

**FINANCIAL SECTOR LEGISLATION AMENDMENT BILL (NO.1) 2000
PROPOSED AMENDMENTS TO OFFENCE PROVISIONS CONTAINED IN THE SIS ACT**

FAULT LIABILITY TO STRICT LIABILITY OFFENCE

SIS Section	Description	Current penalty	New penalty	Administering Body
36(2)	Lodgement of annual returns and information to accompany annual return, to APRA	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA
36A(7)	Trustee of self-managed superannuation fund to lodge annual returns	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	ATO
103(3)	Duty to keep minutes and records for at least 10 years	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	ASIC ATO
104(2)	Duty to keep records of changes of trustees	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA ATO
105(2)	Duty to keep reports for 10 years	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	ASIC
122(2)	Investment manager must not appoint or engage custodian without the trustee's consent	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA ATO
124(2)	Trustee to appoint investment manager in writing	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA ATO
254(4)	Trustee required to give prescribed information to regulator	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA ATO ASIC

SIS Section	Description	Current penalty	New penalty	Administering Body
299C(3)	Employer must inform trustee of TFN	Criminal; 10 p/u; fault	Criminal; 10 p/u; strict	APRA ATO
347A(6)	Reporting statistical information to Regulator	Criminal; 50 p/u; fault	Criminal; 50 p/u; strict	APRA ATO ASIC

FAULT LIABILITY TO TWO-TIER OFFENCE

SIS Section	Description	Current penalty	Proposed penalty	Administering Body
64(3)	Remittance of deductions by employer to trustee	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
107(3)	Establish and publish rules for procedures for appointment of member representatives (employer sponsored funds)	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA
108(3)	Establish and publish rules for procedures for appointment of additional independent trustee/director of corporate trustee (employer sponsored fund)	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA
111(3)	Accounting records to be kept for 5 years	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
112(5)	Accounts and statements to be prepared for each year of income	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
113 (1) and (2)	Trustee must appoint an approved auditor to give the trustee a report in the approved form. Trustee must give the auditor any document that the auditor requests in writing	Criminal; 2 years; fault	Criminal; 2 years; fault Criminal; 50 p/u; strict	APRA ATO
113(4) and (5)	Approved auditor to give report to the trustee in the specified period	Criminal; 6 months; fault	Criminal; 6 months; fault Criminal; 50 p/u; strict	APRA ATO

SIS Section	Description	Current penalty	Proposed penalty	Administering Body
154(2)	Trustee obligations re: commissions and brokerage (public offer funds)	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	ASIC
169(3)	Trustee to comply with requirements of the regulations in relation to money	Criminal; 1 year; fault	Criminal; 1 year; fault Criminal; 50 p/u; strict	ASIC
260(2)	A person appointed to investigate and make s.257 report must provide report to APRA.	Criminal; 100 p/u; fault	Criminal; 100 p/u fault Criminal; 50 p/u; strict	APRA
262	Trustee must comply with requirements imposed under ss, 257, 258 and 259.	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA
299F(4)	Trustee must request person who is beneficiary at commencement to quote TFN	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
299G(4)	Trustee must request person becoming beneficiary after commencement to quote tax file number	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
299H(6)	Use of TFNs for certain purposes- beneficiaries of eligible superannuation entities	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO

FAULT LIABILITY TO TWO-TIER OFFENCE (CONTINUED)

SIS Section	Description	Current penalty	Proposed penalty	Administering Body
299J(6)	Use of TFNs for certain purposes- beneficiaries of regulated exempt public sector superannuation schemes	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA
299K(6)	Use of TFNs for certain purposes- applicants to become beneficiaries of eligible superannuation entities	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
299L(6)	Use of TFNs for certain purposes- applicants to become beneficiaries of regulated exempt public sector superannuation schemes	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA
299M(4)	Trustee of eligible superannuation entity must inform RSA provider or other trustee of TFN for certain purposes	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA ATO
299Y(2)	Trustee of former regulated exempt public sector superannuation scheme to destroy records of tax file numbers	Criminal; 100 p/u; fault	Criminal; 100 p/u; fault Criminal; 50 p/u; strict	APRA

NEW OFFENCE PROVISIONS

SIS Section	Description	Current penalty	Administering Body
131B	Offence of holding oneself out as an actuary or auditor	Criminal; 50 p/u; strict	APRA ATO
141A	Former trustee obligation to give acting trustee books Former trustee obligations relating to the identification of property and transfer of property	Criminal; 50 p/u; strict Criminal; 50 p/u; strict	APRA ATO

NEW OFFENCE PROVISIONS

SIS Section	Description	Current penalty	Proposed penalty	Administering Body
18(7BA)	Trustee to notify APRA of breach of condition	Criminal ; 30 p/u; strict	Criminal; 30 p/u; strict	APRA
29(4)	Trustee to notify APRA of change in circumstances or breach of conditions	Criminal; 250 p/u; strict	Criminal; 250 p/u; strict	APRA
63(7A)	Trustee contravention of Regulator direction not to accept employer contributions	Criminal; 100 p/u; strict	Criminal; 100 p/u; strict	APRA ATO
63(10A)	Trustee contravention of Regulator direction to refund employer contributions and notify employer-sponsor	Criminal; 50 p/u; strict	Criminal; 50 p/u; strict	APRA ATO
121(4)	Trustee to inform the Regulator if it becomes disqualified	Criminal; 50 p/u; strict	Criminal; 50 p/u; strict	APRA ATO
123(4) and (5)	Custodian fails to notify APRA in writing of its eligibility to be custodian.	Criminal; 50 p/u; strict	Criminal; 50 p/u; strict	APRA
123(6)	Failure to make arrangements for orderly dismissal of custodian.	Criminal; 100 p/u; strict	Criminal; 100 p/u; strict	
140(3A)	Acting Trustee to notify appointment to beneficiaries	Criminal; 50 p/u; strict	Criminal; 50 p/u; strict	APRA

SIS Section	Description	Current penalty	Proposed penalty	Administering Body
163(3)	Trustee to keep copy of consent of expert	Criminal; 10 p/u; strict	Criminal; 10 p/u; strict	ASIC
201(4A)	Person to give the Regulator reasonable assistance in connection with application for civil penalty order	Criminal; 5p/u; strict	Criminal; 5 p/u; strict	APRA ATO
265(4)	Person to return identity card upon ceasing to be an inspector	Criminal; 1 p/u; strict	Criminal; 1 p/u; strict	APRA ATO ASIC
303(1A)	Incorrectly keeping records	Criminal; 40p/u; strict	Criminal; 40p/u; strict	APRA ATO ASIC
331(1A)	Person not to contravene conditions to which exemption is subject	Criminal; 5 p/u; strict	Criminal; 5 p/u; strict	APRA ATO ASIC
377(3A)	New trustee to notify appointment to members	Criminal; 250 p/u; strict	Criminal; 250 p/u; strict	APRA ASIC