



SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

PART 16 - ACTUARIES AND AUDITORS OF SUPERANNUATION ENTITIES

Division 3 - Disqualifying and removing actuaries and auditors

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SECTION 130F APPROVED SMSF AUDITORS - DISQUALIFICATION AND SUSPENSION ORDERS

Application of section

130F(1)

This section applies to the extent that the Regulator is ASIC.

Disqualification orders and suspension orders

130F(2)

The Regulator may make a written order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, 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 the *Financial Sector (Collection of Data) Act 2001*; or

(b) the person has failed to comply with a condition, or additional condition, imposed under section 128D on the person's registration as an approved SMSF auditor; or

(c) the person has made a false declaration in:

(i) an application for registration as an approved SMSF auditor; or

(ii) a statement given to the Regulator under section 128G; or

(d) the person is otherwise not a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

Note:

For offences relating to persons disqualified or suspended under this section, see section 131C.

130F(3)

The Regulator must give a copy of the order to the person.

Date of effect**130F(4)**

The 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.

Gazettal**130F(5)**

If the Regulator's decision is to make an order under this section disqualifying a person from being an approved SMSF auditor, the Regulator must cause a copy of the order to be published in the Gazette as soon as practicable after it is made.

130F(6)

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

130F(7)

If:

(a) the Regulator's decision to make the disqualification order is confirmed or varied by the Regulator 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;

the Regulator must cause a notice of the Tribunal's decision to be published in the Gazette as soon as practicable after it is made.

Revocation**130F(8)**

The Regulator may revoke an order under this section. The Regulator's power to revoke may be exercised:

(a) on the Regulator's own initiative; or

(b) on written application made by the person disqualified or suspended.

Revocation - decision on application**130F(9)**

If an application is made for the revocation of the order, the Regulator must decide to:

(a) revoke the order; or

(b) refuse to revoke the order.

Revocation - grounds**130F(10)**

The Regulator must not revoke the order unless the Regulator is satisfied that the person concerned:

(a) is likely to carry out and perform adequately and properly the duties of an approved SMSF auditor under this Act or the regulations; and

(b) is otherwise a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

Revocation - date of effect

130F(11)

A revocation of the order takes effect on the day the revocation is made.

Revocation - reasons for refusing to revoke

130F(12)

If the Regulator decides to refuse an application for revocation of the order, the Regulator must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

Gazettal

130F(13)

If the order that the Regulator revokes under subsection (8) is an order disqualifying a person from being an approved SMSF auditor, the Regulator must cause particulars of the revocation to be published in the Gazette as soon as practicable after it occurs.

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