

APPENDIX 4

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

PART 16—ACTUARIES AND AUDITORS OF SUPERANNUATION ENTITIES

128 Object of Part

The object of this Part is to set out special rules about actuaries and auditors of superannuation entities.

129 Obligations of actuaries and auditors—compliance

When section applies

- (1) This section applies to a person in relation to a superannuation entity 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 entity; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act or the regulations in relation to the entity.

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

Trustee to be told about the contravention

- (3) Subject to subsection (3A), the person must tell the trustee of the entity about the matter in writing.

The person may not have to tell the trustee about the contravention

- (3A) The person does not have to tell the trustee of the entity about the matter if:

- (a) the person has been told by another person who is subject to section 129 that:
 - (i) that other person has already told the trustee about the matter; and
 - (ii) that other person has also told APRA about the matter or has given the trustee a written notice under subsection 129(5); and
- (b) the first-mentioned person has no reason to disbelieve that other person.

Penalty for misleading information

(3B) 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 trustee; and
- (c) the person knowingly tells another person that he or she has taken the action described in subparagraphs (3A)(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.

APRA may be told

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

Trustee's report

(5) If a person:

- (a) tells the trustee about the matter; and
- (b) does not tell APRA about the matter;

the person must, as soon as practicable, give the trustee a written notice requesting the trustee to give the person, before the end of the period specified in the notice, a written report about the action (if any) the trustee has taken, or proposes to take, to deal with the matter. The period specified in the notice must be reasonable. The trustee must comply with the request.

Report to APRA

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

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

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

Offence

(7) A person who intentionally or recklessly contravenes subsection (3), (5) or (6) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

130 Obligations of actuaries and auditors—solvency*When section applies*

- (1) This section applies to a person in relation to a superannuation entity if:
- (a) the person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and
 - (b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act or the regulations in relation to the entity.

Trustee to be told about the financial position

(2) Subject to subsection (2A), the person must tell the trustee of the entity about the matter in writing.

The person may not have to tell the trustee about the financial position

(2A) The person does not have to tell the trustee of the entity about the matter if:

- (a) the person has been told by another person who is subject to section 130 that:
 - (i) that other person has already told the trustee about the matter; and
 - (ii) that other person has also told APRA about the matter or given the trustee a written notice under subsection 130(4); and
- (b) the first-mentioned person has no reason to disbelieve that other person.

Penalty for misleading information

(2B) 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 trustee; and
- (c) the person knowingly tells another person that he or she has taken the action described in subparagraphs (2A)(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.

APRA may be told

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

Trustee's report

(4) If a person:

- (a) tells the trustee about the matter; and
- (b) does not tell APRA about the matter;

the person must, as soon as practicable, give the trustee a written notice requesting the trustee to give the person, before the end of the period specified in the notice, a written report about the action (if any) the trustee has taken, or proposes to take, to deal with the matter. The period specified in the notice must be reasonable. The trustee must comply with the request.

Report to APRA

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

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

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

Offence

(6) A person who intentionally or recklessly contravenes subsection (2), (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

When financial position is unsatisfactory

(7) For the purposes of this section, the financial position of an entity is taken to be unsatisfactory if, and only if, under the regulations, the financial position of the entity is treated as unsatisfactory.

131 Auditors—disqualification orders

Disqualification order

(1) APRA may make a written order (***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) A 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) APRA must give a copy of the order to the person.

Gazettal

(4) APRA must cause particulars of the disqualification order to be published in the *Gazette* as soon as practicable after it is made.

(4A) If APRA's decision to make the disqualification order is varied or revoked by APRA as a result of a reconsideration under subsection 344(4), APRA must cause particulars of the variation or revocation to be published in the *Gazette* as soon as practicable after the decision is made.

(4B) If:

- (a) APRA's decision to make the disqualification order is confirmed or varied by APRA as a result of a reconsideration under subsection 344(4); and
- (b) the decision as so confirmed or varied is varied or set aside by the Administrative Appeals Tribunal;

APRA must cause particulars of the Tribunal's decision to be published in the *Gazette* as soon as practicable after it is given.

Revocation

(5) APRA's may revoke a disqualification order. APRA's power to revoke may be exercised:

- (a) on APRA'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, APRA must decide to:

- (a) revoke the order; or
- (b) refuse to revoke the order.

Revocation—grounds

(7) APRA must not revoke a disqualification order unless APRA 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 APRA decides to refuse an application for revocation of a disqualification order, APRA must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

Gazettal

(7) If APRA revokes a disqualification order under subsection (5), APRA must cause particulars of the revocation to be published in the *Gazette* as soon as practicable after it occurs.

131A APRA may refer matters to a professional association

- (1) If APRA is of the opinion that an approved auditor or an actuary:
 - (a) has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor or an actuary 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 an actuary; or
 - (iii) any functions that an auditor or actuary 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 or an actuary for the purposes of this Act;

APRA:

- (c) may refer the details of the matter to the persons specified in subsection (2); and
 - (d) if APRA does so—must inform the person to whom the details are referred of the person's obligations under subsection 346(6B).
- (2) The persons specified in relation to an approved auditor or an actuary for the purposes of subsection (1) are those members of the auditor's or actuary's professional association whom APRA believes will be involved:
 - (a) in deciding whether the professional association should take any disciplinary or other action against the auditor or actuary in respect of the matter referred; or
 - (b) in taking that action.
 - (3) In relation to an approved auditor, the power of APRA under subsection (1) may be exercised whether or not APRA has made a written order disqualifying the auditor under subsection 131(1).
 - (4) If, under this section, APRA refers details of a matter involving an approved auditor or an actuary, APRA 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 or actuary, inform the auditor or actuary:
 - (a) of the fact that a matter has been referred under subsection (1); and
 - (b) of the nature of the matter so referred.