

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 330**

Issued by the authority of the Minister for Financial Services and Superannuation

Subject - *Superannuation Industry (Supervision) Act 1993*

*Superannuation Industry (Supervision) Amendment Regulation 2012  
(No. 6)*

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the SIS Act.

Subsection 128B(1) of the SIS Act provides that the Regulator must grant an application and register an applicant as an approved self managed superannuation fund (SMSF) auditor if the applicant has the qualifications and practical experience prescribed by the regulations.

Paragraph 128F(a) provides that an approved SMSF auditor must complete the continuing professional development requirements prescribed by the regulations. Paragraph 128F(b) provides that an approved SMSF auditor must hold a current policy of professional indemnity insurance, of a level prescribed by the regulations, for claims that may be made against the auditor in connection with audits of SMSFs. Paragraph 128F(d) provides that an approved SMSF auditor must comply with the auditor independence requirements prescribed by the regulations.

Subsection 128L(3) provides that a fee payable under section 128L is due and payable on the day prescribed by the regulations.

The purpose of the Regulation is to amend the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) to prescribe:

- the qualifications that a person must meet to be eligible for registration as an approved SMSF auditor;
- the practical experience that a person must have to be eligible for registration as an approved SMSF auditor;
- the continuing professional development requirements to be met by an approved SMSF auditor;
- the professional indemnity requirements to be met by an approved SMSF auditor;
- the auditor independence requirements to be met by an approved SMSF auditor;
- when fees imposed under the *Superannuation Auditor Registration Imposition Act 2012* are due and payable; and
- the transitional arrangements that apply for some existing approved auditors.

From 31 January 2013, auditors of SMSFs will be subject to a new registration regime. SMSF auditor registration forms a key part of the Government's Stronger Super reforms and is intended to raise the standard of SMSF auditor competency and ensure there is a set of minimum standards that apply across the entire sector.

The Regulation specifies the transitional arrangements that apply to existing auditors who apply for registration before 1 July 2013. Transitional arrangements grant exemptions to certain registration requirements to give recognition to existing auditors who are experienced and competent.

Details of the Regulation are provided in the Attachment.

The SIS Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 31 January 2013.

Extensive consultation has been undertaken on SMSF auditor registration. As part of Stronger Super, the Government established the Stronger Super Peak Consultative Group, comprising of representatives from peak industry, employer, employee and consumer groups to provide broad, high level advice on the design and implementation of the Stronger Super reforms. In addition, the Government established the SMSF working group to provide technical input on the SMSF reforms. The working papers presented and discussed at the SMSF working group meetings were published on the Stronger Super website and public submissions were invited.

Public consultation was also undertaken between 15 October and 26 October 2012 when an exposure draft of the Regulation was released. Eight submissions were received in response to this consultation, seven of which were public submissions and one was confidential. The public submissions are available on the Treasury website.

Authority: Subsection 353(1) of the  
*Superannuation Industry  
(Supervision) Act 1993*

**Details of the Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 6)**

**Section 1** specifies the name of the Regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 6)*.

**Section 2** provides that the Regulation commences on 31 January 2013.

**Section 3** provides that Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

**Schedule 1 – Amendments**

**Item 1** inserts into subregulation 1.03(1) that a registered company auditor has the same meaning as in section 9 of the *Corporations Act 2001*.

**Item 2** removes the requirements in paragraph 1.04(2)(a) applicable to auditors of self managed superannuation funds (SMSFs). The requirements applicable to auditors of SMSFs are now specified in the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

**Item 3** inserts *Part 9A – Approved SMSF auditors* into the SIS Regulations to prescribe certain requirements that a person must meet in order for the Australian Securities and Investments Commission (ASIC), as Regulator, to grant the person's application for registration as an approved SMSF auditor. Part 9A also prescribes ongoing requirements that must be met by all approved SMSF auditors.

***Qualifications***

Regulation 9A.01 prescribes qualifications that a person must meet to be eligible for registration as an approved SMSF auditor. The applicant must hold one of the following qualifications:

- (1) a degree, diploma or certificate in accounting of not less than 3 years, which includes a course in audit, from a university or institution mentioned in regulation 9.2.02 of the *Corporations Regulations 2001* (subregulation 9A.01(2)); or
- (2) a degree, diploma or certificate in accounting of not less than 3 years, which does not include a course in audit, if the applicant has satisfactorily completed a relevant course in audit that is mentioned in regulation 9A.02 (subregulation 9A.01(3)); or
- (3) a degree, diploma or certificate in accounting of not less than 3 years, which does not include a course in audit, if the applicant has satisfactorily completed the SMSF specialist auditor program conducted by the SMSF Professionals' Association of Australia (subregulation 9A.01(4)); or
- (4) a qualification, or combination of qualifications, which ASIC regards as equivalent to the degree, diploma or certificate mentioned in subregulation 9A.01(2), subregulation 9A.01(3) or subregulation 9A.01(4). This would, for example, enable ASIC to consider applications from persons who have a degree from an overseas university. However, it would be necessary for ASIC

to consider whether the degree is equivalent to the requirements in subregulation (2).

For the purposes of these regulations a degree in commerce or business, for example, of not less than three years, with a major in accounting would be considered equivalent to a degree in accounting.

#### *Relevant courses*

For the purposes of paragraph 9A.01(3)(b), the relevant courses in audit are specified in Regulation 9A.02.

#### *Practical experience*

Regulation 9A.03 prescribes the practical experience that a person must have to be eligible for registration as an approved SMSF auditor. Auditors are required to have at least 300 hours of work in auditing SMSFs under the direction of an approved SMSF auditor in the three years immediately before making an application to be an approved SMSF auditor.

Auditors may also meet this requirement if they have practical experience that ASIC regards as equivalent. This would, for example, enable ASIC to consider applications from persons who have practical experience in auditing SMSFs under the direction of an approved auditor of SMSFs prior to 31 January 2013. The subregulation would also, for example, enable ASIC to consider applications from persons who have overseas experience working in audit. However, in both examples it would be necessary for ASIC to consider whether the experience is equivalent to the requirements in subregulation 9A.03(a).

#### *Continuing professional development*

Regulation 9A.04 prescribes the continuing professional development requirements. An approved SMSF auditor must complete at least 120 hours of continuing professional development (CPD) every three years, including 30 hours of development about superannuation, of which 8 hours is development about SMSF auditing.

The CPD must be reasonably expected to enhance an approved SMSF auditor's technical skills or professional service delivery. CPD gives approved SMSF auditors the opportunity to refresh and keep up to date with the sector.

The approved SMSF auditor must also keep a written record of the CPD that they have undertaken for at least three years after the end of the financial year in which the development occurred.

#### *Professional indemnity*

Regulation 9A.05 prescribes the level of professional indemnity insurance required as either:

- a level set under a limitation of liability scheme provided by a professional organisation mentioned in Schedule 1AAA; or

- the level that is adequate to ensure that the amount of coverage in relation to a single claim or in aggregate is at least \$500,000 and is adequate because other terms of the policy indemnifies the auditor against civil liability that may arise from an act, error, or omission in connection with audits of self managed superannuation funds.

Without limiting the criteria on which ASIC may assess the adequacy of a professional indemnity insurance policy, relevant considerations may include that the policy should:

- cover any civil legal liability (up to at least \$500,000) arising in relation to a SIS Act audit of a SMSF, including liability arising out of fraud/dishonesty of directors/partners, employees and contractors of the practice;
- cover costs and expenses incurred when defending and settling claims arising out of a civil legal liability, including legal costs and expenses of investigation;
- not be cancellable by the insurer solely because of an innocent non-disclosure or misrepresentation;
- be on ordinary commercial terms offered by insurers for insurance of that type at the time the insurance contract is entered into;
- have an excess at a level which the approved SMSF auditor has sufficient financial resources to cover but without affecting the minimum level of cover; and
- include at least one automatic reinstatement.

#### *Auditor independence*

Regulation 9A.06 prescribes the auditor independence requirements to be met by all approved SMSF auditors. Auditors must adhere to the auditor independence requirements produced by the Accounting Professional and Ethical Standards Board as set out in the APES 110 Code of Ethics for Professional Accountants. All approved SMSF auditors must follow these independence requirements regardless of whether or not they are subject to other requirements as part of their membership of a professional association.

#### *When fees must be paid*

Regulation 9A.07 specifies when fees imposed under the *Superannuation Auditor Registration Imposition Act 2012* are due and payable.

- A fee for applying for registration is due and payable when the application is submitted.
- A fee for undertaking a competency examination is due and payable when applying to sit the exam.
- A fee for giving ASIC an annual statement is due and payable when the statement is submitted.
- Any applicable late fees are due and payable when the relevant information is submitted.
- A fee for inspecting or searching a register that ASIC keeps under Division 1A of the SIS Act is due and payable when the request is made.

There are no fees for online inspections or searches of the register of approved SMSF auditors or the register of disqualified SMSF auditors.

### *Transitional Arrangements*

**Item 4** inserts Part 14 and Division 14.1 to specify the transitional arrangements arising out of the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012*. These arrangements apply to persons who apply for registration as an approved SMSF auditor before 1 July 2013.

Regulation 14.01 defines that in this part, **sign off**, in relation to an audit (an SMSF audit) of a superannuation entity that is a self managed superannuation fund, means the action that occurs when an auditor gives a report of the kind mentioned in subsection 35C(1) of the Act to each trustee of the entity for subsection 35C(6) of the Act.

Regulation 14.02 inserts circumstances in a table under which transitional arrangements apply for applications for registration as an approved SMSF auditor made before 1 July 2013.

Item 1 in the table prescribes that an approved auditor who has signed off on an SMSF audit in the 12 months immediately before applying for registration as an approved SMSF auditor as defined in the SIS Act is taken to have met the practical experience requirement in subparagraph 128B(1)(a)(ii) of the SIS Act.

In addition to meeting the practical experience requirement in subparagraph 128B(1)(a)(ii) under Item 1, Item 2 in the table prescribes that an approved auditor who has signed off on at least 20 SMSF audits in the 12 months immediately before applying for registration as an approved SMSF auditor under section 128A of the SIS Act is also taken to have met the competency examination requirement in subparagraph 128B(1)(a)(iii) of the SIS Act.

Item 3 in the table prescribes that an approved auditor who is a registered company auditor at the time of applying to become registered as an approved SMSF auditor is taken to have met the practical experience requirement in subparagraph 128B(1)(a)(ii) of the SIS Act and the competency examination requirement in subparagraph 128B(1)(a)(iii).

These prescribed arrangements are being implemented in conjunction with other transitional arrangements that ASIC can put in place under other ongoing provisions of the SIS Act. Nothing in Part 14 precludes ASIC from exercising any of its powers under the SIS Act such as placing a condition on a person's registration. Even if a person is taken to have met certain requirements under the transitional arrangements and the other criteria to be an approved SMSF auditor set out in paragraph 128B(1)(b) of the SIS Act, ASIC may nevertheless approve the application subject to certain conditions on the person's registration.

For example, an approved auditor applying for registration as an approved SMSF auditor before 1 July 2013 who has signed off on more than one but less than 20 SMSF audits in the 12 months immediately before applying may have their application granted by ASIC subject to a condition on their registration that they complete the competency examination within a specific period of time.

**Item 5** amends item 3 of the table in Schedule 1AAA to replace the National Institute of Accountants with the Institute of Public Accountants as a name change occurred in 2011.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 6)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### ***Overview of the Legislative Instrument***

The purpose of the Legislative Instrument is to provide details on the requirements being placed on auditors of self managed superannuation funds (SMSFs) as part of the registration regime commencing on 31 January 2013. In particular, the Legislative Instrument prescribes the qualifications, practical experience, continuing professional development and auditor independence requirements that all approved SMSF auditors are required to meet as well as details on when fees are due and payable.

#### ***Human rights implications***

##### **Right to non-discrimination**

As part of the SMSF auditor registration regime, auditors of SMSFs are required to meet a number of initial and ongoing competency standards in order to remain registered as an approved SMSF auditor by the Australian Securities and Investments Commission. The minimum standards intend to raise competency levels for SMSF auditors.

The right to non-discrimination in article 26 of the International Covenant on Civil and Political Rights is not limited as no person will be discriminated against because of any status they may have, for example on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth status.

Any differential treatment of auditors is designed to assess whether a person has the appropriate knowledge, skills, experience and competence to be an approved SMSF auditor.

This Legislative Instrument therefore does not engage any of the applicable rights or freedoms.

#### ***Conclusion***

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.