



Superannuation Industry (Supervision) Act exemption

No 1 of 2023

Superannuation Industry (Supervision) Act 1993

I, Clare Gibney, delegate of APRA, exempt the class of persons specified in the Schedule from compliance with the modifiable provisions specified in the Schedule.

Dated: 4 August 2023

Clare Gibney, Executive Director, Policy & Advice Division

Schedule

1. Name of legislative instrument

This is *Superannuation Industry (Supervision) Act exemption No. 1 of 2023*.

2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3. Authority

This instrument is made under subsection 328(1) of the Act.

4. Definitions

In this instrument:

Act means the *Superannuation Industry (Supervision) Act 1993*.

APRA means the Australian Prudential Regulation Authority.

associate has the meaning given by clause 4 of Schedule 1 of the FSS Act.

constituent document has the meaning given by clause 2 of Schedule 1 of the FSS Act.

controlling stake has the meaning given in subsection 10(1) of the Act.

direct control interest has the meaning given by clause 11 of Schedule 1 of the FSS Act.

financial benefit means a benefit arising directly from the acquisition or holding of a share, but does not include a payment made to the person in respect of performance of their duties as a director of the RSE licensee.

FSS Act means the *Financial Sector (Shareholdings) Act 1998 (Cth)*.

modifiable provision has the meaning given under section 327 of the Act.

RSE licensee has the meaning given by subsection 10(1) of the Act.

stake has the meaning given by clause 10 of Schedule 1 of the FSS Act.

5. Application

This instrument applies to the following class of persons:

- (a) a person nominated for appointment as a director of an RSE licensee in accordance with the RSE licensee's constituent document and subsequently appointed as a director of the RSE licensee; and
- (b) a director of an RSE licensee; and
- (c) a former director of the RSE licensee.

6. Modifiable provisions

The persons identified in section 5 of this instrument are exempt from compliance with sections 29HA and 29JCB of the Act.

7. Conditions of exemption

The exemption from compliance with the modifiable provisions identified in section 6 of this instrument is subject to the following conditions specified under subsection 330(2) of the Act:

- (a) the person holds a direct control interest in the RSE licensee at a particular time of 15% or less; and
- (b) the person holds a stake in the RSE licensee at a particular time of more than 15% only as a result of the aggregation of:
 - (i) the direct control interest in the RSE licensee that the person holds at that time; and
 - (ii) the direct control interests in the RSE licensee held at that time by associates of the person; and
- (c) the associates of the person referred to in paragraph (b)(ii) are associates only by operation of clause 4(1)(e) of Schedule 1 of the FSS Act and are a director of the RSE licensee; and
- (d) the person acquires the controlling stake in the RSE licensee on or after the date of commencement of this instrument; and
- (e) the person is not entitled to any financial benefit directly arising from the person's shareholding in the RSE licensee; and
- (f) the person must as soon as practicable after ceasing to be a director of the RSE licensee transfer or forfeit the person's shareholding in the RSE licensee subject to the terms of the RSE licensee's constituent document.