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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT (STRONGER SUPER AND
OTHER MEASURES) BILL (NO. 2) 2012: DATA STANDARDS TRANCHE 2

EXPLANATORY MEMORANDUM

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

Glossary

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

| <i>Abbreviation</i> | <i>Definition</i> |
|----------------------------|---|
| SIS Act | <i>Superannuation Industry (Supervision) Act 1993</i> |
| RSA Act | the <i>Retirement Savings Accounts Act 1997</i> |
| RSA provider | Retirement Savings Account provider |
| the Commissioner | the Commissioner of Taxation |
| RIS | Regulatory Impact Statement |

General outline and financial impact

Improving information quality in the superannuation system

Schedule # of the Superannuation Legislation Amendment (Stronger Super and Other Measures) Bill (No. 2) 2012 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Retirement Savings Accounts Act 1997* (RSA Act) to improve the information quality in the superannuation system and ensure fully effective e-commerce in superannuation.

Date of effect: The day after this Act 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.

Chapter 1

Improving information in the superannuation system

Outline of chapter

1.1 Schedule # of the Superannuation Legislation Amendment (Stronger Super and Other Measures) Bill (No. 2) 2012 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to improve the quality of information in the superannuation system, and facilitate fully effective e-commerce.

1.2 For the purposes of this explanatory memorandum, references to data and payment standards and associated provisions will also apply to the RSA Act.

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

1.4 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 when the employer's consent has been received.

1.5 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 the member holds accounts with and who do not hold a record of the member's tax file number.

1.6 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.

1.7 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.

Context of amendments

1.8 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.

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

1.10 Facilitating efficient electronic superannuation transactions is dependent on:

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

1.11 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 prescribed eligible superannuation entities.

1.12 By obtaining the relevant superannuation entities electronic details, superannuation entities and employers will be able to ensure superannuation data and payments reach the correct destination fund.

1.13 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 is correct.

1.14 There are also large numbers of accounts in the system without tax file numbers which will reduce 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.

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

- Register to display the electronic identity details of certain superannuation entities.
- Validation service to ensure that the employee/member information recorded for superannuation purposes is accurate.

1.16 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

1.17 Schedule # of this exposure draft enables:

- The Commissioner to provide a register of information necessary to facilitate the transmission of information and payments electronically to superannuation entities.
- The Commissioner may require information from an employer to determine whether the requirements applicable to the superannuation data and payment regulations and standards are being met.
- The Commissioner will be able to provide a member's tax file number that has been quoted to an eligible superannuation entity to any other eligible superannuation entity 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 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.

- The Commissioner under Division 3A 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. | No equivalent |
| Trustees of prescribed superannuation funds 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 requirements applicable to the superannuation data and payment regulations and standards are being met. | No equivalent |
| The Commissioner may give a trustee 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. | No equivalent |
| Trustees 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 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

Subdivision B – Register of information about certain superannuation entities

1.18 The intent of Subdivision B is to facilitate the electronic transmission of payments and the information associated with electronic payments between certain superannuation entities, retirement savings account providers and employers by providing for a register of information to be kept by the Commissioner.

1.19 The Commissioner of Taxation must keep a register of information about certain superannuation entities and RSA providers. The register may be kept by electronic means. *[Schedule #, item #, subsections 34Y(1) and (2) of the SIS Act]*

1.20 This register will contain information about the electronic identity of certain superannuation entities and RSA providers. Other superannuation entities, RSA providers and employers will be able to use the register to find and verify the information necessary to send contributions or rollover data and payments electronically.

1.21 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.

1.22 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. *[Schedule #, item #, subsection 34Y(3) of the SIS Act]*

1.23 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 regulated exempt public sector superannuation schemes. *[Schedule #, item #, subsection 34Y(4) and (2) of the SIS Act]*

1.24 The register must contain the information given to the Commissioner by the superannuation entities and RSA providers prescribed by regulations. *[Schedule #, item #, subsection 34Y(5) of the SIS Act]*

1.25 The register may also contain information about the electronic identity of regulated exempt public sector superannuation schemes when this information has been provided to the Commissioner.

1.26 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 #, item #, subsection 34Z(1) of the SIS Act]*

1.27 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.

1.28 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 to ensure the data base is complete and ready to facilitate effective e-commerce from 1 July 2013. *[Schedule #, item #, subsection 34Z(2) of the SIS Act]*

1.29 However, regulations cannot prescribe a timeframe for the provision of information to the Commissioner that is before 1 March 2013. *[Schedule #, item #, subsection (1) of the SIS Act]*

1.30 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 #, item #, subsection 34Z(3) of the SIS Act]*

1.31 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.

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

1.33 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

superannuation entities give this information to the Commissioner in a timely manner so that there is a complete and accurate data base for other participants to use.

1.34 It is a reasonable expectation that prescribed superannuation entities will have this information readily available as it will be a core operational requirement for the receipt of data and payments for contributions and rollovers.

1.35 If the register provided by the Commissioner is unavailable, a superannuation entity, RSA provider or employer may request an eligible superannuation entity to provide information contained on the register about the entities' electronic details through a written notice. *[Schedule #, item #, subsection 34ZA(1) of the SIS Act]*

1.36 The trustee of the eligible superannuation entity, as the information holder, must ensure information is provided to the superannuation entity, RSA provider or employer within 1 business day of the request being received. *[Schedule #, item #, subsection 34ZA(2) of the SIS Act]*

1.37 An offence of strict liability will apply where the provision of the prescribed information is not provided. The penalty for this contravention is 25 penalty units. *[Schedule #, item #, subsection 34ZA(3) of the SIS Act]*

Division 2 – Monitoring

1.38 The Commissioner will be given sufficient power to monitor employers' compliance with Part 3B (superannuation data and payment regulations and standards). *[Schedule #, item #, subparagraph 253(aa) of the SIS Act]*

1.39 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 relevant person in relation to a contributing employer. *[Schedule #, item #, subparagraph 255(1)(c) of the SIS Act]*

1.40 The Commissioner may access an employer's premises for the purpose of inspecting 'books' related to the superannuation data and payment regulations and standards. The authorised person may only access the premises of a contributing employer with the employer's consent. *[Schedule #, item #, subsection 255(1) of the SIS Act]*

1.41 To ensure that the monitoring provisions of the superannuation data and payment regulations and standards within the SIS 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 #, item #, section 256A of the SIS Act]*

1.42 This provision 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.
- the application date for small employers is 1 July 2015, unless regulations specify a day after this.

Division 3 – Tax File Numbers

1.43 New provisions within Division 3A, enable the Commissioner to provide a response to trustees and employers when a member or employee tax file number is quoted for the purpose of validating the information quoted and may inform trustees of a member tax file number in certain circumstances.

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

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

1.46 The source of member information held by superannuation entities is employers. The member information provided by employers is used by trustees to establish new superannuation accounts or 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, reducing any need for costly manual rework.

1.47 The ability for trustees to check member information provided to them is essential. Poor data quality 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.

1.48 With the introduction of these provisions, individuals will retain the right to not 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.

1.49 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 Commissioner. *[Schedule #, item #, subsections 299CA(1) and (2) of the SIS Act]*

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

1.51 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 Commissioner. *[Schedule #, item #, subsections 299LB(1) and (2) of the SIS Act]*

1.52 This provision will apply to member tax file numbers that are already held by the trustee as well as for tax file numbers quoted by member after the commencement of this section.

1.53 The Commissioner will be able to provide a member's tax file number that has been quoted to a trustee or RSA provider to any other trustee or RSA provider that the member has an account with but does not hold the member's tax file number. *[Schedule #, item #, subsection 299TC(1) of the SIS Act]*

1.54 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. By linking a tax file number to member accounts, it significantly decreases the likelihood their account will be duplicated, become lost or unclaimed superannuation.

1.55 Many Australians have quoted their tax file number to one of the superannuation funds they hold an account with, but not the other superannuation fund. It is estimated that approximately 2 million member accounts will benefit from this.

1.56 If a trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme or an RSA provider quotes information to the Commissioner about a beneficiary of the entity, or a person who has applied to become a beneficiary, the Commissioner may

give the trustee a notice whether or not the Commissioner was able to validate the information. *[Schedule #, item #, subsection 299TD(1) of the SIS Act]*

1.57 When the Commissioner is unable to validate the information provided, the trustee can seek further information from the employer, or the member themselves to resolve the discrepancies.

1.58 The information that a trustee must quote about the person to the Commissioner includes the person's full name, tax file number, date of birth and where possible the person's address. *[Schedule #, item #, subsection 299TD(2) of the SIS Act]*

1.59 If the Commissioner issues a notice to the trustee advising that the member information provided by the trustee could not be validated this is not to be taken to be a notice that the member tax file number quoted is invalid. *[Schedule #, item #, subsection 299TD(3) of the SIS Act]*

1.60 If an employer quotes information to the Commissioner about an employee for whom a superannuation contribution is going to be made, the Commissioner may give the employer a notice whether or not the Commissioner was able to validate the information. *[Schedule #, item #, subsection 299TE(1) of the SIS Act]*

1.61 The information that an employer must quote about the employee to the Commissioner includes the person's full name, tax file number, date of birth and where possible the person's address. *[Schedule #, item #, subsection 299TE(2) of the SIS Act]*

1.62 When the Commissioner is unable to validate the information provided, the employer can seek further information from the employee to resolve the discrepancies.

1.63 The Commissioner may provide an electronic interface to receive information and give a notice under this Division. *[Schedule #, item #, section 299TF of the SIS Act]*

Application and transitional provisions

1.64 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 a time earlier than 1 March 2013 for the provision of this information.

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