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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY AMENDMENT BILL  
2002**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Revenue and Assistant Treasurer,

Senator the Hon Helen Coonan)

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**Outline**

1. This Bill amends the *Superannuation (Financial Assistance Funding) Levy Act 1993* the Levy Act to facilitate more efficient arrangements for the imposition of levies under the Levy Act on regulated superannuation funds and approved deposit funds, for the purposes of recouping financial assistance granted under Part 23 of the SIS Act.
2. During the 2001-2002 financial year, the Minister for Revenue and Assistant Treasurer made over 180 determinations to grant financial assistance to superannuation funds that had suffered a loss due to fraudulent conduct of theft. To date the Minister has made over 370. As a result a number of deficiencies were identified in the legislative arrangements.
3. Firstly, the Levy Act currently requires that separate levies must be collected for each grant of financial assistance. Secondly, the levy rate must be determined on a fund's assets with a maximum levy rate. The Levy Act does not allow for the specification of maximum or minimum levy amounts.
4. The recent circumstances have identified that collecting a levy separate levy for each individual determination is impractical in circumstances where a large number of determinations are made, and a flat levy rate to recoup grants already paid would generate a

large number of very small levy amounts (less than 20 cents) from some funds, and very large amount (over \$400,000) from other funds.

5. To address these inefficiencies, this Bill introduces a provision to amend the Levy Act to allow for the specifying of a minimum and maximum levy payable in respect of any levies imposed. This is consistent with the *Superannuation Supervisory Levy Imposition Act 1998*. It also introduces a provision to enable aggregate amounts of financial assistance to be collected in one levy in each financial year, rather than individually.

#### ***Financial Impact Statement***

6. The Government is committed to recouping the amount of financial assistance granted under Part 23 of the SIS Act. The amendments proposed in this Bill simplify the process of collection of levies. It is anticipated that the amendments in this Bill would not have a financial impact.

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## **Regulation Impact Statement**

### **Problem Identification**

2.1 The *Superannuation (Financial Assistance Funding) Levy Act 1993* (Levy Act) allows for regulations to impose a levy on superannuation funds and approved deposit funds for the purpose of funding financial assistance to a fund(s) that has suffered losses as a result of fraudulent conduct or theft. A determination as to whether an eligible loss has been suffered and the amount of any grant would be made under Part 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

2.2 Part 23 enables a trustee of a superannuation fund to apply for assistance if the fund has suffered an eligible loss, subject to certain conditions. An eligible loss is a loss that is suffered as the result of fraudulent conduct or theft. The loss must have caused substantial diminution of the funds assets leading to difficulties paying benefits. Upon the Minister being sufficiently satisfied that the fund has suffered an eligible loss, the Minister must determine whether the public interest requires that a grant of assistance be made to the fund.

2.3 Until recently, Part 23 of the SIS Act had never been used, and therefore neither had the Levy Act. However, on 20 June 2002, the Minister for Revenue and Assistant Treasurer made a determination for the first grant of financial assistance under Part 23. During the 2001-02 financial year, 180 determinations for financial assistance were made, and a further 197 have been made during the current financial year. All but one of the determinations relates to the same event that caused the eligible losses. In all but one of the grants of financial assistance, the funds receiving financial assistance had assets of less than approximately \$1.5 million. Approximately 81 per cent of regulated superannuation funds have assets of \$1.5 million or less.

2.4 The Levy Act in its current form does not provide an equitable or efficient mechanism for the collection of levies to fund financial assistance granted by the Commonwealth.

2.5 The Levy Act allows only for a particular levy to relate to one grant of financial assistance. When the Levy Act was introduced, it was not envisaged that a large number of funds would require assistance at any one time. In its current form, the Levy Act makes the collection of a large volume of levies extremely impractical and inefficient. The imposition of a large number of single levies to collect, in some cases relatively small amounts, imposes large compliance costs on individual superannuation funds subject to levies, and the Australian Prudential Regulation Authority (APRA), who would be responsible for the collection of the levies on behalf of the Commonwealth.

2.6 Secondly, the Levy Act does not ensure equality amongst all funds. There are around 11,000 superannuation funds that range in size from the very large (with close to \$10 billion in assets), to small funds with less than \$1,000 in assets. Financial assistance to date has generally been paid to funds with less than \$1.5 million in assets. The Levy Act in its current form would require some funds to have to pay in excess of \$400,000, far above the \$65,000 maximum the same funds pay for the purposes of APRA supervision, and smaller funds paying as little as 20 cents (or less), which is not administratively sensible or cost effective to collect.

## **Objectives**

2.7 The proposed regulatory measures are designed to improve the workability of the Levy Act to make the process of collecting levies more efficient and the levy burden shared more equally across the industry.

## **Identification of Options**

### *Option 1 Amendments to the Levy Act*

2.8 It is proposed to introduce a provision to enable the setting of a maximum and minimum levy amount, which would mirror provisions in the *Superannuation Supervisory Levy Imposition Act 1998*. This will ensure equality across the funds being levied. The maximum and minimum levy amount would be specified in the regulations imposing a levy. The minimum and maximum amounts would be set depending on the amount of financial assistance being collected by the particular levy.

2.9 In addition it is proposed to amend the Levy Act to enable one levy to be made for one or more determinations under Part 23 of the SIS Act made in a particular financial year. This levy would recoup the aggregate of financial assistance granted in the previous financial year.

### *Option 2 No Specific Action*

2.10 Under this option no measures would be introduced, and the Government, in line with the current provisions of the Levy Act, would recoup the amounts of financial assistance granted under Part 23 of the SIS Act.

## **Impact Analysis**

### *Impact group identification*

2.11 The main groups likely to be affected by the proposed amendments are APRA regulated superannuation funds/trustees and administrators, all APRA regulated superannuation fund members, APRA and the Department of the Treasury.

## **Assessment of Costs and Benefits**

### *Option 1 Proceed with legislative amendments*

#### Superannuation Funds/Trustees/Administrators

2.12 As these provisions have not been previously used, it is anticipated that the introduction of the proposed amendments will reduce compliance costs on superannuation funds subject to the levy. The number of determinations that have been made to date suggests there would be compliance costs involved in dealing with levies and the collection of one levy to recoup the aggregate amount of financial assistance granted in the previous year would reduce the compliance costs of dealing with multiple levies.

2.13 Each levy imposed on superannuation funds involves some cost to the trustee to administer and ensure the conditions of the levy are fulfilled and accounted for. For example, trustees would be

required to undertake an administrative role to organise payment in respect of nearly 200 levies, rather than in respect of one levy.

2.14 Where multiple determinations are made in a year, the compliance costs are likely to rise. Having a single levy reduces the total compliance costs for trustees, compared with the alternative of raising a separate levy for each determination. This amendment will improve the efficiency of the levy process benefiting superannuation funds, trustees and administrators.

2.15 The introduction of requirements establishing a minimum and maximum levy would ensure that proposed levies could be more effectively designed such that the burden is more equally shared across the industry.

2.16 On current estimates, to collect financial assistance granted in the 2001-2002 financial year, funds with a balance of less than \$685,000 may incur a small increase in the quantum of imposed levy. It is noted that the particular fund balance level for which funds below would incur an increase in the quantum of levy imposed would vary, depending on the amount of financial assistance being collected in a particular year. However given the amount of determinations made to date, it is unlikely that it would be much higher than the currently quoted \$685,000.

2.17 While the application of a minimum levy amount based on one levy means that smaller funds may incur a slightly higher burden, the savings in reduced compliance costs through the imposition of one levy, rather than around 200 potential levies, would offset to some extent a potential increase in the quantum imposed by setting a minimum levy amount.

2.18 The application of a maximum may mean that some of the largest funds may experience a reduction in levies. However, it is envisaged that, notwithstanding the total amount to be collected, the maximum and minimum levies set would be less than the maximum and minimum set in terms of the levies imposed on superannuation funds for the cost of APRA supervision. For the 2002-2003 financial year, the minimum and maximum levies for APRA supervision were \$400 and \$66,000 respectively.

2.19 The imposition of a maximum and minimum amount would not effect the majority of superannuation funds, where the levy amount would still be worked out by the applicable rate of the levy multiplied by the asset base of the particular fund.

#### Superannuation Fund Members

2.20 It is likely that the impact of the proposed amendments on superannuation balances of members in large funds will reduce, as the cost of the levies imposed on their funds would reduce the earnings of their superannuation fund, and the impact on member balances in small funds increase with the introduction of a minimum levy amount. However, it is anticipated that the reduction in compliance costs achieved by enabling the aggregation of levies would contribute to offset the increases resulting from the introduction of a minimum levy amount.

#### APRA

2.21 As APRA would be the agency responsible for the collection of levies, the proposed amendments would enable more cost-effective processes involved with the billing and collection of levies. Setting a minimum amount of levy ensures that all levies are cost effective to collect from leviable funds, rather than just larger funds. APRA need only collect one levy a year related to financial assistance rather than one for each determination that is made under Part 23 of the SIS Act.

#### The Department of the Treasury.

2.22 The Department of the Treasury would be responsible for preparing regulations setting one levy only, rather than multiple levies. This would also enable more effective use of Parliamentary resources, as only one set of regulations would need to be tabled for consideration.

## *Option 2 No Specific Action*

2.23 Based on current estimates under the current requirements some funds would be levied amounts (in aggregate) up to \$400,000, and other funds would be levied less than 20 cents. With the amount of financial assistance to be collected from the 2001-2002 financial year, approximately 70 per cent of regulated funds would contribute only half a per cent of the total levy to be recouped.

2.24 Additionally, multiple levies would impose large compliance costs for all superannuation funds. APRA would incur increased administration costs in the collection and administering of multiple levies.

### **Consultation**

2.25 In October 2001 the Government released an issues paper entitled Options for Improving the Safety of Superannuation, which outlined a number of proposals to improve the prudential framework for superannuation. The Government established a Superannuation Working Group (SWG) comprising representatives of the Treasury, APRA, the Australian Securities and Investments Commission, to consult on the proposals and report to the Government with recommendations by March 2002. The SWG reported to Government on 28 March 2002.

2.26 On 28 October 2002, the Government released the SWG report and the Governments response to that report. On the same day, the Government also wrote to all parties that participated in consultations, outlining the proposed legislative changes that were accepted by the Government, and seeking comments on the implementation issues rather than the merits of the reform. The letter included an outline of the proposed amendments to the levy arrangements.

### **Conclusion and recommended option**

2.27 Option 1 will enable the burden of levies to be equally shared across the range of funds particularly as, to date, the main recipients of financial assistance have been funds with less than \$1.5 million dollars. The reduction in compliance costs anticipated as a result of dealing with a single levy request instead of approximately 200 levy requests will offset any increases in the amount to be collected from the smaller funds due to the introduction of a minimum amount of levy.

2.28 Given that benefits from these amendments will be spread, option 1 is the preferred option.

### **Implementation and review**

2.29 It is proposed that the Levy Act be amended to allow the setting of a maximum and minimum levy amount, and also allow for the making of one levy to collect the aggregate of all financial assistance granted in the previous financial year. These effects would take place upon Royal Assent.

2.30 The Superannuation Working Group also recommended that the Government review the operation of the Part 23 provisions and consider possible amendments once the first decision under Part 23 had been made. The Government intends to undertake this review during 2003.

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2. **Proposed legislation**

3. *Clause 1 Short Title*

4. 3.1 Upon enactment, the Act would be known as the *Superannuation (Financial Assistance Funding) Levy Amendment Act 2002*.

5. *Clause 2 Commencement*

6. 3.2 Clause 2 provides for the Act to commence on Royal Assent.
7. **Clause 3 Schedules**
8. 3.3 Clause 3 states that each Act that is specified in a schedule to this Act will be amended or repealed, as it is included in this Act.
9. **Schedule 1 Amendment of the *Superannuation (Financial Assistance Funding) Levy Act 1993***
10. 3.4 Schedule 1 amends the *Superannuation (Financial Assistance Funding) Levy Act 1993* the Levy Act to allow, in conjunction with the imposition of a levy to collect financial assistance granted under Part 23 of the *Superannuation Industry (Supervision) Act 1993*, the setting of a maximum and minimum levy amount. It also amends the Levy Act to allow for collection of all financial assistance granted in a previous financial year to be aggregated and collected as one levy.
11. **Item 1 Section 6**
12. 3.5 Item 1 amends section 6 of the Levy Act to insert two new sections.
13. 3.6 Subsection 6(1A) allows regulations to impose a levy to cover more than one determination of financial assistance made under Part 23 of the SIS Act. The Levy Act prevents a levy from being imposed on any regulated superannuation fund or approved deposit fund that had financial assistance granted to it in the same financial year. Self managed superannuation funds are ineligible for financial assistance under the provisions of the SIS Act nor are they charged a levy under the Levy Act.
14. 3.7 Subsection 6(1B) specifies that if a regulation imposes a levy in respect of more than one grant of financial assistance, the regulation imposing the levy must specify all the determinations to which the levy relates and the proportion that each individual determination represents to the aggregate levy.
15. **Item 2 At the end of Section 6**
16. 3.8 Item 2 adds a new subsection that enables regulations imposing a levy in respect of one or more determinations to impose either or both a maximum and minimum amount of levy that is payable.
17. **Item 3 Subsection 7(1)**
18. 3.9 Item 3 repeals subsection 7(1) and inserts a new subsection. The inserted provision ensures that the rate of any levies introduced because of determinations made under Part 23 in conjunction with the minimum and maximum amounts of levy that is payable, are designed and set in such a manner that the amount of revenue raised by the imposed levy does not exceed the amount that was granted as financial assistance, for which the particular levy relates.
19. **Item 4 After subsection 8(1)**
20. 3.10 Item 4 inserts a new subsection 8(1A). This provision clarifies that if the amount of levy worked out under subsection 8(1), (being the Applicable rate multiplied by the Value of the assets), is greater than the amount set as the maximum levy amount (if a maximum levy amount is stated in the regulation), then the amount of levy imposed on the fund by the regulation is equal to the maximum amount.
21. 3.11 Conversely, if the amount of levy worked out under subsection 8(1), (being the Applicable rate multiplied by the Value of the assets) is less than the amount set as the

minimum levy amount (if a minimum levy amount is stated in the regulation), than the amount of levy imposed on the fund by the regulation is equal to the minimum amount.