

FINANCIAL INSTITUTIONS SUPERVISORY LEVIES COLLECTION ACT 1998

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Part 1 Preliminary

Section 1

Short title This Act may be cited as the "Financial Institutions Supervisory Levies Collection Act 1998".

Section 2

Commencement This Act commences on the commencement of the "Australian Prudential Regulation Authority Act 1998".

Section 3

Act binds the Crown This Act binds the Crown in each of its capacities.

Section 4

External Territories This Act extends to each external Territory.

Section 5

Application of Act to Lloyd's

(1)

This Act applies to Lloyd's (within the meaning of section 3 of the "Insurance Act 1973"), at all times after the commencement of this Act, as if Lloyd's were a body corporate authorised under that Act to carry on insurance business.

(2)

Nothing in this Act makes any Lloyd's underwriter liable to pay levy under this Act.

Section 6

Definitions In this Act, unless the contrary intention appears:
"APRA" means the Australian Prudential Regulation Authority.

Part 2 Collection of levies other than levy under the Superannuation (Financial Assistance Funding) Levy Act 1993

Section 7

Definitions In this Part, unless the contrary intention appears:

"ADI" has the same meaning as in the "Banking Act 1959".

Note: ADI is short for authorised deposit-taking institution.

"authorised NOHC" has the same meaning as in the "Banking Act 1959".

Note: NOHC is short for non-operating holding company.

"business day" means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in the place concerned.

"general insurance company" means a body corporate that is authorised under the "Insurance Act 1973" to carry on insurance business within the meaning of that Act.

"late payment penalty" means penalty payable under section 10.

"leviable body" means any of the following types of bodies:

(a)

an ADI;

(b)

an authorised NOHC;

(c)

a life insurance company;

(d)

a general insurance company;

(e)

an RSA provider;

(f)

a superannuation entity.

"levy" means:

(a)

in respect of a leviable body that is an ADI—levy imposed by the "Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998"; or

(b)

in respect of a leviable body that is an authorised NOHC—levy imposed by the "Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998"; or

(c)

in respect of a leviable body that is a life insurance company—levy imposed by the "Life Insurance Supervisory Levy Imposition Act 1998"; or

(d)

in respect of a leviable body that is a general insurance company—levy imposed by the "General Insurance Supervisory Levy Imposition Act 1998"; or

(e)

in respect of a leviable body that is an RSA provider—levy imposed by the "Retirement Savings Account Providers Supervisory Levy Imposition Act 1998"; or

(f)

in respect of a leviable body that is a superannuation entity—levy imposed by the "Superannuation Supervisory Levy Imposition Act 1998".

"levy imposition day", in relation to the imposition of a levy in respect of a leviable body of a particular type for a financial year, means:

(a)

if the leviable body is that type of leviable body on 1 July of the financial year—that day; or

(b)

if the leviable body becomes that type of leviable body on a day during the financial year that is after 1 July of the financial year—the day, during the financial year, on which the leviable body becomes that type of leviable body.

"levy paying entity" means:

(a)

a leviable body, other than a superannuation entity; or

(b)

the trustee of a superannuation entity.

"life insurance company" means a company that is registered under the "Life Insurance Act 1995".

"RSA provider" has the same meaning as in the "Retirement Savings Accounts Act 1997".

"superannuation entity" means an entity that:

(a)

is a superannuation entity within the meaning of the "Superannuation Industry (Supervision) Act 1993"; and

(b)

is not a self managed superannuation fund within the meaning of that Act.

"trustee", in relation to a superannuation entity, means the person who is the trustee of the entity for the purposes of the "Superannuation Industry (Supervision) Act 1993".

Section 8

Liability to levy

"ADIs"

(1)

A body corporate that is an ADI at any time during a financial year that ends after the commencement of the "Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998" is liable to pay a levy in respect of that financial year.

"Authorised NOHCs"

(2)

A body corporate that is an authorised NOHC at any time during a financial year that ends on or after the commencement of the "Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998" is liable to pay a levy in respect of that financial year.

"General insurance bodies corporate"

(3)

A body corporate that is a general insurance company at any time during a financial year that ends after the commencement of the "General Insurance Supervisory Levy Imposition Act 1998" is liable to pay a levy in respect of that financial year.

"Life Insurance companies"

(4)

A body corporate that is a life insurance company at any time during a financial year that ends after the commencement of the "Life Insurance Supervisory Levy Imposition Act 1998" is liable to pay a levy imposed in respect of that financial year.

"RSA providers"

(5)

A body corporate that is an RSA provider at any time during a financial year that ends after the commencement of the "Retirement Savings Account Providers Supervisory Levy Imposition Act 1998" is liable to pay a levy imposed in respect of that financial year.

"Superannuation entities"

(6)

A trustee of a superannuation entity that is a superannuation entity at any time during a financial year that ends after the commencement of the "Superannuation Supervisory Levy Imposition Act 1998" is liable to pay a levy in respect of that financial year.

Section 9

When levy due for payment

(1)

Levy payable by a leviable body (other than a superannuation entity) for a financial year under section 8 is due and payable on:

(a)

if the levy imposition day relating to the levy payable by the leviable body is 1 July of that financial year—that day, or if that day is not a business day, the first business day following that 1 July; or

(b)

if the levy imposition day relating to the levy payable by the leviable body is a day of that financial year after 1 July—by:

(i)

the day that is 6 weeks after the day on which the leviable body becomes that type of leviable body; or

(ii)

if the day applicable under subparagraph (i) is not a business day, the first business day following that day.

(2)

Levy payable under subsection 8(6) for a financial year by a trustee of a superannuation entity is due and payable:

(a)

if the superannuation entity is a superannuation entity on 1 July of that financial year—6 weeks after the lodgment of a return under section 36 of the "Superannuation Industry (Supervision) Act 1993" that relates to the previous financial year; or

(b)

if the superannuation entity becomes a superannuation entity after 1 July of that financial year—by:

(i)

the day that is 6 weeks after the day on which the superannuation entity becomes a superannuation entity; or

(ii)

if the day applicable under subparagraph (i) is not a business day, the first business day following that day.

Section 10

Late payment penalty If any levy payable by a levy paying entity is unpaid after the time when it becomes due and payable, the levy paying entity is liable to pay, by way of penalty, an amount worked out at the rate of 20% per year on the amount unpaid, computed from that time.

Section 11

Payment of levy and late payment penalty

(1)

Levy and late payment penalty are payable to APRA on behalf of the Commonwealth.

(2)

APRA must pay into the Consolidated Revenue Fund any amounts of levy or late payment penalty received by it.

Note: Levy and late payment penalty may be payable to the Commissioner of Taxation because of section 252G of the "Superannuation Industry (Supervision) Act 1993".

Section 12

Waiver of levy and late payment penalty APRA, on behalf of the Commonwealth, may, if APRA considers it is appropriate to do so, waive the payment of the whole or a part of an amount of levy or late payment penalty that is payable by a levy paying entity.

Note: For example, if levy is payable by a body corporate which has ceased to be authorised under the "Insurance Act 1973" to carry on an insurance business and has ceased to be a life company, APRA may waive the payment of the levy if APRA considers it appropriate to do so because payment of the levy would prevent payment in full of claims under contracts of insurance made with the body corporate.

Section 13

Recovery of levy and late payment penalty The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

(a)

levy that is due and payable;

(b)

late payment penalty that is due and payable.

Section 14

Exempting laws ineffective

(1)

Nothing in a law passed before the commencement of this section exempts a levy paying entity from liability to pay levy.

(2)

If a law (including a provision of a law) passed after the commencement of this section purports to exempt a levy paying entity from:

(a)

liability to pay taxes under laws of the Commonwealth; or

(b)

liability to pay certain taxes under laws of the Commonwealth that would otherwise include levy;

the law does not operate to exempt the levy paying entity from liability to pay levy unless the exemption expressly refers to levy under this Act.

Section 15

Regulations may modify this Part if levy Act commences during a financial year If an Act mentioned in section 8 that imposes levy in respect of a particular type of leviable body commences during a financial year (but not on 1 July of that financial year), this Act has effect in relation to that financial year and that type of leviable body subject to the modifications specified in the regulations.

Part 3 Collection of Levy Under the Superannuation (Financial Assistance Funding) Levy Act 1993

Section 16

Definitions In this Part, unless the contrary intention appears:

"Account "means the Superannuation Protection Account established by section 234 of "the Superannuation Industry (Supervision) Act 1993".

"approved deposit fund" has the same meaning as in the "Superannuation Industry (Supervision) Act 1993".

"fund" means a superannuation fund or an approved deposit fund.

"late payment penalty" means penalty payable under section 20.

"levy" means levy imposed by regulations under the "Superannuation (Financial Assistance Funding) Levy Act 1993".

"levy month" means one of the 12 months of the calendar year.

"superannuation fund" has the same meaning as in the "Superannuation Industry (Supervision) Act 1993".

"trustee", in relation to a fund, has the same meaning as in the "Superannuation Industry (Supervision) Act 1993".

"unpaid levy" means the amount of levy unpaid by the trustee of a fund as at the beginning of a levy month.

Section 17

Fund's accounts to be prima facie evidence of value of its assets

(1)

This section applies if:

(a)

accounts of a fund were prepared for a financial year; and

(b)

an amount is shown on those accounts as the value of an asset of the fund as at the end of that financial year.

(2)

For the purposes of this Part, the accounts are prima facie evidence of the value of the asset at the end of that financial year.

(3)

The Minister may certify that a document is a copy of the accounts.

(4)

This section applies to the certified copy as if it were the original.

Section 18

Liability to levy The trustee of a fund is liable to pay a levy imposed on the fund.

Section 19

When levy due for payment

(1)

A levy payable by the trustee of a fund is due and payable on such date as is specified in the regulations imposing the levy.

(2)

The date to be so specified must not be earlier than the 28th day after the day on which the regulation imposing the levy took effect.

Section 20

Late payment penalty

(1)

If any levy payable by the trustee of a fund remains unpaid as at:

(a)

the beginning of the first levy month after the time when it became due for payment; or

(b)

the beginning of a later levy month;

the trustee is liable to pay to the Commonwealth, in respect of that levy month, by way of penalty, the amount worked out using the formula:

$$\text{Unpaid Levy} \frac{0.2}{12}$$

(2)

Late payment penalty for a levy month is due and payable at the end of the levy month.

Section 21

Payment of levy and late payment penalty Levy and late payment penalty are payable to the Minister.

Section 22

Waiver of late payment penalty The Minister may waive the whole or a part of an amount of late payment penalty.

Section 23

Recovery of levy and late payment penalty The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

(a)

levy that is due and payable;

(b)

late payment penalty that is due and payable.

Section 24

How payments of levy and late payment penalty and repayments of financial assistance are to be applied

(1)

If a levy is imposed as a result of a determination by the Minister to make a grant of financial assistance out of the Consolidated Revenue Fund:

(a)

any amounts of that levy, and of late payment penalty in respect of that levy, that are received by the Minister; and

(b)

any repayments of that financial assistance;

must be paid into the Consolidated Revenue Fund.

(2)

If a levy is imposed as a result of a determination by the Minister to make a grant of financial assistance out of the Account:

(a)

any amounts of that levy, and of late payment penalty in respect of that levy, that are received by the Minister; and

(b)

any repayments of that financial assistance;

must be paid into the Consolidated Revenue Fund.

(3)

There must be paid into the Account amounts equal to amounts paid into the Consolidated Revenue Fund under subsection (2).

(4)

The Consolidated Revenue Fund is appropriated for the purposes of subsection (3).

Section 25

Exempting laws ineffective

(1)

Nothing in a law passed before the commencement of this section exempts a trustee of a fund from liability to pay levy.

(2)

If a law (including a provision of a law) passed after the commencement of this section purports to exempt a trustee of a fund from:

(a)

liability to pay taxes under laws of the Commonwealth; or

(b)

liability to pay certain taxes under laws of the Commonwealth that would otherwise include levy;

the law does not operate to exempt the trustee from liability to pay levy unless the exemption expressly refers to levy under this Act.

Section 26

Delegation The Minister may, by signed writing, delegate to APRA all or any of his or her powers under this Part.

Part 4 Miscellaneous

Section 27

Review of certain decisions

(1)

A levy paying entity that is affected by a reviewable decision of the decision maker may, if dissatisfied with the decision, request the decision maker to reconsider the decision.

(2)

The request must:

(a)

be made by notice given to the decision maker within:

(i)

the period of 21 days after the day on which the levy paying entity first receives notice of the decision; or

(ii)

the further period that the decision maker allows; and

(b)

set out the reasons for making the request.

(3)

When the decision maker receives the request the decision maker must reconsider the decision.

(4)

The decision maker may confirm or revoke the decision or vary the decision in the manner that the decision maker thinks fit. However, if the decision maker does not confirm, revoke or vary the decision within the period of 21 days after the day on which the decision maker received the request, the decision maker is taken to have confirmed the decision immediately after the end of that period.

(5)

If the decision maker confirms, revokes or varies the decision during the period of 21 days after the day on which the decision maker received the request, the decision maker is to give a notice in writing to the levy paying entity that made the request. The notice must set out the result of the reconsideration of the decision and the reasons for confirming, varying or revoking the decision, as the case may be.

(6)

Applications may be made to the Administrative Appeals Tribunal for review of:

(a)

decisions of the decision maker that have been confirmed or varied under subsection (4); and

(b)

decisions of the decision maker to revoke reviewable decisions.

(7)

If a decision is taken to be confirmed under subsection (4), section 29 of the "Administrative Appeals Tribunal Act 1975" applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.

(8)

If a request is made under subsection (1) in respect of a reviewable decision, section 41 of the "Administrative Appeals Tribunal Act 1975" applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

(9)

The hearing of a proceeding relating to a reviewable decision is to take place in private and the Administrative Appeals Tribunal may, by order:

(a)

give directions as to the persons who may be present; and

(b)

give directions of a kind referred to in paragraph 35(2)(b) or (c) of the "Administrative Appeals Tribunal Act 1975".

(10)

In this section:

"decision maker", in relation to a reviewable decision, means:

(a)

if the reviewable decision is a decision of APRA under section 12—APRA; or

(b)

if the reviewable decision is a decision of the Minister under section 22 —the Minister.

"levy paying entity" means:

(a)

an entity that is a levy paying entity as defined in section 7; or

(b)

a trustee of a fund as defined in section 16.

"reviewable decision" means:

(a)

a decision of APRA under section 12; or

(b)

a decision of the Minister under section 22.

Section 28

Statements to accompany notification of decisions

(1)

If notice in writing is given to a levy paying entity affected by a reviewable decision that the reviewable decision has been made, that notice must include words to the effect that:

(a)

the levy paying entity may seek a reconsideration of the reviewable decision by the decision maker in accordance with subsection 27(1) if the levy paying entity is dissatisfied with the decision; and

(b)

the levy paying entity may, subject to the "Administrative Appeals Tribunal Act 1975", apply to the Administrative Appeals Tribunal for review of a reviewable decision that is confirmed or varied under subsection 27(4), or for review of a decision to revoke a reviewable decision.

(2)

If:

(a)

the decision maker confirms or varies a reviewable decision under subsection 27(4), or makes a decision to revoke a reviewable decision under that subsection; and

(b)

gives the levy paying entity affected by the decision notice in writing of the confirmation or variation of the decision, or of the revocation of the decision;

that notice must include words to the effect that the levy paying entity may, subject to the "Administrative Appeals Tribunal Act 1975", apply to the Administrative Appeals Tribunal for review of the reviewable decision as confirmed or varied, or for review of the decision to revoke the reviewable decision.

(3)

A failure to comply with the requirements of subsections (1) and (2) in relation to a reviewable decision or a decision under subsection 27(4) does not affect the validity of that decision.

(4)

In this section:

"decision maker", in relation to a reviewable decision, has the same meaning as in section 27.

"levy paying entity" has the same meaning as in section 27.

"reviewable decision" has the same meaning as in section 27.

Section 29

Regulations

(1)

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a)

required or permitted by this Act to be prescribed; or

(b)

necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

Without limiting subsection (1), the regulations may, in particular:

(a)

provide for the manner of payment for levy, late payment penalty and other amounts payable under this Act; and

(b)

provide for the refund (or other application) of overpayments.