# Commonwealth Coat of Arms

# 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](http://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:

1. 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
2. a director of an RSE licensee; and
3. 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:

1. the person holds a direct control interest in the RSE licensee at a particular time of 15% or less; and
2. 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:
3. the direct control interest in the RSE licensee that the person holds at that time; and
4. the direct control interests in the RSE licensee held at that time by associates of the person; and
5. 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
6. the person acquires the controlling stake in the RSE licensee on or after the date of commencement of this instrument; and
7. the person is not entitled to any financial benefit directly arising from the person’s shareholding in the RSE licensee; and
8. 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.