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Superannuation Industry (Supervision)
Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Nos. 93–94 2002–03

Superannuation Industry (Supervision) Amendment Bill
2002

Superannuation (Financial Assistance Funding) Levy
Amendment Bill 2002

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30 January 2003

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Superannuation Industry (Supervision) Amendment Bill 2002

Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002

Date Introduced: 12 December 2002

House: House of Representatives

Portfolio: Treasury

Commencement: The Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002 commences on Royal Assent. Clauses 1 to 3 in the Superannuation Industry (Supervision) Amendment Bill 2002 commence on Royal Assent while the amendments in Schedule 1 commence on the day the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002 receives Royal Assent.

Purpose

Together the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002 (the S(FAF)LA Bill) and the Superannuation Industry (Supervision) Amendment Bill 2002 (the SISA Bill) aim to make the imposition and administration of a levy under the *Superannuation (Financial Assistance Funding) Levy Act 1993* (the Levy Act) more efficient and less burdensome on the superannuation industry.

The purpose of the S(FAF)LA Bill is to amend the Levy Act to allow regulations for the imposition of one levy on superannuation funds and approved deposit funds at the end of a financial year to recoup the grants of financial assistance made to superannuation funds during that financial year. The S(FAF)LA Bill also includes amendments that allow for a maximum and minimum amount to be set when imposing the levy.

The purpose for the SISA Bill is to make some minor consequential amendments to section 237 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) as a result of the amendments proposed in the S(FAF)LA Bill.

Warning:

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Background

The SIS Act and the Levy Act were part of the group of seven pieces of legislation passed in 1993 to improve the prudential supervision of the superannuation industry. The reforms were meant to strengthen the security of superannuation savings and protect the rights of members.¹ The Explanatory Memorandum for the Superannuation Industry (Supervision) Bill 1993 stated:

This Bill contains the most important elements of the package of Bills and provides:

- for financial assistance to be provided to funds that have suffered a loss due to fraudulent conduct or theft²

Part 23 of the SIS Act was drafted to meet that requirement.

The Explanatory Memorandum for the Superannuation (Financial Assistance Funding) Levy Bill 1993 stated that the Bill provided for:

the imposition of levies on superannuation funds and approved deposit funds for the purpose of funding financial assistance provided pursuant to the provisions of Part 23 of the Superannuation Industry (Supervision) Bill 1993 to any fund, or funds, that have suffered a loss as a result of fraudulent conduct or theft.

When the SIS Act was passed the provisions in Part 23 did not cover excluded superannuation funds.³ Excluded superannuation funds were exempt from the provisions in Part 23 and other prudential provisions in the SIS Act due to their size and the perceived ability of members to be involved in the day-to-day running of an excluded superannuation fund. It was never expected that the provisions in Part 23 of the SIS Act would cover superannuation funds with less than 5 members.

On 8 October 1999 amendments were passed that abolished the definition of excluded superannuation funds and replaced it with a new type of small superannuation fund, the self managed superannuation fund (SMSF).⁴ From 8 October 1999 all regulated superannuation funds, other than SMSFs, were covered by Part 23 of the SIS Act. This included all small funds with less than 5 members who decided they wanted to be regulated by the Australian Prudential Regulation Authority (APRA) and replaced their trustees with a trustee who had been granted approved trustee status under Part 2 of the SIS Act by APRA.

The Levy Act limits the size of the levy that can be imposed on superannuation funds to 0.05% of assets at the end of the financial year prior to the financial year that the levy applies. The Levy Act also requires that a new levy be imposed for each determination made under Part 23 of the SIS Act. Prior to the 2001/2002 financial year the Minister had made no determinations under Part 23 of the SIS Act and, therefore, no levies had been raised under the Levy Act.

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In October 2001 the then Minister for Financial Services and Regulation, The Hon Joe Hockey MP, established the Superannuation Working Group (SWG), which included representatives from APRA, the Australian Securities and Investment Commission and the Department of the Treasury. They were charged with conducting public consultations on an issues paper entitled *Options for Improving the Safety of Superannuation*. The report prepared by the SWG was given to the Minister for Revenue and the Assistant Treasurer in March 2002 and was released to the public on 28 October 2002. Recommendation 27 dealt with the issue of whether any amendments needed to be made to the financial assistance provisions in Part 23 of the SIS Act. Recommendation 27 stated:

Given that the current provisions contained in Part 23 of the SIS Act have not yet been fully tested, the SWG recommends that the provisions not be changed at this time. However, the SWG recommends that the Government review the operation of Part 23 and consider possible amendments to it, in consultation with relevant stakeholders, once the first decision under Part 23 has been made.⁵

Also on 28 October 2002 the Government issued a response to the report that included a number of proposed changes to the regulation of the superannuation industry. In its response the Government supported Recommendation 27 and stated:

Since 14 June 2002, the Government has made over 190 determinations (relating to two events) to grant financial assistance to funds that have suffered loss as a result of fraudulent conduct or theft.

The Treasury will review the operation of these provisions, in consultation with key stakeholders.⁶

By the time both Bills were introduced into Parliament the Minister had made 380 determinations to grant requests for financial assistance mostly to funds with assets less than \$1.5 million.⁷ The first grant of financial assistance occurred on 14 June 2002 and involved 181 small superannuation funds previously under the trusteeship of Commercial Nominees of Australia Limited who suffered losses in the Enhanced Cash Management Trust (ECMT).⁸

The two bills are the first of the reforms proposed by the Government in its response to the SWG's report.⁹ The aim is to allow the Government to impose a levy in a financial year that relates to more than one determination. Currently, if the Minister makes a determination, regulations may be made to impose a levy to recoup the money provided in the grant for financial assistance determination. The levy, or if more than one levy is imposed in one financial year, all levies cannot exceed 0.05% of the total value of all assets in a fund as at the end of the previous financial year.¹⁰

As there were 181 determinations made on 14 June 2002 concerning the losses suffered by superannuation funds investing in ECMT, the Levy Act requires that if the Government wanted to recoup the grants for financial assistance it would have to impose 181 separate levies. This would be an administrative burden on all funds and APRA.

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Issues with the application of Part 23 of the SIS Act

These Bills do not address the issues raised in the superannuation industry over the last 18 months in relation to Part 23 of the SIS Act. These issues are:

- the time it has taken for decisions to be made regarding requests for grants of financial assistance
- whether legislation should be introduced into Parliament requiring that grants for financial assistance fully compensate for eligible losses
- whether the definition of eligible loss should go beyond fraud and theft, and
- whether the provisions in Part 23 of the SIS Act should be extended to other superannuation products, such as some pension and annuity products.

The Financial System Inquiry¹¹ and the Superannuation Working Groups report on safety in superannuation¹² have discussed some of these issues. With the first grants of financial assistance occurring in June 2002, the Government is leaving its options open on how or when it may need to deal with these issues.

Main Provisions

Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002

Schedule 1 of the S(FAF)LA Bill proposes amendments to the Levy Act.

Items 1 and 2 insert into section 6 of the Levy Act provisions that simplify the process for raising a levy under the regulations of the Levy Act to cover determinations granting financial assistance made in a financial year. **Proposed subsection 6(1A)** permits the raising of a levy to cover one or more financial assistance determinations made in a financial year and for that levy not to apply to any fund covered by those determinations. **Proposed subsection 6(1B)** requires that where a levy is raised in respect of more than one determination, the regulations made to raise the levy must also specify all the funds covered by the levy and the proportion of the levy that applies to each fund. **Proposed subsection 6(3)** allows the regulations made to impose a levy to specify a minimum and maximum amount of levy that any one fund is required to pay in relation to the levy.

Section 7 of the Levy Act prescribes the limits that apply to a levy raised to cover the determination(s) made during a financial year in granting financial assistance to superannuation funds. **Item 3** repeals and replaces subsection 7(1) of the Levy Act to take account of the proposed amendments in **items 1 and 2**. Under **proposed subsection 7(1)** the rate of the levy and the minimum and maximum amounts should not result in the Commonwealth collecting revenue that would exceed the amount needed to recoup the grants of financial assistance to which the levy applies.

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Item 4 inserts a new subsection into section 8 of the Levy Act. Section 8 of the Levy Act stipulates the method for calculating the amount of levy imposed on a fund. It limits the amount of the levy to 0.05% of the value of assets of the fund at the end of the financial year before the year in which the levy took effect.

Proposed subsection 8(1A) places a further condition on the amount of levy that will apply to a fund. It requires that where a maximum amount is imposed under the regulations a fund whose levy amount calculated using the formula in subsection 8(1) is greater than the maximum amount will only be required to pay the maximum amount. Similarly, where a minimum amount is imposed under the regulations a fund whose levy amount calculated using the formula in subsection 8(1) is less than the minimum amount will be required to pay the minimum amount.

When regulations are made imposing a levy under the Levy Act that includes a minimum levy amount the levy will have a greater impact on APRA regulated superannuation funds with small balances¹³ than those funds whose levy is more than the minimum levy amount. In a year such as the last financial year (2001/2002) negative returns, management fees and other expenses associated with running a fund have all impacted heavily on small balance superannuation funds. Adding a minimum levy amount to recoup grants for financial assistance is going to have a heavier impact on these small balancing superannuation funds as the levy will represent a greater proportion of their assets than larger funds, which are more able to absorb the cost of the levy.

Superannuation Industry (Supervision) Amendment Bill 2002

Schedule 1 of SISA Bill proposes minor amendments to section 237 of the SIS Act that are consequential to changes proposed in the S(FAF)LA Bill.

The proposed amendments in **items 1, 2 and 3** alter subsection 237(2) of the SIS Act to ensure that it applies to more than one determination. If the total amount of funds raised by the levy exceeds the amount of financial assistance granted under the determinations the levy applies to then the excess amount is applied in a manner determined by the Minister. The amendments in the SISA Bill will not be necessary if the S(FAF)LA Bill does not pass into law.

Concluding Comments

The Bills do achieve the aim of reducing the administrative burden that would exist on funds if they had to pay a levy for each determination for granting financial assistance. However, they do increase the financial burden of superannuation funds with small balances by allowing regulations that impose a levy to include a minimum and maximum amount. The imposition of a minimum amount, while ensuring that superannuation funds are not levied ridiculously small amounts, in some cases less than 20 cents,¹⁴ places a heavier burden on small balancing superannuation funds. The result being that the

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proportionately higher cost to a small balancing superannuation fund could have an adverse impact on the retirement savings of the members in those superannuation funds.

Endnotes

- 1 Superannuation Industry (Supervision) Bill 1993, *Explanatory Memorandum*, p. 1.
- 2 *ibid.*
- 3 Prior to 8 October 1999 any superannuation fund with less than 5 members was an excluded superannuation fund for the purposes of the SIS Act.
- 4 Apart from a small number of exceptions, section 17A of the SIS Act defines a self managed superannuation fund as a fund with less than five members where all the members of the fund are also the trustees of the fund. Self managed superannuation funds are regulated by the Australian Taxation Office. The Australian Prudential Regulation Authority supervises all other regulated superannuation funds.
- 5 Superannuation Working Group, *Options for Improving the Safety of Superannuation - Report of the Superannuation Working Group*, 28 March 2002, p. 78
[\[http://www.treasury.gov.au/contentitem.asp?pageId=&ContentID=457\]](http://www.treasury.gov.au/contentitem.asp?pageId=&ContentID=457) (17 January 2003).
- 6 Government Response to SWG Recommendations, 28 October 2002, p. 13.
- 7 Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002, Second Reading Speech, Mr Peter Slipper, House of Representatives, *Debates*, 12 December 2002, p. 10274.
- 8 'Financial assistance to superannuation investors', *Media release*, Senator The Hon Helen Connan, Minister for Revenue and the Assistant Treasurer, 14 June 2002, C68/02.
- 9 Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002, Second Reading Speech, *op. cit.*, p. 10275.
- 10 Subsection 7(2), *Superannuation (Financial Assistance Funding) Levy 1993*.
- 11 Financial System Inquiry, *Financial System Inquiry Final Report*, March 1997
- 12 Superannuation Working Group, *op. cit.*
- 13 Mr Peter Slipper in the Second Reading speech stated that '[a]pproximately 81% of regulated funds have assets of \$1.5 million or less.' For the purpose of this document they will be referred to as small balancing superannuation funds.
- 14 Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002, Second Reading Speech, *op. cit.*, p. 10275

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