

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (Stronger Super**
3 **Self Managed Superannuation Funds)**
4 **Bill 2012: administrative penalties**
5

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6
Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2. Schedule AP	1 July 2013.	1 July 2013

7 **Schedule AP—Administrative consequences**
8 **for contraventions relating to self**
9 **managed superannuation funds**
10

11 *Superannuation Industry (Supervision) Act 1993*

12 **1 Section 4 (after table item dealing with Part No. 19)**

13 Insert:

20 | administrative consequences for contraventions relating
to self managed superannuation funds

14 **2 Subparagraph 6(1)(e)(v)**

15 After “140),”, insert “20,”.

16 **3 Subsection 10(1)**

17 Insert:

18 *education direction*: see subsection 160(2).

19 **4 Subsection 10(1)**

20 Insert:

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rectification direction: see subsection 159(2).

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2 **5 Subsection 10(4)**

3 After “42A”, insert “, and Part 20,”.

4 **6 At the end of subsection 34(1)**

5 Add:

6 Note: Section 166 imposes an administrative penalty for a contravention of
7 subsection (1) in relation to a self managed superannuation fund.

8 **7 Subsection 35B(6) (note)**

9 Omit “Note”, substitute “Note 1”.

10 **8 At the end of section 35B**

11 Add:

12 Note 2: Section 166 imposes an administrative penalty for a contravention of
13 this section.

14 **9 At the end of subsections 56(2) and 57(2)**

15 Add:

- 16 ; or (c) liability for the costs of undertaking a course of education in
17 compliance with an education direction; or
18 (d) liability for an administrative penalty imposed by
19 section 166.

20 **10 At the end of subsection 65(1)**

21 Add:

22 Note: Section 166 imposes an administrative penalty for a contravention of
23 subsection (1) by a trustee in relation to a self managed
24 superannuation fund.

25 **11 Subsection 67(1) (note)**

26 Omit “Note”, substitute “Note 1”.

27 **12 At the end of subsection 67(1)**

28 Add:

29 Note 2: Section 166 imposes an administrative penalty for a contravention of
30 subsection (1) in relation to a self managed superannuation fund.

31 **13 At the end of subsection 84(1)**

32 Add:

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1 Note: Section 166 imposes an administrative penalty for a contravention of
2 subsection (1) in relation to a self managed superannuation fund.

3 **14 At the end of section 103**

4 Add:

5 Note 3: Section 166 imposes an administrative penalty for a contravention of
6 subsection (1), (2) or (2A) in relation to a self managed
7 superannuation fund.

8 **15 At the end of subsection 104(1)**

9 Add:

10 Note: Section 166 imposes an administrative penalty for a contravention of
11 subsection (1) in relation to a self managed superannuation fund.

12 **16 At the end of subsection 104A(1)**

13 Add:

14 ; or (c) he or she is a trustee of such a fund or a director of such a
15 body corporate and undertakes a course of education in
16 compliance with an education direction.

17 **17 After paragraph 104A(2)(b)**

18 Insert:

19 (ba) if paragraph (1)(c) applies—sign a declaration in the
20 approved form that he or she understands his or her duties as
21 trustee of a self managed superannuation fund (or as director
22 of a body corporate that is such a trustee), no later than 21
23 days after completing the course of education; and

24 **18 At the end of subsection 104A(2)**

25 Add:

26 Note: Section 166 imposes an administrative penalty for a contravention of
27 subsection (2).

28 **19 At the end of subsections 105(1) and 106(1)**

29 Add:

30 Note: Section 166 imposes an administrative penalty for a contravention of
31 subsection (1) in relation to a self managed superannuation fund.

32 **20 Subsection 106A(1) (note)**

33 Omit “Note”, substitute “Note 1”.

34 **21 At the end of subsection 106A(1)**

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Add:

Note 2: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

22 At the end of subsection 124(1)

Add:

Note: Section 166 imposes an administrative penalty for a contravention of subsection (1) in relation to a self managed superannuation fund.

23 After Part 19

Insert:

Part 20—Administrative consequences for contraventions relating to self managed superannuation funds

Division 1—Object and scope of this Part

157 Object of this Part

The object of this Part is to provide administrative consequences for contraventions of this Act or the regulations that relate to self managed superannuation funds. This Part:

- (a) allows the Regulator to give rectification directions and education directions; and
- (b) imposes administrative penalties for certain contraventions.

158 Scope of this Part

This Part applies in relation to self managed superannuation funds that are regulated superannuation funds.

Division 2—Directions

159 Rectification direction

- (1) This section applies if the Regulator reasonably believes that a person who is:
 - (a) a trustee of a self managed superannuation fund; or
 - (b) a director of a body corporate that is a trustee of a self managed superannuation fund;

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1 has contravened a provision of this Act (other than Part 3B) or the
2 regulations in relation to the fund.

- 3 (2) The Regulator may give the person a written direction (a
4 **rectification direction**) requiring the person:
5 (a) to take specified action to rectify the contravention; and
6 (b) to provide the Regulator with evidence of the person's
7 compliance with the direction.
- 8 (3) In deciding whether to give a person a rectification direction, the
9 Regulator is to have regard to:
10 (a) any financial detriment that might reasonably be expected to
11 be suffered by the fund as a result of the person's compliance
12 with the direction; and
13 (b) the nature and seriousness of the person's contravention; and
14 (c) any other relevant circumstances.
- 15 (4) A rectification direction must specify the period within which the
16 person must comply with the direction (which must be a period
17 that is reasonable in the circumstances).
- 18 (5) The Regulator must not give a rectification direction in relation to
19 a contravention if:
20 (a) the Regulator has, under section 262A, accepted an
21 undertaking given by a person; and
22 (b) the contravention is covered by the undertaking; and
23 (c) the undertaking has neither been withdrawn nor varied in a
24 way that means the contravention is no longer covered by it.
- 25 (6) A person to whom a rectification direction is given must comply
26 with the direction before the end of the period specified in the
27 direction for the purposes of subsection (4).
- 28 (7) A person commits an offence of strict liability if the person
29 contravenes subsection (6).

30 Penalty: 10 penalty units.

31 Note: For strict liability, see section 6.1 of the *Criminal Code*.

32 160 Education direction

- 33 (1) This section applies to the following persons:
34 (a) a trustee of a self managed superannuation fund, if the
35 Regulator reasonably believes that the trustee has

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1 contravened a provision of this Act (other than Part 3B) or
2 the regulations in relation to the fund;
3 (b) a director of a body corporate that is a trustee of a self
4 managed superannuation fund, if the Regulator reasonably
5 believes that:
6 (i) the director has contravened a provision of this Act
7 (other than Part 3B) or the regulations in relation to the
8 fund; or
9 (ii) the trustee has contravened a provision of this Act
10 (other than Part 3B) or the regulations in relation to the
11 fund.

12 (2) The Regulator may give the person a written direction (an
13 *education direction*) requiring the person:
14 (a) to undertake a specified approved course of education (see
15 section 161); and
16 (b) to provide the Regulator with evidence of completion of the
17 course.

18 Note: See also section 104A (recognition of obligations and
19 responsibilities).

20 (3) An education direction must specify the period within which the
21 person must comply with the direction (which must be a period
22 that is reasonable in the circumstances).

23 (4) A person to whom an education direction is given must comply
24 with the direction before the end of the specified period.

25 Note: Section 166 imposes an administrative penalty for a contravention of
26 subsection (4).

27 (5) A person commits an offence of strict liability if the person
28 contravenes subsection (4).

29 Penalty: 10 penalty units.

30 Note: For strict liability, see section 6.1 of the *Criminal Code*.

31 161 Approval of courses of education

32 (1) The Regulator may, in writing, approve one or more courses of
33 education for the purposes of giving education directions.

34 (2) A course approved under subsection (1):
35 (a) may be provided by the Regulator or by another entity; and

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1 (b) must be a course for which no fees are charged in respect of
2 persons who undertake the course in compliance with
3 education directions.

4 (3) An approval under subsection (1) is not a legislative instrument.

5 **162 Costs of course of education**

6 If a person undertakes a course of education in compliance with an
7 education direction, the person must ensure that none of the costs
8 of undertaking the course are paid or reimbursed from the assets of
9 the fund in relation to which the education direction was given.

10 **163 Variation or revocation on Regulator's own initiative**

11 The Regulator may, at any time, vary or revoke a rectification
12 direction or an education direction by written notice given to the
13 person to whom the direction was given.

14 **164 Variation on request**

- 15 (1) A person to whom a rectification direction or an education
16 direction is given may request the Regulator to vary the direction.
- 17 (2) The request must be made by written notice given to the Regulator
18 before the end of the period specified in the direction for the
19 purposes of subsection 159(4) or 160(3).
- 20 (3) The request must set out the reasons for making the request.
- 21 (4) The Regulator must decide:
22 (a) to vary the direction in accordance with the request; or
23 (b) to vary the direction otherwise than in accordance with the
24 request; or
25 (c) to refuse to vary the direction.
- 26 (5) If the Regulator does not make a decision on the request before the
27 end of 28 days after the day the request was made, the Regulator is
28 taken, at the end of that period, to have decided to refuse the
29 request.
- 30 (6) If the Regulator makes a decision on the request before the end of
31 the period referred to in subsection (5), the Regulator must:
32 (a) notify the person of the Regulator's decision; and

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- 1 (b) if the decision is to vary the direction (whether or not in
2 accordance with the request)—give the person a copy of the
3 varied direction; and
4 (c) if the decision is to refuse to vary the direction, or to vary the
5 direction otherwise than in accordance with the request—
6 give the person written reasons for the decision.
- 7 (7) If a person makes a request under this section, then, for the
8 purposes of subsection 159(6) or 160(4), the period specified in the
9 direction for the purposes of subsection 159(4) or 160(3) is taken
10 to be extended by 1 day for each day in the period:
11 (a) beginning at the start of the day the request was made; and
12 (b) ending at the earlier of:
13 (i) the end of the day the Regulator makes a decision on the
14 request; and
15 (ii) the end of the period referred to in subsection (5) of this
16 section.

17 165 Taxation objection

- 18 A person who is dissatisfied with:
19 (a) a decision of the Regulator to give a rectification direction or
20 an education direction, or to vary one otherwise than in
21 accordance with a request under section 164; or
22 (b) a decision of the Regulator under section 164 to refuse to
23 vary a rectification direction or an education direction;
24 may object against the decision in the manner set out in Part IVC
25 of the *Taxation Administration Act 1953*.

26 Division 3—Administrative penalties

27 166 Administrative penalties in relation to self managed 28 superannuation funds

- 29 (1) If a person referred to in subsection (2) contravenes a provision of
30 this Act specified in the table, the person is liable to an
31 administrative penalty. The amount of the penalty is the amount
32 specified in the table for the provision.
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Administrative penalties in relation to self managed superannuation funds

Item	Provision of this Act	Administrative penalty
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1	Subsection 34(1)	20 penalty units
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Administrative penalties in relation to self managed superannuation funds

Item	Provision of this Act	Administrative penalty
2	Section 35B	10 penalty units
3	Subsection 65(1)	60 penalty units
4	Subsection 67(1)	60 penalty units
5	Subsection 84(1)	60 penalty units
6	Subsection 103(1)	10 penalty units
7	Subsection 103(2)	10 penalty units
8	Subsection 103(2A)	10 penalty units
9	Subsection 104(1)	10 penalty units
10	Subsection 104A(2)	10 penalty units
11	Subsection 105(1)	10 penalty units
12	Subsection 106(1)	60 penalty units
13	Subsection 106A(1)	20 penalty units
14	Subsection 124(1)	5 penalty units
15	Subsection 160(4)	5 penalty units
16	Subsection 254(1)	5 penalty units
17	Subsection 347A(5)	5 penalty units

1 Note: See section 4AA of the *Crimes Act 1914* for the current value of a
2 penalty unit.

- 3 (2) For the purposes of subsection (1), the persons are:
4 (a) a trustee of a self managed superannuation fund; or
5 (b) a director of a body corporate that is a trustee of a self
6 managed superannuation fund.

7 Note: Collection and recovery of administrative penalties imposed by this
8 section is dealt with in Part 4-15 of Schedule 1 to the *Taxation*
9 *Administration Act 1953*.

- 10 (3) If a trustee of a self managed superannuation fund on whom a
11 penalty is imposed by this section is an individual, a reference in
12 Part 4-15 or Division 298 in Schedule 1 to the *Taxation*
13 *Administration Act 1953* to an entity is taken to be a reference to
14 that individual in his or her personal capacity.

15 **167 Administrative penalty and civil penalty**

16 If:

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- 1 (a) a person is liable to pay an amount by way of administrative
2 penalty imposed by section 166 because of an act or omission
3 of the person; and
4 (b) proceedings against the person are commenced for a
5 contravention of a civil penalty provision constituted by the
6 act or omission;
7 then (whether or not the proceedings are withdrawn):
8 (c) the person is not liable to pay the amount; and
9 (d) any amount paid, or applied by the Regulator, in total or
10 partial discharge of that liability is to be refunded to the
11 person, or applied by the Regulator in total or partial
12 discharge of another tax-related liability of the person.

13 Note: Section 8ZE of the *Taxation Administration Act 1953* deals with the
14 situation of a person against whom a criminal prosecution is instituted.

15 **168 Penalty must not be reimbursed from fund**

16 An administrative penalty imposed by section 166 must not be paid
17 or reimbursed from the assets of the fund in relation to which the
18 administrative penalty was imposed.

19 **169 Joint and several liability of directors of corporate trustee liable** 20 **to administrative penalty under section 166**

- 21 (1) This section applies if a trustee of a self managed superannuation
22 fund:
23 (a) is liable to an administrative penalty imposed by section 166;
24 and
25 (b) is a body corporate.
- 26 (2) The directors of the body corporate at the time it becomes liable to
27 the penalty are jointly and severally liable to pay the amount of the
28 penalty.

29 **24 Subsection 254(1) (note)**

30 Omit “Note”, substitute “Note 1”.

31 **25 At the end of subsection 254(1)**

32 Add:

33 Note 2: Section 166 imposes an administrative penalty for a contravention of
34 subsection (1) in relation to a self managed superannuation fund.

35 **26 At the end of subsection 347A(5)**

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Add:

Note: Section 166 imposes an administrative penalty for a contravention of subsection (5) in relation to a self managed superannuation fund.

Taxation Administration Act 1953

27 At the end of section 298-5 in Schedule 1

Add:

; or (d) an administrative penalty is imposed on an entity by section 166 of the *Superannuation Industry (Supervision) Act 1993*.

28 Application of this Schedule

The amendments made by this Schedule apply to contraventions that occur on or after 1 July 2013.