The Superannuation Legislation Amendment (Reform of Self Managed Superannuation Funds Supervisory Levy Arrangements) Bill 2013

Introduction

1.1 On 14 February 2013, the House of Representatives Selection Committee referred the Superannuation Legislation Amendment (Reform of Self Managed Superannuation Funds Supervisory Levy Arrangements) Bill 2013 to the Parliamentary Joint Committee on Corporations and Financial Services (the committee) for inquiry and report.

1.2 The bill proposes to amend the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* (Imposition Act) and the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* (Taxation Act) to:

- increase the maximum supervisory levy payable by self managed superannuation funds (SMSFs) from $200 to $300 (the specific amount of the levy for a given income year is prescribed in the regulations—the government has indicated that the actual levy will increase from $191 to $259 per annum from the 2013–14 income year);[1] and
- bring forward payment of the SMSF supervisory levy so that it is levied and collected in the year of income that the supervision relates to.

1.3 These measures were announced by the government on 22 October 2012 in the 2012–13 *Mid-Year Economic and Fiscal Outlook.*[2]

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website inviting submissions from interested parties by 1 March 2013. The committee also wrote directly to stakeholders to invite submissions. In total, five submissions were received. Details about these submissions can be found in Appendix 1.

1.5 The committee conducted a public hearing on 14 March 2013. A list of witnesses can be found in Appendix 2.

1.6 The committee thanks the organisations that provided evidence to this inquiry.

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1 See The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *Proof House of Representatives Hansard*, 13 February 2013, p. 5.

2 Australian Government, *Mid-Year Economic and Fiscal Outlook 2012–13,* October 2012, p. 179.

Overview of the SMSF levy

1.7 An SMSF is a private superannuation fund with one to four members and where the members of the fund are also the trustees. As at June 2012, there were over 478,000 SMSFs in Australia. As Table 1 shows, the number of SMSFs has increased significantly over the past nine years. With assets of $439 billion as at June 2012 (representing more than 31 per cent of Australia's total superannuation savings of $1.4 trillion), by this measure SMSFs are the largest segment of the superannuation sector.[3]

Table 1: Number of SMSFs, June 2004 to June 2012

Date	*Number of SMSFs*	*% change in number from previous year*	*Total assets of SMSFs ($ billion)*	*SMSF assets as a % of total superannuation assets*
June 2004	271,515	–	127.5	20.1%
June 2005	289,512	6.63%	160.8	21.4%
June 2006	309,088	6.76%	203.2	22.5%
June 2007	350,142	13.28%	312.2	26.6%
June 2008	375,738	7.31%	321.4	28.4%
June 2009	399,742	6.39%	326.2	30.6%
June 2010	414,956	3.81%	366.2	30.6%
June 2011	442,987	6.76%	423.2	31.3%
June 2012	478,263	7.96%	439.0	31.3%

Source: Based on Australian Taxation Office, 'Self-managed super fund statistical report—June 2012', 12 July 2012, www.ato.gov.au/superfunds/content.aspx?menuid=0&doc=/content/00332225.htm&page=6 (accessed 18 February 2013); Australian Prudential Regulation Authority, *Annual superannuation bulletin*, June 2012 (issued 9 January 2013), p. 40.

1.8 While other superannuation funds, such as corporate, industry and retail funds, are regulated by the Australian Prudential Regulation Authority (APRA), SMSFs are regulated by the Australian Taxation Office (ATO). However, all superannuation funds are subject to a supervisory levy intended 'to fund the regulatory costs of ensuring funds comply with the superannuation legislation'.[4] This principle was reinforced by the recommendations of the 1997 Financial System Inquiry chaired by Mr Stan Wallis (the Wallis Inquiry), which observed that:

3 Based on APRA data: Australian Prudential Regulation Authority, *Annual superannuation bulletin*, June 2012 (issued 9 January 2013), p. 40.

4 Explanatory memorandum, paragraph 1.4.

> For reasons of equity and efficiency, as a general principle the costs of financial regulation should be borne by those who benefit from it. This principle must, however, be applied in a practical way.[5]

1.9 The Wallis Inquiry recommended that regulatory agencies should, through a mix of direct service fees and annual levies, collect from the financial entities which they regulate 'enough revenue to fund themselves, but not more'.[6]

1.10 A fee or supervisory levy has been imposed on small superannuation funds since 1987.[7] The levy relevant to SMSFs is imposed by the Imposition Act and the entities that are liable to pay the levy are determined by the Taxation Act. The Imposition Act sets a maximum SMSF supervisory levy that may be imposed and the Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Regulations 1991 (Imposition Regulations) determines the specific amount of the levy payable for a particular income year within that cap. At present, the Imposition Act restricts the amount that may be prescribed by the regulations to $200.[8] The Imposition Regulations currently provide that the amount of the levy is $200 for the 2011–12 income year and $191 for subsequent income years.[9]

Provisions of the bill

1.11 The bill proposes to amend the Imposition Act to increase the maximum supervisory levy payable by SMSFs from $200 to $300 for the 2013–14 income year onwards. During the ministerial second reading speech on the bill, the Parliamentary Secretary to the Treasurer indicated that the government will amend the Imposition Regulations to prescribe an actual levy of $259.[10]

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5 Financial System Inquiry, *Final Report*, March 1997, p. 532; cited in Australian National Audit Office, *The Australian Taxation Office's Approach to Regulating and Registering Self Managed Superannuation Funds*, Audit Report no. 52 2006–07, June 2007, p. 68.

6 Financial System Inquiry, *Final Report*, March 1997, p. 532. The Wallis Inquiry recommended that 'as far as practicable', direct service fees should be used for specific services provided and levies on sectors of industry to cover the general costs of regulation undertaken at the discretion of the regulator.

7 SMSFs came into existence in 1999 when the *Superannuation Legislation Amendment Act (No. 3) 1999* repealed the term 'excluded fund'—which was a superannuation fund with fewer than five members—and replaced it with SMSFs and small APRA funds. The levy that was imposed on excluded funds was retained for SMSFs, although the amount of the levy was reduced.

8 *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*, s. 6.

9 Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Regulations 1991, r. 4.

10 The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *Proof House of Representatives Hansard*, 13 February 2013, p. 5.

1.12 The bill also proposes to change when the payment of the levy is due. Currently, a trustee of an SMSF is liable to pay the levy when lodging the fund's annual return.[11] The due date of the payment occurs on a day specified in the Superannuation (Self Managed Superannuation Funds) Taxation Regulations 1999 (Taxation Regulations).[12] Therefore, the payment of the supervisory levy for an income year occurs after the year of income that has been supervised. The bill proposes to amend the Imposition and Taxation Acts so that the SMSF levy can be levied and collected in the same year of income. To facilitate this:

- proposed new section 15DA of the Taxation Act would provide that a trustee of a superannuation entity which is an SMSF at any time during an income year is liable to pay the levy;[13] and
- a proposed amendment to section 6 of the Imposition Act would remove the reference to the amount of the levy being 'payable on the lodgment of a return'.[14]

1.13 The day that the payment will be due will remain specified in the Taxation Regulations.

Transitional arrangements

1.14 While the amendments will apply to the 2013–14 income year onwards, the bill proposes that the regulations may provide a phase-in arrangement for the levy payable in 2013–14. The government has announced that, 'to give SMSFs time to adjust', the SMSF levy will indeed be phased in over 2013–14 and 2014–15, as follows:

- in 2013–14 SMSFs will be required to pay the 2012–13 levy and half of the 2013–14 levy (a total of $321);
- in 2014–15 SMSFs will be required to pay the remaining half of the 2013–14 levy and the 2014–15 levy (a total of $388); and
- from 2015–16 SMSFs will pay the levy during each income year (a total of $259 per annum).[15]

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11 *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*, s. 15DA.

12 The annual return is due on: (a) 31 October if the SMSF is not a new registrant and prepares their own return; (b) 28 February for new registrants; or (c) according to the ATO's tax agent lodgement program if the return is prepared by a tax agent. ATO, 'Guide to self-managed superannuation funds', www.ato.gov.au/superfunds/content.aspx?menuid=0&doc=/content/00251857.htm&page=33#P777_46648 (accessed 18 February 2013).

13 Schedule 1, item 6 of the bill.

14 Schedule 1, item 2 of the bill.

15 The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *Proof House of Representatives Hansard*, 13 February 2013, p. 5.

Rationale for the changes

1.15 The government argues that the current levy 'does not fully recover the ATO's cost of supervising this rapidly growing and diverse sector'.[16] The ATO also has stated that the revenue from the SMSF levy is not fully recovering the costs of regulating the sector and suggests that the proposed increase will enable it 'to continue to regulate this rapidly growing and diverse sector effectively'.[17]

1.16 The change to the timing of the levy payment is intended to ensure consistency with the levy that applies to APRA-regulated superannuation funds, which pay their levy in the same financial year that the levy applies to. The government considers that this framework 'is appropriate for a cost recovery levy'.[18]

Previous changes to the SMSF supervisory levy

1.17 Table 2 outlines the previous changes to the amount of the SMSF supervisory levy. The significant change to the levy in 1999–00 occurred as the responsibility for regulating SMSFs was transferred from APRA to the ATO, and was a response to earlier industry concern that the levy was being used to subsidise the regulatory activities required for large funds.[19] Ensuring that the SMSF supervisory levy was a genuine cost-recovery levy continued to influence subsequent adjustments. In September 2006, as part of the then government's Simplified Superannuation reforms, it was announced that the levy would be increased to $150. The change was in recognition that the levy had not increased since 1999, and that it no longer covered the ATO's costs.[20] The findings of a 2007 report by the Australian National Audit Office (ANAO) support this reasoning; as Figure 1 shows, for most of the period that the ANAO reviewed the estimated levy collections were less than both the funding provided to the ATO for regulating SMSFs and the ATO's actual expenditure.[21]

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16 The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *Proof House of Representatives Hansard*, 13 February 2013, p. 5.

17 Australian Taxation Office, 'Reform of SMSF levy arrangements', 6 November 2012, www.ato.gov.au/superfunds/content.aspx?doc=/content/00337306.htm&pc=001/149/030/003/004&mnu=53448&mfp=001/149&st (accessed 18 February 2013).

18 The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *Proof House of Representatives Hansard*, 13 February 2013, p. 5.

19 Australian National Audit Office, *The Australian Taxation Office's Approach to Regulating and Registering Self Managed Superannuation Funds*, Audit Report no. 52 2006–07, June 2007, p. 68.

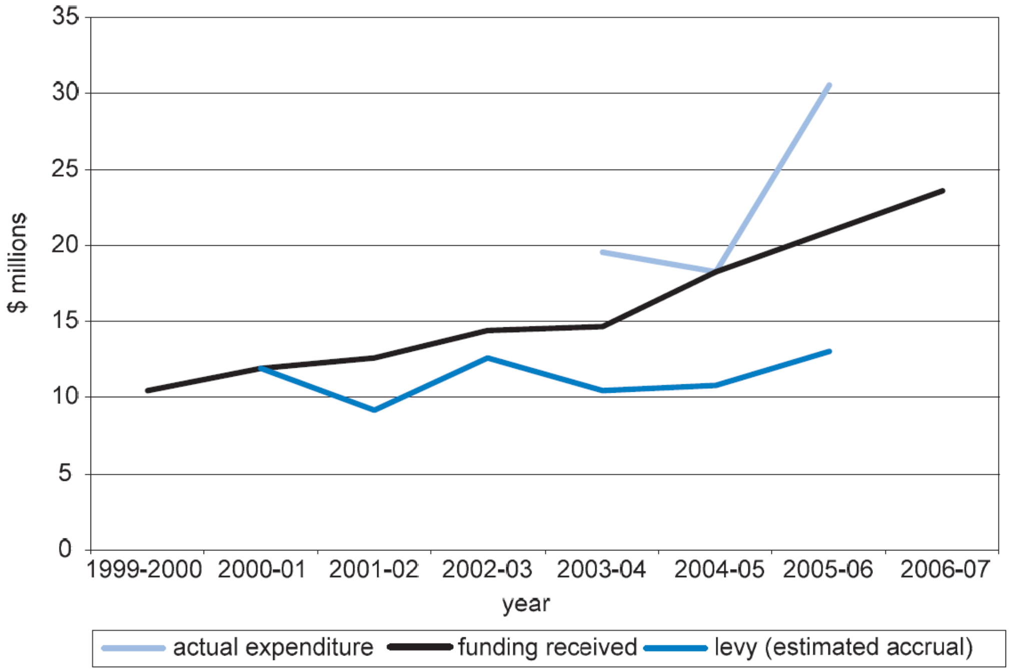
20 Explanatory statement, Select Legislative Instrument 2007 No. 75, p. 3.

21 Australian National Audit Office, *The Australian Taxation Office's Approach to Regulating and Registering Self Managed Superannuation Funds*, p. 67.

Table 2: SMSF levy applicable to various years of income

Income years	*Amount of SMSF levy*
1992–93 to 1998–99	$200
1999–00 to 2006–07	$45
2007–08 to 2009–10	$150
2010–11	$180
2011–12	$200
2012–13 onwards	$191

Figure 1: ATO SMSF-related funding, expenditure and SMSF levy collections from 1999–2000 to 2006–07



Source: Australian National Audit Office, *The Australian Taxation Office's Approach to Regulating and Registering Self Managed Superannuation Funds*, Audit Report no. 52 2006–07, June 2007, p. 66.

Notes: Data for ATO expenditure on SMSF regulation between 1999–00 and 2002–03 are unavailable as the ATO did not have adequate systems in place to record such expenditure.

1.18 The further changes to the levy made in 2011 and 2012 were intended to offset the costs associated with the implementation of reforms to the SMSF sector that form part of the government's Stronger Super package.[22]

22 Explanatory statement, Select Legislative Instrument 2011 No. 68 [p. 1]; Explanatory statement, Select Legislative Instrument 2012 No. 132 [p. 1].

Revenue implications

1.19 Combined with the continued growth in both the number of SMSFs and the value of assets managed by the sector (as Table 1 shows, total assets increased from less than $130 billion to almost $440 billion between 2003–04 and 2011–12) the changes to the levy made from 2007–08 onwards have significantly increased the revenue collected (see Table 3).

Table 3: Net SMSF levy collected, 2002–03 to 2011–12 ($ millions)

	2002–03	*2003–04*	*2004–05*	*2005–06*	*2006–07*	*2007–08*	*2008–09*	*2009–10*	*2010–11*	*2011–12*
SMSF levy	13	9	13	13	11	19	41	51	87	70

Source: Australian Taxation Office, *Commissioner of Taxation Annual report 2011–12,* October 2012, p. 54.

1.20 The measures contained in the bill are expected to add around $319 million in net revenue over the forward estimates (see Table 4). These figures reflect both the proposed increase in the levy and the proposed change to the timing of levy payments. The spike in additional revenue projected for 2014–15 is due to the bill's transitional arrangements (see paragraph 1.14).

Table 4: Financial impact of the proposed changes ($ million)

	2012–13	*2013–14*	*2014–15*	*2015–16*
Revenue	–	70.0	164.0	88.0
Related expense	0.6	1.3	0.8	0.5

Source: Explanatory memorandum, p. 3.

1.21 The projected changes to revenue were questioned by the committee. The ATO noted that the projections would be affected by cash flow issues. The committee has requested further information about these projections.[23]

Submitters' views

1.22 The Australian Institute of Superannuation Trustees (AIST), which represents the trustee directors and staff of industry, corporate and public-sector superannuation funds, expressed its support for reform of the supervisory levy. The AIST supports the amendments on the basis that they will provide for appropriate recovery of the ATO's costs, including helping to offset the cost associated with the SMSF Stronger Super reforms. However, in its submission the AIST also argued that SMSFs will benefit from the SuperStream reforms and, accordingly, should contribute to the funding of these reforms. The AIST suggested that the cost attributable to SMSFs from the

23 See *Proof Committee Hansard*, 14 March 2013, pp. 13–14.

SuperStream reforms would be approximately $146 million, or $311 per SMSF. The AIST noted that it had previously put this argument to APRA.[24]

1.23 The Association of Superannuation Funds of Australia (ASFA) similarly supported the principle that supervisory costs incurred by the ATO which are directly related to SMSFs should be recovered from SMSFs. ASFA, however, called for greater disclosure by the ATO of the amount collected and the costs incurred.[25]

1.24 The Self Managed Superannuation Funds Professionals' Association of Australia (SPAA) also argued that there is a need for greater disclosure of the ATO's costs. SPAA argued that the need for the current SMSF levy cap to be increased had not been sufficiently justified. Accordingly, it does not support the proposed increase without 'a commitment from the ATO to consult with the SMSF industry and justify future increases in the levy as part of the ATO's cost recovery for administering SMSFs'.[26] SPAA also suggested that, as a result of the proposed change in the timing of the collection of the SMSF levy, it was not clear whether the levy would still be collected through the annual SMSF tax return.[27]

Evidence from the ATO

1.25 The issues raised by stakeholders were put to the ATO at the committee's public hearing. First, the ATO addressed SPAA's concern that the current arrangements for collecting the levy through the annual return may be changed to a separate invoicing process. The ATO's Deputy Commissioner, Superannuation, stated that there is 'no intention to change the process that we have now, which is that [collection of the levy] would be done through the tax return':

> There is not a proposal at all to pull that out and invoice separately or anything like that, it will just be as part of the tax return.[28]

1.26 The ATO also advised that it intends to prepare a cost recovery impact statement prior to the measures taking effect on 1 July 2013, which will include 'all the detail which we believe that the SMSF Professionals' Association and others should be seeking and are entitled to have'. An ATO officer explained:

> What we will do is expose the costs of progressing with the work on administering self-managed super funds and we will show the methodology for projecting forward. In terms of the methodology for projecting forward,

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24 Australian Institute of Superannuation Trustees, *Submission 1*, pp. 1–2.

25 Association of Superannuation Funds of Australia, *Submission 2*, p. 1.

26 Self Managed Superannuation Funds Professionals' Association of Australia, *Submission 3*, p. 1.

27 Self Managed Superannuation Funds Professionals' Association of Australia, *Submission 3*, p. 6.

28 Mrs Alison Lendon, Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 14 March 2013, p. 9.

> what we have done, effectively, is take 2011–12 as a base year and apply to that a couple of variations. The first is growth in the level of self-managed super funds, and you heard Mrs Slattery [of SPAA] say that they are growing at a rate of about 30,000 funds a year at the present time, which is fairly substantial. We and SPAA are quite proud of the level of growth in the industry. That represents the growth year-on-year over the past several years of about six to eight per cent. On a go-forward basis, we are projecting five to 5½ per cent. Our sense is that you have to have a discipline of expecting some efficiency in the work you do so we are projecting at a lower level than we actually expect the growth to be … We have also factored in the cost of pay rises [for ATO staff].[29]

1.27 The ATO also confirmed that it has released some information about the costs it incurs from supervising SMSFs during its regular meetings with stakeholders, and confirmed that its costs for 2011–12 were $85.2 million.[30] However, an ATO officer noted that levy revenue and the ATO's costs are 'not meant to balance year-on-year'. The ATO officer explained:

> What it is seeking to do is get a balanced picture across a five-year period, which is the normal period of review for cost-recovery arrangements in line with government guidelines.[31]

Committee view

1.28 Provided that doing so is cost effective, efficient and consistent with other policy objectives, governments should recover the costs associated with regulation through a dedicated charge imposed on the entities that are actually regulated, as this will result in an outcome that is superior to the alternative option of such regulation being financed through general taxpayer funding. This principle is expressed in the *Australian Government Cost Recovery Guidelines*, a document applied by successive recent governments.

1.29 The measures contained in the bill are supported by the committee. Requiring payment of the SMSF supervisory levy in the year that the supervision relates to, rather than in a subsequent year, is a logical change that is consistent with the treatment of APRA-regulated funds. Given that the supervisory levy is a cost recovery charge, it is also appropriate that the levy be reviewed periodically and adjusted upwards when full cost recovery is not occurring.

1.30 The committee acknowledges the calls from industry bodies for greater transparency of the actual costs incurred by the ATO in regulating the SMSF sector. However, the committee notes that the ATO does provide at SMSF consultation

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29 Mr Brett Peterson, Assistant Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 14 March 2013, pp. 9, 10.

30 *Proof Committee Hansard*, 14 March 2013, p. 12.

31 Mr Brett Peterson, Assistant Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 14 March 2013, p. 10.

meetings high level information about these costs. The ATO has also advised that it will prepare and publish a cost recovery impact statement prior to the commencement of the levy increase on 1 July 2013. Nonetheless, provided that it would not cause an unreasonable diversion of the ATO's resources and that the information can be presented in a timely and meaningful way, the committee considers that the ATO should release information on a regular and publicly accessible basis about the costs that it incurs as a result of its SMSF regulation functions.

Recommendation 1

1.31 The committee recommends that the bill be passed.

Ms Deborah O'Neill MP
Chair