceedings in respect of disciplinary or other action:
- (a) that is taken or proposed to be taken against an auditor; and
 - (b) to which the protected information is, or the protected documents are, relevant.

Disclosure to court

- (14) A person who is or has been an RSA standards officer cannot be required to disclose to a court any protected information, or to produce in a court any protected document, except when it is

necessary to do so for the purposes of this Act or any other Act of which the Commissioner has the general administration.

- (15) Subsection (1) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.

Application of tax secrecy provisions

- (16) If protected information is disclosed, or a protected document is produced, under paragraph (7)(a) to the Commissioner of Taxation or to a taxation officer, the information, or the information contained in the document, is taken, for the purposes of section 16 of the Income Tax Assessment Act, to be information acquired by the Commissioner of Taxation or taxation officer in the manner mentioned in the definition of *officer* in subsection 16(1) of that Act.

Department to observe secrecy requirements

- (17) If protected information is disclosed, or a protected document is produced, under paragraph (7)(b) to the Secretary of the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Minister in connection with the administration of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

Penalty: Imprisonment for 2 years.

- (18) If protected information is disclosed, or a protected document is produced, under paragraph (7)(h) to the Australian Statistician or to an officer of the Australian Bureau of Statistics, then the information, or the information contained in the document, is taken to be information given for the purposes of the *Census and Statistics Act 1905*.

Application of FOI Act

- (19) A protected document or a document containing protected information is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

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Definitions

(20) In this section:

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

financial sector supervisory agency means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

law enforcement agency means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

overseas financial sector supervisory agency means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

this Act includes the regulations.

(21) At the end of 5 years after the commencement of this subsection, the following are taken to be repealed:

(a) paragraphs (7)(f) and (g);

(b) subsections (9), (10) and (11);

(c) the definitions of *financial sector supervisory agency*, *law enforcement agency* and *overseas financial sector supervisory agency* in subsection (20).

192 How information may be given to the Commissioner of Taxation

If a provision of this Act requires or authorises the Commissioner or an RSA standards officer to give information to the Commissioner of Taxation or a taxation officer, the information may be given by means of a data processing device.

193 Commissioner may collect statistical information

Collection

(1) The Commissioner may collect such statistical information about RSAs and RSA providers as the Commissioner considers appropriate.

Survey forms

(2) For the purposes of subsection (1), the Commissioner may, by writing, approve one or more forms (the *survey forms*).

Instructions in survey forms

- (3) A survey form must contain instructions about the following matters:
- (a) filling up and supply of the particulars specified in the form;
 - (b) giving the filled-up form to a person (the *authorised recipient*) specified in the instructions.

The authorised recipient must be the Commissioner or a delegate of the Commissioner.

Notice to RSA provider about participation in the ISC's statistics program

- (4) The Commissioner may, by written notice given to an RSA provider, determine that the RSA provider is a participant in the ISC's statistics program. The notice must set out the effect of subsections (5) and (6).

Obligations of participants in the ISC's statistics program

- (5) At any time when a determination under subsection (4) is in force in relation to an RSA provider, the Commissioner may give the RSA provider a survey form. In that event, the RSA provider must:
- (a) fill up and supply, in accordance with the instructions contained in the form, the particulars specified in the form; and
 - (b) give the filled-up form to the authorised recipient in accordance with those instructions.

Offence

- (6) A person who intentionally or recklessly contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Survey form and determination may be given at the same time

- (7) For the purposes of subsection (5), if a determination under subsection (4) is given to an RSA provider at the same time as a survey form, the determination is taken to have been in force at the time when the survey form was given to the RSA provider.

Survey period

- (8) The particulars specified in a survey form must relate to one or more specified periods (the survey periods). The instructions contained in a survey form must not require the RSA provider to

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give the filled-up form to the authorised recipient before the 28th day after:

- (a) the end of the survey period; or
- (b) if there is more than one survey period—the end of the most recent survey period.

Extension of lodgment period—particular survey forms

- (9) The Commissioner may extend the period within which a particular filled-up form is to be given to the authorised recipient.

Extension of lodgment period—general

- (10) The Commissioner may, by notice published in the *Gazette*, extend the period within which a specified class of filled-up survey forms is to be given to the authorised recipient.

Delegation

- (11) The Commissioner may, by writing, delegate to a person any or all of the Commissioner's powers under this section.

Section does not limit other powers

- (12) This section does not, by implication, limit:
 - (a) any other provision of this Act; or
 - (b) anything in the *Census and Statistics Act 1905*.

194 Commissioner may publish statistical information

- (1) Subject to subsection (2), the Commissioner may arrange for the publication of statistical information relating to RSAs or RSA providers or relating to payments made to persons.
- (2) The Commissioner must not arrange for the publication of statistical information in a manner that enables the identification of:
 - (a) an RSA provider; or
 - (b) a particular RSA; or
 - (c) a person.
- (3) The Commissioner may determine that fees are to be paid in respect of the supply of publications in accordance with this section.

195 This Act and the regulations have effect subject to the *Crimes (Superannuation Benefits) Act 1989* and the *Australian Federal Police Act 1979*

This Act and the regulations apply in relation to an RSA provider subject to the effect of any superannuation order within the meaning of the *Crimes (Superannuation Benefits) Act 1989* or Part VA of the *Australian Federal Police Act 1979* that is made in respect of any RSA holder.

196 Payment out of an RSA in accordance with the *Bankruptcy Act 1966*

If a holder of an RSA becomes a bankrupt, within the meaning of subsection 5(1) of the *Bankruptcy Act 1966*, nothing in this Act or the regulations prevents the RSA provider from paying to the trustee in bankruptcy an amount out of the RSA that is property divisible amongst the member's creditors, within the meaning of section 116 of the *Bankruptcy Act 1966*.

197 Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

198 Delegation

The Commissioner may, by signed writing, delegate to a member of the staff of the Commissioner all or any of the Commissioner's powers under this Act or the regulations (other than section 199).

199 Annual reports

- (1) The Commissioner must, within 3 months after each year ending on 30 June, prepare and give to the Minister a report on the working, during the year, of this Act.
- (2) Without limiting the generality of subsection (1), a report under that subsection must set out information about the exercise during the year of the Commissioner's powers under Part 15.
- (3) The Minister must cause a copy of a report given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Section 200

200 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- and without limiting the generality of the above, may make regulations:
- (c) prescribing fees in respect of any matter under this Act; and
 - (d) prescribing penalties not exceeding 10 penalty units in respect of offences against the regulations.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for and in relation to the keeping of one or more registers by the Commissioner, where the registers relate to matters arising under this Act or the regulations. In particular, the regulations may make provision for the following:
- (a) a register to be kept in such form and manner as the Commissioner directs;
 - (b) persons to inspect a register;
 - (c) persons to obtain information contained in a register;
 - (d) fees to be charged for such an inspection or for providing such information.

*[Minister's second reading speech made in—
House of Representatives on 4 December 1996
Senate on 5 March 1997]*