Superannuation Legislation Amendment Act (No. 3) 1999

Act No. 121 of 1999 as amended

This compilation was prepared on 28 October 2003

[This Act was amended by Act No. 101 of 2003]

Amendment from Act No. 101 of 2003
[Schedule 6 (item 31) repealed Schedule 2 (item 34)
Schedule 6 (item 31) commenced on 8 October 1999]

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An Act to amend the law relating to superannuation, and for related purposes

[*Assented to 8 October 1999*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation Amendment Act (No. 3) 1999*.

2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Items 29 and 54 of Schedule 1 commence on 1 April 2000.

(3) Items 44 and 50 of Schedule 1 commence on 1 July 2000.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Superannuation Industry (Supervision) Act 1993 relating to self managed superannuation funds

Part 1—Regulation of self managed superannuation funds

1 Subsection 3(1)

Omit “APRA and ASIC”, substitute “APRA, ASIC and the Commissioner of Taxation”.

2 Subsection 6(1)

Omit “subsection (3)”, substitute “subsections (3) and (4)”.

3 Paragraph 6(1)(a)

After “administration of”, insert “the following provisions, to the extent that administration of the provisions is not conferred on the Commissioner of Taxation by paragraph (e)”.

4 Subparagraphs 6(1)(a)(i) to (v)

Omit “and”.

5 Subparagraph 6(1)(a)(vi)

Omit “and” (second occurring).

6 Subparagraphs 6(1)(a)(vii) to (xii)

Omit “and”.

7 Paragraph 6(1)(b)

After “(d)”, insert “or on the Commissioner of Taxation by paragraph (f)”.

8 Subparagraph 6(1)(c)(v)

Omit “and”.

9 At the end of paragraph 6(1)(c)

Add (but not as part of subparagraph (v)):

to the extent that administration is not conferred on the Commissioner of Taxation by paragraph (e); and

10 At the end of subsection 6(1)

Add:

; and (e) the Commissioner of Taxation has the general administration of the following provisions to the extent that they relate to self managed superannuation funds:

(i) Parts 4, 5, 7 and 8;

(ii) Part 12 (other than section 105);

(iii) Parts 13 and 14;

(iv) Part 15 (other than sections 126B to 126F);

(v) Parts 16, 17 (other than section 140), 21, 24 and 25A; and

(f) the Commissioner of Taxation also has the general administration of Parts 3 and 6 (other than section 60A) and section 105:

(i) to the extent that they relate to self managed superannuation funds; and

(ii) to the extent that administration is not conferred on ASIC by paragraph (d).

11 Subsection 6(2)

Omit “to 31”, substitute “ 27, 28, 29 (other than section 332), 30 and 31”.

12 Subsection 6(2) (note)

Omit “16”, substitute “10”.

13 After subsection 6(2) (after the note)

Insert:

(2A) Powers and duties are also conferred by Parts 1, 25 (other than Division 3), 26 to 28, 29 (other than section 332) and 30 (other than section 342) on the Commissioner of Taxation for the

purposes of the administration of the provisions he or she administers.

Note: Generally, the Commissioner of Taxation is not referred to in these provisions, ***Regulator*** is used instead.

(2B) Powers and duties are also conferred on APRA by section 332 for the purposes of the administration of provisions administered by APRA or by the Commissioner of Taxation.

14 At the end of section 6

Add:

(4) Despite subsection (1):

(a) if an entity is not a self managed superannuation fund on the last day of a year of income, APRA has (subject to any later application of this subsection) the general administration of subsections 40(1) and (2), in relation to the entity, in respect of the following:

(i) the doing of anything after the end of that year of income, in relation to that year of income;

(ii) the doing of anything after the end of that year of income, in relation to any previous year of income; and

(b) if an entity is a self managed superannuation fund on the last day of a year of income, the Commissioner of Taxation has (subject to any later application of this subsection) the general administration of subsections 40(1) and (2), in relation to the entity, in respect of the following:

(i) the doing of anything after the end of that year of income, in relation to that year of income;

(ii) the doing of anything after the end of that year of income, in relation any previous year of income; and

(c) the following rules apply in relation to the general administration of subparagraphs 42(1AA)(b)(ii) and (c)(ii), subsection 42(1AC), subparagraphs 42A(3)(c)(ii) and (d)(ii) and subsection 42A(4):

(i) subject to subparagraph (ii), APRA has the general administration of those provisions;

(ii) if another person or body is specified in regulations under subsection 19(4) in respect of a class of superannuation funds, that person or body has the

general administration of those provisions to the extent that they relate to funds belonging to that class.

15 Subsection 10(1) (definition of *excluded fund*)

Repeal the definition.

16 Subsection 10(1) (definition of *excluded superannuation fund*)

Repeal the definition.

17 Subsection 10(1) (at the end of the definition of *member of staff*)

Add:

; and (c) in relation to the Commissioner of Taxation—a taxation officer.

18 Subsection 10(1) (at the end of the definition of *Regulator*)

Add:

; and (c) the Commissioner of Taxation if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner of Taxation.

19 Subsection 10(1)

Insert:

self managed superannuation fund has the meaning given by section 17A.

20 Subsection 10(1)

Insert:

taxation officer means:

(a) a Second Commissioner of Taxation; or

(b) a Deputy Commissioner of Taxation; or

(c) an officer or employee of the Australian Public Service or of an authority of the Commonwealth performing duties in the Australian Taxation Office; or

(d) a person engaged to provide services relating to the Australian Taxation Office.

21 At the end of section 10

Add:

(3) Without limiting the meaning of the expression ***member*** in this Act, that expression, in relation to a self managed superannuation fund, includes a person:

(a) who receives a pension from the fund; or

(b) who has deferred his or her entitlement to receive a benefit from the fund.

22 After section 17

Insert:

17A Definition of self managed superannuation fund

Basic conditions—funds other than single member funds

(1) Subject to this section, a superannuation fund, other than a fund with only one member, is a ***self managed superannuation fund*** if and only if it satisfies the following conditions:

(a) it has fewer than 5 members;

(b) if the trustees of the fund are individuals—each individual trustee of the fund is a member of the fund;

(c) if the trustee of the fund is a body corporate—each director of the body corporate is a member of the fund;

(d) each member of the fund:

(i) is a trustee of the fund; or

(ii) if the trustee of the fund is a body corporate—is a director of the body corporate;

(e) no member of the fund is an employee of another member of the fund, unless the members concerned are relatives;

(f) no trustee of the fund receives any remuneration from the fund or from any person for any duties or services performed by the trustee in relation to the fund.

Basic conditions—single member funds

(2) Subject to this section, a superannuation fund with only one member is a ***self managed superannuation fund*** if and only if:

(a) if the trustee of the fund is a body corporate:
  (i) the member is the sole director of the body corporate; or
  (ii) the member is one of only 2 directors of the body corporate, and the member and the other director are relatives; or
  (iii) the member is one of only 2 directors of the body corporate, and the member is not an employee of the other director; and

(b) if the trustees of the fund are individuals:
  (i) the member is one of only 2 trustees, of whom one is the member and the other is a relative of the member; or
  (ii) the member is one of only 2 trustees, and the member is not an employee of the other trustee; and

(c) no trustee of the fund receives any remuneration from the fund or from any person for any duties or services performed by the trustee in relation to the fund.

Certain other persons may be trustees

(3) A superannuation fund does not fail to satisfy the conditions specified in subsection (1) or (2) by reason only that:

(a) a member of the fund has died and the legal personal representative of the member is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during the period:
  (i) beginning when the member of the fund died; and
  (ii) ending when death benefits commence to be payable in respect of the member of the fund; or

(b) the legal personal representative of a member of the fund is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during any period when:
  (i) the member of the fund is under a legal disability; or
  (ii) the legal personal representative has an enduring power of attorney in respect of the member of the fund; or

(c) if a member of the fund is under a legal disability because of age and does not have a legal personal representative—the parent or guardian of the member is a trustee of the fund in place of the member; or

(d) an appointment under section 134 of an acting trustee of the fund is in force.

Circumstances in which entity that does not satisfy basic conditions remains a self managed superannuation fund

(4) Subject to subsection (5), if a superannuation fund that is a self managed superannuation fund would, apart from this subsection, cease to be a self managed superannuation fund, it does not so cease until the earlier of the following times:

(a) the time an approved trustee of the fund is appointed;

(b) 6 months after it would so cease to be a self managed superannuation fund.

Subsection (4) does not apply if admission of new members

(5) Subsection (4) does not apply if the reason, or one of the reasons, why the superannuation fund would cease to be a self managed superannuation fund was the admission of one or more new members to the fund.

*Extended meaning of **employee** in certain circumstances*

(6) For the purposes of this section, a member of a fund, who is an employee of an employer-sponsor of the fund, is also taken to be an employee of another person (the ***other person***), if the employer-sponsor is:

(a) a relative of the other person; or

(b) either of the following:

(i) a body corporate of which the other person, or a relative of the other person, is a director;

(ii) a body corporate related to that body corporate; or

(c) the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary; or

(d) a partnership, where:

(i) the other person, or a relative of the other person, is a partner in the partnership; or

(ii) the other person, or a relative of the other person, is a director of a body corporate that is a partner in the partnership; or

(iii) the other person, or a relative of the other person, is a beneficiary of a trust, if the trustee of the trust is a partner in the partnership.

Note 1: An effect of this subsection is that a fund will not be a self-managed superannuation fund if a member is employed by an employer-sponsor of the fund, and another member (who is not a relative) has a specified interest in that employer-sponsor: see paragraph (1)(e). An example of this would be where the employer-sponsor is a company of which another member is a director.

Note 2: Another effect is that a fund will not be a self-managed superannuation fund if its single member is employed by an employer-sponsor of the fund in which the other trustee of the fund (who is not a relative) has a specified interest: see subsection (2).

(7) Subsection (6) does not limit the meaning of the term ***employee***.

Regulations

(8) For the purposes of this section:

(a) a member of a fund is taken to be an employee of a person belonging to a class specified in the regulations for the purposes of this paragraph; and

(b) despite subsections (6) and (7) and section 15A, a member of a fund is not taken to be an employee of a person belonging to a class specified in the regulations for the purposes of this paragraph.

Meaning of relative

(9) In this section:

relative, in relation to an individual, means:

(a) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her spouse or former spouse; or

(b) another individual having such a relationship to the individual or to his or her spouse or former spouse because of adoption or remarriage; or

(c) the spouse or former spouse of the individual, or of an individual referred to in paragraph (a) or (b).

Disqualified persons

(10) For the avoidance of doubt, subsection (3) does not permit a person, in the capacity of legal personal representative of a disqualified person (within the meaning of section 120), to be a trustee of a self managed superannuation fund.

23 Subsection 18(1)

Omit "Subject to section 18A, a", substitute "A".

24 After paragraph 18(1)(a)

Insert:

(aa) the fund is not a self managed superannuation fund; and

25 Section 18A

Repeal the section.

26 Subsection 19(4)

Omit "APRA", substitute "APRA, or such other body or person as is specified in the regulations,".

27 After subsection 19(4)

Insert:

Regulations

(4A) Without limiting subsection (4), regulations for the purposes of that subsection may specify that notices are to be given to different persons or bodies in respect of different classes of superannuation funds.

28 At the end of subsection 21(2)

Add:

; (c) a person must not be the trustee of a superannuation fund with fewer than 5 members (other than a self managed superannuation fund) unless the person is an approved trustee.

29 At the end of subsection 21(2)

Add:

; (d) APRA may suspend or remove a trustee of a superannuation fund with fewer than 5 members (other than a self managed superannuation fund) if the trustee is not an approved trustee.

30 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Trustee of superannuation entity to lodge annual returns with the Regulator

31 At the end of section 36

Add:

Self managed superannuation funds

(5) A superannuation entity is not required to lodge a return under this section in respect of a year of income if the superannuation entity was, at all times during the year of income, a self managed superannuation fund.

32 After section 36

Insert:

36A Trustee of self managed superannuation fund to lodge annual returns

Lodgment

(1) The trustee of a superannuation entity that was a self managed superannuation fund at any time during a year of income must, within the reporting period, or within such longer period as the Commissioner of Taxation allows, give to the Commissioner of Taxation a return under this section.

Period for lodgment

(2) The ***reporting period*** is the period that begins at the end of the year of income and whose length is:

(a) prescribed by the regulations for the purposes of this paragraph; or

(b) if the length of the period is not prescribed—specified for the purposes of this paragraph by the Commissioner of Taxation by notice in the *Gazette*.

Form of return

(3) The return must:

(a) be in the approved form; and

(b) contain such information as is required by the form in relation to the fund in respect of that year of income or in relation to another year of income, or both.

Note: The approved form of return may require the trustee to set out the tax file number of the entity. See subsection 299U(2).

Approvals

(4) An approval given by the Commissioner of Taxation of a form of return for the purposes of this section may require or permit the return:

(a) to be attached to, or physically to form part of, another document; and

(b) to be given on a specified kind of data processing device or by specified electronic transmission, in accordance with specified software or other requirements.

Signature when not lodged electronically

(5) If the return is given to the Commissioner of Taxation other than by data processing device or by electronic transmission, the return must be signed by:

(a) if the trustee is a body corporate—a director of the body corporate; or

(b) if the trustee is a group of 2 or more individuals—at least one of those individuals.

Signature when lodged electronically

(6) If the return is given to the Commissioner of Taxation on a data processing device or by way of electronic transmission:

(a) the return must contain the electronic signature of a person specified in the approved form; and

(b) a hard copy of the return must be made and signed by:

(i) if the trustee is a body corporate—a director of the body corporate; or

(ii) if the trustee is a group of 2 or more individuals—at least one of those individuals.

The hard copy need not be given to the Commissioner of Taxation, but must be kept by a person referred to in paragraph (b) for a period of 10 years beginning on the date on which it was signed.

(7) A person who intentionally or recklessly contravenes this section commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

(8) A notice under paragraph (2)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

33 At the end of subsection 42(1)

Add:

; and (c) the entity was not a self managed superannuation fund at any time during the year of income.

34 After paragraph 42(1AA)(d)

Insert:

(da) the entity was not a self managed superannuation fund at any time during the year of income; and

35 After paragraph 42(1AC)(f)

Insert:

(fa) the entity was not a self managed superannuation fund at any time during the year of income; and

36 After subsection 42(1A)

Insert:

Note: The culpability test is still relevant to a fund that has been a self managed fund during only part of a year of income—see subparagraph 42A(2)(b)(ii), paragraph 42A(3)(g) and subparagraph 42A(4)(f)(ii).

37 At the end of section 42

Add:

(3) If a person or body is specified in the regulations for the purposes of subsection 19(4), a reference to APRA in subparagraph (1AA)(b)(ii) or (c)(ii) or subsection (1AC) of this section is taken to be a reference to that person or body.

38 After section 42

Insert:

42A Complying superannuation fund—fund that has been a self managed superannuation fund at any time during a year

Entity that was a self managed superannuation fund throughout a year of income

(1) An entity that was a self managed superannuation fund at all times during a year of income is a complying superannuation fund in relation to that year of income for the purposes of this Division if:

(a) either:

(i) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence; or

(ii) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence other than a time, before it became a resident regulated superannuation fund, when the entity was a resident approved deposit fund; and

(b) the entity passes the test in subsection (5) in relation to the year of income.

Entity that was a self managed superannuation fund during only part of a year of income

(2) An entity that was a self managed superannuation fund during a part or parts of a year of income is a complying superannuation

fund in relation to that year of income for the purposes of this Division if:

(a) either:

(i) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence; or

(ii) the entity was a resident regulated superannuation fund at all times during the year of income when the entity was in existence other than a time, before it became a resident regulated superannuation fund, when the entity was a resident approved deposit fund; and

(b) both:

(i) the entity passes the test in subsection (5) in respect of the part or parts of the year of income during which the entity was a self managed superannuation fund; and

(ii) if the trustee contravened this Act or the regulations in relation to the entity in respect of any other part or parts of the year of income—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Funds coming into existence during year of income etc.

(3) An entity that:

(a) is a superannuation fund that came into existence during the year of income and at that time or later in the year of income became a self managed superannuation fund; or

(b) was a resident approved deposit fund that became a superannuation fund during the year of income;

is also a complying superannuation fund in relation to the year of income if:

(c) the entity complied with subsections 19(2) to (4):

(i) within 60 days after the day on which it came into existence or became a superannuation fund, as the case may be; or

(ii) within such further period, if any, as APRA (whether before or after the end of the period of 60 days) allows; and

(d) either of the following conditions is satisfied:

(i) the trustee did not contravene this Act or the regulations in relation to the entity during the whole of the period (the ***pre-lodgment period***) that began when the entity came into existence or became a superannuation fund, as the case may be, and ended when the entity complied with subsections 19(2) to (4);

(ii) the trustee contravened this Act or the regulations in relation to the entity during the pre-lodgment period on one or more occasions but the trustee satisfies APRA that, because of special circumstances that existed in relation to the fund during the pre-lodgment period, it would be reasonable for the fund to be treated as if it had satisfied this Act and the regulations; and

(e) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the pre-lodgment period; and

after the pre-lodgment period:

(f) the entity passed the test in subsection (5) in respect of the part or parts of the year of income, occurring after the pre-lodgment period, during which the entity was a self managed superannuation fund; and

(g) if the trustee contravened this Act or the regulations in relation to the entity in respect of any part or parts of the year of income, occurring after the pre-lodgment period, during which the entity was not a self managed superannuation fund—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Trustee makes an election

(4) An entity that was a self managed superannuation fund at some time, or at all times, during a year of income is also a complying superannuation fund in relation to the year of income if:

(a) the trustee of the entity has purported to make an election under subsection 19(4); and

(b) if, when the election was made, the requirements of subsections 19(2) to (4) are not complied with:

(i) the requirements of subsections 19(2) to (4) (to the extent that they have not already been complied with) are complied with within 28 days after the trustee finds

out (whether by written notice from APRA or otherwise) that they were not complied with, or within such further period, if any, as APRA (whether before or after the end of the period of 28 days) allows; and

(ii) except where the trustee received written notice from APRA about the non-compliance—the trustee tells APRA in writing of the compliance within 7 days after the requirements are complied with or within such further period, if any, as APRA (whether before or after the end of the period of 7 days) allows; and

(c) either of the following conditions is satisfied:

(i) the trustee did not contravene this Act or the regulations in relation to the entity during the whole of the period (the ***rectification period***) that began when the trustee of the entity lodged the purported election under subsection 19(4) and ended when the entity complied with subsections 19(2) to (4);

(ii) the trustee contravened this Act or the regulations in relation to the entity during the rectification period on one or more occasions but the trustee satisfies the APRA that, because of special circumstances that existed in relation to the fund during the rectification period, it would be reasonable for the fund to be treated as if it had satisfied this Act and the regulations; and

(d) if the fund was in existence before the beginning of its 1994-95 year of income—under regulations made for the purposes of section 50, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period that began at the beginning of the fund's 1994-95 year of income and ended when the trustee of the entity lodged the purported election under subsection 19(4); and

(e) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the rectification period; and

(f) in respect of the part of the year of income occurring after the end of the rectification period, both:

(i) the entity passed the test in subsection (5) in respect of the part or parts of the year of income occurring after

the end of the rectification period, during which the entity was a self managed superannuation fund; and

(ii) if the trustee contravened this Act or the regulations in relation to the entity in respect of any other part or parts of the year of income occurring after the end of the rectification period, during which the entity was not a self managed superannuation fund—the entity did not fail the culpability test set out in subsection 42(1A) in relation to any of those contraventions.

Circumstances in which entity passes the test in this subsection

(5) An entity passes the test in this subsection in relation to a year of income or part of a year of income if:

(a) the trustee did not contravene this Act or the regulations in relation to the entity during the year of income or the part of the year of income; or

(b) if the trustee contravened this Act or the regulations in relation to the entity during the year of income or the part of the year of income, the Regulator, after considering:

(i) the taxation consequences that would arise if the entity were to be treated as a non-complying superannuation fund for the purposes of Part IX of the *Income Tax Assessment Act 1936* in relation to the year of income concerned; and

(ii) the seriousness of the contravention; and

(iii) all other relevant circumstances;

thinks that a notice should nevertheless be given stating that the entity is a complying superannuation fund in relation to the year of income concerned.

Determining whether contravention

(6) In determining for the purposes of this section whether the Act or the regulations were contravened in respect of the entity in respect of the pre-lodgment period or the rectification period, this Act and the regulations are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.

References to APRA

(7) If a person or body is specified in the regulations for the purposes of subsection 19(4), a reference to APRA in subparagraph (3)(c)(ii), (3)(d)(ii), or subsection (4) is taken to be a reference to that person or body.

39 Subsection 58(1)

Omit "an excluded fund", substitute "a superannuation fund with fewer than 5 members or an excluded approved deposit fund".

40 Subsection 59(1)

Omit "an excluded fund", substitute "a self managed superannuation fund".

41 Subsection 60(1)

Omit "an excluded fund", substitute "a self managed superannuation fund ".

42 Subsection 66(5) (paragraph (a) of the definition of *acceptable percentage*)

Omit "an excluded superannuation fund", substitute "a superannuation fund with fewer than 5 members".

43 Subsection 101(1)

Omit "an excluded superannuation fund, or of an approved deposit fund other than an excluded approved deposit fund", substitute "a self managed superannuation fund, or of an approved deposit fund".

44 After section 106

Insert:

106A Duty to notify Commissioner of Taxation of change in status of entity

Trustee's duty to notify Commissioner of Taxation

(1) The trustee of a superannuation entity must give written notice to the Commissioner of Taxation if the trustee:

(a) has knowledge that the superannuation entity has ceased to be a self managed superannuation fund; or

(b) has knowledge that the superannuation entity has become a self managed superannuation fund since first becoming a superannuation entity.

Note: The trustee of a fund that was already a self managed superannuation fund when the trustee made an election under section 19 does not have to give a notice to the Commissioner of Taxation at that time, because the fund became a self managed superannuation fund before (not since) becoming a superannuation entity.

Timing of notice

(2) A notice under subsection (1) must be given as soon as practicable, and not later than 21 days, after the trustee first has knowledge that the superannuation fund has ceased to be, or has become, a self managed superannuation fund.

Offence

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

45 Subsection 107(1)

Omit “an excluded superannuation fund”, substitute “a superannuation fund with fewer than 5 members”.

46 Subsection 108(1)

Omit “an excluded”, substitute “a self managed”.

47 Subsection 117(2)

Omit all the words after “21 October 1992; and”, substitute:

(b) ending immediately before the day on which subsection (2A) commenced.

48 After subsection 117(2)

Insert:

Self managed superannuation funds

(2A) This section does not apply to a self managed superannuation fund if, at all times after the day on which this subsection commenced when the fund was in existence, the fund was a self managed superannuation fund.

49 After section 121

Insert:

121A Person not to be trustee of certain small funds unless an approved trustee

A person must not be, or act as, a trustee of a superannuation entity that is a superannuation fund with fewer than 5 members (other than a self managed superannuation fund) unless the person is an approved trustee.

50 At the end of section 121A

Add:

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months.

(3) An offence under subsection (2) is an offence of strict liability.

51 Subsection 123(1)

Omit “an excluded fund”, substitute “a self managed superannuation fund”.

52 Section 125

Omit “an excluded fund”, substitute “a self managed superannuation fund”.

53 Sections 126 and 126A

Omit “an excluded fund” (wherever occurring), substitute “a self managed superannuation fund”.

54 At the end of subsection 133(1)

Add:

; or (d) where the superannuation entity is a superannuation fund with fewer than 5 members (other than a self managed superannuation fund)—the trustee is not an approved trustee.

55 Section 228 (definition of *fund*)

Omit "an excluded fund", substitute "a self managed superannuation fund".

56 After Part 24A

Insert:

Part 24B—Provisions relating to the administration by APRA and the Commissioner of Taxation of superannuation funds with fewer than 5 members

Division 1—Monitoring of superannuation funds with fewer than 5 members

252A APRA or Commissioner of Taxation may request certain information

Notice may be given

(1) APRA or the Commissioner of Taxation may give a written notice under this section to the trustee of a regulated superannuation fund if APRA or the Commissioner of Taxation, as the case requires, considers that the fund has fewer than 5 members.

Information that may be requested

(2) The notice may require the trustee, within a specified period (which must not be shorter than 21 days), to inform APRA or the Commissioner of Taxation:

(a) whether or not the fund was a self managed superannuation fund as at the date (the ***response date***) on which the trustee so informed APRA or the Commissioner of Taxation; or

(b) if the fund was not a self managed superannuation fund as at the response date—whether, in the trustee's opinion, the fund is likely to become a self managed superannuation fund within the period specified in the notice; and

(c) if the fund was a self managed superannuation fund as at the response date—whether, in the trustee's opinion, the fund is likely to cease to be a self managed superannuation fund within the period specified in the notice.

Offence

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Strict liability

(4) An offence under subsection (3) is an offence of strict liability.

252B Contravention notices

Service of notice

(1) If APRA or the Commissioner of Taxation has reason to believe that a person has contravened section 252A, APRA or the Commissioner of Taxation, as the case requires, may cause a notice (a ***contravention notice***) to be served on the person in accordance with the regulations.

Particulars

(2) A contravention notice is to set out:

(a) particulars of the alleged contravention; and

(b) the prescribed penalty for the contravention and the person to whom, the place at which, and the manner in which, the penalty may be paid; and

(c) the date of the notice and a statement that the penalty may be paid within 14 days after that date;

and may contain any other particulars that APRA or the Commissioner of Taxation thinks necessary.

Notification that person may pay prescribed penalty

(3) A contravention notice is to state that, if the person does not wish the matter to be dealt with by a court, the person may lodge with APRA or the Commissioner of Taxation, as the case requires, a signed statement to that effect in the manner stated in the notice and pay the prescribed penalty for the contravention.

Prescribed penalty

(4) For the purposes of this section, the prescribed penalty for a contravention is 2 penalty units for each month or part of a month during which the contravention continues, up to a maximum of 10 penalty units.

Consequences of payment of prescribed penalty

(5) If:

(a) a contravention notice has been served on a person; and

(b) before the end of the period of 14 days stated in the notice, or, if APRA or the Commissioner of Taxation allows, at any time before service of the summons in respect of the contravention, the amount of the prescribed penalty is paid in accordance with the notice; and

(c) a statement, signed by the person, to the effect that the person does not wish the matter to be dealt with by a court, is received by the person to whom the amount of penalty is paid; and

(d) the contravention that resulted in the service of the contravention notice has ceased;

the following provisions have effect:

(e) any liability of the person in respect of the contravention is taken to be discharged;

(f) no further proceedings are to be taken in respect of the contravention;

(g) no conviction for the contravention is taken to have been recorded.

Payment by cheque

(6) If the amount of the prescribed penalty is paid by cheque, payment is taken not to be made unless the cheque is honoured upon presentation.

Other proceedings not affected

(7) Except as provided by subsection (5), this section does not prejudice or affect the institution or prosecution of proceedings in respect of a contravention of section 252A or limit the amount of the fine that may be imposed by a court in respect of such contravention.

No requirement to serve contravention notice

(8) This section does not require the service of a contravention notice or affect the liability of a person to be prosecuted in a court in respect of a contravention of section 252A in relation to which a contravention notice has not been served.

Division 2—Secrecy provisions relating to Commissioner of Taxation

252C Secrecy—general obligations

(1) In this section:

Act covered by this section means any of the following Acts:

(a) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;

(b) the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*;

(c) any other Act prescribed by the regulations for the purposes of this paragraph.

court includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

financial sector supervisory agency means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

officer means:

(a) the Commissioner of Taxation; or

(b) a taxation officer; or

(c) any other person who, because of his or her employment, or in the course of that employment:

(i) has acquired protected information; or

(ii) has had access to protected documents;

other than an employee of the body to which the information or document relates.

protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and containing information relating to the affairs of:

(a) a self managed superannuation fund; or

(b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related to a body corporate that is the trustee of a self managed superannuation fund; or

(c) a person who has been, is, or proposes to be, a member of a self managed superannuation fund;

other than information that has already been lawfully made available to the public from other sources.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and relating to the affairs of:

(a) a self managed superannuation fund; or

(b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related to a body corporate that is the trustee of a self managed superannuation fund; or

(c) a person who has been, is, or proposes to be, a member of a self managed superannuation fund;

other than information that has already been lawfully made available to the public from other sources.

(2) A person who is or has been an officer is guilty of an offence if:
  (a) the person directly or indirectly:
    (i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or
    (ii) produces a document to any person or to a court; and
  (b) the information is protected information, or the document is a protected document; and
  (c) the disclosure or production is not in accordance with subsection (3), (4), (5), (6) or (7).

Maximum penalty: Imprisonment for 2 years.

(3) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of this Act or an Act covered by this section.

(4) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
  (a) is by an employee of the person to whose affairs the information or document relates; or
  (b) occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

(5) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
  (a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies), specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or
  (b) is to another person and is approved by the Commissioner of Taxation by instrument in writing.

Note: See subsection (9) for conditions that may be imposed on people making disclosures under this subsection.

(6) It is not an offence if the disclosure of protected information or the production of a protected document is to:

(a) the Commissioner of Taxation; or

(b) a taxation officer;

for the purposes of the performance of the functions or the exercise of the powers of the Commissioner of Taxation under a law of the Commonwealth or of a State or Territory.

(7) It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

(8) A person who is, or has been, an officer cannot be required to disclose to a court any protected information or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or an Act covered by this section.

(9) The regulations may impose conditions in relation to the disclosure of information or the production of a document under this section, with which a person who discloses the information or produces the document must comply.

(10) A person is guilty of an offence if the person fails to comply with a condition imposed under subsection (9).

Maximum penalty: Imprisonment for 2 years.

(11) A document that:

(a) is a protected document; or

(b) contains protected information;

is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

Note: The *Privacy Act 1988* also contains provisions relevant to the disclosure of information.

Division 3—Transitional and savings provisions relating to the regulation of self managed superannuation funds by the Commissioner of Taxation

252D Definition

In this Division:

commencement day means the day on which section 1 of the *Superannuation Legislation Amendment Act (No. 3) 1999* commenced.

252E Instruments made or issued by APRA or by the Commissioner of Taxation

Instruments made by APRA

(1) An instrument that:
  (a) relates to a superannuation fund; and
  (b) was in force immediately before a particular time (the ***switching time***); and
  (c) was made or issued (whether before, on or after the commencement day) by APRA under a provision of this Act that:
    (i) immediately before the switching time, was administered by APRA in relation to the fund; and
    (ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been made or issued by the Commissioner of Taxation.

Instruments made by Commissioner of Taxation

(2) An instrument that:
  (a) relates to a superannuation fund; and
  (b) was in force immediately before a particular time (the ***switching time***); and

(c) was made or issued by the Commissioner of Taxation under a provision of this Act that:

(i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and

(ii) as at the switching time, is administered by APRA in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been made or issued by APRA.

Instruments for a limited period

(3) If an instrument referred to in this section was, when made, to have effect only for a limited period, it has effect only for so much of the period as has not already expired before the switching time.

Instruments not in operation

(4) A reference in this item to an instrument in force includes a reference to an instrument that has been made but is not yet in operation.

252F Obligations owed by or to APRA or the Commissioner of Taxation

(1) Subject to section 252G, an obligation that:

(a) relates to a superannuation fund; and

(b) was owed by APRA, or to APRA, immediately before a particular time (the ***switching time***); and

(c) was owed (whether before, on or after the commencement day) under a provision of this Act that:

(i) immediately before the switching time, was administered by APRA in relation to the fund; and

(ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been owed by, or to, the Commissioner of Taxation.

Rights and powers of APRA

(2) Subject to section 252G, a right or power that:

(a) relates to a superannuation fund; and

(b) was possessed by, or conferred on, APRA immediately before a particular time (the ***switching time***); and

(c) was possessed or conferred (whether before, on or after the commencement day) under a provision of this Act that:

(i) immediately before the switching time, was administered by APRA in relation to the fund; and

(ii) as at the switching time, is administered by the Commissioner of Taxation in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been possessed by, or conferred on, the Commissioner of Taxation.

Obligations owed by, or to, the Commissioner of Taxation

(3) An obligation that:

(a) relates to a superannuation fund; and

(b) was owed by the Commissioner of Taxation, or to the Commissioner of Taxation, immediately before a particular time (the ***switching time***); and

(c) was owed under a provision of this Act that:

(i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and

(ii) as at the switching time, is administered by APRA in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been owed by, or to, APRA.

Rights and powers of the Commissioner of Taxation

(4) A right or power that:

(a) relates to a superannuation fund; and

(b) was possessed by, or conferred on, the Commissioner of Taxation immediately before a particular time (the ***switching time***); and

(c) was possessed or conferred under a provision of this Act that:

(i) immediately before the switching time, was administered by the Commissioner of Taxation in relation to the fund; and

(ii) as at the switching time, is administered by APRA in relation to the fund;

has effect, at and after the switching time (subject to any later application of this section), as if it had been possessed by, or conferred on, APRA.

252G Outstanding annual returns and amounts

Outstanding annual returns etc.—self managed funds

(1) If:

(a) a superannuation fund was a self managed superannuation fund at either of the following times:

(i) the end of the last day of a designated year of income; or

(ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and

(b) at that time, the trustee of the fund was under an obligation to give to APRA an annual return in respect of a previous year of income, or any other report or information under this Act;

the trustee of the fund is taken (subject to any later application of this section) to be under an obligation, beginning immediately after that time, to give the annual return, report or information to the Commissioner of Taxation. The annual return, report or information is to be given in the approved form.

Note: This provision only affects annual returns outstanding from years *before* the designated year of income. The trustee will still be required to submit a return under section 36A for the designated year of income (and also under section 36 if the fund changed status during the designated year of income). Levy will be payable on lodgment of any such return.

Outstanding annual returns etc.—other funds

(2) If:

(a) a superannuation fund was a fund other than a self managed superannuation fund at either of the following times:

(i) the end of the last day of a designated year of income; or

(ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and

(b) at that time, the trustee of the fund was under an obligation to give to the Commissioner of Taxation an annual return in respect of a previous year of income, or any other report or information under this Act;

the trustee of the fund is taken (subject to any later application of this section) to be under an obligation, beginning immediately after that time, to give the annual return, report or information to APRA. The annual return, report or information is to be given in the approved form.

Note: This provision only affects annual returns outstanding from years *before* the designated year of income. The trustee will still be required to submit a return under section 36 for the designated year of income (and also under section 36A if the fund changed status during the designated year of income). Levy will be payable on lodgment of any such return.

Outstanding levy—self managed funds

(3) If:

(a) a superannuation fund was a self managed superannuation fund at either of the following times:

(i) the end of the last day of a designated year of income; or

(ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and

(b) at that time, an amount was payable by the trustee of the superannuation fund to APRA on behalf of the Commonwealth under a prescribed Act in respect of a previous year of income;

then:

(c) the amount is taken (subject to any later application of this section) to be payable by the trustee of the superannuation fund, immediately after the that time, to the Commissioner of Taxation on behalf of the Commonwealth; and

(d) the Commissioner of Taxation has the same power to waive or remit the amount as APRA would have had if this subsection had not been enacted.

Outstanding levy—other funds

(4) If:

(a) a superannuation fund was a fund other than a self managed superannuation fund at either of the following times:

(i) the end of the last day of a designated year of income; or

(ii) if the fund ceased to exist during a designated year of income—the time at which the fund ceased to exist; and

(b) at that time, an amount was payable by the trustee of the superannuation fund to the Commissioner of Taxation under a prescribed Act in respect of a previous year of income;

then:

(c) the amount is taken (subject to any later application of this section) to be payable by the trustee of the superannuation fund, immediately after that time, to APRA on behalf of the Commonwealth; and

(d) APRA has the same power to waive or remit the amount as the Commissioner of Taxation would have had if this subsection had not been enacted.

Regulations

(5) The regulations may prescribe exceptions to the rules set out in subsections (1) to (4), including, but not limited to the following:

(a) prescribing that, in specified circumstances, the trustee of a superannuation fund is taken to be under an obligation to give a return, report or information to APRA rather than to the Commissioner of Taxation, or to the Commissioner of Taxation rather than to APRA;

(b) prescribing that, in specified circumstances, an amount is taken to be payable by the trustee of a superannuation fund to APRA rather than to the Commissioner of Taxation, or to the Commissioner of Taxation rather than to APRA.

Definitions

(6) In this section:

amount means an amount of levy or an amount of late payment penalty.

designated year of income means the 1999-2000 year of income or a later year of income.

prescribed Act means the following:

(a) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;

(b) the *Financial Institutions Supervisory Levies Collection Act 1998*;

(c) any other Act prescribed by the regulations for the purposes of this paragraph.

252H Regulations

The regulations may deal with other transitional matters arising from the enactment of the *Superannuation Legislation Amendment Act (No. 3) 1999.*

57 At the end of section 284

Add:

(5) ASIC and the Commissioner of Taxation must give each other a copy of any report they prepare under this section in relation to a self managed superannuation fund.

Part 2—Consequential changes to references to "APRA"

58 Subsection 10(1) (paragraphs (e) to (l), (s), (t), (u) and (zg) of the definition of *reviewable decision*)

Omit "APRA" (wherever occurring), substitute "the Regulator".

59 Section 35

Omit "APRA", substitute "the Regulator".

60 Division 2 of Part 5 (heading)

Repeal the heading, substitute:

Division 2—The Regulator may give notices about complying fund status

61 Subsection 40(1)

Omit "APRA", substitute "The Regulator".

Note: The heading to section 40 is altered by omitting "**APRA**" and substituting "**the Regulator**".

62 Subsections 40(2) and (4)

Omit "APRA" (wherever occurring), substitute "the Regulator".

63 At the end of section 40

Add:

Note: Because "the Regulator" is whichever of APRA or the Commissioner of Taxation is administering this provision in respect of a fund, a notice could initially be given to a fund by APRA under paragraph 40(4)(a), and later the Commissioner of Taxation could give a notice to the same fund under paragraph 40(4)(b). This is because the fund could have become a self managed superannuation fund after the first notice was given.

64 Subsection 41(1)

Omit "APRA", substitute "the Regulator".

Note: The heading to section 41 is altered by omitting "**APRA**" and substituting "**the Regulator**".

65 Subsection 41(2)

Omit “APRA” (first occurring), substitute “The Regulator”.

66 Paragraph 41(2)(b)

Omit “APRA”(wherever occurring), substitute “the Regulator”.

67 Subsection 42(1A)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

68 Subsection 45(1)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

69 Section 50

Omit “APRA” (wherever occurring), substitute “the Regulator”.

70 Section 62

Omit “APRA” (wherever occurring), substitute “the Regulator”.

71 Subsection 63(1)

Omit “APRA”, substitute “The Regulator”.

Note: The heading to section 63 is altered by omitting “**APRA**” and substituting “**The Regulator**”.

72 Subsection 63(3)

Omit “APRA” (first occurring), substitute “The Regulator”.

73 Paragraph 63(3)(b)

Omit “APRA”, substitute “the Regulator”.

74 Subsection 63(5)

Omit “APRA” (first occurring), substitute “The Regulator”.

75 Subsection 63(5)

Omit “APRA” (second occurring), substitute “the Regulator”.

76 Subsection 63(8)

Omit “APRA”, substitute “the Regulator”.

77 Subsections 67(3) and (4)

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note: The heading to subsection 67(4) is altered by omitting "*APRA's*" and substituting "*The Regulator's*".

78 Section 70A

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note 1: The heading to section 70A is altered by omitting "**APRA**" and substituting "**The Regulator**".

Note 2: The heading to subsection 70A(2) is altered by omitting "*APRA*" and substituting "*The Regulator*".

79 Section 71

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note: The heading to subsection 71(4) is altered by omitting "*APRA's*" and substituting "*The Regulator's*".

80 Subsection 106(1)

Omit "APRA", substitute "the Regulator".

Note: The heading to section 106 is altered by omitting "**APRA**" and substituting "**the Regulator**".

81 Subsection 121(3)

Omit "APRA", substitute "the Regulator".

Note: The heading to subsection 121(3) is altered by omitting "*APRA*" and substituting "*the Regulator*".

82 Section 129

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note 1: The heading to subsection 129(4) is altered by omitting "*APRA*" and substituting "*The Regulator*".

Note 2: The heading to subsection 129(6) is altered by omitting "*APRA*" and substituting "*the Regulator*".

83 Section 130

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note 1: The heading to subsection 130(3) is altered by omitting "*APRA*" and substituting "*The Regulator*".

Note 2: The heading to subsection 130(5) is altered by omitting "*APRA*" and substituting "*the Regulator*".

84 Subsection 131(1)

Omit "APRA" substitute "The Regulator".

85 Subsections 131(3) and (4)

Omit "APRA" (wherever occurring), substitute "The Regulator".

86 Subsection 131(5)

Omit "APRA", substitute "The Regulator".

87 Subsection 131(5)

Omit "APRA's" (first occurring), substitute "The Regulator's".

88 Paragraph 131(5)(a)

Omit "APRA's", substitute "the Regulator's".

89 Subsection 131(6)

Omit "APRA", substitute "the Regulator".

90 Subsection 131(7)

Omit "APRA" (first occurring), substitute "The Regulator".

91 Subsection 131(7)

Omit "APRA" (second occurring), substitute "the Regulator".

92 Subsection 131(9)

Omit "APRA" (wherever occurring), substitute "the Regulator".

93 Subsection 131(10)

Omit "APRA" (wherever occurring), substitute "the Regulator".

94 Section 131A

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note 1: The heading to section 131A is altered by omitting "**APRA**" and substituting "**The Regulator**".

Note 2: The heading to subsection 131A(3) is altered by omitting "*APRA's*" and substituting "*the Regulator's*".

95 Subsection 133(1)

Omit “APRA” (first occurring), substitute “The Regulator”.

96 Paragraphs 133(1)(b) and (c)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

97 Subsections 133(2), (3) and (4)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

98 Subsection 133(5)

Omit “APRA”, substitute “The Regulator”.

99 Subsections 134(1) and (2)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

Note: The heading to subsection 134(1) is altered by omitting “*APRA*” and substituting “*The Regulator*”.

100 Subsection 134(3)

Omit “APRA”, substitute “The Regulator”.

101 Subsection 134(4)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

102 Subsection 135(1)

Omit “APRA”, substitute “The Regulator”.

Note: The heading to subsection 135(1) is altered by omitting “*APRA’s*” and substituting “*The Regulator’s*”.

103 Subsection 135(2)

Omit “APRA”, substitute “the Regulator”.

104 Subsection 136

Omit “APRA” (wherever occurring), substitute “The Regulator”.

105 Sections 137 and 138

Omit “APRA” (wherever occurring), substitute “the Regulator”.

106 Subsection 141(1)

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note: The heading to section 141 is altered by omitting "**APRA**" and substituting "**The Regulator**".

107 Subsection 142(1)

Omit "APRA", substitute "the Regulator".

Note: The heading to section 142 is altered by omitting "**APRA**" and substituting "**The Regulator**".

108 Subsection 142(4)

Omit "APRA", substitute "The Regulator".

109 Subsections 142(5) and (6)

Omit "APRA" (wherever occurring), substitute "the Regulator".

110 Subsection 142(7)

Omit "APRA" (first occurring), substitute "The Regulator".

111 Subsection 142(7)

Omit "APRA" (second occurring), substitute "the Regulator".

112 Subsection 197(1)

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note 1: The heading to subsection 197(1) is altered by omitting "*APRA*" and substituting "*the Regulator*".

Note 2: The heading to subsection 197(2) is altered by omitting "*APRA's*" and substituting "*the Regulator's*".

113 Section 200

Omit "APRA" (wherever occurring), substitute "the Regulator".

114 Section 201

Omit "APRA" (wherever occurring), substitute "the Regulator".

Note: The heading to section 201 is altered by omitting "**APRA**" and substituting "**The Regulator**".

Note: The heading to subsection 201(2) is altered by omitting "*APRA*" and substituting "*The Regulator*".

115 Subsection 254(1)

After “APRA”, insert “or such other body or person as is specified in the regulations”.

116 After subsection 254(1)

Insert:

(1A) Without limiting subsection (1), regulations for the purposes of that subsection may specify that information is to be given to different persons or bodies in respect of different classes of superannuation funds.

117 Subsection 254(3)

Omit all the words after “information” (first occurring), substitute “to APRA or to another person or body as required by subsection (1), APRA or the other person or body must give to the trustee a written statement that the information has been received”.

118 Subsection 299E(1)

Omit “APRA”, substitute “the Regulator”.

119 Subsection 299F(1)

Omit “APRA”, substitute “the Regulator”.

120 Subsection 299G(1)

Omit “APRA”, substitute “the Regulator”.

121 Subsection 299M(2)

Omit “APRA”, substitute “the Regulator”.

122 Subsection 299N(2)

Omit “APRA”, substitute “the Regulator”.

123 Section 299P

Omit “APRA”, substitute “the Regulator”.

124 Subsection 347A(1)

Omit “APRA” (first occurring), substitute “The Regulator”.

Note: The heading to section 347A is altered by omitting "**APRA**" and substituting "**The Regulator**".

125 Subsection 347A(1)

Omit "APRA" (second occurring), substitute "the Regulator".

126 Subsections 347A(2) and (3)

Omit "APRA" (wherever occurring), substitute "the Regulator".

127 Subsection 347A(4)

Omit "APRA", substitute "The Regulator".

128 Subsection 347A(4)

Omit "the APRA's", substitute "the Regulator's".

129 Subsection 347A(5)

Omit "APRA", substitute "the Regulator".

Note: The heading to subsections 347A(4) and (5) are altered by omitting "*the APRA's*" and substituting "*the Regulator's*".

130 Subsections 347A(9), (10) and (11)

Omit "APRA", substitute "The Regulator".

131 Subsection 348(1)

Omit "APRA", substitute "the Regulator".

Note: The heading to section 348 is altered by omitting "**APRA**" and substituting "**The Regulator**".

132 Subsections 348(2) and (3)

Omit "APRA", substitute "The Regulator".

Part 3—Transitional and saving provisions

133 Transitional provision—no contravention of Act during transition period in certain circumstances

(1) Despite the amendments made by this Schedule, a person does not contravene this Act or the regulations in respect of conduct engaged in by the person in relation to a superannuation fund if:

(a) immediately before the later of:

(i) the beginning of the transition period; and

(ii) the day on which this Act received the Royal Assent;

the superannuation fund was an excluded superannuation fund; and

(b) the person engaged in the conduct during the transition period; and

(c) the person engaged in the conduct at a time when the superannuation fund had fewer than 5 members, but was not a self managed superannuation fund; and

(d) the person's engaging in the conduct would not have been a contravention of this Act or the regulations if the fund had been a self managed superannuation fund at the time the person engaged in the conduct.

(2) In this item:

excluded superannuation fund has the meaning given by the *Superannuation Industry (Supervision) Act 1993* as in force immediately before the commencement of this item.

transition period means the period:

(a) beginning on 1 July 1999; and

(b) ending at the end of 31 March 2000.

(3) In this item, a reference to engaging in conduct includes a reference to failing or refusing to engage in conduct.

134 Transitional provision relating to annual returns—application of amendments

(1) Subject to item 135, the amendments made by items 31 and 32 of Part 1 of this Schedule apply to the 1999-2000 year of income and later years of income.

(2) Despite items 31 and 32 of Part 1 of this Schedule, section 36 continues to apply to a return in respect of the 1998-99 year of income, as if the amendments made by those items had not been made.

135 Special rule in relation to 1999-2000 year of income

(1) If a superannuation fund was both:

(a) a self managed superannuation fund at any time during the 1999-2000 year of income; and

(b) a superannuation fund other than a self managed superannuation fund at another time during the 1999-2000 year of income;

the trustee of the fund is not required to submit an annual return for that year of income under both sections 36 and 36A of the *Superannuation Industry (Supervision) Act 1993*.

(2) The trustee of the fund must submit an annual return under section 36 of that Act for the 1999-2000 year of income if:

(a) where the superannuation fund ceased to exist during the year of income—the fund was not a self managed superannuation fund on the day on which it ceased to exist; or

(b) otherwise—the fund was not a self managed superannuation fund on the last day of the year of income.

(3) The superannuation fund must submit an annual return under section 36A of that Act for the 1999-2000 year of income if:

(a) where the fund ceased to exist during the year of income—the fund was a self managed superannuation fund on the day on which it ceased to exist; or

(b) otherwise—the fund was a self managed superannuation fund on the last day of the year of income.

136 Transfer of records

(1) The Treasurer may transfer from APRA to the Commissioner of Taxation records that relate to the functions of the Commissioner of Taxation.

(2) This item does not authorise the Commonwealth record to be transferred, or otherwise dealt with, except in accordance with the *Archives Act 1983*.

(3) In this item:

Commonwealth record and ***record*** have the same meanings as in the *Archives Act 1983*.

Schedule 2—Consequential amendments of other Acts

Australian Prudential Regulation Authority Act 1998

1 Subsection 56(1) (definition of *protected document*)

Omit all the words after "other than", substitute:

: (d) a document containing information that has already been lawfully made available to the public from other sources; or

(e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

(ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

2 Subsection 56(1) (definition of *protected information)*

Omit all the words after "other than", substitute:

: (d) information that has already been lawfully made available to the public from other sources; or

(e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

(ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

Financial Institutions Supervisory Levies Collection Act 1998

3 Section 7 (paragraph (b) of the definition of *superannuation entity*)

Omit "an excluded superannuation fund", substitute "a self managed superannuation fund".

4 At the end of section 11

Add:

Note: Levy and late payment penalty may be payable to the Commissioner of Taxation because of section 252G of the *Superannuation Industry (Supervision) Act 1993*.

Income Tax Assessment Act 1936

5 Subsection 160ZZPIA(5) (paragraph (a) of the definition of *qualifying superannuation fund*)

Omit "an excluded superannuation fund", substitute "a self managed superannuation fund".

6 At the end of section 161

Add:

(3) Nothing in this section prevents an approval by the Commissioner of a form of return under section 36A of the *Superannuation Industry (Supervision) Act 1993* from requiring or permitting a return under that section to be attached to, or physically to form part of, a return under this section.

Note: However, the rules applicable to a return under section 36A of the *Superannuation Industry (Supervision) Act 1993* are those specified in that Act.

Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991

7 Section 1

Omit "*(Excluded Funds)*", substitute "*(Self Managed Superannuation Funds)*".

8 Section 4

Repeal the section.

9 Section 5

Omit "*Excluded*", substitute "*Self Managed Superannuation*".

10 Paragraphs 6(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) an amount (not exceeding $200) specified in regulations for the purposes of this subsection; and

(b) if the return is not lodged by the date specified in the regulations in respect of a year of income—the late lodgment amount which the trustee is liable to pay under subsection 6(2) in relation to that return.

11 Subsections 6(2), (3), (4) and (5)

Repeal the subsections, substitute:

Late lodgment amount

(2) The late lodgment amount in relation to a return is the amount (not exceeding $25) specified in regulations for the purposes of this subsection, in respect of:

(a) the calendar month beginning on the day after the day on which the return was required to be lodged; and

(b) each subsequent calendar month beginning before the day on which the return is lodged.

12 Subsections 7(2) and (3)

Repeal the subsections.

Superannuation (Excluded Funds) Taxation Act 1987

13 Section 1

Omit "*(Excluded Funds)*", substitute "*(Self Managed Superannuation Funds)*".

14 Section 3 (definition of *APRA*)

Repeal the definition.

15 Section 3 (definition of *reviewable decision*)

Omit "APRA", substitute "the Commissioner of Taxation".

16 Section 3 (definition of *unit trust*)

Repeal the definition.

17 Part III (heading)

Repeal the heading, substitute:

Part III—Functions of the Commissioner of Taxation

18 Section 9

Omit "APRA", substitute "the Commissioner of Taxation".

19 Part IIIAA (heading)

Repeal the heading, substitute:

Part IIIAA—Collection of superannuation (self managed funds) levy

20 Section 15DAA (definition of *basic levy amount*)

Repeal the definition.

21 Section 15DAA (definition of *excluded superannuation fund*)

Repeal the definition.

22 Section 15DAA (definition of *levy*)

Omit "*Excluded Funds*", substitute "*Self Managed Superannuation Funds*".

23 Section 15DAA (definition of *minimum basic levy amount*)

Repeal the definition.

24 Section 15DAA

Insert:

> ***self managed superannuation fund*** has the meaning given by subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

25 Section 15DA

Omit “an excluded”, substitute “a self managed”.

26 Section 15DA

Omit “36”, substitute “36A”.

27 Subsection 15DB(1)

Omit all the words after “specified”, substitute “in the regulations for the purposes of this subsection”.

28 After subsection 15DB(1)

Insert:

(1A) Without limiting subsection (1), the regulations may provide that levy is due and payable on a day specified in a written notice given to the person by the Commissioner of Taxation.

29 Subsection 15DC(1)

Omit all the words after “amount”, substitute “specified in, or worked out in a manner specified in, regulations for the purposes of this subsection”.

30 Subsections 15DC(2) and (3)

Repeal the subsections, substitute:

Maximum amount of penalty

(2) The amount for a calendar month must not exceed $25.

31 Section 15DE

Omit “APRA”, substitute “the Commissioner of Taxation”.

32 At the end of section 15DE

Add:

Note: Levy and late payment penalty may be payable to APRA because of section 252G of the *Superannuation Industry (Supervision) Act 1993*.

33 Section 15DF

Omit "APRA", substitute "The Commissioner of Taxation".

35 Section 16

Omit "APRA" (wherever occurring), substitute "the Commissioner of Taxation".

Note 1: The heading to subsection 16(3) is altered by omitting "*APRA*" and substituting "*the Commissioner of Taxation*".

Note 2: The heading to subsection 16(8) is altered by omitting "*Commissioner's*".

36 Section 17

Omit "APRA" (wherever occurring), substitute "the Commissioner of Taxation".

37 Subsection 22(2)

Repeal the subsection.

Superannuation (Resolution of Complaints) Act 1993

38 Subsection 3(2) (note 2 at the end of the definition of *trustee*)

Omit "***excluded fund***, ***excluded superannuation fund***", substitute "***self managed superannuation fund***".

39 Section 5

Omit "an excluded fund", substitute "a self managed superannuation fund".

40 Section 5 (note)

Omit "the definition of 'excluded fund'", substitute "the definition of ***self managed superannuation fund***".

Superannuation Supervisory Levy Imposition Act 1998

41 Section 5 (paragraph (b) of the definition of *superannuation entity*)

Omit "an excluded superannuation fund", substitute "a self managed superannuation fund".

42 Application provisions

(1) The *Superannuation (Excluded Funds) Taxation Act 1987* continues to apply to the lodgment of a return in respect of the 1998-99 year of income as if the repeals and amendments of provisions of that Act made by this Schedule had not happened.

(2) The amendments of the *Financial Institutions Supervisory Levies Collection Act 1998* made by this Schedule apply to an entity in respect of the financial year beginning on 1 July 2000 and subsequent financial years.

(3) Until 1 April 2000, the *Superannuation (Resolution of Complaints) Act 1993* continues to apply to a fund that was an excluded fund immediately before the later of:

(a) 1 July 1999; and

(b) the day on which this Act received the Royal Assent;

as if the amendments of that Act made by this Schedule had not happened.

[*Minister's second reading speech made in—*
House of Representatives on 31 March 1999
Senate on 25 May 1999]

(71/99)