



1 March 2013

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Email: corporations.joint@aph.gov.au

Dear Madam/Sir

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

The Self Managed Superannuation Funds Professionals' Association of Australia (SPAA) welcomes the opportunity to make a submission in relation to the Parliamentary Joint Committee on Corporations and Financial Services' review of the Superannuation Legislation Amendment (Reform of Self Managed Superannuation Funds Supervisory Levy Arrangements) Bill 2013 ("the Bill").

The Bill seeks to increase the amount that can be imposed as the self managed superannuation fund (SMSF) levy from the current cap of \$200 to \$300 effective from the 2013-14 income year. Also, the Bill changes the collection the SMSF levy so that the levy can be collected in the income year in which it is levied.

SPAA does not support the increase in the cap of the SMSF levy on the basis that such an increase would enable the ATO to further increase the SMSF levy in the future without industry consultation or without the need for the ATO to justify such increases.

Also, SPAA is uncertain as to whether the changes to collect the SMSF levy in the same year that it is levied will result in changing the current method of collecting the levy through the SMSF annual tax return. The current system of the levy being collected on lodgment of an SMSF's tax return for the year in which the levy was charged has been an efficient and well-functioning system.

They key points of this submission are:

- **SPAA does not support an increase in the cap of the SMSF levy without a commitment from the ATO to consult with the SMSF industry and justify future increases in the levy as part of the ATO's cost recovery for administering SMSFs.**
- **There should be no change to the existing SMSF levy collection through the SMSF annual tax return.**

These issues and SPAA's recommendations are discussed in detail in the [Attachment](#).



About SPAA

SPAA is the peak professional body representing the SMSF sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners and other professionals such as actuaries.

SPAA is committed to raising the standard of professional advice and conduct in the SMSF sector by working proactively with Government and the industry. In doing so, SPAA has contributed to SMSF advisors providing a higher standard of advice to SMSF trustees. This in turn has enabled trustees to make more informed decisions addressing the adequacy, sustainability and longevity of their own retirement savings. SMSFs offer trustees greater control and flexibility and have become an integral part of the Australian Superannuation landscape by providing significant and viable options for managers, business owners, executives and retail operators alike.

We would be happy to provide further information or to discuss any questions you may have about this submission with you.

Yours sincerely

Andrea Slattery
CEO

Mrs. Andrea Slattery
Chief Executive Officer

Mr. Peter Burgess
Technical Director



Increase in the SMSF levy

1. The Bill seeks to increase the amount that can be charged for the SMSF levy under the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* from \$200 per year to \$300 per year.
2. SPAA does not support the increase in the SMSF levy cap on the basis that there has been no justification as to why the current SMSF levy cap of \$200 is not recovering ATO costs of regulating the SMSF sector. The change to a \$300 SMSF levy cap will allow the ATO to increase the SMSF levy to \$300 without any justification or consultation with industry.
3. The rationale for the increase in the SMSF levy cap was explained in the Explanatory Memorandum (EM) accompanying the Bill in paragraph 1.5 on the basis that “*the current SMSF supervisory levy does not fully recover the ATO’s costs of regulating the sector*” and that the increase in the levy would “*ensure that the ATO’s costs of regulating the SMSF sector are fully recovered.*”
4. SPAA accepts that the SMSF levy and cap may need to be adjusted from time-to-time to ensure cost recovery for the ATO, however, such changes should be justified in a transparent manner. We believe that transparency in the costs of regulating the SMSF sector would enhance confidence in the ATO and strengthen its authority as the institution that is responsible for regulating SMSFs.
5. We believe that an increase in the SMSF levy cap – and the levy itself – should only take place after consultation between the ATO and the SMSF industry. This consultation would allow an opportunity for the ATO to justify any need for an increase in the SMSF levy to industry. It would also allow the SMSF industry to question the ATO’s need for further funds for SMSF regulation and ensure that funds raised from the SMSF levy are being applied to the regulation of SMSFs, rather than broader ATO funding.
6. Further, we are aware that the ATO have previously shown Australian Prudential Regulatory Authority (APRA) regulated superannuation funds the costings and justification for increasing the Superannuation Supervisory levy that was collected by APRA to fund the SuperStream reforms. Similar transparent justification for increasing the SMSF levy should be provided by the ATO to the SMSF sector.
7. We believe the Government’s 2012-13 Mid-Year Economic and Fiscal Outlook (MYEFO) increase of the SMSF levy from \$191 per year to \$259 per year for each SMSF under the proposed \$300 cap provides an example as to why ATO justification and explanation should be required.
8. The increase to \$259 represents a 35.6% increase in the SMSF levy which is the largest increase in the levy since it moved from \$45 to \$150 per year in 2006-07. This increase has been made without any justification to SMSF trustees why increased funding is needed for the ATO regulation of SMSFs.
9. The SMSF levy has risen over the past four income years (except for a small decrease in 2012-13), culminating in the 36 per cent increase scheduled for the 2013-14 income year.



Table 1: SMSF Levy since 2006-07

Income Year	SMSF Levy	Percentage change on previous year
2006-07	\$45	-
2007-08	\$150	233%
2008-09	\$150	-
2009-10	\$150	-
2010-11	\$180	20%
2011-12	\$200	11%
2012-13	\$191	- 4.5%
2013-14	\$259	36%

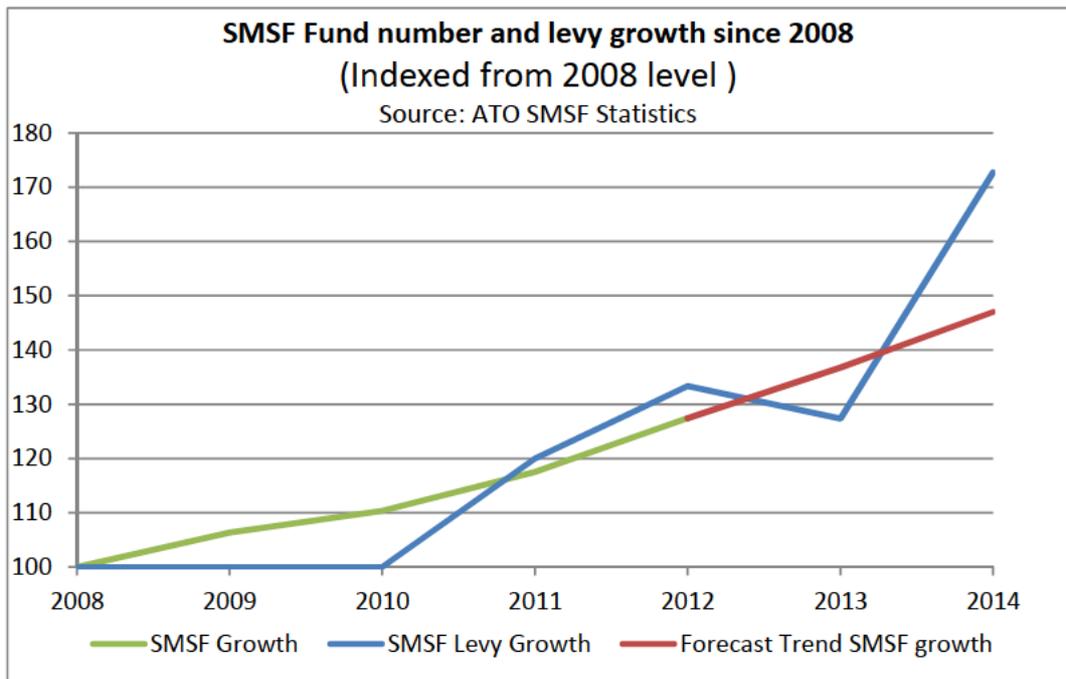
10. The 2011-12 Budget increased the SMSF levy from \$150 to \$180 to implement measures relating to SMSFs that stemmed from *Stronger Super Government: Response to the Super System Review*. The 2011-12 Budget measure description for the increase in the SMSF levy indicated that the increase would implement a range of measures including:
- a. the introduction of administrative penalties that the ATO can apply in cases of non-compliance by SMSF trustees;
 - b. the introduction of knowledge and competency requirements on SMSF service providers, including the registration of SMSF auditors;
 - c. tightened legislative restrictions on SMSF investment in collectables and personal use assets;
 - d. requiring SMSFs to value their assets at net market value and the ATO to publish valuation guidelines;
 - e. the appointment of the ATO to collect and publish data on the sector; and
 - f. changes to the registration and rollover processes, and illegal early release penalties to deter the use of SMSFs for illegal activity.
11. The 2012-13 Budget included an increase in the SMSF levy to offset the ATO’s costs to police registered auditors, check their compliance with competency standards set by ASIC and refer auditors to ASIC for enforcement action.
12. In the 2012-13 MYEFO, the Government stated the SMSF levy would be increased because there is “*currently a shortfall of SMSF levy revenue compared to the costs of regulating the sector*” and that it would create “*savings to the Budget of \$319.0 million over the forward estimates period.*” Unlike, previous increases of the levy, there did not appear to be new compliance measures or new legislation that would have increased the ATO’s cost of regulating SMSFs.
13. Accordingly, for the proposed increase of the SMSF levy to \$259 we believe that the ATO should explain where the increase in costs of regulating SMSFs has occurred and why a 36%



increase in the SMSF levy is required to recover costs. This increase would represent an additional \$34.7 million in funding for the ATO taken from SMSF trustees in 2013-14.¹ A \$34.7 million increase in funding for SMSF regulation is a substantial increase in funding when SPAA is aware that the ATO cost of administering the SMSF sector was approximately \$85.2 million in 2011-12. With such a large increase in the funding for the ATO's administration of the SMSF sector being funded by SMSF trustees, the ATO should transparently justify the need for the increase in the levy.

14. SPAA understands the growth of the SMSF sector may cause challenges for the ATO and result in higher costs in monitoring and administering SMSFs. However, as illustrated in Figure 1 (below), the growth in the amount of the SMSF levy has recently far exceeded the growth in the number of SMSFs since 2008, when the levy was \$150 per SMSF. The need for such an increase in the SMSF levy that is disproportionate to the growth in the numbers of SMSFs should be justified.

Figure 1: SMSF growth v SMSF Levy increases



15. SPAA believes that the Parliamentary Joint Committee on Corporations and Financial Services should seek explanation from the ATO as to why a 36% increase in the SMSF levy is required to recover costs of regulating the SMSF sector.

¹ \$34.7 million is based on a conservative estimate of 510,000 SMSFs paying the additional \$68 increase in the SMSF levy.



Change in collection of the SMSF Levy

16. Besides raising the SMSF levy, the Bill proposes amendments to the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* to change the collection method of the SMSF levy to allow collection of the levy in the same year that is levied.
17. SPAA does not see any reason for needing to change the existing SMSF levy collection method which has functioned effectively through the SMSF annual tax return. It is not clear from the EM, MYEFO measure description or the Hon. Bernie Ripoll MP's second reading speech whether the SMSF levy will still be collected through the SMSF annual tax return.
18. SPAA believes that the SMSF levy should still be collected through the SMSF annual tax return to minimise compliance costs for SMSF trustees and the ATO.
19. SPAA understands that changing the collection timing to allow for the SMSF levy to be levied and collected in the same income year will benefit the Budget forward estimates by bringing revenue collected from the levy forward one year. This is evident in the MYEFO measure description which showed a \$164 million benefit to the Budget in 2014-15 from the bring forward of the collection of the SMSF levy. While this will benefit the Government in terms of revenue collection, any possible change to the SMSF levy collection method will add red-tape and complexity for SMSF trustees.
20. Currently, SMSFs are required to pay the SMSF levy through their annual SMSF annual tax return. The levy amount liable to be paid by the SMSF is included as an item in the SMSF tax return so that it is added on to the SMSF's tax liability or deducted from the amount of any tax to be refunded.
21. This current method collects the SMSF levy in the year proceeding the income year in which the SMSF levy applied. For instance, the SMSF levy for the 2011-12 income year will be collected via SMSF tax returns lodged throughout the 2012-13 year. This method of collection has been efficient for both SMSF trustees and the ATO as it requires only one mode of communication and payment between the SMSF and ATO rather than two. SPAA believes that this method must be retained in collecting the SMSF levy. The Hon. Bernie Ripoll MP's second reading speech accompanying the introduction of the Bill intimated that the collection mechanism will stay tied to the SMSF tax return but no clear statement to this effect has been made.
22. The EM explains that the proposed change will "*ensure consistency within the superannuation industry as other superannuation funds regulated by APRA pay the superannuation supervisory levy in the same financial year that it is levied*". Neither the EM nor the MYEFO measure description provides further justification for why the collection of supervisory levies needs to be consistent between APRA-regulated funds and SMSFs.
23. We do not see consistency with APRA-regulated funds as a rationale that justifies changing the existing effective collection mechanism for the SMSF levy. This reasoning ignores the different nature of APRA-regulated superannuation funds and SMSFs. APRA-regulated funds are generally much larger and have greater compliance resources than SMSFs, enabling them to more easily comply with a separate levying and collection of a supervisory levy.



24. Further, the idea of consistency in collection of supervisory levies between APRA-regulated funds and SMSFs ignores the massive difference in number of funds from which the relevant levies are collected. As of December 2012 there were 3,727 APRA-regulated funds compared to 496,026 SMSFs.² Accordingly, if the collection method is changed from its current operation, the ATO will be required to collect the SMSF levy from approximately 500,000 SMSFs in addition to completing the annual SMSF tax return for these funds.
25. We believe that any change to the collection of the SMSF levy, such as a separate invoicing of the levy, will increase the cost of collection of the SMSF levy for the ATO and increase compliance burdens for SMSF trustees. The increased costs for the ATO in collecting the levy separately from the SMSF annual tax return would undermine the revenue benefits of collecting the levy in the year it is levied.
26. SPAA believes that there is no need to change the collection method for the SMSF levy through the annual SMSF return. Any changes to this method will increase red-tape and complexity for SMSF trustees and the ATO. We believe the Parliamentary Joint Committee on Corporations and Financial Services should seek assurances from the ATO and Government that there will be no significant change in how the SMSF levy is currently collected.

² APRA, *Statistics: Quarterly Superannuation Performance December 2012, (2013)*
<http://www.apra.gov.au/Super/Publications/Documents/Dec-2012-Quarterly-Superannuation-Performance-publication.pdf>