

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LAWS AMENDMENT (CAPITAL GAINS TAX RELIEF
AND OTHER EFFICIENCY MEASURES) BILL 2012
SUPERANNUATION AUDITOR REGISTRATION IMPOSITION BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

Table of contents

Glossary	1
General outline and financial impact.....	3
Chapter 1 Merging superannuation funds.....	9
Chapter 2 Self-Managed Superannuation Fund Auditor Registration	21
Chapter 3 Superannuation Auditor Registration Imposition Bill 2012	53
Chapter 4 Regulation impact statement.....	57
Chapter 5 Expanded superannuation reporting	69
Chapter 6 Improving efficiency and data quality in the superannuation system	75
Index.....	95

Glossary

The following abbreviations and acronyms are used throughout this combined explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ADF	approved deposit funds
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUASB	Auditing and Assurance Standards Board
CGT	capital gains tax
Commissioner	Commissioner of Taxation
ERF	Eligible Rollover Fund
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
PDS	Product Disclosure Statement
PST	pooled superannuation trust
RIS	Regulation Impact Statement
RSA Act	<i>Retirement Savings Accounts Act 1997</i>
RSA provider	Retirement Savings Account provider
RSE	Registrable Superannuation Entity
S(UMLM) Act	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS Regulations	<i>Superannuation Industry (Supervision) Regulations 1994</i>
SMSF	self-managed superannuation fund
TAA 1953	<i>Taxation Administration Act 1953</i>

General outline and financial impact

Merging superannuation funds

Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* and *Tax Laws Amendment (2009 Measures No. 6) Act 2010* to reinstate the temporary loss relief for merging superannuation funds with some modifications.

Date of effect: This measure is available for mergers that occur on or after 1 October 2011 and before 2 July 2017.

Proposal announced: This measure was announced in the Minister for Financial Services and Superannuation's Media Releases No. 020 of 24 April 2012 and No. 046 of 3 August 2012.

Financial impact: This measure has the following revenue implications:

<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>
–	\$5.0m	\$6.0m	\$6.0m

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.51 to 1.54.

Compliance cost impact: This measure is expected to have a low overall compliance cost impact, comprised of a low implementation impact and a low decrease in ongoing compliance costs.

Self-Managed Superannuation Fund Auditor Registration

Superannuation Auditor Registration Imposition Bill 2012

On 16 December 2010, the then Assistant Treasurer and Minister for Financial Services and Superannuation (Minister) announced the Stronger Super reforms.

Stronger Super represents the Government's response to the review into the governance, efficiency, structure and operation of Australia's superannuation system, the Super System Review (Review).

To provide input on the design and implementation of the Stronger Super reforms, the Government undertook extensive consultation with industry, employer and consumer groups. The Government announced its decisions on the key design aspects of the Stronger Super reforms in the Minister's Media Release No. 131 of 21 September 2011.

Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 implement the Government's reforms relating to auditors of self-managed superannuation funds (SMSFs) as part of Stronger Super. Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 introduce a registration regime for SMSF auditors. Auditors will be required to meet initial and ongoing requirements relating to their qualifications, competency and independence.

Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 provide for the Australian Securities and Investments Commission (ASIC), as the registration body for SMSF auditors, to be responsible for setting competency standards and taking enforcement action against auditors who have not met their on-going obligations under Schedule 1 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 also provide powers to the Australian Taxation Office to monitor auditor's compliance with relevant standards and refer any non-compliant auditors to ASIC for enforcement action consideration.

SMSF auditor registration is intended to ensure that auditors of SMSFs have a minimum standard of competency and knowledge of relevant laws and are able to detect and report contraventions by SMSF trustees.

Date of effect: 31 January 2013.

Proposal announced: The Minister announced the Stronger Super reforms in the Minister's Media Release No. 024 of 16 December 2010. The Minister announced the Government's decisions on key design aspects of the Stronger Super reforms in the Minister's Media Release No. 131 of 21 September 2011. In the 2012-13 Budget, further details on auditor registration were announced. The Minister announced further details including transitional arrangements that will be in place for existing SMSF auditors in the Minister's Media Release No. 036 of 23 June 2012.

Financial impact: The 2011-12 and 2012-13 Budgets announced a total of \$29.7 million in funding over five years from 2011-12 to 2015-16 for the implementation of self-managed superannuation fund auditor registration. It was also announced that ASIC would collect \$0.9 million from 2011-12 to 2015-16 in fees associated with auditor registration.

Human rights implications: Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 do not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.174 to 2.177 and Chapter 3 paragraphs 3.13 to 2.16.

Compliance cost impact: Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 will impose compliance costs on auditors who apply and become registered with ASIC. Fees for applying for registration, undertaking a competency exam and submitting an annual statement will be imposed on these auditors. Approved SMSF auditors will also be liable for additional fees if they do not submit their annual statements on time or fail to notify ASIC of certain matters on time.

Summary of regulation impact statement

Impact: A regulation impact statement for SMSF auditor registration has been assessed as adequate by the Office of Best Practice Regulation.

Main points:

- SMSF auditor registration seeks to ensure that SMSF auditors have a minimum level of competency to perform SMSF audits, and can be relied upon to detect and report contraventions of the superannuation legislation; and
- Implementation of this measure involves a trade-off between creating a level-playing field for SMSF auditor and minimising the compliance burden on highly competent auditors.

Expanded superannuation reporting

Schedule 3 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends Subdivision 390-A of Schedule 1 to the *Taxation Administration Act 1953*

to expand the information required to be reported to the Commissioner of Taxation. Under the revised reporting obligations, superannuation providers will be required to provide statements for all members who held an interest in the superannuation plan at any time during a reporting period, not just those for whom contributions are received.

Date of effect: This measure will apply with effect from 1 July 2012, that is, the first financial year the amendments are to apply is the 2012-13 financial year for which the first member statements are due by October 2013.

Proposal announced: This measure was announced by the Minister for Financial Services and Superannuation in Media Release No. 131 of 21 September 2011 as part of the Government's Stronger Super package of reforms.

Financial impact: Unquantifiable but likely to be small.

Human Rights implications: Schedule 3 does not raise any human rights issue. See Statement of Compatibility with Human Rights — Chapter 5, paragraphs 5.22 to 5.25.

Compliance cost impact: Low.

Summary of regulation impact statement

Regulation impact on business

Impact: Schedule 3 expands the current reporting requirements for superannuation providers to require statements to be provided to the Commissioner for all superannuation interests not just those for which contributions are received.

A regulation impact statement has been finalised for the implementation of the Stronger Super reforms and can be found at <http://ris.finance.gov.au/2011/10/17/stronger-super-reforms-%e2%80%93-regulation-impact-statement-and-prime-minister%e2%80%99s-exemption-%e2%80%93-treasury/>. The relevant chapter of the regulation impact statement is Chapter 3 of the SuperStream Section.

Improving efficiency and data quality in the superannuation system

Schedule 4 of the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* to improve the information quality in the superannuation system and ensure fully effective e-commerce in superannuation.

Date of effect: The day after this Bill receives Royal Assent.

Proposal announced: This measure was announced in the then Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 131 of 21 September 2011.

Financial impact: Nil

Human rights implications: This Schedule raises human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 6, paragraphs 6.101 to 6.119.

Compliance cost impact: Nil

Summary of regulation impact statement

Regulation impact on business

Impact: A Regulation Impact Statement (RIS) has been finalised for the implementation of the Stronger Super reforms and can be found on the Office of Best Practice Regulation's website. The relevant section of the Stronger Super RIS covered in this Bill is the chapter on SuperStream.

Main points:

- Superannuation data and payment regulations and standards were legislated in Superannuation Legislation Amendment (Stronger Super) Bill 2012 to mandate e-commerce in the superannuation industry.
- These amendments facilitate the implementation and use of services to be provided by the Commissioner of Taxation. These services will result in a more efficient superannuation industry.

- Rollovers and contributions will be processed in a more timely manner, and employee and member information will be more accurate resulting in less rework, reduced duplicate, lost and unclaimed superannuation accounts.
- The services to be provided include:
 - a data base containing accurate information about superannuation entities to ensure fully effective e-commerce; and
 - a validation service that employers and trustees will be able to use to validate employee and member information provided to them.

Chapter 1

Merging superannuation funds

Outline of chapter

1.1 Schedule 1 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 reinstates the temporary loss relief and asset roll-over in Division 310 of the *Income Tax Assessment Act 1997* (ITAA 1997) with the following modifications:

- an optional asset roll-over for capital gains and revenue gains;
- losses that are transferred to the receiving entity will be treated as having been made in the income year that they were transferred; and
- the exclusion of self-managed superannuation funds.

1.2 The loss relief and asset roll-over removes income tax impediments to mergers between complying superannuation funds by permitting the roll-over of both revenue gains or losses and capital gains or losses. This loss relief will be available for complying superannuation funds (other than self-managed superannuation funds) and approved deposits funds (ADFs) that merge with a complying superannuation fund with five or more members.

1.3 All references in this chapter are to the ITAA 1997 unless otherwise specified.

Context of amendments

1.4 Capital gains tax (CGT) is the primary code for calculating gains or losses of complying superannuation funds. There are certain gains and losses that are treated on revenue account, such as those from a debenture stock or bond (see section 295-85 of the ITAA 1997).

1.5 The transfer of assets from one superannuation fund to another, under a merger between the two funds, will typically trigger CGT event A1 (about disposals of a CGT asset — section 104-10 of the ITAA 1997) or may trigger CGT event E2 (about transferring a CGT asset to a trust — section 104-60 of the ITAA 1997). Therefore, the asset

transfer will lead to the realisation of capital gains and/or capital losses for the transferring fund. Following this asset transfer and the transfer of members' accounts to the receiving fund, the transferring fund will typically be wound up.

1.6 Capital losses are extinguished on the ending of an entity. As capital losses can be used to offset present and future capital gains, they carry some value — at most the value of the tax liability that would otherwise be payable on the reduced capital gains. This value is extinguished on the winding up of the transferring superannuation fund.

1.7 Similarly, revenue losses, such as foreign exchange losses, are also extinguished on the ending of an entity. Revenue losses also have a value as they can be offset against current year income, or carried forward where the entity continues to exist. However, where there is a merger and the transferring entity ceases to exist, the value of the revenue losses is also extinguished.

1.8 Valuations of members' superannuation interests may include the tax benefits of unrealised net capital losses or revenue losses. In the absence of optional loss relief and asset roll-over a merger may lead to a reduction in the value of members' superannuation interests. This can act as an obstacle to the superannuation fund merging with another fund because the trustee has to take this reduction into account when considering such a merger. The trustee may decide to abandon any merger plans where there is a significant negative impact on members' benefits. The optional loss relief and asset roll-over removes the impediment to eligible funds merging that would otherwise arise from the extinguishment of the losses.

1.9 This loss relief encompasses transfers to and from pooled superannuation trusts (PSTs) and life insurance companies as well as superannuation funds and ADFs. Providing the loss relief to superannuation fund mergers involving these kinds of entities recognises the commercial reality that a significant amount of superannuation is invested via PSTs and life insurance companies rather than being directly invested by superannuation funds.

1.10 The loss relief and asset roll-over in Division 310 was introduced as a temporary concession to assist the superannuation industry to cope with the severe economic and financial market conditions in late 2008. The temporary loss relief and asset roll-over was granted for transfer events happening on or after 24 December 2008 and before 1 October 2011.

1.11 The rationale for reinstating the taxation relief is to facilitate the implementation of the Stronger Super reforms. The Government's

Stronger Super reforms will put pressure on superannuation funds to improve their competitiveness or reassess their viability in the absence of merging with another entity. Stronger Super encourages increased size or scale of superannuation funds to enable funds to provide a range of benefits to members, including lower fees through administrative efficiency and greater returns and diversification of investment through additional investment weight.

1.12 Tax considerations are a major impediment to mergers as trustees of superannuation funds must consider the adverse tax impacts on members' accounts. Although a merger may be in the long-term interest of members, the effect on members' account balances may preclude this from happening.

1.13 Given the potential benefits to members of facilitating industry consolidation and the possible costs for some entities transitioning to Stronger Super, temporary taxation relief in the form of loss relief and asset roll-over for mergers of superannuation funds is appropriate.

Summary of new law

1.14 This measure reinstates Division 310 with some modifications to allow a complying superannuation fund (other than a self-managed superannuation fund) or a complying ADF to choose to roll-over revenue gains or losses and capital gains or losses arising from an arrangement to merge the fund with a complying superannuation fund with five or more members. This is achieved through the provision of a loss transfer and an asset roll-over.

1.15 The transferring entity may also transfer previously realised capital losses and revenue losses, including its prior year losses. Losses that are transferred will be taken to be incurred by the receiving entity in the year of transfer.

1.16 The amendments to Division 310 allow transferring entities greater flexibility when choosing the asset roll-over.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A merging superannuation fund may choose loss relief where the transferring entity transfers assets to the receiving entity on or after 1 October 2011 and before 2 July 2017.	A merging superannuation fund may choose loss relief for an eligible fund merger where the transferring entity transfers assets to the receiving entity on or after 24 December 2008 and before 1 October 2011.
Trustees of self-managed superannuation funds are excluded from choosing the loss relief and the asset roll-over.	Trustees of self-managed superannuation funds may currently be eligible to choose the loss relief and the asset roll-over where they enter into an arrangement to merge with a complying superannuation fund with five or more members.
Earlier year capital losses that are transferred to a receiving entity are taken to be made by the receiving entity in the year that the losses are transferred.	Earlier year capital losses that are transferred to a receiving entity are taken to be made by the receiving entity for that earlier year.
Earlier year tax losses that are transferred to a receiving entity are taken to be made by the receiving entity in the year that the losses are transferred.	Earlier year tax losses that are transferred to a receiving entity are taken to be made by the receiving entity for that earlier year.
Access to both options under the asset roll-over is available regardless of the net capital position of the entity, in relation to the transferred assets.	Two options for the asset roll-over are available depending on the net capital position of the entity, in relation to the transferred assets. If an entity is in a net capital loss position in relation to the transferred assets for the current year, it may choose either the global asset approach or the individual asset approach. If the entity is not in that position, it can only choose the individual asset approach.

<i>New law</i>	<i>Current law</i>
Access to both options under the asset roll-over is available regardless of the net revenue position of the entity, in relation to the transferred assets.	Two options for the asset roll-over are available depending on the net revenue position of the entity, in relation to the transferred assets. If an entity is in a net revenue loss position in relation to the transferred assets for the current year, it may choose either the global asset approach or the individual asset approach. If the entity is not in that position, it can only choose the individual asset approach.
An entity can disregard any capital gain or loss under the individual asset approach.	An entity can disregard any capital loss under the individual asset approach.
An entity can disregard any assessable income or tax loss with respect to its revenue assets under the individual asset approach.	An entity can disregard any tax loss with respect to its revenue assets under the individual asset approach.

Detailed explanation of new law

1.17 To reinstate Division 310, the application and repeal provisions for the loss relief and asset roll-over in the *Tax Laws Amendment (2009 Measures No. 6 Act) 2010* are amended to allow the provisions to apply from 1 October 2011 to 1 July 2017. [*Schedule 1, items 1 and 2, notes 1 and 2 to section 310-1*]

1.18 Several minor amendments and updates have been made to a number of provisions of the ITAA 1997 and *Tax Laws Amendment (2009 Measures No. 6) Act 2010* as a result of the reinstatement and modifications made to Division 310. [*Schedule 1, items 3, 4, 11, 13, 16 and 18, table item 4 in subsection (2)(1), item 11 of Schedule 1, note to subsection 310-55(1), note to subsection 310-60(1), note to subsection 310-65(1), and note to subsection 310-70(1)*]

What entity may choose the loss transfer and asset roll-over

1.19 A trustee of a complying superannuation fund (other than a self-managed superannuation fund) is eligible to choose the optional loss transfer and asset roll-over where there is an arrangement to merge complying superannuation funds. [*Schedule 1, item 5, subsection 310-10(1)*]

1.20 An eligible entity with an arrangement to merge superannuation funds may choose:

- a loss transfer only;
- an asset roll-over only; or
- a combination of the loss transfer and the asset roll-over;

where the relevant conditions are satisfied.

1.21 Eligibility for the asset roll-over is conditional on an entity being eligible for the loss transfer, but will not be dependent on the entity actually choosing the loss transfer. This will permit an arrangement to merge superannuation funds to occur in the following ways:

- the transfer of cash only following the disposal of all the transferring entity's assets;
- the transfer of other assets only; or
- a combination of cash and other asset transfers.

When an entity may choose the loss transfer and asset roll-over

1.22 Subdivision 310-B sets out the conditions that must exist for an entity to choose the loss transfer and the asset roll-over in respect of an arrangement to merge superannuation funds.

1.23 Subdivision 310-B specifies separately the different ways in which a complying superannuation fund or ADF may hold assets. Assets may be held directly, through a pooled superannuation trust (PST) or through a policy with a life insurance company.

Consequences of choosing to transfer losses

1.24 Subdivision 310-C sets out the entities to which losses can be transferred, the losses that can be transferred and the effect of transferring a loss.

1.25 Section 310-25 provides that losses may be transferred to one or more of the following entities, called receiving entities:

- a continuing fund for the loss relief;

- a PST in which the units are held by a continuing fund for the loss relief just after the completion time of the arrangement to merge the funds; and/or
- a life insurance company which has issued a complying superannuation/First Home Saver Accounts (FHSA) life insurance policy that is held by a continuing fund for the loss relief just after the completion time.

1.26 Section 310-30 provides that the losses that may be transferred are capital losses and revenue losses realised before the merger, specifically:

- net capital losses for earlier income years than the transfer year to the extent that they were not utilised before the completion time;
- net capital losses for the transfer year, worked out as if the transfer year ended at the completion time;
- tax losses for earlier income years than the transfer year to the extent that they were not utilised before the completion time; and
- tax losses incurred for the transfer year, worked out as if the transfer year ended at the completion time.

Effect of transferring a capital loss

1.27 The previously realised net capital loss for an income year that is not the transfer year will be taken, if it is transferred, not to have been made by the transferring entity for that earlier income year.

1.28 An amount equal to the transferred loss will be taken to have been made by the receiving entity in the transfer year. [*Schedule 1, item 6, subparagraphs 310-35(1)(b)(i) and (ii)*]

1.29 The receiving entity will therefore be able to utilise the transferred capital losses against capital gains only in the income year that the losses are transferred or in future income years.

Effect of transferring a tax loss

1.30 Similar to capital losses, an earlier year tax loss can be transferred to a receiving entity by the transferring entity. As a result, the transferring entity will be taken not to have incurred the loss for that earlier income year.

1.31 For the purposes of section 36-15, an amount equal to the transferred loss will be taken to have been made by the receiving entity in the income year immediately prior to the transfer year. *[Schedule 1, items 7 and 8, paragraph 310-40(1)(b) and subparagraphs 310-40(1)(b)(i) and (ii)]*

1.32 For all other purposes in the ITAA 1997, an amount equal to the transferred loss is taken to be incurred by the receiving entity in the transfer year. *[Schedule 1, item 9, subsection 310-40(1)]*

1.33 The receiving entity will therefore be able to utilise the transferred tax losses against income only in the income year that the losses are transferred or in future income years.

Example 1.1

Small Super superannuation fund (not a self-managed superannuation fund) has net assets of \$2 million, a carried forward net capital loss from an earlier income year of \$100,000 and tax losses for earlier income years of \$25,000. Small Super entered into a deed of arrangement to transfer all assets and members to Best Super superannuation fund, a large APRA regulated superannuation fund, on 1 April 2012.

Small Super elected to transfer its losses. The \$100,000 carried forward capital loss and the \$25,000 tax loss were transferred to Best Super in the 2011-12 income year (the transfer year). The losses are excluded from the calculation of Small Super's taxable income for the transfer year or any future income year. For the purpose of deducting the tax losses and only for that purpose, Best Super will be taken to have incurred the losses in the 2010-11 income year. This allows Best Super to deduct the transferred tax losses in the transfer year or a later income year.

Roll-over for assets

1.34 Subdivision 310-D provides that superannuation funds, ADFs, PSTs and life insurance companies that meet the eligibility conditions for the loss transfer may also choose a roll-over for assets transferred from the transferring entity to the receiving entity provided certain additional conditions are satisfied.

1.35 Section 310-45 specifically lists the three additional conditions for the asset roll-over which must be satisfied.

Choosing the form of the asset roll-over

1.36 An entity may choose between two methods for executing the roll-over regardless of the entity's net position with respect to the

transferred assets. These two methods provide flexibility and minimise compliance costs for such entities.

1.37 An entity must make a choice for the form of the roll-over that is to apply to its CGT assets and revenue assets. *[Schedule 1, item 10, subsection 310-50(1)]*

1.38 In respect of CGT assets, an entity can choose either the global asset approach or individual asset approach to transfer its CGT assets. However, only one method can be chosen in respect of the transferred CGT assets. Specifically, an entity cannot use the individual asset approach in relation to some of the transferred assets and the global asset approach in relation to the remaining transferred assets. *[Schedule 1, item 10, subsection 310-50(2)]*

1.39 Similarly, an entity can choose either the global asset approach or individual asset approach to transfer its revenue assets. However, only one method can be chosen in respect of the transferred revenue assets. Specifically, an entity cannot use the individual asset approach in relation to some of the transferred assets and the global asset approach in relation to the remaining transferred assets. *[Schedule 1, item 10, subsection 310-50(3)]*

1.40 The entity choosing the form of the roll-over may choose different forms of roll-over for its CGT assets and revenue assets.

Consequences for CGT assets — individual asset approach

1.41 Under this approach, the transferring entity may disregard all capital gains or losses it realises, or it may choose to disregard some or none of its capital gains or losses. The choice as to what gains or losses to disregard is a matter for the transferring entity. *[Schedule 1, item 12 and 14, subsections 310-60(1) and (2)]*

1.42 A transferring entity that chooses the individual asset approach for its CGT assets may elect to treat those assets subject to the asset roll-over as being transferred (or disposed of) to the receiving entity by treating:

- the assets that would otherwise realise a capital gain as being transferred at their cost base; and
- the assets that would otherwise realise a capital loss as being transferred at their reduced cost base.

[Schedule 1, item 15, subsection 310-60(3)]

1.43 The effect of the individual asset approach is that the transferred CGT assets will have neither a capital gain nor a capital loss on their transfer.

1.44 For the receiving entity, the first element of the cost base and reduced cost base of the transferred assets in its hands is taken to be equal to the cost base and the reduced cost base respectively of the asset just before its transfer (when it was still held by the transferring entity).

Consequences for revenue assets — individual asset approach

1.45 Under this approach, the transferring entity may disregard all revenues gains or losses it realises, or it may choose to disregard some or none of its revenue gains or losses. The choice as to what gains or losses to disregard is a matter for the transferring entity. [*Schedule 1, item 17, subsection 310-70(1)*]

1.46 This approach for revenue assets will treat the transferring entity's gross proceeds for the transfer of each revenue asset to be the amount, the deemed proceeds, it would need to have received to have no profit or loss from the transfer. This rule means that there is no gain or loss for the transferring entity. [*Schedule 1, item 17, subsection 310-70(1)*]

1.47 The receiving entity will be taken to have paid an amount equal to the deemed proceeds for the transferring entity for each revenue asset received.

Application and transitional provisions

1.48 The amendments apply in relation to all transfer events that happen during the period starting on 1 October 2011 and ending at the end of 1 July 2017. [*Schedule 1, item 19*]

Repeals and savings provisions

1.49 These amendments end on 1 July 2017. The automatic repeal provision has been updated to reflect a repeal date of 1 July 2019. The repeal will occur two years after the end date of the legislation. [*Schedule 1, item 1, note 1 to section 310-1*]

1.50 These amendments will operate for a limited time and will then be automatically repealed.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Merging superannuation funds

1.51 This Schedule 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

1.52 This Schedule amends the ITAA 1997 and *Tax Laws Amendment (2009 Measures No. 6) Act 2010* to provide taxation relief to merging superannuation funds through the provision of loss relief and an asset roll-over.

Human rights implications

1.53 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

1.54 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Self-Managed Superannuation Fund Auditor Registration

Outline of chapter

2.1 Schedule 2 of the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to introduce a new registration regime for auditors of self-managed superannuation funds (SMSFs).

2.2 This chapter explains:

- registration requirements a person must meet in order to register with Australian Securities and Investments Commission (ASIC) and become an approved SMSF auditor;
- ongoing obligations of approved SMSF auditors;
- registers of approved SMSF auditors and disqualified SMSF auditors;
- disclosure of information between the Australian Taxation Office (ATO) and ASIC;
- fees imposed under the registration regime;
- penalties and compliance treatments including disqualification and suspension of approved SMSF auditors;
- monitoring and investigation powers of the ATO and ASIC; and
- application of transitional provisions.

2.3 All references in this chapter are to the SIS Act unless otherwise stated.

Context of amendments

Operation of current provisions

2.4 SMSF trustees are required to appoint an approved auditor to audit the financial reports and the operations of the fund for each year or part of the year the fund is in existence. The auditor is required to assess the fund's overall compliance with the law and the fund's financial statements.

2.5 The annual audit provides assurance to the Government and the general public that SMSFs are complying with the superannuation laws. This is particularly important given the level of taxation concessions provided to complying superannuation funds.

2.6 Auditors play a crucial role in the regulation of the SMSF sector and consequently, it is necessary that SMSF auditors have a high standard of competency.

Rationale for major changes

2.7 The Super System Review (Review) found that while some approved auditors are subject to minimum competency standards through their professional association, not all approved auditors are subject to the same minimum competency standards, nor are they subject to the same enforcement actions.

2.8 In addition, the Review identified issues with SMSF auditor independence. The ATO's 2009 compliance activities targeting high risk approved auditors identified that 29 per cent of those auditors were the SMSF's accountant and had prepared a material part of its financial statements. Also, 28 per cent of those auditors exhibited evidence of a relationship or conflict of interest that might impact the auditor's ability to be independent.

2.9 The Review recommended that ASIC be appointed as the registration body for SMSF approved auditors and be responsible for determining eligibility requirements, setting competency standards and determining and taking appropriate enforcement action. The Review also recommended that the ATO police the approved auditor standards.

2.10 The Review also recommended the introduction of independence requirements for SMSF auditors to ensure that SMSF audits can be relied upon to provide an objective assessment of compliance with the superannuation legislation.

2.11 The objective of the SMSF auditor registration regime is to raise the standard of SMSF auditor competency and ensure there is a set of minimum standards that apply across the entire sector. Registration will identify, formally recognise and enable the provision of tailored support to SMSF auditors that are currently producing high quality audits.

2.12 Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012 implement the Government's response to the Review's recommendations in relation to SMSF auditor registration and auditor independence.

Summary of new law

2.13 Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012:

- introduces a new definition of an approved SMSF auditor;
- sets out who may apply for registration as an approved SMSF auditor and the requirements a person must meet before ASIC grants an application for registration as an approved SMSF auditor;
- provides ASIC with the ability to place conditions on an auditor's registration and the ability to cancel a person's registration in certain circumstances;
- sets out the ongoing obligations of approved SMSF auditors including:
 - meeting professional obligations;
 - submitting annual statements to ASIC; and
 - notifying ASIC of certain matters;
- sets out the type of registers to be kept by ASIC and what information is to be entered on these registers;
- provides for information to be shared between ASIC and the ATO;
- provides ASIC with the power to determine and set competency standards which are to be complied with by all approved SMSF auditors;

- sets out the fees which are proposed by the Superannuation Auditor Registration Imposition Bill 2012;
- provides ASIC with the ability to issue disqualification and suspension orders to approved SMSF auditors under certain circumstances;
- amends the existing penalties for those who hold themselves out as an approved auditor to align with the new registration regime; and
- provides the ATO and ASIC with relevant monitoring and investigation powers.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
An approved auditor in relation to a superannuation entity that is an SMSF means an approved SMSF auditor.	An approved auditor is a person included in a class of persons specified in the regulations unless that person has been disqualified from being or acting as an auditor of all superannuation entities or a disqualification order is in force for that person.
An approved SMSF auditor is a person who is registered as an approved SMSF auditor with ASIC but does not include a person for whom an order disqualifying that person from being an approved SMSF auditor is in force or a person who is disqualified from being or acting as an auditor of all superannuation entities.	No equivalent.
A natural person who is an Australian resident may apply to the ASIC for registration as an approved SMSF auditor.	No equivalent.
ASIC must grant an application and register an applicant as an approved SMSF auditor if the applicant meets certain criteria.	No equivalent.

<i>New law</i>	<i>Current law</i>
ASIC may by written notice place conditions on a person's registration as an approved SMSF auditor.	No equivalent.
ASIC may cancel a person's registration under limited circumstances.	No equivalent.
An approved SMSF auditor must meet certain professional obligations.	No equivalent.
An approved SMSF auditor must submit an annual statement to ASIC.	No equivalent.
An approved SMSF auditor must notify ASIC of certain matters within a prescribed timeframe.	No equivalent.
ASIC must cause a register of approved SMSF auditors and a register of disqualified SMSF auditors to be kept for the purposes of the SIS Act.	No equivalent.
ASIC may disclose certain information to the Commissioner of Taxation (Commissioner) for the purposes of administering the relevant provisions of the SIS Act.	No equivalent.
ASIC, by legislative instrument, may determine competency standards to be complied with by all approved SMSF auditors.	No equivalent.
Fees are payable by persons for particular matters relating to auditor registration.	No equivalent.
ASIC may make a written order disqualifying a person from being an approved SMSF auditor or suspending a person's registration as an approved SMSF auditor under certain circumstances.	The Commissioner may make a written order disqualifying a person from being an approved auditor under certain circumstances.
The Commissioner may refer relevant matters to ASIC where, in the opinion of the Commissioner, an auditor has failed in his duties in that role, has not complied with the law or is otherwise not fit and proper to be an approved SMSF auditor.	No equivalent.

Detailed explanation of new law

General administration

2.14 Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends section 6 of the SIS Act to provide for the general administration of the new and amended provisions relating to auditors of SMSFs by ASIC and the Commissioner. *[Schedule 2, item 1, paragraph 6(1)(a)]*

2.15 ASIC will have the general administration of Part 16 (other than Division 2 and section 128P) to the extent that it relates to auditors of SMSFs. *[Schedule 2, item 2, paragraph 6(1)(da)]*

2.16 The Commissioner will have the general administration of Division 2 of Part 16 and section 128P. *[Schedule 2, item 3, subparagraph 6(1)(e)(v)]*

2.17 The Commissioner will retain the general administration of Part 16 (other than section 128N) to the extent that it relates to SMSFs and that administration is not conferred on ASIC. This is to ensure the Commissioner remains the Regulator of actuaries of SMSFs. *[Schedule 2, item 4, paragraph 6(1)(ea)]*

Definitions

2.18 An approved auditor in relation to a superannuation entity that is an SMSF means an approved SMSF auditor. *[Schedule 2, item 5, subsection 10(1)]*

2.19 An approved SMSF auditor means a person who is registered under section 128B but does not include a person for whom an order disqualifying the person from being an approved SMSF auditor, or suspending the person's registration as an approved SMSF auditor, is in force under section 130F or a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D. *[Schedule 2, item 6, subsection 10(1)]*

2.20 An SMSF auditor number of an approved SMSF auditor means the number stated in the certificate of registration given by ASIC relating to the auditor's registration. *[Schedule 2, item 7, subsection 10(1)]*

2.21 A suspended SMSF auditor means a person for whom an order suspending a person's registration as an approved SMSF auditor is in force under section 130F. *[Schedule 2, item 8, subsection 10(1)]*

Registration of approved SMSF auditors

2.22 Schedule 1 inserts Division 1A — Approved SMSF auditors.
[Schedule 2, item 9, Division 1A]

2.23 Schedule 1 inserts Subdivision A — Registration of approved SMSF auditors. *[Schedule 2, item 9, Subdivision A]*

2.24 A natural person who is an Australian resident may apply to ASIC for registration as an approved SMSF auditor. The application must be in the approved form which can require electronic lodgement. ASIC will have the ability to request the applicant to give ASIC further information relating to their application within a specified time. If the applicant does not provide ASIC with that information within that time, the applicant is taken to have withdrawn their application.
[Schedule 2, item 9, section 128A]

2.25 Subject to meeting the requirements noted in paragraph 2.26, ASIC must grant an application for registration as an approved auditor and register the applicant if the applicant has:

- the qualifications prescribed by the regulations;
- the practical experience prescribed by the regulations; and
- passed a competency examination in accordance with section 128C.

[Schedule 2, item 9, paragraph 128B(1)(a)]

2.26 Before granting registration, ASIC must also be satisfied that the applicant is capable of performing the duties of an approved SMSF auditor. The duties of an approved SMSF auditor include those under the SIS Act, as well as any duties required of an auditor by their position or occupation under any other Commonwealth, state or territory law.
[Schedule 2, item 9, subparagraph 128B(1)(b)(i)]

2.27 ASIC must also be satisfied that the applicant is unlikely to contravene the obligations of an approved SMSF auditor under Subdivision B. These include professional obligations such as undertaking continuing professional development, complying with competency and independence standards, lodging annual statements with ASIC and notifying ASIC of certain matters. *[Schedule 2, item 9, subparagraph 128B(b)(ii)]*

2.28 Finally, ASIC must be satisfied that the applicant is a fit and proper person to be an approved SMSF auditor. The concept of fit and proper is not defined in the SIS Act, however it has been considered by

the courts on a number of occasions. Whether a person is a fit and proper person to be an approved SMSF auditor is ascertained by an evaluation of whether the person has the appropriate knowledge, skills, experience, competence, judgement, character, honesty and integrity to be, or remain, registered. [*Schedule 2, item 9, subparagraph 128B(1)(b)(iii)*]

2.29 A prescriptive approach cannot be applied to such a determination. ASIC must make a decision as to whether a person is fit and proper to be an approved SMSF auditor based on an evaluation of all the particulars of each case. However, relevant considerations in determining whether a person is a fit and proper person to be an approved SMSF auditor may include whether the person:

- has carried out or performed adequately and properly, the duties and functions of an approved SMSF auditor;
- has been or is currently subject to disciplinary action, including, but not limited to, suspension and exclusion from practice, by a regulatory body or a professional association;
- has been or is currently disqualified or banned under provisions of an Act or legislative instrument under Commonwealth, state or territory law;
- has been or is currently the subject of administrative, civil or enforcement action, which were determined adversely (including consenting to an order or direction, or giving an undertaking not to engage in unlawful or improper conduct) in any country;
- has been convicted or have legal proceedings pending for any criminal offences, any acts of dishonesty (such as theft or fraud), any breach of trust or fiduciary duty, any professional misconduct or other misconduct;
- has served a term of imprisonment;
- has been obstructive, misleading or untruthful in dealing with regulatory bodies, or a court;
- has failed to deal with conflicts of interest appropriately; or
- has or has had the status of undischarged bankrupt or insolvent under administration, or there is any such action pending.

The above matters are not meant to be an exhaustive list. The relevance and weighting given to these considerations (or any other relevant factors) may vary according to each person's circumstances, and no one factor will be determinative in all cases. ASIC may provide further guidance in determining whether a person is fit and proper.

2.30 ASIC will have the ability to exempt a person from a requirement in paragraph 128B(1)(a) and grant the person's application for registration as an approved SMSF auditor and register the person. However, this does not preclude ASIC from placing a condition on that person's registration, such as completing a course of education or training specified by ASIC, relating to the exemption provided. *[Schedule 2, item 9, subsection 128B(2)]*

2.31 ASIC is not required to grant an application for registration if the applicant does not meet a requirement listed in paragraph 128B(1)(a) unless it exercises its discretion under subsection 128B(2). In any case, if the applicant does not meet the requirements of paragraph 128B(1)(b), ASIC must refuse the application. *[Schedule 2, item 9, subsection 128B(3)]*

2.32 Additionally, ASIC must refuse an application for registration if the applicant is a person for whom a disqualification order or a suspension order is in force under section 130F or a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D. *[Schedule 2, item 9, subsection 128B(4)]*

2.33 ASIC's decision under section 128B to refuse an application for registration as an approved SMSF auditor under section 128A is a reviewable decision under the SIS Act. If ASIC refuses an application for registration, it must, no later than 14 days after the decision, give to the applicant a notice in writing setting out the decision and reasons for it. *[Schedule 2, item 9, subsection 128B(5)]*

2.34 If ASIC grants an application for registration, it must, no later than 14 days after granting the application, issue the applicant a certificate stating that the applicant has been registered as an approved SMSF auditor, stating the applicant's SMSF auditor number and specifying the day on which the application was granted. *[Schedule 2, item 9, subsection 128B(6)]*

2.35 A failure by ASIC to issue the applicant with a certificate within 14 days does not affect the validity of the decision. *[Schedule 2, item 9, subsection 128B(7)]*

2.36 A person's registration as an approved SMSF auditor takes effect at the beginning of the day in the certificate as the day the application is granted. The person's registration remains in force (except while the registration is suspended) unless ASIC cancels the person's

registration, an order disqualifying the person from being an approved SMSF auditor comes into force, an order disqualifying the person from being or acting as an approved auditor comes into force under section 130D or the person dies. *[Schedule 2, item 9, subsection 128B(8)]*

2.37 A person will be required to undertake and pass a competency examination conducted by or on behalf of ASIC in the 12 months prior to making an application to become registered as an approved SMSF auditor. The person will be allowed two attempts to pass the examination within that 12 month period. Transitional provisions will apply for existing approved auditors as explained in paragraphs 2.158 to 2.161. *[Schedule 2, item 9, section 128C]*

Conditions on registration

2.38 ASIC will have the ability to impose conditions, or additional conditions, on a person's registration as an approved SMSF auditor and to vary or revoke conditions imposed on the person's registration, and may do so at any time. For example, ASIC may grant a person's application for registration as an approved SMSF auditor and immediately impose a condition on that registration. ASIC may also impose conditions on a person's registration as an approved SMSF auditor if that auditor has been found not to have met an obligation under the SIS Act. *[Schedule 2, item 9, section 128D(1)]*

2.39 ASIC will have the ability to impose, vary or revoke conditions on its own initiative or on application by an approved SMSF auditor provided the application is accompanied by any documents prescribed by the regulations. *[Schedule 2, item 9, subsection 128D(2)]*

2.40 ASIC's decision to impose or vary conditions, or additional conditions, on a person's registration and ASIC's decision to refuse an application to vary or revoke conditions, or additional conditions, on a person's registration is a reviewable decision under the SIS Act.

2.41 ASIC is not limited to the nature or type of conditions that may be placed on a person's registration. The nature and type of conditions that may be placed on a person's registration will be determined on a case by case basis.

2.42 Conditions may include requiring the person to complete a course of education or training or requiring the person to undertake and pass a competency examination within a time frame specified by ASIC. *[Schedule 2, item 9, subsection 128D(3)]*

Cancelling registration

2.43 A person's registration remains in force (except while the registration is suspended) unless, among other events, ASIC cancels the person's registration. ASIC can apply its discretion in cancelling a person's registration. If a person's registration is cancelled, that person may make another application to become registered as an approved SMSF auditor at a later time.

2.44 ASIC may cancel a person's registration as an approved SMSF auditor if the person requests ASIC to do so in writing. *[Schedule 2, item 9, subsection 128E(1)]*

2.45 ASIC will also have the ability to cancel a person's registration if it is satisfied that the person has failed to comply with a condition imposed on their registration. There may be circumstances where failure to meet a condition of registration is not serious enough to warrant ASIC issuing a disqualification order against a person. This power gives ASIC the flexibility to deal with non-compliance with a condition on registration by cancelling the person's registration. Cancellation will allow the person to reapply for registration as an approved SMSF auditor in the future. *[Schedule 2, item 9, paragraph 128E(2)(a)]*

2.46 ASIC may cancel a person's registration as an approved SMSF auditor if it is satisfied that the person has not performed any significant audit work during a continuous period of five years and as a result has ceased to have the practical experience necessary for carrying out audits of SMSFs. Whether a person meets this criteria will be assessed by ASIC on a case by case basis. Practical experience, prescribed by the regulations, is one of the requirements under section 128B for registration as an approved SMSF auditor. *[Schedule 2, item 9, paragraph 128E(2)(b)]*

2.47 In determining whether a person has performed any significant audit work, ASIC may have regard to factors including:

- the number of SMSF audits the person has signed or undertaken work on; and
- the nature of the SMSFs the person signs the audit report for or undertakes audit work on. For example, the value and nature of the fund's assets and arrangements may indicate the type of work and knowledge exercised by the person.

2.48 ASIC may cancel a person's registration as an approved SMSF auditor if it is satisfied that the person has failed to comply with their obligation to give ASIC a statement under section 128G. *[Schedule 2, item 9, paragraph 128E(2)(c)]*

2.49 ASIC may also cancel a person's registration as an approved SMSF auditor if the person ceases to be an Australian resident. This is consistent with registration requirements where only Australian residents may apply for registration. *[Schedule 2, item 9, paragraph 128E(2)(d)]*

2.50 ASIC must, not later than 14 days after deciding to cancel the registration, give the person a written notice setting out the decision and reasons for it. The decision takes effect at the end of the day on which the notice is given to the person. ASIC's decision to cancel an approved SMSF auditor's registration is a reviewable decision under the SIS Act. *[Schedule 2, item 9, subsections 128E(3) and (4)]*

2.51 A failure by ASIC to give the person written notice setting out the decision and reasons for it within 14 days does not affect the validity of the decision. *[Schedule 2, item 9, subsection 128E(5)]*

Obligations of approved SMSF auditors

2.52 Approved SMSF auditors will be required to meet a range of ongoing obligations relating to their training, competency and independence as well as their registration with ASIC. Schedule 1 inserts new Subdivision B — Obligations of approved SMSF auditors. *[Schedule 2, item 9, Subdivision B]*

Professional obligations

2.53 Approved SMSF auditors will be required to complete the continuing professional development requirements prescribed by the regulations. This ongoing training is necessary to ensure auditors refresh and update their knowledge necessary for undertaking SMSF audits. *[Schedule 2, item 9, paragraph 128F(a)]*

2.54 Approved SMSF auditors 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. *[Schedule 2, item 9, paragraph 128F(b)]*

2.55 Approved SMSF auditors must comply with any competency standards issued by ASIC under section 128Q as a condition on registration. This will ensure all approved SMSF auditors are subject to the same, minimum competency standards necessary for the conduct of SMSF audits. *[Schedule 2, item 9 subparagraph 128F(c)(i)]*

2.56 Approved SMSF auditors must comply with any auditing standards made by the Auditing and Assurance Standards Board (AUASB) under section 336 of the *Corporations Act 2001* that are

applicable to the duties of an approved SMSF auditor. [*Schedule 2, item 9, subparagraph 128F(c)(ii)*]

2.57 Approved SMSF auditors must comply with any auditing and assurance standards formulated by the AUASB under section 227B of the *Australian Securities and Investments Commission Act 2001* that are applicable to the duties of an approved SMSF auditor. [*Schedule 2, item 9, subparagraph 128F(c)(iii)*]

2.58 The AUASB has issued Guidance Statement GS 009 *Auditing of Self-Managed Superannuation Funds* pursuant to section 227B to provide guidance to auditors conducting audits of SMSFs in how to understand and comply with the relevant standards.

2.59 Approved SMSF auditors must also comply with the auditor independence requirements prescribed by the regulations. This requirement is intended to ensure that approved SMSF auditors can be relied upon to provide an objective assessment of compliance with the superannuation legislation. [*Schedule 2, item 9, paragraph 128F(d)*]

Annual statements

2.60 An approved SMSF auditor must give to ASIC an annual statement in the approved form which can require electronic lodgement. This requirement will continue to apply whether or not the person is a suspended SMSF auditor. ASIC may extend the period for giving the statement. [*Schedule 2, item 9, section 128G*]

2.61 Approved SMSF auditors will be required to disclose certain information in the annual statement, for example a declaration of whether the auditor has adhered to independence standards and the number of SMSF audit reports that the person has signed over the relevant period.

Notification of certain matters

2.62 An approved SMSF auditor will be required to notify ASIC of certain matters no later than 21 days after the occurrence of the event concerned. Auditors must notify ASIC using the approved form which may require electronic lodgement. This requirement will continue to apply whether or not the person is a suspended SMSF auditor. However, subparagraph 128H(a)(i), which requires an approved SMSF auditor to notify ASIC when they cease to practice, will not apply to a suspended SMSF auditor. [*Schedule 2, item 9, section 128H*]

2.63 This requirement is intended to ensure ASIC is informed of circumstances that affect a person's registration, such as residency status

and that the details held by ASIC and available on the register of approved SMSF auditors are kept up to date.

Registers

2.64 Schedule 2 inserts new Subdivision C — Registers. ASIC must establish and maintain a Register of Approved SMSF Auditors and a Register of Disqualified SMSF Auditors for the purposes of the SIS Act. *[Schedule 2, item 9, Subdivision C]*

2.65 ASIC must cause a register of approved SMSF auditors to be kept for the purposes of the SIS Act. *[Schedule 2, item 9, subsection 128J(1)]*

2.66 Details of approved SMSF auditors and suspended SMSF auditors will be placed on the register by ASIC. These details include the person's name, the day the person's registration took effect, address details and details of a person's suspension. ASIC will also have the ability to place other details it considers appropriate on the register of approved SMSF auditors. *[Schedule 2, item 9, subsection 128J(2)]*

2.67 If the person ceases to be an approved SMSF auditor, for example if their registration has been cancelled or ASIC has issued an order disqualifying the person from being and acting as an approved SMSF auditor, ASIC must remove the person's name and any other particulars that are entered on the register of approved SMSF auditors. *[Schedule 2, item 9, subsection 128J(3)]*

2.68 A person may inspect and make copies of, or take extracts from the register of approved SMSF auditors. *[Schedule 2, item 9, subsection 128J(4)]*

2.69 ASIC must cause a register of Disqualified SMSF Auditors to be kept for the purposes of the SIS Act. Details such as the name and last known contact details for each person for whom an order disqualifying the person from being an approved SMSF auditor is in force under section 130F will be placed on this register. Where a disqualification order has been revoked ASIC will remove the details, such as the person's name and other particulars relating to the person, from the Disqualified SMSF Auditors register. A person may inspect and make copies of, or take extracts from the register of Disqualified SMSF auditors. *[Schedule 2, item 9, section 128K]*

2.70 A search of the Register of Approved SMSF Auditors and the Register of Disqualified SMSF Auditors that ASIC makes available online will not be subject to a fee.

Fees

2.71 Schedule 2 inserts new Subdivision D — Fees which sets out the fees payable under the provisions. *[Schedule 2, item, 9, Subdivision D]*

2.72 A fee imposed under the Superannuation Auditor Registration Imposition Bill 2012 is payable for matters mentioned in an item in column 1 of the table in subsection 128L(1). The fee is payable by the person referred to in the corresponding item in column 2 of the table in subsection 128L(1). *[Schedule 2, item 9, subsection 128L(1)]*

2.73 Fees are payable for:

- applying for registration as an approved SMSF auditor. The fee is payable by the applicant;
- undertaking a competency examination in accordance with section 128C. The fee is payable by the person undertaking the examination;
- giving to ASIC a statement under section 128G. The fee is payable by the person giving the statement;
- giving to ASIC a statement under section 128G within one month after it fell due. This fee is in addition to the fee payable for giving ASIC the statement under section 128G. The fee is payable by the person giving the statement;
- giving to ASIC a statement under section 128G more than one month after it fell due. This fee is in addition to the fee payable for giving ASIC the statement under section 128G. The fee is payable by the person giving the statement;
- giving ASIC particulars under section 128H within one month after they fell due. The fee is payable by the person giving the particulars;
- giving ASIC particulars under section 128H more than one month after they fell due. The fee is payable by the person giving the particulars; and

- inspecting or searching a register that ASIC keeps under Division 1A. For example, a fee will be payable for an extract that includes historical information such as previous principal place of business of an approved SMSF auditor. The fee is payable by the person who requests the inspection or search.

2.74 Approved SMSF auditors will be liable for additional fees if they do not submit their annual statements on time or fail to notify ASIC of certain matters on time. This is intended to deter approved auditors from not meeting their obligations on time and penalise those who fail meet their obligations on time.

2.75 The fee is payable to ASIC on behalf of the Commonwealth. *[Schedule 2, item 9, subsection 128L(2)]*

2.76 The fee is due and payable on the day prescribed by the regulations. *[Schedule 2, item 9, subsection 128L(3)]*

2.77 ASIC may, on behalf of the Commonwealth, waive payment of the whole or part of the fee by its own initiative or on written application by the person. ASIC's decision to refuse an application to waive full or part payment of a fee is a reviewable decision. *[Schedule 2, item 9, subsection 128L(4)]*

2.78 If a fee is payable under section 128L (other than a matter referred to in item 8 of the table in subsection 128L(1)), the matter is taken, for the purposes of the Superannuation Auditor Registration Imposition Bill 2012 (other than section 128J), not to have occurred until the fee is paid. *[Schedule 2, item 9, subsection 128L(5)]*

2.79 ASIC may, on behalf of the Commonwealth, recover a debt due under section 128L. *[Schedule 2, item 9, subsection 128L(6)]*

2.80 Nothing in a law passed before the commencement of section 128L exempts a person from a liability to pay a fee under section 128L. *[Schedule 2, item 9, subsection 128L(7)]*

2.81 A law, or a provision of a law, passed after the commencement of section 128L that purports to exempt a person from liability to pay taxes under laws of the Commonwealth or to pay certain taxes under those laws that include fees payable under section 128L is not to be construed as exempting the person from liability to pay fees payable under section 128L, unless the law or provision that expressly exempts a person from liability to pay such fees. *[Schedule 2, item 9, subsection 128L(8)]*

2.82 If a fee is payable under section 128L for inspecting or searching a register that ASIC keeps under this Division as referred to in item 8 of the table in subsection 128L(1), ASIC may refuse to do the act until the fee is paid. *[Schedule 2, item 9, subsection 128M(1)]*

2.83 To avoid doubt, nothing in Division 1A, and nothing done under Division 1A imposes on ASIC a duty to allow the inspection or search of a register, or to make available information, or confers a right to inspect or search a register or to have information made available except so far as such a duty or right would, but for the effect of section 128M, exist under a provision of the SIS Act (other than a provision of Division 1A) or under some other law. *[Schedule 2, item 9, subsection 128M(2)]*

Miscellaneous

2.84 Schedule 2 inserts new Subdivision E — Miscellaneous
[Schedule 2, item 9, Subdivision E]

Disclosure of information to the Commissioner

2.85 ASIC may disclose information, given to it in or in connection with the performance of its functions or the exercise of its powers under Part 16 or Part 25, to the Commissioner for the purposes of administering the provisions of the SIS Act. *[Schedule 2, item 9, section 128N]*

2.86 This provision is intended to enable ASIC to share information relevant to approved SMSF auditors with the Commissioner to ensure each may perform its role effectively. Information provided to the Commissioner will enable the ATO to identify and monitor persons registered as approved SMSF auditors and administer other parts of the SIS Act.

2.87 A disclosure of information permitted by this section is an authorised disclosure for the purposes of subsection 127(2) of the *Australian Securities and Investments Commission Act 2001*.

Commissioner may refer matters to ASIC

2.88 The Commissioner will be responsible for monitoring approved SMSF auditors and other matters relating to the conduct of an SMSF audit by a person other than an approved SMSF auditor. The Commissioner will undertake compliance activities to determine whether the obligations and prohibitions established under Part 16 have been adhered to.

- 2.89 In cases where the Commissioner is of the opinion that:
- an approved SMSF auditor is not a fit and proper person to be an approved SMSF auditor;
 - in relation to the conduct of an audit of an SMSF, a person has contravened the SIS Act or regulations; or
 - a person who conducted, or is conducting the audit has failed to carry out or perform adequately and properly the duties of an auditor under the SIS Act or the regulations or any duties required by a law of the Commonwealth, a state or a territory to be carried out or performed by an auditor or any functions that an auditor is entitled to perform in relation to the SIS Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*;

the Commissioner may refer the details of the matter to ASIC. [*Schedule 2, item 9, subsection 128P(1)*]

2.90 The Commissioner may exercise the power under subsection 128P(1) in relation to an approved SMSF auditor whether or not an order disqualifying or suspending the approved SMSF auditor has been made under section 130F. [*Schedule 2, item 9, subsection 128P(2)*]

2.91 If the Commissioner refers details of a matter to ASIC, the Commissioner must, as soon as practicable but, in any event, not later than 14 days after the referral, by notice in writing given to the auditor or person concerned, inform the auditor or person of the fact that a matter has been referred and of the nature of the matter so referred. [*Schedule 2, item 9, subsection 128P(3)*]

2.92 Once a matter is referred to ASIC, ASIC will be responsible for determining what, if any penalty or other enforcement action should be applied, for example whether a condition should be placed on the person's registration or whether a disqualification order should be issued. ASIC will decide what action to take on a matter referred by the Commissioner on a case by case basis.

Competency standards

2.93 ASIC may, by legislative instrument, determine competency standards to be complied with by all approved SMSF auditors. [*Schedule 2, item 9, subsection 128Q(1)*]

2.94 A competency standard may impose different requirements to be complied with in different situations or in respect of different activities. [*Schedule 2, item 9, subsection 128Q(2)*]

2.95 ASIC is not limited in its ability to determine competency standards. The competency standards may cover matters such as the conduct of audits, professional obligations of approved SMSF auditors and the knowledge of and compliance with laws applying to approved SMSF auditors. [*Schedule 2, item 9, subsection 128Q(3)*]

2.96 A competency standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing as in force or existing at a particular time or as in force or existing from time to time. This has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*. [*Schedule 2, item 9, subsections 128Q(4) and (5)*]

2.97 This provision gives ASIC the ability to set minimum standards applicable to all approved SMSF auditors. All approved SMSF auditors will be required to comply with these standards as part of their professional obligations.

2.98 The Commissioner will undertake compliance activities to determine whether approved SMSF auditors have adhered to these standards. An approved SMSF auditor who is found to be non-compliant with these standards may face referral to ASIC to determine appropriate enforcement action such as having a condition placed on their registration, having their registration suspended, or having a disqualification order issued against them.

Disqualification and suspension orders

2.99 ASIC may make a written order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor under certain circumstances. [*Schedule 2, item 10, subsection 130F(1)*]

2.100 ASIC may make a disqualification or suspension order if the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:

- the duties of an auditor under the SIS Act or regulations. This includes all the obligations and requirements on approved SMSF auditors in Part 16;
- any duties required by the law of the Commonwealth, a state or a territory to be carried out or performed by an auditor; or
- any functions that an auditor is entitled to perform in relation to the SIS Act or the regulations or the *Financial Sector*

(Collection of Data) Act 2001. [Schedule 2, item 10,
paragraph 130F(2)(a)]

2.101 ASIC may also make a disqualification or suspension order if the person has failed to comply with a condition or additional condition, imposed under section 128D on the person's registration as an approved SMSF auditor. [Schedule 2, item 10, paragraph 130F(2)(b)]

2.102 ASIC may also make a disqualification or suspension order if the person has made a false declaration in their application for registration as an approved SMSF auditor or in their annual statement given to ASIC. [Schedule 2, item 10, paragraph 130F(2)(c)]

2.103 ASIC may also make a disqualification or suspension order if the person is not fit and proper to be an approved SMSF auditor for the purposes of the SIS Act. *Fit and proper* is discussed at paragraphs 1.28 and 1.29. Consideration of matters relevant to whether a person is fit and proper to be registered as an approved SMSF auditor are equally relevant to determining whether a person should be disqualified or suspended. [Schedule 2, item 10, paragraph 130F(2)(d)]

2.104 ASIC's decision to make a disqualification or suspension order is a reviewable decision.

2.105 ASIC must give a copy of the order to the person. [Schedule 2, item 10, subsection 130F(3)]

2.106 The order takes effect on the day specified in the order. The specified day must be within the 28 day period beginning on the day on which the order was made. [Schedule 2, item 10, subsection 130F(4)]

2.107 If ASIC decides to make an order under section 130F disqualifying a person from being an approved SMSF auditor, ASIC must cause a copy of the order to be published in the *Gazette* as soon as practicable after it is made. [Schedule 2, item 10, subsection 130F(5)]

2.108 If ASIC's decision to make the disqualification order is varied or revoked by ASIC as a result of a reconsideration of its decision under subsection 344(4), ASIC must cause a notice of the variation or revocation to be published in the *Gazette* as soon as practicable after the decision is made. [Schedule 2, item 10, subsection 130F(6)]

2.109 If ASIC's decision to make the disqualification order is confirmed or varied by ASIC as a result of a reconsideration under subsection 344(4) and the decision as so confirmed or varied is varied or set aside by the Administrative Appeals Tribunal, ASIC must cause a notice of the Tribunal's decision to be published in the *Gazette* as soon as practicable after it is made. [Schedule 2, item 10, subsection 130F(7)]

2.110 ASIC may revoke a disqualification or suspension order under section 130F. ASIC's power to revoke may be exercised on ASIC's own initiative or on written application made by the person disqualified or suspended. ASIC's decision to refuse an application to revoke an order is a reviewable decision under the SIS Act. *[Schedule 2, item 10, subsection 130F(8)]*

2.111 If an application is made for the revocation of an order, ASIC must decide to revoke the order or refuse to revoke the order. *[Schedule 2, item 10, subsection 130F(9)]*

2.112 ASIC must not revoke an order unless it is satisfied that the person concerned is likely to carry out and perform adequately and properly the duties of an approved SMSF auditor under the SIS Act or the regulations and the person is otherwise a fit and proper person to be an approved SMSF auditor for the purposes of the Act. *[Schedule 2, item 10, subsection 130F(10)]*

2.113 A revocation of an order takes effect on the day the revocation is made. *[Schedule 2, item 10, subsection 130F(11)]*

2.114 If ASIC decides to refuse an application for revocation of an order, it must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision. *[Schedule 2, item 10, subsection 130F(12)]*

2.115 If an order that ASIC revokes is an order disqualifying a person from being an approved SMSF auditor, ASIC must cause particulars of the revocation to be published in the *Gazette* as soon as practicable after it occurs. *[Schedule 2, item 10, subsection 130F(13)]*

2.116 A person for whom a suspension order is in force will be prevented from auditing SMSFs until their suspension ends. The making of a suspension order does not preclude ASIC from taking any other action against that auditor for the same matter for which the suspension order was made. For example a condition may be placed on the person's registration when their suspension ends.

2.117 A person for whom a suspension order is in force must still comply with their obligations in respect of submitting annual statements and notifying ASIC of certain matters.

2.118 A person for whom a disqualification order is in force will be prevented from auditing SMSFs unless that order is revoked. Such a person will no longer meet the definition of approved SMSF auditor in subsection 10(1) and may not be appointed by SMSF trustees to give an audit report as required under section 35C.

2.119 Details of a person for whom a disqualification order is made will be placed on the Register of Disqualified SMSF Auditors. Such details will only be removed from this register if the disqualification order is revoked.

2.120 A person for whom a disqualification or suspension order is in force cannot have a subsequent application for registration as an approved SMSF auditor granted unless that order is revoked — see subsection 128B(4).

Other amendments

Superannuation Industry (Supervision) Act 1993

Powers and duties conferred by Part 25

2.121 Powers and duties are conferred by Part 25 on ASIC for the purposes of ASIC's administration of the provisions it administers. This includes for the purpose of administering Part 16, to the extent ASIC has the general administration over that Part.

2.122 However, powers and duties conferred on ASIC by section 255 are conferred only in relation to persons who are relevant persons in relation to superannuation entities. *[Schedule 2, item 11, paragraph 6(2AA)(a)]*

2.123 Additionally, powers and duties conferred on ASIC by section 256 are conferred only in relation to the affairs of superannuation entities. *[Schedule 2, item 11, paragraph 6(2AA)(b)]*

2.124 Powers and duties are also conferred on the Commissioner by Part 25 (other than Division 3) for the purposes of the administration of the provisions he or she administers.

2.125 However, powers and duties conferred on the Commissioner by Divisions 4 to 8 of Part 25 are conferred only in relation to persons who are relevant persons in relation to superannuation entities and the affairs of superannuation entities. The exception to this is section 285 in Division 7 which is conferred on the Commissioner in relation to the superannuation entities, approved SMSF auditors and the conduct of audits of SMSFs. *[Schedule 2, item 12, subsection 6(2AB)]*

Definitions

2.126 A natural person who is an Australian resident may apply for registration as an approved SMSF auditor. Australian resident means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*. *[Schedule 2, item 13, subsection 10(1)]*

2.127 The term ‘relevant person’ is primarily used in Part 25 in relation to the exercise of monitoring and investigation powers under that Part. Schedule 2 makes amendments to the definition of relevant person to define a relevant person in relation to an approved SMSF auditor and an audit of an SMSF.

2.128 The definition of relevant person in relation to an approved SMSF auditor includes the approved SMSF auditor and a person who is a relevant person in relation to an SMSF of which the approved SMSF auditor is or was an auditor. *[Schedule 2, item 14, subsection 10(1), definition of relevant person]*

2.129 The definition of relevant person in relation to an audit of an SMSF includes the person who is conducting, or conducted the audit and a person who is a relevant person in relation to the SMSF. *[Schedule 2, item 15, subsection 10(1) definition of relevant person]*

2.130 Schedule 2 amends the definition of reviewable decision to include certain decisions made by ASIC under Part 16. This is to ensure a person affected by such a decision can request ASIC to reconsider the decision under section 344. *[Schedule 2, item 15, subsection 10(1), definition of reviewable decision]*

Audits of accounts and statements

2.131 From 31 January 2013, trustees of SMSFs must appoint an approved SMSF auditor to give the trustees a report as required by subsection 35C(1) regardless of the year of income the report is in relation to. Transitional provisions will apply for existing approved auditors as explained in paragraphs 1.158 to 1.161. *[Schedule 2, item 16, end of subsection 35C(1)]*

2.132 This item amends subsection 35C(1A) to ensure it applies to superannuation entities other than SMSFs. *[Schedule 2, item 17, subsection 35C(1A)]*

2.133 The report given by an approved SMSF auditor to an SMSF trustee must be in the approved form. The approved form must include a statement by the auditor as to the extent of their compliance with the auditor independence requirements referred to in paragraph 128F(d). *[Schedule 2, item 18, paragraph 35C(5)(ba)]*

2.134 An auditor commits an offence if the auditor contravenes subsection 35C(6) and the entity is not a self-managed superannuation fund and the auditor is not an approved SMSF auditor. *[Schedule 2, item 19, subsection 35C(7)]*

Commissioner may issue disqualification orders under section 131 to actuaries of SMSFs only

2.135 Schedule 2 amends section 131 to remove references to approved auditors. The Commissioner will have the ability to issue a disqualification order under section 131 in relation to actuaries of SMSFs only. *[Schedule 2, items 20 to 30, section 131]*

2.136 APRA may direct the removal of an auditor of a superannuation entity that is not an SMSF. *[Schedule 2, item 31, subsection 131AA(1)]*

Referral to professional associations

2.137 Regulators may refer details of an auditor to a professional association in certain circumstances. This section will not apply in relation to approved auditors of SMSFs. This does not preclude professional associations from applying to ASIC for certain information. *[Schedule 2, items 32 and 33, subsection 131A(1)]*

Offence of holding oneself out as an auditor

2.138 A person commits an offence if the person holds themselves out as an approved SMSF auditor and the person is not an approved SMSF auditor, or the person holds themselves out as an approved auditor of another kind other than an approved SMSF auditor and the person is not such an approved auditor. The person who commits such an offence may be liable to a penalty of 50 penalty units. The offences are strict liability offences under the SIS Act. *[Schedule 2, items 34 to 36, section 131B]*

2.139 A person who provides an SMSF trustee with a report which states an SMSF auditor number which is not their own, or a person who advertises as a registered SMSF auditor when they are not, may indicate that that person has held themselves out as an approved SMSF auditor. Additionally, a person who misuses a SMSF auditor number on a SMSF annual return may indicate that the person has held themselves out as an approved SMSF auditor.

2.140 A person commits an offence if the person is, or acts as an auditor of a self-managed superannuation fund for the purposes of the SIS Act and that person is disqualified or suspended under section 130F from being an approved SMSF auditor and that person knows that he or she is disqualified or suspended. This offence may result in imprisonment for 2 years or a penalty of 60 penalty units. *[Schedule 2, items 37 to 40, section 131C]*

Monitoring and investigation

2.141 Part 25 currently deals with monitoring and investigation of superannuation entities only. Schedule 2 makes amendments to relevant monitoring and investigation provisions to provide ASIC and the Commissioner appropriate monitoring and investigation powers in relation to approved SMSF auditors and audits of SMSFs conducted by persons other than approved SMSF auditors. *[Schedule 2, item 41, Part 25 (heading)]*

2.142 In broad terms, the Commissioner will undertake a monitoring role with regard to the obligations and requirements placed on approved SMSF auditors as well as other conduct relating to the audit of an SMSF such as the prohibition of holding oneself out as an approved SMSF auditor. As part of the Commissioner monitoring role, he or she will have the ability to refer matters to ASIC.

2.143 Additionally, as part of its responsibilities for the registration of approved SMSF auditors ASIC will have the ability not only to take enforcement action under Part 16, but will also have the ability to accept enforceable undertakings and conduct investigations on an approved SMSF auditor or in relation to an audit of an SMSF.

2.144 The objects of Part 25 include ensuring that the Regulator has sufficient power to monitor approved SMSF auditors and audits of SMSFs. The Regulator for this purpose is the Commissioner. *[Schedule 2, item 42, paragraph 253(a)]*

2.145 The objects of Part 25 include authorising the Regulator to conduct an investigation of the whole or part of the affairs of an approved SMSF auditor or the conduct of an audit of an SMSF. The Regulator for this purpose is ASIC. *[Schedule 2, item 43, paragraph 253(c)]*

2.146 Schedule 2 inserts notes at the end of section 253 to clarify that:

- Sections 254 and 264 and Division 3 apply to monitoring and investigating of superannuation entities only;
- ASIC's powers and duties as the Regulator under sections 255 and 256 do not apply to monitoring approved SMSF auditors or audits of SMSFs. These powers and duties are conferred on the Commissioner; and
- with the exception of section 285 in Division 7 of Part 25, the Commissioner of Taxation's powers and duties as the Regulator under Divisions 4 to 8 apply only to investigating superannuation entities. They do not apply to investigating

approved SMSF auditors or audits of SMSFs. These powers and duties are conferred on ASIC. *[Schedule 2, item 44, at the end of section 253]*

2.147 Notices may be given to former relevant persons in relation to an approved SMSF auditor or in relation to an audit of an SMSF. *[Schedule 2, items 45 and 46, section 253A]*

2.148 Schedule 2 amends the heading of Division 2 to Division 2 — Monitoring. *[Schedule 2, item 47, Division 2 of Part 25 (heading)]*

2.149 Schedule 2 amends section 255 to enable the Regulator (in this case, being the Commissioner) to require the production of any books relating to the affairs of an approved SMSF auditor or an audit of an SMSF. A notice may be given to a relevant person in relation to an approved auditor or an audit of an SMSF. *[Schedule 2, item 48, subsection 255(1)]*

2.150 The Commissioner may exercise his or her powers under section 255 in relation to an approved SMSF auditor or in relation to an audit of an SMSF even though an investigation is being conducted under section 263 of the whole or a part of the affairs of the auditor or the conduct of the audit. *[Schedule 2, item 49, subsection 255(4)]*

2.151 Schedule 2 amends section 256 to enable an authorised person to access premises where the person has reason to believe books relating to the affairs of an approved auditor or the conduct of an audit of an SMSF are kept. The authorised person may inspect any book found on the premises that relates to those affairs or the conduct of that audit or that the authorised person believes, on reasonable grounds to relate to those affairs and make copies of, or take extracts from any such books. *[Schedule 2, items 50 to 52, section 256]*

2.152 Schedule 2 makes a series of amendments to certain provisions contained in Divisions 4 to 8 of Part 25. These amendments are intended to be applied by ASIC as Regulator in relation to approved SMSF auditors and the audits of SMSFs in the same way they currently apply in relation to superannuation entities. *[Schedule 2, items 53 to 67, Divisions 4 to 8]*

Reviewable decisions

2.153 To ensure a person affected by reviewable decisions inserted by Schedule 2 may request ASIC to reconsider the decision, Schedule 2 amends subsection 344(12). A reviewable decision of the Regulator includes:

- the refusal under subsection 128B of an application made under section 128A;

- the decision to impose or vary conditions, or additional conditions, on a person's registration under subsection 128D;
- refusal of an application to vary or revoke conditions, or additional conditions, on a person's registration under subsection 128D;
- the decision to cancel a person's registration under subsection 128E(2);
- the decision to refuse an application to waive full or part payment of a fee under subsection 128L(4);
- the decision to make an order under subsection 130F(2); and
- refusal of an application to revoke an order under section 130F(8).

[Schedule 2, item 68, subsection 344(12)]

Taxation Administration Act 1953

2.154 Schedule 2 amends the TAA 1953 to enable the ATO to make a record or disclose information to ASIC if the record or disclosure is for the purpose of administering Part 16. *[Schedule 2, item 69, item 6A]*

2.155 The on-disclosure rules contained in the TAA 1953 will apply to ASIC's use of the information provided to it under that Act.

2.156 This amendment is intended to ensure that the ATO has the ability to share relevant information in relation to approved SMSF auditors and the conduct of SMSF audits with ASIC to enable ASIC to undertake further investigations, enforcement actions and maintain the register of approved SMSF auditors.

Application and transitional provisions

Approved auditors of SMSFs

2.157 Provisions contained in Schedule 2 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 commence on 31 January 2013. A person may apply to ASIC for registration from this date. All auditors must be registered with ASIC by 1 July 2013 to audit SMSFs after this date.

2.158 To ensure existing approved auditors are able to continue to audit SMSFs while undertaking the registration process, an auditor who was an approved auditor of an SMSF immediately before 31 January 2013 will be treated as an approved SMSF auditor until the person's registration as an approved SMSF auditor takes effect or until the end of 30 June 2013 (whichever happens earlier). *[Schedule 2, item 70]*

2.159 The amended provisions of the SIS Act contained in Schedule 2 apply to these auditors as if they had become an approved SMSF auditor on 31 January 2013.

2.160 These auditors will not have their details entered on the Register of Approved SMSF Auditors until their registration takes effect. The requirement to provide ASIC with an annual statement or to notify ASIC of certain matters does not commence until their registration takes effect.

Applications before 1 July 2013 for registration as an approved SMSF auditor

2.161 On 23 June 2012, the Minister announced transitional arrangements for existing approved auditors of SMSFs. Auditors who were approved auditors immediately before 31 January 2013 will be exempt from meeting certain requirements in paragraph 128B(1)(a). These exceptions will only apply to auditors who apply for registration as an approved SMSF auditor before 1 July 2013.

2.162 The regulations will therefore prescribe circumstances in which a person may be taken to have met one or more of the requirements in paragraph 128B(1)(a). The regulations will detail the exceptions announced by the Minister. *[Schedule 2, item 71, subsection (1)]*

2.163 This item does not prevent ASIC from applying its discretion under subsection 128(2). *[Schedule 2, item 71, subsection (2)]*

Approved auditors of superannuation entities that are not SMSFs

2.164 An amendment made by Schedule 2 does not affect the continuity of any regulations made for the purposes of the definition of approved auditor in subsection 10(1) that are in force immediately before 31 January 2013. However, this does not apply to the extent that those regulations apply to an auditor of an SMSF. *[Schedule 2, item 72]*

Auditors previously disqualified under section 131

2.165 If immediately before 31 January 2013, the Commissioner made an order under section 131 disqualifying a person from being an approved auditor, then from 31 January 2013, that person is taken to be a person for whom an order disqualifying a person from being an approved SMSF auditor is in force under section 130F. *[Schedule 2, item 73, subsection (1)]*

2.166 This amendment is intended to ensure that an auditor that has been disqualified as an approved auditor under section 131 is still treated as a disqualified auditor. Such persons are excluded from the definition of an approved SMSF auditor. Additionally, ASIC must refuse an application for registration as an approved SMSF auditor from such persons.

2.167 If before 31 January 2013, an application was made, as mentioned in subsection 131(6), for the revocation of the section 131 order and a decision on the application was not made before that day by the Commissioner, then from 31 January 2013, an application is taken to have been made, as mentioned in subsection 130F(9), for the revocation of a section 130F order. *[Schedule 2, item 73, subsection (2)]*

2.168 If before 31 January 2013, a request was made, under subsection 344(1), for reconsideration of a decision refusing to revoke the section 131 order and a decision on the request was not made before that day by the Commissioner, then from 31 January 2013 a request is taken, for the purposes of the SIS Act to have been made, under subsection 344(1) for reconsideration of a decision refusing to revoke a section 130F order. *[Schedule 2, item 73, subsection (3)]*

2.169 If before 31 January 2013, an application was made, under subsection 344(8) for review of a decision under subsection 344(4) relating to the section 131 order and a decision on the application was not made before that day, then from 31 January 2013 an application is taken to have been made, under subsection 344(8) for review of a corresponding decision relating to a section 130F order. *[Schedule 2, item 73, subsection (4)]*

Enforcement of undertakings

2.170 If before 31 January 2013, the Commissioner accepted an undertaking, under subsection 262A(1) of the SIS Act, given by an approved auditor and the undertaking was still in force immediately before that day, then from 31 January 2013 the undertaking is taken to have been accepted by ASIC under that subsection of that Act. *[Schedule 2, item 74]*

2.171 This amendment is intended to ensure that enforceable undertakings accepted by the Commissioner from approved auditors remain in force after 31 January 2013. ASIC will become the Regulator for the purpose of the undertaking. Auditors may then apply to ASIC to withdraw or vary the undertaking. Additionally, ASIC will have the ability to apply to the Court for an order if ASIC considers the auditor who has given the undertaking has breached its terms.

Inspectors

2.172 If a person was an inspector immediately before 31 January 2013, the person's appointment as an inspector continues after that day as if it were an appointment for the purposes of the conduct of investigations, under Division 4 of Part 25 as amended by Schedule 2, in relation to the affairs of superannuation entities and approved SMSF auditors and the conduct of audits of SMSFs. [*Schedule 2, item 75*]

Regulations

2.173 The Governor General may make regulations prescribing matters required or permitted by Part 16 to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Part. [*Schedule 2, item 76*]

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Approved SMSF auditors

2.174 Schedule 2 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

2.175 Schedule 2 introduces a registration regime for auditors of self-managed superannuation funds. As part of this, auditors will be required to meet initial and ongoing requirements relating to their qualification, competency and independence.

Human rights implications

2.176 Schedule 2 does not engage any of the applicable rights or freedoms.

Conclusion

2.177 Schedule 2 is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Chapter 3

Superannuation Auditor Registration Imposition Bill 2012

Outline of chapter

3.1 This chapter explains the imposition of fees relating to auditors of self-managed superannuation funds (SMSFs) and for related purposes as described in the Superannuation Auditor Registration Imposition Bill 2012.

3.2 In recognition of the important role SMSF auditors play in the regulatory arrangements for SMSFs, the Government accepted the recommendation of the Super System Review to establish a registration system for approved SMSF auditors. Approved SMSF auditors will be required to pay fees for applying for registration, undertaking a competency exam and submitting an annual statement to Australian Securities and Investments Commission (ASIC). Additionally, approved SMSF auditors will be liable for additional fees if they do not submit their annual statements on time or fail to notify ASIC of certain matters on time.

3.3 While online searches of the registers kept by ASIC for approved SMSF auditors and disqualified SMSF auditors will be free, fees will be payable for certain requests to inspect or search a register. For example, a fee will be payable for an extract that includes historical information such as previous place of business of an approved SMSF auditor.

3.4 All references in this chapter are to the Superannuation Auditor Registration Imposition Bill 2012 unless otherwise stated.

Context of amendments

3.5 Auditors play a crucial role in the regulation of the SMSF sector since they assess the fund's overall compliance with the law and the fund's financial statements. This in turn provides an important assurance for trustees of SMSFs that the fund is in compliance with regulatory requirements. The annual audit also provides assurance to the Government and the general public that SMSFs are complying with the

superannuation laws. It is therefore necessary that SMSF auditors have a high standard of competency.

3.6 SMSF auditor registration is intended to raise the standard of SMSF auditor competency and ensure there are minimum standards across the sector.

3.7 Fees imposed under the Superannuation Auditor Registration Imposition Bill 2012 are intended to offset costs of implementing SMSF auditor registration.

Summary of new law

3.8 This Bill imposes fees on certain matters relating to auditors of SMSFs and for related purposes.

Comparison of key features of new law and current law

<i>New Law</i>	<i>Current Law</i>
Fees payable in accordance with section 128L of the SIS Act are imposed. The amounts of those fees are prescribed by the regulations.	No equivalent.
The regulations may prescribe an amount not exceeding \$1,000 as the fee or a method for calculating the amount not exceeding \$1,000 of the fee.	No equivalent.
The regulations may prescribe different amounts for different kinds of matters mentioned in an item in column 1 of the table in subsection 128L(1) of the <i>Superannuation (Industry) Supervision Act 1993</i> (SIS Act).	No equivalent.
The Governor-General may make regulations relating to the amount of fees.	No equivalent.

Detailed explanation of new law

3.9 Fees payable in accordance with section 128L of the SIS Act are imposed. [Section 3]

3.10 The amounts of those fees will be prescribed by the regulations.
[Section 4, subsection (1)]

3.11 The regulations may prescribe such a fee:

- by prescribing an amount (not exceeding \$1,000) as the fee; or
- by prescribing a method for calculating the amount (not exceeding \$1,000) of the fee.

[Section 4, subsection (2)].

3.12 Approved SMSF auditors will be required to pay fees for applying for registration as an approved SMSF auditor, undertaking a competency exam and submitting an annual statement to ASIC. Approved SMSF auditors will be liable for additional fees if they do not submit their annual statements on time or fail to notify ASIC of certain matters on time. Fees will also be payable for certain requests to inspect or search the Register of Approved SMSF Auditors and the Register of Disqualified SMSF Auditors.

3.13 The expected amounts of the fees payable are outlined in the following table.

<i>Fee payable for...</i>	<i>Fee (\$)</i>
Applying for registration as an approved SMSF auditor.	100
Undertaking a competency exam.	100
Giving ASIC an annual statement.	50
Giving ASIC an annual statement after it fell due.	Depends on how late the statement is given to ASIC after it fell due.
Notifying ASIC of certain matters after they fell due.	Depends on how late the particulars are provided to ASIC after they fell due.
Certain requests to inspect or search a register.	Based on cost recovery and depends on resources required to find information for the requested search.

3.14 While fees are generally expected to be much lower than \$1,000, the threshold provides flexibility for late payments and for extensive

searches of a register that the Regulator keeps under Division 1A of the SIS Act.

3.15 The regulations may prescribe different amounts for different kinds of matters mentioned in an item in column 1 of the table in subsection 128L(1). [*Section 4, subsection (3)*]

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Superannuation Auditor Registration Imposition Bill 2012

3.16 This Bill 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

3.17 This Bill imposes fees on certain matters relating to auditors of self-managed superannuation funds, and for related purposes.

Human rights implications

3.18 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

3.19 This Bill is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten.

Chapter 4

Regulation impact statement

Policy objective

4.1 The Government's aim is to improve the reliability of the self-managed superannuation fund (SMSF) audit by ensuring that SMSF auditors have the requisite competency to conduct SMSF audits, and to provide a framework within which it can be assured that SMSF auditors apply these standards on an ongoing basis. This will improve the integrity of the SMSF sector by providing assurance that contraventions by SMSF trustees are being detected and reported.

4.2 Registration will also aim to identify, formally recognise and enable the provision of tailored support to those SMSF auditors that are currently producing high quality audits. It will seek to lift the standards of those that lack the competency to conduct an SMSF audit. If auditors are unwilling or unable to comply with the competency standards they will not be able to continue conducting SMSF audits.

4.3 The Government recognises that some SMSF approved auditors have considerable experience and expertise in conducting SMSF audits. The Government aims to minimise the compliance burden on these auditors in the transition from the current arrangements to the new registration system.

Implementation options

4.4 Three options are presented below for the registration requirements to apply to SMSF auditors. Option A was originally presented to the SMSF working group, an industry group established to consult on the Stronger Super SMSF reforms, and based around an exam to assess the competency of all SMSF auditors. The model set out in Option B was proposed by the joint accounting bodies (JAB) to provide streamlined registration for members of the JAB and recognise the competency standards that they are subject to through their professional membership. Option C is a hybrid model that seeks to balance the advantages and disadvantages of the first two models.

Option A: Uniform national competency exam

4.5 Under Option A, an auditor would need to meet the following criteria to register as an SMSF auditor:

- hold a tertiary accounting qualification that includes an audit component;
- meet a fit and proper test;
- hold professional indemnity insurance;
- have 450 hours of SMSF audit experience in the three years prior to registration; and
- pass a competency exam that would be based on competency standards developed by ASIC in consultation with industry. The competency exam would test their audit and SIS legislation knowledge.

4.6 The auditor would only be required to declare that they are a fit and proper person, and would not need to provide any documentation. Australian Securities and Investments Commission (ASIC) may request further information or documentation if they have reason to believe the auditor has made a false declaration. In determining whether an auditor is a fit and proper person, ASIC will take into account whether the auditor has been disqualified as an SMSF trustee, disqualified or suspended as a registered company director, convicted of a dishonesty offence, banned from the financial services regime, disqualified as an auditor of a superannuation entity, bankrupt in the last three years or disqualified as a tax agent or registered tax practitioner.

4.7 Registered SMSF auditors would be required to complete 120 hours of Continuing Professional Development (CPD) training every three years, including at least 30 hours on superannuation with eight hours on audit. In addition, they would be required to pass a refresher competency exam every three years.

4.8 Existing auditors will be able to register with ASIC from 1 July 2012 and sit the competency exam from 1 January 2013. Existing SMSF auditors that register prior to 1 January 2013 would not be subject to the hours-based test and would not need to have passed the competency exam until 30 June 2013. Existing SMSF auditors are auditors that have signed off on an SMSF audit in the 12 months prior to 1 July 2012.

4.9 From 1 July 2012 until 30 June 2013 the current eligibility rules for approved auditors would overlap auditor registration.

Option B: Streamlined registration for members of professional associations

4.10 Under Option B, there would be streamlined registration for members of the JAB.

4.11 The model set out in Option A would apply to auditors that are not members of these professional associations. Those auditors that are members would be eligible to register provided that they:

- hold a tertiary accounting qualification that includes an audit component;
- meet a fit and proper test;
- hold professional indemnity insurance; and
- have completed an SMSF audit course provided by the professional associations in the three years prior to registration.

4.12 Members of the professional associations would not be subject to the initial competency exam. Members that have not signed off on an SMSF audit in the 12 months prior to the commencement of registration would be subject to a reduced hours-based test of 100 hours of SMSF audit experience in the 12 months prior to registration. The CPD requirements set out in Option A would also apply in Option B. However, members of the professional associations would be exempt from the three yearly competency exam.

Option C: Hybrid model

4.13 Option C is a combination of Options A and B. An auditor would need to meet the following criteria to register as an SMSF auditor:

- hold a tertiary accounting qualification that includes an audit component;
- meet a fit and proper test;
- hold professional indemnity insurance;

- have 300 hours of SMSF audit experience in the three years prior to registration; and
- pass a competency exam that would be based on competency standards developed by ASIC in consultation with industry. The competency exam would test their audit and SIS legislation knowledge.

4.14 The CPD requirements would be the same as under Options A and B. However, there would be no three-yearly competency exam. Instead SMSF auditors would be required to complete an SMSF knowledge refresher course every three years as part of their 120 hours of CPD.

4.15 All existing auditors would be exempt from the hours-based test.

4.16 Existing auditors will be able to register with ASIC from 1 July 2012 and sit the competency exam from 1 January 2013. Existing SMSF auditors that register prior to 1 January 2013 would not need to have passed the competency exam until 30 June 2013.

4.17 Existing auditors would not be required to pass the competency exam if they have signed off on 20 or more SMSF audits in the 12 months prior to 1 July 2012, provided they register by 1 January 2013.

4.18 From 1 July 2012 until 30 June 2013 the current eligibility rules for approved auditors would overlap auditor registration.

Assessment of Impacts

4.19 Some of the proposed registration requirements are common to all three options:

- tertiary accounting qualification that includes an audit component;
- professional indemnity insurance;
- fit and proper test; and
- CPD requirements.

4.20 SMSF auditors will incur costs to meet these requirements. However, these costs will not be discussed because SMSF approved auditors already bear these costs under the current arrangements. Currently, an SMSF approved auditor is a member of an approved

professional organisation or a registered company auditor. Membership of these organisations and registration as a company auditor requires an auditor to have a tertiary accounting qualification, hold professional indemnity insurance and undertake the same CPD training as is required under the proposed options. Including these requirements in the SMSF auditor registration requirements will formalise that all SMSF auditors are expected to meet these requirements.

4.21 There will generally be no costs involved with meeting the fit and proper test. SMSF auditors will be required to declare that they are a fit and proper person. ASIC will only request further information if they have reason to believe that an SMSF auditor has made a false declaration. If this occurs, then the SMSF auditor may be required to obtain a police check, which would cost approximately \$30.

4.22 These requirements will provide significant benefits in assuring that SMSF auditors are sufficiently competent to undertake SMSF audits. The tertiary qualification requirement will ensure that SMSF auditors have a high-level of training in accounting and audit, and consequently are able to undertake the financial audit of the fund. The CPD requirements will ensure that SMSF auditors undertake ongoing training to maintain their knowledge and skill in relation to undertaking audits, and to keep up to date with changes to the SIS legislation. The fit and proper test will determine if SMSF auditors are proven to be honest and trustworthy so that they can be relied upon to detect and report contraventions of the SIS legislation.

4.23 Under each option, there will also be costs to ASIC and the Australian Taxation Office (ATO) associated with building and operating the registration system. These costs will be fully offset by the collection of auditor registration fees and an increase in the SMSF Levy. The final costs of implementing SMSF auditor registration are not known at this time, however it is estimated that SMSF auditors will be subject to the following fee schedule:

Initial Registration Fee	Online Application	\$300
Annual Renewal Fee	Online Renewal	\$130

4.24 SMSF trustees will be subject to an approximately \$14 increase in the SMSF Levy, which they pay annually when submitting their annual return. The SMSF Levy is designed to offset the costs of regulating the SMSF sector.

Option A: Uniform national competency exam

4.25 Option A creates a level-playing field between SMSF auditors by applying registration requirements consistently to all auditors. A uniform national competency exam would be a single objective measure of auditor knowledge and ensure that all auditors meet the same minimum standards. SMSF auditors will be subject to a fee in order to undertake the exam. The fee would be expected to be \$320 and would be confirmed when the costs of implementing the exam are known.

4.26 While an exam would test knowledge, it does not test an auditor's ability to apply that knowledge. Consequently, the hours-based test ensures that SMSF auditors have experience in applying knowledge of the SIS legislation and trustee requirements to SMSF audits. Although this imposes a cost on new SMSF auditors through having to gain experience working with a more senior auditor, it is not unreasonable to expect auditors to undergo supervision before signing off on audits without any oversight. The requirement of 450 hours experience in SMSF audits over three years represents less than ten per cent of full time working hours or approximately 30 SMSF audits per year.

4.27 The ATO's SMSF auditor compliance activities will target high-risk auditors to assess whether they comply with the minimum competency requirements on an ongoing basis. A three-yearly refresher competency exam would reinforce the ATO's compliance activities by testing that all SMSF auditors, not just high-risk auditors, continue to meet the minimum competency standards on an ongoing basis. The three-yearly exam would also provide an incentive for them to keep up to date with changes to the SIS legislation. There will be both direct and indirect costs to SMSF auditors from the exam, from a cost recovery fee and the time spent undertaking the exam. The fee would be expected to be \$150 and would be confirmed when the costs of implementing the exam are known. SMSF auditors undertaking the required CPD hours should not need to spend time preparing for the exam.

4.28 A one-year transitional period would allow existing SMSF auditors time to meet the registration requirements and to move to the new system. This has the dual benefit of spreading the compliance costs for SMSF auditors over time and also ensuring that there continues to be enough approved auditors to conduct SMSF audits during the transition from the current arrangements to the new registration system.

4.29 Option A aligns the registration requirements of SMSF auditors with the proposed licensing requirements for financial advisers. Licensing requirements for financial advisers are being reviewed as part of the *Future of Financial Advice* reforms and it is proposed that financial advisers would be required to pass an exam to obtain an Australian

financial services licence and would be subject to a regular knowledge review.

4.30 In trying to ensure consistency across all SMSF auditors, Option A makes no allowance for experienced SMSF auditors with a high-level of competency. These highly-competent auditors, often those that specialise in SMSF audits, would be subject to the same requirements, and therefore the same compliance costs, as auditors with little experience, competence and knowledge in relation to conducting SMSF audits.

4.31 Option A also gives no recognition to industry efforts to raise the standards of SMSF auditors. Professional accounting organisations have sought to improve the competency of SMSF auditors by developing competency standards for conducting SMSF audits, providing education to their members and conducting Quality Assurance (QA) reviews of members' audit work.

4.32 Option A relies solely on an exam to test competency without any initial SMSF audit education requirements. This disadvantages those that don't perform well under exam conditions. It also does not assess an auditor's ability to use professional judgment in applying knowledge to practical situations.

Option B: Streamlined registration for members of professional associations

4.33 Option B takes into account efforts by industry organisations to raise the competency standards of their members. It provides streamlined registration for members of the JAB, who are subject to the competency requirements developed by their professional association. JAB members are also subject to mandatory SMSF audit education and five-yearly quality assurance (QA) reviews. The JAB has indicated that it will consider increasing QA reviews to three-yearly for SMSF auditors. Almost 90 per cent of SMSF approved auditors are members of the JAB. SMSF auditors that are not a member of the JAB will incur a fee to undertake the competency exam.

4.34 The lower experience requirement of 100 hours in the previous 12 months reduces the compliance cost on new SMSF auditors that are members of JAB. This experience requirement represents approximately five per cent of full time working hours or approximately 20 SMSF audits. Other SMSF auditors would still be subject to the higher compliance cost of 450 hours in three years requirement.

4.35 Option B includes a mandatory education component prior to registration. This would ensure that SMSF auditors have training in how to conduct SMSF audits. It would prevent the registration of those that rote learn for an exam but have no understanding of how to apply professional judgement when assessing compliance with the superannuation industry supervision (SIS) legislation. SMSF auditors would incur a cost to undertake this course, however members of JAB are already subject to this requirement through their professional membership and so will incur no additional cost. SMSF courses provided by the professional associations range from approximately \$200 to \$800.

4.36 Membership of the JAB does not guarantee SMSF audit competency. Auditors subject to ATO compliance action include members of professional associations. Although the JAB have developed SMSF audit competency standards for their members, they are limited in their ability to enforce them. The JAB have advised that they do not know which of their members undertake SMSF audits and so cannot ensure compliance with their standards or requirements. Concerns have also been raised about the effectiveness of their QA reviews and their ability to increase their frequency. QA reviews are open to abuse because they are peer reviews. In addition, they are costly and time-consuming for the auditor being reviewed and for the auditor conducting the review. It is questionable whether there would be sufficient resources to conduct three-yearly reviews.

4.37 SMSF auditors that are not a member of JAB will be subject to the three-yearly refresher exam and the costs involved as outlined in Option A. JAB members could be subject to more frequent QA reviews by their professional association, which would involve increased costs. It is estimated that a QA review costs \$2,000 on average.

4.38 Option B does not address the concern of auditors that conduct a low number of SMSF audits. There is no evidence that JAB members are not among the auditors conducting less than 20 SMSF audits in a year nor that non-JAB members are not among the auditors that specialise in SMSF audits. This option could allow JAB members conducting low numbers of audits to register without any assessment of their competency.

4.39 Option B imposes inconsistent requirements on SMSF auditors by differentiating between JAB and non-JAB members. Consequently it does not create a level-playing field or set a minimum standard across all SMSF auditors. It also raises competition concerns by reducing compliance costs for JAB members. This may encourage auditors to become members of one of the JAB in order to access streamlined registration and could cause detriment to other professional accounting organisations.

4.40 The system for assessing competency set out in Option A would still need to be developed for non-JAB members. This could result in diseconomies of scale from setting up an exam for a small number of auditors.

4.41 Option B does not include any ongoing assessment of competency and relies on the ATO's risk-based auditor compliance program to detect any issues with SMSF auditor competency. Consequently, there is a greater risk of competency issues going undetected. SMSF auditors may be able to obtain sufficient knowledge to be registered but not maintain this knowledge over time.

Option C: Hybrid model

4.42 Option C focuses the registration requirements on the auditors that are of most concern, that is those conducting less than 20 SMSF audits in a year. Twenty SMSF audits represents approximately six per cent of full time working hours. Auditors conducting only a few SMSF audits in a year have little incentive to keep up to date with the SIS legislation because SMSF audits represent only a small part of their business. Also, ATO data from July 2008 to June 2011 indicates that auditors who conducted 20 or less audits in a year accounted for 84 per cent of auditors subject to disciplinary action by the ATO, including 78 per cent of those subject to serious sanctions. Approximately 67 per cent of SMSF approved auditors conduct less than 20 SMSF audits in a year. Option C sets a uniform assessment of competency for these auditors, regardless of professional membership.

4.43 If the minimum number were reduced to 15 SMSF audits, approximately 62 per cent would need to sit the exam and if the minimum number were 5 SMSF audits, approximately 42 per cent would need to sit the exam.

4.44 Option C includes a lower experience requirement than under Option A, reducing the compliance costs for new SMSF auditors. However, in contrast to Option B, it extends the experience requirement to three years to ensure that SMSF auditors have a broader range of experience from working on SMSF audits over a longer period. All new SMSF auditors will be subject to the reduced experience requirement. Option C includes a mandatory SMSF knowledge refresher course in the CPD requirements. Integration with the CPD requirements minimises compliance costs for SMSF auditors by not imposing any additional ongoing education or assessment requirements on top of CPD. The mandatory SMSF audit component would encourage SMSF auditors to maintain their knowledge over time.

4.45 Option C transitions experienced auditors into the system but applies consistent requirements on all auditors on an ongoing basis, creating a level-playing field over the long term.

4.46 Option C does not provide recognition of professional association membership. Industry involvement would include providing input into the development of the competency standards and competency test and an education role in the long term. Also, auditor registration would enable the JAB to identify which of their members are conducting SMSF audits and would therefore, be able to ensure that they comply with the JAB SMSF auditor competency requirements.

Consultation

4.47 The SMSF auditor registration measure was announced on 16 December 2010 as part of the Stronger Super reform package. Following that announcement, the Government established the Stronger Super Peak Consultative Group, comprising representatives of 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, an SMSF working group was established to provide technical input on those reforms relating to SMSFs.

4.48 The SMSF working group comprised superannuation, accounting and financial advice industry representatives. The Treasury, ASIC and the ATO were also represented on the working group. The working group met six times to discuss the SMSF reforms. In relation to SMSF auditor registration, separate meetings were also held with the JAB and SMSF Professionals' Association of Australia (SPAA).

4.49 Issues papers presented to the SMSF working group were released on the Stronger Super website for public consultation. Consultation closed at the end of May 2011.

4.50 Stakeholders were broadly supportive of the objectives of SMSF auditor registration, including that registration should set a minimum standard of competency for SMSF auditors and increase the confidence that can be placed in the SMSF audit. However, differing views were expressed on the registration requirements that should be imposed on SMSF auditors.

4.51 Option A was originally presented to the SMSF working group. The model set out in Option B was proposed by the JAB. The JAB's view was that the registration requirements need to take into account

professional association membership, given that JAB members are subject to competency standards and QA reviews.

4.52 Many of the SMSF working group members were supportive of JAB's model. However, they raised some concerns with the model, including that the experience requirement was set too low and that JAB would need to provide assurance that their requirements and QA processes were aligned and of a high standard. Some SMSF working group members disagreed with the competency exam requirements, stating that an exam is not the best way to test audit competency because it tests only knowledge and not the ability to exercise professional judgment.

4.53 Some members of the SMSF working group, however, favoured the model set out under Option A. Their view was that this model would create a level-playing field between all SMSF auditors by imposing the same requirements regardless of professional membership or experience. These members also questioned the assurance that could be provided by JAB's enforcement of their standards.

4.54 Public submissions were supportive of raising the standard of SMSF auditor competency through registration but were concerned that competent auditors would be burdened by the registration requirements. They favoured providing recognition of professional association membership and SMSF audit experience through the registration requirements.

4.55 The Hybrid Model was developed as a compromise between the views expressed in relation to the other models. It provides recognition of industry standards, while focussing registration requirements on auditors that are of most concern. The Hybrid Model creates a level-playing field for all SMSF auditors. Option C was not considered by the full SMSF working group, however meetings were held with individual members of the working group regarding the model, in particular the JAB. The JAB have indicated that they support the model but believe that the threshold for exemption from the competency exam should be lower than 20 or more SMSF audits in the 2011-12 income year. ASIC are strongly of the view that all SMSF auditors should be required to sit the competency exam because it would create a level playing field. The 20 or more threshold seeks to balance these competing views and meet the objective of raising competency standards while minimising the compliance burden on experienced auditors

Conclusion and recommended option

4.56 SMSF auditor registration seeks to ensure that SMSF auditors have a minimum level of competency to perform SMSF audits, and can be relied upon to detect and report contraventions of the SIS legislation. However, implementation of this measure involves a trade-off between creating a level-playing field for SMSF auditors and minimising the compliance burden on highly competent auditors.

4.57 The Hybrid Model presented in Option C is recommended because it strikes a balance between these two competing factors by targeting registration requirements where there is most concern or uncertainty about auditor competency. The Hybrid Model requires auditors to have training, experience and to demonstrate their knowledge by passing a competency exam in order to be registered as an SMSF auditor. However, experienced auditors will be exempt from the exam requirement. Auditors conducting a low number of SMSF audits a year are of particular concern because they have little incentive to obtain and maintain adequate knowledge of the SIS legislation, and represent approximately 84 per cent of those SMSF auditors subject to disciplinary action by the ATO.

4.58 The Hybrid Model, therefore, recognises experienced SMSF auditors and limits the compliance burden on them by exempting them from the competency exam.

4.59 The transitional period, including the competency exam exemption for some SMSF auditors, under the Hybrid Model reduces the compliance burden on SMSF auditors by providing them time to meet the registration requirements. It also transitions SMSF auditors into the system, ensuring that SMSF audits can continue to be conducted during the move to the new arrangements. The advantage of the Hybrid Model is that once the transitional period has ended, there exists a level-playing field for all new entrants to the system. This means that all new SMSF auditors will need to meet the same benchmark to conduct SMSF audit and there will be assurance of a minimum level of competency across the sector.

4.60 The Hybrid Model, like the other options, seeks to ensure that SMSF auditors maintain their knowledge and competency over the long-term. However, unlike the other options, it minimises the compliance burden by incorporating all ongoing training requirements into the CPD requirements. It does not test ongoing competency, however ATO compliance activity will aim to identify and rectify any issues with auditor competency.

Chapter 5

Expanded superannuation reporting

Outline of chapter

5.1 Schedule 3 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends Subdivision 390-A of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) to expand the information required to be reported to the Commissioner of Taxation (Commissioner). Under the revised reporting obligations, superannuation providers will be required to provide statements for all members who held an interest in the superannuation plan at any time during a reporting period, not just those for whom contributions are received.

Context of amendments

5.2 The purpose of these amendments is to expand the existing reporting obligation for superannuation providers to support a range of superannuation reform measures, including enhanced online reporting services, consolidation of superannuation (within a fund and between funds), and the increased concessional contributions cap for members over 50 whose interests or accounts are valued at less than \$500,000 (from 1 July 2014).

5.3 The amendments expand the existing reporting obligation for superannuation providers to all superannuation interests held in respect of an individual, regardless of whether a contribution has been received on their behalf by the superannuation provider within the reporting period. Under the revised reporting obligations superannuation providers may also be required to report information in relation to the value of members' accounts or interests via the approved form.

5.4 Currently, under section 390-5 of the TAA 1953, a superannuation provider must give the Commissioner a statement in relation to contributions (if any) made to the superannuation plan for an individual during the financial year. In order to support a number of the Government's Stronger Super announcements in relation to account consolidation and enhanced online services for individuals and funds, the current superannuation reporting requirement needs to be expanded to include inactive interests, that is, interests that have not received a

contribution or rollover within the financial year. This information is also required to support the higher concessional contributions cap measure for individuals aged 50 and over.

Summary of new law

5.5 Schedule 3 amends the operation of Schedule 1 to the TAA 1953 to require superannuation providers to give the Commissioner a statement in relation to all individuals who held an interest in the superannuation plan at any time during the reporting period. Currently, for superannuation plans that are not self-managed superannuation funds (SMSFs), member statements are required only in respect of members who received a contribution during the reporting period.

5.6 These amendments will allow the Australian Taxation Office (ATO) to obtain more comprehensive superannuation information that it can display to individuals and facilitate the consolidation of inactive accounts with a low balance.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Superannuation providers must give the Commissioner a statement in respect of members who hold an interest in a superannuation plan at any time during the period, irrespective of whether contributions were made.	Superannuation providers (other than trustees of SMSFs) must give the Commissioner a statement in respect of members who have received contributions during the reporting period and either: <ul style="list-style-type: none">• the interest is held at the end of the period; or• the member received a benefit (other than roll-overs) during the period. Trustees of SMSFs must give the Commissioner a statement irrespective of whether a contribution has been received.

Detailed explanation of new law

5.7 Currently, subsection 390-5(1) of Schedule 1 to the TAA 1953 imposes an obligation on superannuation providers, other than SMSFs, to lodge a statement in respect of members who have received contributions during the reporting period and *either* the superannuation interest is held at the end of the period, *or* the member received a benefit (other than a rollover) during the relevant reporting period. This means, for example, that no statement is presently required in respect of members who have not received any contributions throughout the year or who have received contributions but do not still hold the interest at the end of the reporting period.

5.8 Subsection 390-5(1) of Schedule 1 to the TAA 1953 requires trustees of SMSFs to give the Commissioner a statement irrespective of whether a contribution has been received.

5.9 To administer the measures being introduced as part of the Stronger Super reforms, the Commissioner will need information to be reported where an individual was a member of a superannuation plan at any time during the year to ensure that the ATO:

- is able to display to individuals through the enhanced online services, information that is accurate and useful, including being able to remove information with confidence when the Commissioner becomes aware that the superannuation provider ceases to hold an interest or account for that member;
- can properly identify the superannuation interests or accounts that are eligible to be rolled over or transferred under the consolidation measure (between funds) and therefore reduce unnecessary administrative costs for the members, the ATO and funds; and
- can assess whether the total value of an individual's superannuation interest or account is below the \$500,000 balance threshold for the higher concessional contributions cap.

5.10 Accordingly, subsection 390-5(1) of Schedule 1 to the TAA 1953 is amended to require a statement to be made where a superannuation interest is held by a member of a fund at any time during the period, irrespective of whether contributions were made during the reporting period, and irrespective of whether an interest is still held by the member at the end of the period. [*Schedule 3, item 3, subsection 390-5(1)*]

5.11 The new approved form for the expanded reporting obligation may require new information to be reported. This may include the nature of a member's interest or accounts in a fund (for example, whether it is in accumulation phase or pension phase), features attaching to the interest or account, such as insurance coverage, balances or values, whether an amount can be rolled into the fund, and the ability of the fund to accept contributions from the Government. The precise details of what is to be reported will be captured in the approved form subject to consultation with industry. To provide certainty, however, paragraph 390-5(9)(b) is expanded to specify that the information required to be reported may include the value of any of a member's superannuation interests or accounts. *[Schedule 3, item 5, paragraph 390-5(9)(b)]*

5.12 It is anticipated that superannuation providers will be able to continue existing reporting practices in some situations but may be required to alter their current practice for others, and upgrade their systems to comply with this measure. The provisions allow sufficient flexibility to cater for different practices that already occur within industry.

Consequential Amendments

5.13 The headings of Subdivision 390-A and section 390-5 of Schedule 1 to the TAA 1953 are amended to better reflect that the information that is to be reported now relates to the member and their accounts or interests in the fund, rather than focusing on contributions as the driver of the reporting obligation. *[Schedule 3, items 1 and 2, Subdivision 390-A and subsection 390-5]*

5.14 Subsection 390-5(2) of Schedule 1 to the TAA 1953 ensures that certain amounts that are not actual contributions made to a superannuation provider are reported by deeming them to be contributions for the purposes of the section. These amounts are needed to ensure that the ATO can properly administer the excess contributions tax provisions of the *Income Tax Assessment Act 1997* (ITAA 1997).

5.15 The existing subsection 390-5(2) of Schedule 1 to the TAA 1953 refers to amounts that subsection 292-25(3) of the ITAA 1997 treats as concessional contributions for the purposes of the excess contributions tax. To improve readability and clarity of the legislation, subsection 390-5(2) is repealed and reinserted as subsection 390-5(9A). *[Schedule 3, items 3 and 6, subsection 390-5(9)]*

5.16 Subsection 390-5(3) clarifies that roll-overs are not to be treated as superannuation benefits for the purposes of the members contributions

statement. Under the expanded reporting obligations, this section is no longer required and is therefore repealed. *[Schedule 3, item 3]*

5.17 To correct a technical error, subsection 390-5(9A) is added to subsection 390-5(9) to add a reference to paragraphs 292-90(4)(a) and (c) of the ITAA 1997 which perform a similar function to 292-25(3) of the ITAA 1997 in relation to non-concessional contributions. *[Schedule 3, item 6, subsection 390-5(9)].*

5.18 A consequential amendment is made to the wording of paragraph 390-5(9)(a) to provide clarification in relation to contributions that may be required for inclusion in the member information statement. *[Schedule 3, item 4, paragraph 390-5(9)(a)]*

5.19 Consequential amendments are made to paragraph 390-5(11)(c) to remove the references to contributions as the reporting obligation is no longer linked to contributions. *[Schedule 3, items 7 and 8 paragraph 390-5(11)(c)]*

Application

5.20 These amendments apply to reporting periods starting on or after 1 July 2012, that is, the first financial year the amendments are to apply is 2012-13 (for which member information statements are due in October 2013). *[Schedule 3, item 9]*

5.21 The requirement to report additional information to the ATO in relation to inactive accounts with effect from October 2013 was announced on 21 September 2011, following consultation with industry. Accordingly, industry has been aware for some time that the expanded reporting requirements were to apply to reporting periods commencing from 1 July 2012. Moreover, the first report under the revised arrangements is not due until the 2013-14 financial year (that is, on or after 1 July 2013).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Expanded superannuation reporting

5.22 This Schedule 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

5.23 The purpose of this Schedule is to expand the information required to be reported by superannuation providers to the Commissioner. Under the revised reporting obligations, superannuation providers will be required to provide statements for all members who held an interest in the superannuation plan at any time during a reporting period, not just those for whom contributions are received. These amendments will allow the ATO to display more comprehensive superannuation information to individuals and facilitate the consolidation of inactive accounts with a low balance.

Human rights implications

5.24 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

5.25 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Improving efficiency and data quality in the superannuation system

Outline of chapter

6.1 Schedule 4 of the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Retirement Savings Accounts Act 1997* (RSA Act) to improve the quality of information in the superannuation system, and facilitate fully effective e-commerce.

6.2 The Commissioner of Taxation (Commissioner) will keep a register containing information provided by certain superannuation funds, schemes and Retirement Savings Account (RSA) providers. The information contained on the register will enable superannuation entities, RSA providers and employers to transmit information and payments electronically.

6.3 The Commissioner may require information from an employer for the purpose of determining the employer's compliance with the superannuation data and payment regulations and standards. The Commissioner may also access the employer's premises for the purposes of inspecting records where the employer's consent has been received.

6.4 The Commissioner will be able to provide a tax file number that has been quoted by a member to a superannuation fund to other superannuation funds and/or RSA providers the member holds accounts with and who do not hold a record of the member's tax file number.

6.5 Trustees of eligible superannuation entities, regulated exempt public sector superannuation schemes and RSA providers may check a member's tax file number with the Commissioner for the purpose of ensuring accurate information is recorded within the superannuation system.

6.6 Employers may check an employee's tax file number with the Commissioner for the purpose of ensuring accurate information is recorded within the superannuation system.

Context of amendments

6.7 As part of the Government's Stronger Super package of reforms, a number of measures were announced to improve the efficiency of the superannuation system.

6.8 These measures included the introduction of mandatory superannuation data and payment regulations and standards for eligible superannuation entities, RSA providers and employers.

6.9 Facilitating efficient electronic superannuation transactions is dependent on:

- improving the quality of superannuation data; and
- availability of superannuation fund details that enable data and payments to be sent electronically.

6.10 It has been estimated that the Australian superannuation industry processes more than 100 million transactions annually. The potential gains to the system from improved efficiency in contribution management are significant.

6.11 A pre-condition to the establishment of a framework that supports effective electronic superannuation transactions is the availability of a register that contains details of the electronic identity of certain superannuation entities and RSA providers. By obtaining these details, superannuation entities, RSA providers and employers will be able to ensure superannuation data and payments reach the correct destination fund.

6.12 Currently poor member information quality leads to difficulties in allocating contributions, unnecessary duplicate accounts and a large amount of lost and unclaimed superannuation. To address this, trustees and employers will be able to check information about their members and employees with the Commissioner to ensure it matches the information held by the Commissioner.

6.13 There are also large numbers of accounts in the system without tax file numbers that will limit the effectiveness of other measures designed to reduce the number of unnecessary accounts in the superannuation system. To overcome this, the Commissioner will be able to provide a member's tax file number to a trustee in certain circumstances.

6.14 The Commissioner will provide the following services which have been identified as critical to the success of SuperStream:

- a register to display the electronic identity details of certain superannuation entities and RSA providers; and
- a validation service to ensure that the employee/member information recorded for superannuation purposes is accurate.

6.15 The Commissioner has general administration of compliance with the superannuation data and payment regulations and standards for employers. Without amendments, there is no ability for the Commissioner to request information from employers to determine their compliance.

Summary of new law

6.16 This Schedule enables:

- the Commissioner to provide a register of information necessary to facilitate the transmission of information and payments electronically to superannuation entities and RSA providers;
- the Commissioner to require information from an employer to determine whether applicable superannuation data and payment regulations and standards are being met;
- the Commissioner to provide a member's tax file number that has been quoted to an eligible superannuation entity or RSA provider to any other eligible superannuation entity or RSA provider that the member has an account with but does not hold the member's tax file number;
- trustees of eligible superannuation entities, regulated exempt public sector superannuation schemes and RSA providers to check the member's tax file number with the Commissioner to ensure accurate information is recorded within the superannuation system;
- the Commissioner to issue a notice to a trustee or RSA provider stating whether the information was able to be validated or not;

- employers to check an employee's tax file number with the Commissioner to ensure accurate information is recorded within the superannuation system;
- the Commissioner to issue a notice to an employer stating whether the information was able to be validated or not; and
- the Commissioner under Division 3A of the SIS Act of Division 4A of the RSA Act to receive information and give notices electronically.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The Commissioner must keep a register containing information about the electronic identity of certain superannuation funds and RSA providers.	No equivalent.
Trustees of prescribed superannuation funds and prescribed RSA providers are required to provide the Commissioner with information for inclusion on the register.	No equivalent.
A penalty of strict liability will be introduced for the failure to provide this information to the Commissioner.	No equivalent.
The Commissioner may request information from an employer to determine whether the applicable superannuation data and payment regulations and standards are being met.	No equivalent.
The Commissioner may give a trustee or RSA provider the tax file number of a member who has not quoted the tax file number to the fund, if the member has previously quoted their tax file number to another superannuation fund or RSA provider.	No equivalent.

<i>New law</i>	<i>Current law</i>
Trustees, RSA providers and employers may check information about a member or an employee for the purpose of ensuring the information is accurate through use of an electronic validation service.	No equivalent.
The Commissioner may give trustees, RSA providers and employers a notice stating whether or not the Commissioner is able to validate the information.	No equivalent.
The Commissioner may receive information and give notices electronically under Division 3A.	No equivalent.

Detailed explanation of new law

6.17 Data and payment regulations and standards relating to RSA providers means regulations made under section 45B of the RSA Act and standards issued by the Commissioner under that section. *[Schedule 4, item 1, subsection 10(1) of the SIS Act and item 25, section 16 of the RSA Act]*

6.18 An eligible superannuation entity means a regulated superannuation fund or an approved deposit fund. *[Schedule 4, item 2, subsection 10(1) of the SIS Act]*

6.19 Superannuation data and payment regulations and standards means regulations made under section 34K of the SIS Act and standards issued by the Commissioner under that section. *[Schedule 4, item 3, subsection 10(1) and item 26, section 16 of the RSA Act]*

6.20 Repeal existing heading ‘Correction and rectification of information’ and replace with ‘Information’ to reflect the broader intent of the new sections in Division 4. *[Schedule 4, item 4 of the SIS Act and item 27 of the RSA Act]*

6.21 Insert new Subdivision A ‘Correction and Rectification of Information’ as Division 4 is now split into two subdivisions. *[Schedule 4, item 5 of the SIS Act and item 28 of the RSA Act]*

Subdivision B — Register of information about certain superannuation funds and schemes

6.22 The intent of Subdivision B of the SIS Act and the RSA Act is to facilitate the electronic transmission of payments and the information

associated with electronic payments between certain superannuation entities, RSA providers and employers by providing for a register of information to be kept by the Commissioner.

6.23 The Commissioner must keep a register of information about certain funds, schemes and RSA providers. The register is to be kept by electronic means. *[Schedule 4, item 6, subsections 34Y(1) and (2) of the SIS Act and item 29, subsection 45Q(1) and (2) of the RSA Act]*

6.24 This register will contain information about the electronic identity of certain funds, schemes and RSA providers. Superannuation entities, RSA providers and employers who must comply with the superannuation data and payment regulations and standards will be able to use the register to find and verify the information necessary to send contributions or roll-over data and payments electronically.

6.25 The term ‘certain funds and schemes’ has been used to acknowledge the register will contain information about eligible superannuation entities that are prescribed through the regulations and exempt public sector superannuation schemes.

6.26 The term ‘certain RSAs’ reflects that the register will contain information about RSA providers that are prescribed through regulations.

6.27 It should be noted that, although exempt public sector superannuation schemes cannot be required to provide information about their electronic identity, the intent is to allow the Commissioner to provide this information in the register if it is provided.

6.28 An electronic register will allow superannuation entities, RSA providers and employers to verify the information automatically, without the need for human intervention, adding to the efficiency of the superannuation system.

6.29 The register is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection has been included to assist readers and to avoid any doubt. *[Schedule 4, item 6, subsection 34Y(3) of the SIS Act and item 29, subsection 45Q(3) of the RSA Act]*

6.30 The Commissioner may make the contents of the register available to eligible superannuation entities, RSA providers and employers that are required to comply with the superannuation data and payment regulations and standards. Contents of the register will also be made available to exempt public sector superannuation schemes. *[Schedule 4, item 6, paragraphs 34Y(4)(a) and (b) of the SIS Act and item 29, subsection 45Q(4) of the RSA Act]*

6.31 It is envisaged that there may be instances when the register would not be made available to a certain superannuation entity by the Commissioner. For example, when inappropriate use of the register has occurred.

6.32 The register must contain the information given to the Commissioner by the superannuation entities and RSA providers prescribed by regulations. The term ‘prescribed eligible superannuation entities’ is used to highlight that the entities will be prescribed by regulations but limited to eligible superannuation entities. *[Schedule 4, item 6, subsection 34Y(5) of the SIS Act and item 29, subsection 45Q(5) of the RSA Act]*

6.33 The register may also contain information about the electronic identity of exempt public sector superannuation schemes when this information has been provided to the Commissioner. *[Schedule 4, item 6, paragraphs 34Y(6)(a) and (b) of the SIS Act]*

6.34 The Commissioner is to combine the register of information of RSA providers together with the register of superannuation entities kept under section 34Y of the SIS Act. This will result in the best outcome for the users of the register. *[Schedule 4, item 29, subsection 45Q(6) of the RSA Act]*

6.35 Regulations may be made that prescribe the eligible superannuation entities and RSA providers required to provide information to the Commissioner, the manner in which it is to be provided and the timeframe in which it is to be provided. *[Schedule 4, item 6, subsection 34Z(1) of the SIS Act and item 29, subsection 45R(1) of the RSA Act]*

6.36 The regulations will prescribe information such as:

- bank details — to ensure a payment goes to the correct destination;
- a digital service address — used to ensure that information can be sent to the correct destination; and
- a unique superannuation identifier — used to identify the correct fund, or a segment of that fund.

6.37 Regulations will also prescribe that information to be contained in the register is to be provided to the Commissioner prior to the commencement of the superannuation data and payment standards (1 July 2013) to ensure the register is complete and ready to facilitate effective electronic superannuation transactions. *[Schedule 4, item 7, paragraph 34Z(1)(c) of the SIS Act and item 30, paragraph 45R(1)(c) of the RSA Act]*

6.38 However, regulations cannot prescribe a timeframe for the provision of information to the Commissioner that is before 1 March 2013. *[Schedule 4, item 7 of the SIS Act and item 30 of the RSA Act]*

6.39 The register is to be kept from 1 July 2013. *[Schedule 4, item 7 of the SIS Act and item 30 of the RSA Act]*

6.40 An offence of strict liability will apply where the provision of the prescribed information is not provided to the Commissioner in accordance with the regulations. The penalty for this contravention is 25 penalty units. *[Schedule 4, item 6, subsection 34Z(3) of the SIS Act and item 29, subsection 45R(3) of the RSA Act]*

6.41 In framing these offences, consideration was given to the principles contained in *Report 6/2002 of the Senate Scrutiny of Bills Committee on the Application of Absolute and Strict Liability Offences in Commonwealth Legislation*.

6.42 It is considered appropriate that a contravention of this provision be a strict liability offence as a requirement to prove 'intent' of a prescribed eligible superannuation entity or RSA provider to not comply with the provision of information would make the provisions difficult to enforce.

6.43 The underlying nature of these provisions is to benefit the members of superannuation entities and RSA providers by improving the efficiency of the superannuation system. It is vital that all prescribed eligible superannuation entities and RSA providers give this information to the Commissioner in a timely manner so that there is a complete and accurate register for other participants to use.

6.44 It is a reasonable expectation that prescribed eligible superannuation entities and RSA providers will have this information readily available as it will be a core operational requirement for the receipt of data and payments for contributions and roll-overs.

Division 2 — Monitoring

6.45 Powers and duties are conferred on the Commissioner in relation to contributing employers in Part 25 of the SIS Act, and Part 10 of the RSA Act. The powers and duties conferred on the Commissioner by Part 25 of the SIS Act in relation to contributing employers, are not limited by a new provision being inserted as part of the self-managed superannuation fund (SMSF) Auditor Registration at Chapter 1 of this explanatory memorandum. *[Schedule 4, item 8, subsection 6(2AC) of the SIS Act and item 31, subsection (3)(2A) of the RSA Act]*

- 6.46 A contributing employer is an employer who has dealings to which the superannuation data and payment regulations and standards apply. Generally speaking, this is an employer who makes superannuation contributions for an employee to a superannuation entity or RSA provider. *[Schedule 4, item 9, subsection 10(1) of the SIS Act and item 32, section 16 of the RSA Act]*
- 6.47 Repeal the heading and substitute Part 10 Monitoring and Investigation in the RSA Act. *[Schedule 4, item 33 of the RSA Act]*
- 6.48 The Commissioner will be given sufficient power to monitor employers' compliance with Part 3B of the SIS Act (superannuation data and payment regulations and standards). Divisions 3 to 6 and 8 of Part 25 of the SIS Act are not relevant to employers. *[Schedule 4, item 10, subparagraph 253(aa) of the SIS Act]*
- 6.49 The Commissioner will be given sufficient power to monitor employers' compliance with Part 4A of the RSA Act (superannuation data and payment regulations and standards). *[Schedule 4, item 34, subparagraph 91(a)(aa) of the RSA Act]*
- 6.50 Amend note 3 to highlight that the note does not affect any powers and duties the Commissioner has under this Part in relation to contributing employers. *[Schedule 4, item 11]*
- 6.51 Repeal the heading and substitute Division 2 Monitoring in the RSA Act. *[Schedule 4, item 35 of the RSA Act]*
- 6.52 The Commissioner may require the production of books by a contributing employer to allow the Commissioner to determine compliance with the superannuation data and payment regulations and standards. A notice may be given to a contributing employer. *[Schedule 4, item 12, subparagraph 255(1)(b), item 13, subparagraph 255(1)(c), item 14, subsection 255(1) and item 15, subsection 255(1) of the SIS Act and item 36, subparagraph 93(1)(1A) of the RSA Act]*
- 6.53 The Commissioner may require the books to be produced in the English language. *[Schedule 4, item 37, subsection 93(2) of the RSA Act]*
- 6.54 A person authorised by the Commissioner may access any premise at which the person has reason to believe records relating to the obligations of a contributing employer under Part 3B of the SIS Act or Part 4A of the RSA Act. The authorised person may only access the premises with consent. *[Schedule 4, item 16, subsection 256(1) of the SIS Act and item 38, subsection 94 and item 40, paragraph 94(1)(a) of the RSA Act]*
- 6.55 To ensure that the monitoring provisions of the superannuation data and payment regulations and standards within the SIS Act and RSA

Act will apply to employers and are constitutional, a provision has been included that states that the incidental aspect of the corporations power contained in section 51(xx) of the Constitution applies. *[Schedule 4, item 17, section 256A of the SIS Act and item 40, section 94A of the RSA Act]*

6.56 The privilege against self-incrimination will be retained for contributing employers in relation to the monitoring provisions in Division 2 of the SIS Act and the RSA Act. *[Schedule 4, item 18, subsection 287(5) of the SIS Act and item 41, subsection 117(5) of the RSA Act]*

6.57 These amendments will not apply to employers until they are required to comply with the superannuation data and payment regulations and standards:

- the application date for medium to large employers (employs 20 or more employees) on 1 July 2014 is 1 July 2014; and
- the application date for small employers is 1 July 2015, unless regulations specify a day after this.

Division 3 — tax file numbers

6.58 New provisions within Division 3A of the SIS Act and the RSA Act, enable the Commissioner to provide a response to trustees and employers when a member or employee tax file number (TFN) is provided to the Commissioner for the purpose of validating whether or not the TFN matches the information provided. The Commissioner may also inform trustees of a member tax file number in certain circumstances.

6.59 One of the irritants in the superannuation system at present is the poor quality of information about members.

6.60 High quality member information, that is, information that incorporates tax file number (if provided) and personal details such as full name, date of birth and address, will ensure that contributions and roll-overs can be processed electronically, thereby removing the need for costly manual processing. High quality information will also reduce the number of unnecessary duplicate, lost and unclaimed superannuation accounts.

6.61 The source of member information held by superannuation entities is generally employers. The member's information provided by employers is used by trustees to establish new superannuation accounts or to credit payments to existing accounts. By enabling employers to check the personal information provided to them by their employees, employers can ensure that they are providing information to a trustee that is accurate, thereby reducing any need for costly manual rework.

6.62 The ability for trustees to check member information provided to them is essential. Poor quality of member information leads to inefficiencies in crediting superannuation contributions, unnecessary duplicate accounts as well as an increased risk that a person's superannuation can become lost or unclaimed.

6.63 With the introduction of these provisions, individuals will retain the right not to quote their tax file number for superannuation purposes. While these provisions do not override this right, they do enable employers and trustees to validate tax file numbers that have been quoted to them.

6.64 To facilitate improvements in the quality of information recorded in the superannuation system, an employer may use an employee's tax file number that has been quoted to him/her for the purpose of validating information about the person's identity with the information held by the Commissioner for that tax file number. *[Schedule 4, item 19, subsections 299CA(1) and (2) of the SIS Act and item 42, subsections 133A(1) and (2) of the RSA Act]*

6.65 The employee's tax file number can be used when it has been quoted for superannuation purposes or in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936* (quotation of tax file numbers by recipients of eligible PAYG payments). It is intended that this would be done when an employer is going to register an employee with a superannuation fund, or make a contribution on their behalf.

6.66 This provision only applies to employee tax file numbers that are quoted to an employer after the commencement of this section.

6.67 A trustee or RSA provider is able to use a member's tax file number that has been quoted to him/her for the purpose of validating information about the person with the information held by the Commissioner for that tax file number. *[Schedule 4, item 20, subsections 299LB(1) and (2) of the SIS Act and item 43, subsections 137B(1) and (2) of the RSA Act]*

6.68 This provision will apply to member tax file numbers that are already held by the trustee or RSA provider as well as for tax file numbers quoted by a member after the commencement of this section. This will enable trustees or RSA provider to validate member information for accounts already established which will provide trustees with a significant opportunity to improve existing member information as well as new member information.

6.69 Amend the existing heading of Part 25A of the SIS Act and Division 4A of the SIS Act and substitute 'Commissioner of Taxation

may issue notices about tax file numbers'. *[Schedule 4, item 21 of the SIS Act and item 44 of the RSA Act]*

6.70 Insert Commissioner of Taxation's full title. *[Schedule 4, item 22 and item 23 of the SIS Act and item 45 and item 46 of the RSA Act]*

6.71 The Commissioner will be able to provide a member's tax file number to a trustee of an eligible superannuation entity, regulated exempt public sector superannuation scheme or RSA provider that the member has an account with but who does not hold the member's tax file number, in circumstances where that tax file number has been quoted for superannuation purposes (within the meaning of the *Income Tax Assessment Act 1997*) to another person. *[Schedule 4, item 24, subsection 299TC(1) of the SIS Act and item 47, subsection 143(C)(1) of the RSA Act]*

6.72 This provision will enable tax file numbers that have been previously quoted by the member for superannuation purposes to be linked to other superannuation accounts held by the member. The linking of a tax file number to member accounts will significantly decrease the likelihood that their account will be duplicated, become lost or unclaimed superannuation.

6.73 References to 'quoted by the member for superannuation purposes' includes where a person is taken to have quoted their tax file number or has been deemed to have quoted their tax file number (Division 3 of Part 25A of the SIS Act).

6.74 If the person has specifically requested the trustee or RSA provider to not record their tax file number prior to the Commissioner giving the trustee or RSA provider a notice, the notice is to be disregarded and the person is not taken to have quoted his or her tax file number to the trustee or RSA provider. *[Schedule 4, item 24, subsection 299TC(2) of the SIS Act and item 47, subsection 143(C)(2) of the RSA Act]*

6.75 This is necessary to maintain an individual's right not to quote their tax file number to their superannuation fund.

6.76 Many Australians have multiple superannuation accounts. In many instances they have quoted their tax file number to one of their superannuation funds and not the others. It is estimated that approximately two million member accounts will benefit from this.

6.77 The Commissioner may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme or RSA provider a notice in the following circumstances:

- the trustee or RSA provider gives the Commissioner the details they believe to be the person's full name, tax file number, date of birth and/or address;
- the Commissioner is satisfied that the person is a beneficiary or an RSA holder or an applicant to become so. This could be achieved by asking a trustee or RSA provider to declare this as part of using the electronic service;
- the Commissioner is satisfied that the trustee or RSA provider is giving the information to the Commissioner in connection with the operation of the entity or scheme. This could be achieved by asking a trustee or RSA provider to declare this as part of using the electronic service. The phrase "in connection with the operation of the entity or scheme" links the use of the service to superannuation data and payment matters; and
- the Commissioner compares the information provided with the information the Commissioner has recorded for that tax file number and having undertaken a validation process outlined below is satisfied that a notice stating whether or not the information can be validated can be given. This is to reflect that there may be instances where the Commissioner is not satisfied that a notice can be given [*Schedule 4, item 24, subsection 299TD(1) of the SIS Act and item 47, subsection 143D(1) of the RSA Act*].

6.78 The notice must state whether or not the Commissioner is able to validate the information given. [*Schedule 4, item 24, subsection 299TD(2) of the SIS Act and item 47, subsection 143D(2) of the RSA Act*]

6.79 To validate the information provided by the trustee or RSA provider, the Commissioner uses a complex matching algorithm, allocating a different weighting to each of the pieces of personal information, then derives a score. If the combination of the information matches a single record to a high degree of confidence, the Commissioner will advise the trustee that the information is validated.

6.80 If the combination of the information of does not match a single record to a high degree of confidence, the Commissioner will advise the trustee or RSA provider the information is not able to be validated.

6.81 If the Commissioner is unable to validate the information provided, the trustee or RSA provider can seek further information from the employer, or the member themselves to resolve the discrepancies.

6.82 If the Commissioner issues a notice to the trustee or RSA provider advising that the member information provided could not be validated, this is not to be taken to be a notice that the member tax file number quoted is invalid. *[Schedule 4, item 24, subsection 299TD(3) of the SIS Act and item 47, subsection 143D(3) of the RSA Act]*

6.83 The Commissioner may give an employer a notice in the following circumstances:

- the employer gives the Commissioner the details he or she holds for an employee including the person's full name, tax file number, date of birth and/or address;
- the Commissioner is satisfied that the person is an employee for whose benefit a contribution is to be made. This could be achieved by asking an employer to declare this as part of using the electronic service;
- the Commissioner is satisfied that the employer is giving the information to the Commissioner in connection with the operation of the entity or scheme. This is to ensure that an employer uses the service as part of making a superannuation contribution or registering an employee for superannuation. This could be achieved by asking an employer to declare this as part of using the electronic service. The phrase 'in connection with the operation of the entity or scheme' links the use of the service to superannuation data and payment matters;
- the Commissioner is satisfied that use by the employer of the tax file number complies with section 299CA of the SIS Act or 133A of the RSA Act. This could be achieved by asking an employer to declare this as part of using the electronic service; and
- the Commissioner compares the information provided with the information the Commissioner has recorded for that tax file number and having undertaken a validation process outlined below is satisfied that a notice stating whether or not the information can be validated can be given *[Schedule 4, item 24, subsection 299TE(1) of the SIS Act and item 47, subsection 143E(1) of the RSA Act]*.

6.84 To validate the information provided by the employer, the Commissioner uses a complex matching algorithm, allocating a different weighting to each of the pieces of personal information, then derives a score. If the combination of the information matches a single record to a

high degree of confidence, the Commissioner will advise the employer that the information is validated.

6.85 If the combination of the information of does not match a single record to a high degree of confidence, the Commissioner will advise the employer the information is not able to be validated.

6.86 A notice under this section is not a notice under subsection 202CE(3) of the *Income Tax Assessment Act 1936* as that section relates to fax file numbers stated in a Tax File Number (TFN) Declaration. [*Schedule 4, item 24, subsection 299TE(3) and item 47, subsection 143E(3)*]

6.87 If the Commissioner is unable to validate the information given, the employer can seek further information from the employee to resolve the discrepancies.

6.88 The Commissioner may provide an electronic interface to receive information and give a notice under this Division. [*Schedule 4, item 25, section 299TF of the SIS Act and item 48, subsection 143F of the RSA Act*]

Application and transitional provisions

6.89 Regulations made for the purpose of prescribing the information to be provided to the Commissioner relating to the electronic identity of prescribed eligible regulated entities cannot prescribe a time earlier than 1 March 2013 for the provision of this information.

6.90 The register of information relating to the electronic identity of prescribed eligible regulated entities is to be kept from 1 July 2013.

Consequential amendments

6.91 Part 3 of this schedule implements minor amendments relating to definitions.

6.92 Amendments to the SIS Act that introduced the superannuation data and payment standards stated that the standards were to apply broadly to superannuation entities. Superannuation entities include regulated superannuation funds, approved deposit funds and pooled superannuation trusts.

6.93 Upon further review of the scope of the superannuation data and payment standards it was agreed that the extension of compliance with the standards to pooled superannuation trusts is unnecessary.

6.94 As such, the definition of superannuation entities is to be repealed from SIS Act and replaced with eligible superannuation entity. An eligible superannuation entity includes regulated superannuation funds and approved deposit funds. [Schedule 4, item 54, section 34H(1) and (2); item 55, paragraphs 34K(1)(a) and (b); item 56, subsection 34K(2); item 57, paragraphs 34K(3)(a) and (b); item 58, subsection 34K(4); item 59, subparagraphs 34K(5)(a)(i) and (ii), item 60, 34K(5)(b); item 61, section 34M (heading); item 62, subsection 34M(1); item 63, subsection 34M(1); item 64, subsection 34N(1); item 65, section 34P (heading); item 66, subsection 34P(1); item 67, subsection 34P(1); item 68, paragraph 34P(2)(a); item 69, subsection 34P(3); item 70, subsection 34P(4); item 71, subsections 34P(6), (8) and (9); item 72, section 299W (definition) of the SIS Act; item 73, paragraph 20(1)(a) of the Superannuation Legislation Amendment (Stronger Super) Act 2012]

6.95 The definition of superannuation entity is to be repealed and replaced by eligible superannuation entity in the *Taxation Administration Act 1953* (TAA 1953). [Schedule 4, item 74, subsection 288-110(1) in schedule 1 (heading) of the TAA 1953]

6.96 Within the *Retirements Savings Account Act*, the existing definition of eligible superannuation entity is to be repealed and replaced to ensure that the definition of eligible superannuation entity in the SIS Act. [Schedule 4, item 53, subsection 16(definition) of the RSA Act]

6.97 Within the *Income Tax Assessment Act 1936* (ITAA 1936), the existing definitions of eligible superannuation entity and regulated exempt public sector superannuation scheme are to be repealed and replaced to ensure that the definition of eligible superannuation entity in the SIS Act [Schedule 4, item 48, subsection 202DH(2); item 49, subsection 202DJ(2) of the ITAA 1936]

6.98 The definition of eligible superannuation entity is to be inserted into the ITA Act 1936 and will have the same meaning as in the SIS Act. [Schedule 4, item 51, subsection 202DJ(2) of the ITAA 1936]

6.99 Additionally, definitions associated with retirement savings account holder, RSA and RSA provider are to be repealed as these terms are already defined for the purposes of the ITAA 1936. [Schedule 4, item 52, subsection 202DJ(2) of the ITAA 1936]

6.100 The definition of regulated exempt public sector superannuation scheme is to be inserted into the ITAA 1936 and will have the same meaning as in the SIS Act. [Schedule 4, item 53, subsection 202DJ(2) of the ITAA 1936]

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Improving efficiency and data quality in the superannuation system

6.101 Schedule 4 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

6.102 This Schedule amends the SIS Act and the RSA Act to improve the quality of information in the superannuation system, and facilitate fully effective e-commerce for superannuation.

6.103 The Commissioner will keep a register containing information provided by certain superannuation entities and RSA providers. The information contained on the register will enable superannuation entities, RSA providers and employers to transmit information and payments electronically.

6.104 The Commissioner may request information from an employer for the purpose of determining the employer's compliance with the superannuation data and payment regulations and standards. The Commissioner may also access the employer's premises for the purposes of inspecting records where the employer's consent has been received.

6.105 The Commissioner will be able to provide a tax file number that has been quoted by a member to a superannuation fund or RSA provider to other superannuation funds or RSA providers the member holds accounts with and who do not hold a record of the member's tax file number.

6.106 Trustees of eligible superannuation entities, regulated exempt public sector superannuation schemes and RSA providers may check the member's tax file number with the Commissioner for the purpose of ensuring accurate information is recorded within the superannuation system.

6.107 Employers may check the employee's tax file number with the Commissioner for the purpose of ensuring accurate information is recorded within the superannuation system.

Human rights implications

6.108 This Schedule engages the following human rights:

Presumption of Innocence

6.109 The strict liability offence in section 34Z of the SIS Act and 45R of the RSA Act will apply where a prescribed eligible superannuation entity or prescribed RSA provider fails to provide the Commissioner of Taxation with information to be prescribed in regulations. The information that will be prescribed in regulations includes bank details to receive payments through the banking system, a digital service address to receive electronic messages and a unique superannuation identifier particular to the entity.

6.110 This information is standard as part of an eligible superannuation entity and RSA provider's administration and other superannuation entities will be relying on this information to send electronic payments and information associated with those payments electronically.

6.111 Electronic transactions between superannuation entities are being mandated from 1 July 2013, so this information is essential to enable other superannuation entities to comply with their obligations.

Privilege against self-incrimination

6.112 Item 15 ensures that for employers the privilege against self-incrimination applies in relation to the monitoring provisions in Division 2.

Protection from arbitrary or unlawful interference with privacy

6.113 The handling of TFN information is regulated by the binding *Tax File Number Guidelines (2011)*, issued in section 17 of the *Privacy Act 1988*.

6.114 An individual is not legally obliged to quote their TFN. Under section 299TC of the SIS Act, the Commissioner may disclose the member's TFN to a superannuation fund only when a member has quoted their TFN to another superannuation fund they have an account with. Many Australians have multiple superannuation accounts and through an oversight have not provided their TFN to all funds they hold accounts

with. By linking a TFN to these member accounts, these accounts are less likely to become lost or unclaimed.

6.115 It is also important to protect an individual's right not to quote their TFN. There may be instances where an individual has made a conscious decision not to provide their tax file number to a trustee and provide it to other trustees. To maintain an individual's right not to quote, when an individual has advised the trustee of this intention, the legislation requires a trustee to not record the individual's TFN even if it is provided to the trustee.

6.116 Sections 299TD and 299TE of the SIS Act only apply when an individual has quoted their tax file number, to a trustee where they are a beneficiary of the scheme, or their employer.

6.117 By checking the information with the Commissioner it ensures accurate information is recorded in the superannuation system, reducing the probability that the individual's superannuation account will become lost or unclaimed.

6.118 An individual will retain the right not to quote their TFN by notifying their superannuation fund or RSA provider, and there are strong protections around the use of TFN's limiting the use of TFN's and penalties for inappropriate use in existing legislation.

Conclusion

6.119 This Schedule is compatible with human rights because the limitations it places on human rights are reasonable and proportionate.

Minister for Superannuation, the Hon Bill Shorten

Index

SUPERANNUATION LAWS AMENDMENT (CAPITAL GAINS TAX RELIEF AND OTHER EFFICIENCY MEASURES) BILL 2012

Schedule 1: Merging superannuation funds

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1 and 2, notes 1 and 2 to section 310-1	1.17
Item 1, note 1 to section 310-1	1.49
Items 3, 4, 11, 13, 16 and 18, table item 4 in subsection (2)(1), item 11 of Schedule 1, note to subsection 310-55(1), note to subsection 310-60(1), note to subsection 310-65(1), and note to subsection 310-70(1)	1.18
Item 5, subsection 310-10(1)	1.19
Item 6, subparagraphs 310-35(1)(b)(i) and (ii)	1.28
Items 7 and 8, paragraph 310-40(1)(b) and subparagraphs 310-40(1)(b)(i) and (ii)	1.31
Item 9, subsection 310-40(1)	1.32
Item 10, subsection 310-50(1)	1.37
Item 10, subsection 310-50(2)	1.38
Item 10, subsection 310-50(3)	1.39
Item 12 and 14, subsections 310-60(1) and (2)	1.41
Item 15, subsection 310-60(3)	1.42
Item 17, subsection 310-70(1)	1.45, 1.46
Item 19	1.48

Schedule 2: Approved SMSF auditors

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1, paragraph 6(1)(a)	2.14
Item 2, paragraph 6(1)(da)	2.15
Item 3, subparagraph 6(1)(e)(v)	2.16
Item 4, paragraph 6(1)(ea)	2.17
Item 5, subsection 10(1)	2.18

*Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures)
Bill 2012
Superannuation Auditor Registration Imposition Bill 2012*

<i>Bill reference</i>	<i>Paragraph number</i>
Item 6, subsection 10(1)	2.19
Item 7, subsection 10(1)	2.20
Item 8, subsection 10(1)	2.21
Item 9, Division 1A	2.22
Item 9, Subdivision A	2.23
Item 9, section 128A	2.24
Item 9, paragraph 128B(1)(a)	2.25
Item 9, subparagraph 128B(1)(b)(i)	2.26
Item 9, subparagraph 128B(b)(ii)	2.27
Item 9, subsection 128B(2)	2.30
Item 9, subsection 128B(3)	2.31
Item 9, subsection 128B(4)	2.32
Item 9, subsection 128B(5)	2.33
Item 9, subsection 128B(6)	2.34
Item 9, subsection 128B(7)	2.35
Item 9, subsection 128B(8)	2.36
Item 9, section 128C	2.37
Item 9, section 128D(1)	2.38
Item 9, subsection 128D(2)	2.39
Item 9, subsection 128D(3)	2.42
Item 9, subsection 128E(1)	2.44
Item 9, paragraph 128E(2)(a)	2.45
Item 9, paragraph 128E(2)(b)	2.46
Item 9, paragraph 128E(2)(c)	2.48
Item 9, paragraph 128E(2)(d)	2.49
Item 9, subsections 128E(3) and (4)	2.50
Item 9, subsection 128E(5)	2.51
Item 9, Subdivision B	2.52
Item 9, paragraph 128F(a)	2.53
Item 9, paragraph 128F(b)	2.54
Item 9 subparagraph 128F(c)(i)	2.55
Item 9, subparagraph 128F(c)(ii)	2.56
Item 9, subparagraph 128F(c)(iii)	2.57
Item 9, paragraph 128F(d)	2.59
Item 9, section 128G	2.60

<i>Bill reference</i>	<i>Paragraph number</i>
Item 9, section 128H	2.62
Item 9, Subdivision C	2.64
Item 9, subsection 128J(1)	2.65
Item 9, subsection 128J(2)	2.66
Item 9, subsection 128J(3)	2.67
Item 9, subsection 128J(4)	2.68
Item 9, section 128K	2.69
Item 9, Subdivision D	2.71
Item 9, subsection 128L(1)	2.72
Item 9, subsection 128L(2)	2.75
Item 9, subsection 128L(3)	2.76
Item 9, subsection 128L(4)	2.77
Item 9, subsection 128L(5)	2.78
Item 9, subsection 128L(6)	2.79
Item 9, subsection 128L(7)	2.80
Item 9, subsection 128L(8)	2.81
Item 9, subsection 128M(1)	2.82
Item 9, subsection 128M(2)	2.83
Item 9, Subdivision E	2.84
Item 9, section 128N	2.85
Item 9, subsection 128P(1)	2.89
Item 9, subsection 128P(2)	2.90
Item 9, subsection 128P(3)	2.91
Item 9, subsection 128Q(1)	2.93
Item 9, subsection 128Q(2)	2.94
Item 9, subsection 128Q(3)	2.95
Item 9, subsections 128Q(4) and (5)	2.96
Item 10, subsection 130F(1)	2.99
Item 10, paragraph 130F(2)(a)	2.100
Item 10, paragraph 130F(2)(b)	2.101
Item 10, paragraph 130F(2)(c)	2.102
Item 10, paragraph 130F(2)(d)	2.103
Item 10, subsection 130F(3)	2.105
Item 10, subsection 130F(4)	2.106
Item 10, subsection 130F(5)	2.107
Item 10, subsection 130F(6)	2.108

*Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures)
Bill 2012
Superannuation Auditor Registration Imposition Bill 2012*

<i>Bill reference</i>	<i>Paragraph number</i>
Item 10, subsection 130F(7)	2.109
Item 10, subsection 130F(8)	2.110
Item 10, subsection 130F(9)	2.111
Item 10, subsection 130F(10)	2.112
Item 10, subsection 130F(11)	2.113
Item 10, subsection 130F(12)	2.114
Item 10, subsection 130F(13)	2.115
Item 11, paragraph 6(2AA)(a)	2.122
Item 11, paragraph 6(2AA)(b)	2.123
Item 12, subsection 6(2AB)	2.125
Item 13, subsection 10(1)	2.126
Item 14, subsection 10(1), definition of 'relevant person'	2.128
Item 15, subsection 10(1) definition of 'relevant person'	2.129
Item 15, subsection 10(1), definition of 'reviewable decision'	2.130
Item 16, end of subsection 35C(1)	2.131
Item 17, subsection 35C(1A)	2.132
Item 18, paragraph 35C(5)(ba)	2.133
Item 19, subsection 35C(7)	2.134
Items 20 to 30, section 131	2.135
Item 31, subsection 131AA(1)	2.136
Items 32 and 33, subsection 131A(1)	2.137
Items 34 to 36, section 131B	2.138
Items 37 to 40, section 131C	2.140
Item 41, Part 25 (heading)	2.141
Item 42, paragraph 253(a)	2.144
Item 43, paragraph 253(c)	2.145
Item 44, at the end of section 253	2.146
Items 45 and 46, section 253A	2.147
Item 47, Division 2 of Part 25 (heading)	2.148
Item 48, subsection 255(1)	2.149
Item 49, subsection 255(4)	2.150
Items 50 to 52, section 256	2.151
Items 53 to 67, Divisions 4 to 8	2.152
Item 68, subsection 344(12)	2.153
Item 69, item 6A	2.154

<i>Bill reference</i>	<i>Paragraph number</i>
Item 70	2.158
Item 71, subsection (1)	2.162
Item 71, subsection (2)	2.163
Item 72	2.164
Item 73, subsection (1)	2.165
Item 73, subsection (2)	2.167
Item 73, subsection (3)	2.168
Item 73, subsection (4)	2.169
Item 74	2.170
Item 75	2.172
Item 76	2.173

Schedule 3: Expanded superannuation reporting

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1 and 2, Subdivision 390-A and subsection 390-5	5.13
Items 3 and 6, subsection 390-5(9)	5.15
Item 3	5.16
Item 4, paragraph 390-5(9)(a)	5.18
Item 5, paragraph 390-5(9)(b)	5.11
Item 6, subsection 390-5(9)	5.17
Items 7 and 8 paragraph 390-5(11)(c)	5.19
Item 9	5.20

Schedule 4: Improving efficiency and data quality in the superannuation system

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1, subsection 10(1) of the SIS Act and item 25, section 16 of the RSA Act	6.17
Item 2, subsection 10(1) of the SIS Act	6.18
Item 3, subsection 10(1) and item 26, section 16 of the RSA Act	6.19
Item 4 of the SIS Act and item 27 of the RSA Act	6.20
Item 5 of the SIS Act and item 28 of the RSA Act	6.21

*Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures)
Bill 2012*

Superannuation Auditor Registration Imposition Bill 2012

<i>Bill reference</i>	<i>Paragraph number</i>
Item 6, subsections 34Y(1) and (2) of the SIS Act and item 29, subsection 45Q(1) and (2) of the RSA Act	6.23
Item 6, subsection 34Y(3) of the SIS Act and item 29, subsection 45Q(3) of the RSA Act	6.29
Item 6, paragraphs 34Y(4)(a) and (b) of the SIS Act and item 29, subsection 45Q(4) of the RSA Act	6.30
Item 6, subsection 34Y(5) of the SIS Act and item 29, subsection 45Q(5) of the RSA Act	6.32
Item 6, paragraphs 34Y(6)(a) and (b) of the SIS Act	6.33
Item 6, subsection 34Z(1) of the SIS Act and item 29, subsection 45R(1) of the RSA Act	6.35
Item 6, subsection 34Z(3) of the SIS Act and item 29, subsection 45R(3) of the RSA Act	6.40
Item 7 of the SIS Act and item 30 of the RSA Act	6.38, 6.39
Item 7, paragraph 34Z(1)(c) of the SIS Act and item 30, paragraph 45R(1)(c) of the RSA Act	6.37
Item 8, subsection 6(2AC) of the SIS Act and item 31, subsection (3)(2A) of the RSA Act	6.45
Item 9, subsection 10(1) of the SIS Act and item 32, section 16 of the RSA Act	6.46
Item 10, subparagraph 253(aa) of the SIS Act	6.48
Item 11	6.50
Item 12, subparagraph 255(1)(b), item 13, subparagraph 255(1)(c), item 14, subsection 255(1) and item 15, subsection 255(1) of the SIS Act and item 36, subparagraph 93(1)(1A) of the RSA Act	6.52
Item 16, subsection 256(1) of the SIS Act and item 38, subsection 94 and item 40, paragraph 94(1)(a) of the RSA Act	6.54
Item 17, section 256A of the SIS Act and item 40, section 94A of the RSA Act	6.55
Item 18, subsection 287(5) of the SIS Act and item 41, subsection 117(5) of the RSA Act	6.56
Item 19, subsections 299CA(1) and (2) of the SIS Act and item 42, subsections 133A(1) and (2) of the RSA Act	6.64
Item 20, subsections 299LB(1) and (2) of the SIS Act and item 43, subsections 137B(1) and (2) of the RSA Act	6.67
Item 21 of the SIS Act and item 44 of the RSA Act	6.69
Item 22 and item 23 of the SIS Act and item 45 and item 46 of the RSA Act	6.70
Item 24, subsection 299TC(1) of the SIS Act and item 47, subsection 143(C)(1) of the RSA Act	6.71

<i>Bill reference</i>	<i>Paragraph number</i>
Item 24, subsection 299TC(2) of the SIS Act and item 47, subsection 143(C)(2) of the RSA Act	6.74
Item 24, subsection 299TD(1) of the SIS Act and item 47, subsection 143D(1) of the RSA Act	6.77
Item 24, subsection 299TD(2) of the SIS Act and item 47, subsection 143D(2) of the RSA Act	6.78
Item 24, subsection 299TD(3) of the SIS Act and item 47, subsection 143D(3) of the RSA Act	6.82
Item 24, subsection 299TE(1) of the SIS Act and item 47, subsection 143E(1) of the RSA Act	6.83
Item 24, subsection 299TE(3) and item 47, subsection 143E(3)	6.86
Item 25, section 299TF of the SIS Act and item 48, subsection 143F of the RSA Act	6.88
Item 29, subsection 45Q(6) of the RSA Act	6.34
Item 33 of the RSA Act	6.47
Item 34, subparagraph 91(a)(aa) of the RSA Act	6.49
Item 35 of the RSA Act	6.51
Item 37, subsection 93(2) of the RSA Act	6.53
Item 48, subsection 202DH(2); item 49, subsection 202DJ(2) of the ITAA 1936	6.97
Item 51, subsection 202DJ(2) of the ITAA 1936	6.98
Item 52, subsection 202DJ(2) of the ITAA 1936	6.99
Item 53, subsection 16(definition) of the RSA Act	6.96
Item 53, subsection 202DJ(2) of the ITAA 1936	6.100
Item 54, section 34H(1) and (2); item 55, paragraphs 34K(1)(a) and (b); item 56, subsection 34K(2); item 57, paragraphs 34K(3)(a) and (b); item 58, subsection 34K(4); item 59, subparagraphs 34K(5)(a)(i) and (ii), item 60, 34K(5)(b); item 61, section 34M (heading); item 62, subsection 34M(1); item 63, subsection 34M(1); item 64, subsection 34N(1); item 65, section 34P (heading); item 66, subsection 34P(1); item 67, subsection 34P(1); item 68, paragraph 34P(2)(a); item 69, subsection 34P(3); item 70, subsection 34P(4); item 71, subsections 34P(6), (8) and (9); item 72, section 299W (definition) of the SIS Act; item 73, paragraph 20(1)(a) of the <i>Superannuation Legislation Amendment (Stronger Super) Act 2012</i>	6.94
Item 74, subsection 288-110(1) in schedule 1 (heading) of the TAA 1953	6.95

**SUPERANNUATION AUDITOR REGISTRATION IMPOSITION
BILL 2012**

<i>Bill reference</i>	<i>Paragraph number</i>
Section 3	3.9
Section 4, subsection (1)	3.10
Section 4, subsection (2)	3.11
Section 4, subsection (3)	3.12

