OUTCOMES OF THE REVIEW INTO PART 23 OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

BACKGROUND

Superannuation is a key element of the Government's policies to address the long term consequences of an ageing population. The prudential regulatory framework for superannuation is set out in the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). This framework is designed to provide a high level of safety for the superannuation savings of all Australians. However, in recognition of the compulsory and long term nature of superannuation savings, the Government provides an additional safeguard through access to financial assistance for superannuation losses resulting from fraudulent conduct or theft. Under this safety net, the Government has made 802 grants of financial assistance, providing approximately $44 million in assistance. The vast bulk of this assistance relates to losses associated with the failure of Commercial Nominees of Australia Limited (CNAL), which was an Approved Trustee for three public offer superannuation funds and approximately 500 small funds regulated by the Australian Prudential Regulation Authority (APRA).

This financial assistance is provided under Part 23 of the SIS Act. Part 23 provides assistance to superannuation funds that suffer loss as a result of fraudulent conduct or theft. The Minister may grant financial assistance where certain conditions are met, namely, that the loss causes a substantial diminution of the fund's assets leading to difficulty in paying benefits and that the grant is in the public interest.

The issue of compensating members affected by fraudulent conduct or theft in superannuation funds was raised in the October 2001 Issues Paper released by the Government, *Options for Improving the Safety of Superannuation*. The Final Report of the Superannuation Working Group (SWG) into the Issues Paper recommended that the provisions not be changed at that time, but that the Government should review the operation of Part 23 and consider possible amendments to it once the first decision under Part 23 had been made. In responding to the SWG recommendations on 28 October 2002, the Government agreed to review the operation of Part 23.

On 4 June 2003, the Government released a Consultation Paper seeking written submissions on the issues relating to the operation of Part 23 and the associated levy process under the *Superannuation (Financial Assistance Funding) Levy Act 1993* (the Levy Act). The Government conducted a consultation roundtable to discuss these issues with stakeholders during July 2003 and received 8 written submissions during August 2003.

The Government has given careful consideration to the issues raised by stakeholders and the outcomes of the Review are contained in this paper.

[This paper contains recommendations for legislative change. It is the Government's intention that all of the outcomes of the Review take effect from the date on which that legislation comes into effect.]

COMPENSATION

The Government sought comments on the desirability of compensation.

The Australian prudential regulatory framework is designed to ensure that, under all reasonable circumstances, financial promises made by regulated institutions are met within a stable, efficient and competitive financial system. This framework does not aim to prevent the failure of institutions, but rather to minimise the chance of that failure, and the extent of losses in the event of a failure.

The Government has recently introduced reforms to the prudential regulatory framework for superannuation. These reforms will enhance the safety of superannuation benefits by introducing a universal trustee licensing regime and fund registration arrangements. In order to obtain a licence, trustees are required, amongst other things, to demonstrate their fitness and propriety, and to document and implement risk management procedures for the fund and trustee. The reporting obligations for auditors and actuaries have also been strengthened to ensure that the Regulator is informed of any breaches that may affect the interests of members.

These reforms should further reduce the already low incidence of superannuation losses resulting from fraudulent conduct and theft. However, the Government believes that, given the special characteristics of superannuation, it is appropriate to maintain the existing financial assistance arrangements for losses arising from fraudulent conduct and theft. There is widespread industry support for this policy.

The consultation process during the Review also indicated that there is broad stakeholder support for maintaining a high degree of flexibility in administering these financial assistance arrangements. Both stakeholders and the Government believe it is desirable to provide financial assistance on a case-by-case basis in recognition of the variety and diversity of superannuation arrangements in the Australian superannuation industry.

Outcome: The Government will continue to provide financial assistance for eligible superannuation losses arising from fraudulent conduct or theft through Part 23 of the SIS Act.

OPERATION OF PART 23

What kinds of superannuation funds are covered by Part 23?

The Government sought comments on the entities that are covered by the financial assistance provisions of Part 23.

The SIS Act currently enables the trustee of a superannuation fund or approved deposit fund regulated by APRA to apply for financial assistance under Part 23.

Under this approach, self-managed superannuation fund (SMSFs) are excluded from the Part 23 arrangements on the basis that all members of a SMSF must also be trustees of the fund. Therefore, all members of a SMSF (in their capacity as trustees) are responsible for the prudent operation of the fund and its investment strategy. The Government considers that the SMSF members, as trustees, are able to protect their own interests and it is not necessary to have the additional safety net of Part 23 financial assistance. SMSFs are also exempt from a number of the provisions of the SIS Act, the APRA industry supervisory levy, and the financial assistance levy imposed under the Levy Act, but SMSFs are required to pay a comparatively small levy to the Australian Taxation Office.

During the consultations, a number of stakeholders argued that SMSFs should continue to be excluded from Part 23 and only prudentially regulated funds should be eligible for financial assistance. The Government accepts this view and therefore, does not propose to alter the definition of 'fund' for the purposes of determining eligibility for assistance under Part 23.

However, the Government is aware of difficulties that have arisen as a result of the current legislative provisions regarding the type of 'fund' that may apply for assistance under Part 23. Specifically, the current provisions of Part 23 require the fund to be regulated by APRA at the time the application is lodged in order for it to be eligible for financial assistance. In the case of CNAL, most of the funds affected were small APRA-regulated funds (and therefore, were eligible to apply for Part 23 financial assistance at the time the loss was suffered). However, in the period between the loss being suffered and the application for Part 23 financial assistance being made, a number of these funds transferred to permanent arrangements under a new trustee or as SMSFs. Under the current provisions of Part 23, those funds that transferred to a new trustee received financial assistance but those funds that transferred to SMSFs were ineligible to apply.

The Government provided financial assistance to some funds in this situation in the CNAL case through an Act of Grace payment made under the *Financial Management and Accountability Act 1997*. However, the Government will introduce a legislative amendment to ensure that members of superannuation funds that transfer to a SMSF after suffering an eligible loss are able to apply for financial assistance under Part 23. A number of stakeholders indicated their support for this proposal during the consultation process.

In addition, it is possible that an 'eligible' fund may be wound up prior to an application being made under Part 23, or that an individual member may chose to transfer their savings to another investment vehicle, for example, a retirement savings account. It is also possible that a member may be forced to take benefits out of the superannuation system due to the member reaching the prescribed age or by reason of death. In these circumstances, under the current arrangements, the individual members would not be able to make an application for financial assistance under Part 23, despite being 'eligible' at the time the loss is suffered. The Government believes it is inequitable for these individuals to be precluded from receiving assistance and will amend the legislation to enable these individuals to be included in a Part 23 application made by the trustee of their former fund (ie. the fund that suffered the loss).

Outcome: The Government will retain the current definition of 'fund' for the purposes of eligibility for financial assistance under Part 23.

Outcome: The Government will amend the SIS Act to ensure that a superannuation fund that is eligible for financial assistance under Part 23 at the time a loss is suffered is not prevented from making a Part 23 application despite subsequently transferring to a SMSF.

Outcome: The Government will also amend the SIS Act to ensure that the trustee of a regulated superannuation fund, an approved deposit fund or a SMSF may make an application for financial assistance on behalf all members of the fund at the time the loss was suffered (ie. including both current and former members of the fund).

What constitutes 'eligible loss'?

The Government sought comments on the definition of eligible loss as contained in section 228 of the SIS Act, and on what should constitute eligible loss for the purposes of Part 23.

The definition of eligible loss currently differs for accumulation funds and defined benefit funds (DBFs). For an accumulation fund, it is a loss resulting from fraudulent conduct or theft. For a DBF, it is so much of a loss resulting from fraudulent conduct or theft that an employer-sponsor is required to pay to the fund, but would be unable to pay without becoming insolvent.

A number of the submissions to the Review considered that the current distinction between accumulation funds and DBFs under Part 23 created inequity and should be removed. These submissions argued that a superannuation entity and its employer-sponsor are separate legal entities and the current structure of the SIS Act ignores this distinction. Once a contribution is made by the employer, legal responsibility for the money rests solely with the trustee of the superannuation entity and the trustee is liable for breaches of the SIS Act obligations. The impact of losses arising from fraudulent conduct or theft should not feedback to the employer-sponsor, who has already paid contributions to the fund. For these reasons, several stakeholders proposed that losses resulting from fraudulent conduct or theft should be treated in the same manner for DBFs as for accumulation funds. The Government agrees that, as a matter of equity, the SIS Act should be amended to remove the distinction between accumulation funds and DBFs.

The removal of the distinction between accumulation funds and DBFs in accessing financial assistance under Part 23 will require an amendment to the current definition of eligible loss. The Government will amend the definition of eligible loss to clarify that financial assistance will not be provided to cover any deficit in the superannuation fund arising from shortfalls in contributions. That is, Part 23 financial assistance should only be available for losses directly suffered by a fund as a result of fraudulent conduct or theft. For example, financial assistance is not available to remedy a failure by the employer-sponsor to maintain contributions to a DBF at actuarially determined levels. This approach recognises that the prudential regulatory regime, as implemented under the SIS Act, is primarily focussed on the responsibilities of superannuation fund trustees and does not extend to the conduct of employers. Therefore, it is appropriate that the SIS Act only provides financial assistance in circumstances where the fund trustee has assumed responsibility for the money (ie. where the trustee has received, or should have received, contributions). This approach also recognises that the Government has put in place separate arrangements to deal with the security of contributions. Section 64 of the SIS Act requires an employer to promptly remit any deductions made on behalf of an employee to the trustee of the superannuation fund. In addition, the Government has put in place arrangements to deal with the security of mandated superannuation contributions under the *Superannuation Guarantee (Administration) Act 1992* with new requirements for employers to make at least quarterly Superannuation Guarantee contributions on behalf of their employees.

The Government has also given consideration to the wording of the current definition of ‘eligible loss’ contained in section 228 of the SIS Act. The current standard for the existence of eligible loss is loss suffered as a result of fraudulent conduct or theft. During the consultation process, stakeholders identified several possible extensions to this definition, including ‘gross dishonesty’, ‘misleading and deceptive conduct’ and ‘gross incompetence’.

The scope of the current standard for eligible loss is quite broad. For example, in the case of CNAL, the nature of investments made by the trustee were misrepresented to members in promotional material and financial reports. Given this misrepresentation, members were unaware of the risky nature of the investments and were unable to take steps to protect their interests. This was found to constitute ‘fraudulent conduct’ for the purposes of Part 23 on the basis that fund members were deprived of their property, or the right to protect their interests, as a result of dishonest means (being the misleading statements made by the trustees).

Given the broad interpretation of 'fraudulent conduct or theft', as highlighted in the CNAL case, the Government considers that it is not necessary to expand the wording of the standard to include 'gross dishonesty' or 'misleading and deceptive conduct'. Dishonesty is central to the concept of fraudulent conduct and therefore these types of conduct, in many cases, may already come within the scope of the existing standard of 'fraudulent conduct or theft'. Furthermore, an amendment regarding 'misleading or deceptive conduct' would require the Minister to consider the effect on fund members of the conduct which is the subject of the complaint and therefore, may require an application under Part 23 to contain a much wider class of evidence.

In addition, the *Australian Securities and Investments Commission Act 2001* also contains provisions that enable a person to recover loss related to misleading or deceptive conduct. Section 12DA of that Act states that a corporation must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive. Under section 12GF, a person is able to recover loss suffered as a result of this conduct.

The extension of the definition of eligible loss to include losses resulting from 'gross incompetence' would also expand the types of evidence that would need to be considered in assessing an application under Part 23. This standard would, at times, require the Minister to make subjective assessments which may undermine the consistent application of Part 23 and lead to the differing treatment of members of different funds in similar situations.

The possibility of extending the definition of eligible loss to include 'negligence' was also raised during the Senate debate in relation to the *Superannuation Safety Amendment Act 2004* (the SSA Act). The concept of negligence has an established legal meaning and it is extremely difficult to place appropriate boundaries around this meaning. A finding of negligence may arise as a result of action taken by the trustee, or as a result of a failure to act. As negligence does not necessarily involve a positive act on the part of the trustee, it may be difficult to identify and measure the loss suffered. For example, in a period of sustained investment losses, it would be extremely difficult to distinguish between losses suffered on account of negligence, perhaps because the trustee failed to reduce exposure to a particular investment, and losses suffered as a result of market fluctuations.

A finding of negligence also depends largely on the individual circumstances of each case, therefore, there is also a risk that imposing this standard may also undermine the consistency of the application of Part 23 and lead to differing treatment of funds in similar circumstances.

In addition, under the existing trustee approval regime, Approved Trustees are required to maintain adequate levels of insurance against liabilities incurred as a result of a breach of professional duty as trustee. As a result, many trustees hold professional indemnity insurance to cover losses suffered as a result of negligence.

In addition, the Government considers that its reforms under the SSA Act will assist in reducing the risk of losses resulting from negligent or incompetent actions. The introduction of measures such as standards for trustee fitness and propriety, and enhanced reporting to the Regulator will increase the level of protection provided to superannuation members. In particular, the SSA Act requires the disclosure of a fund risk management plan, which will mean that members are better able to scrutinise the conduct of trustees. In light of the identified problems of extending the definition of eligible loss, and the recent strengthening of the prudential framework for superannuation, the Government will not legislate to include 'gross incompetence' or 'negligence'.

In relation to interpreting and applying the definition of eligible loss, the current legislation requires that losses covered must be suffered 'as a result of' the fraudulent conduct or theft, which depends

largely on the circumstances of the individual case. There was support from stakeholders to continue to interpret the legislation so as to include the principal amount lost, and the related costs that would not have been incurred by the fund in the absence of the fraudulent conduct or theft. These costs may also include a reasonable estimate of future outgoings incurred on account of the loss. There is also broad support for the Government's current policy that eligible loss should not include forgone investment returns as the Government does not intend to guarantee investments.

Outcome: The Government will introduce a legislative amendment to remove the distinction between accumulation funds and DBFs for the purposes of defining eligible loss.

Outcome: The Government will amend the definition of eligible loss to clarify that any deficit in the fund arising from the failure to pay contributions is not covered under Part 23.

Outcome: The Government will retain the current definition of eligible loss as loss suffered as a result of fraudulent conduct or theft.

What constitutes a substantial diminution of the fund leading to difficulty paying benefits?

The Government sought comments on the requirement that an eligible loss must cause a substantial diminution of the fund leading to difficulties in the payment of benefits.

In order to be eligible for Part 23 assistance under the current arrangements, the loss suffered by a fund must cause a substantial diminution of the fund leading to difficulties in the payment of benefits. There is widespread stakeholder support for maintaining this as a condition to be met before providing compensation. This approach ensures that Part 23 only covers those losses which will have a significant effect on the fund and, consequently, on fund members.

The current legislative provisions do not provide any guidance as to the interpretation of 'substantial diminution' or 'difficulties in the payment of benefits'. To date, the Minister has applied this requirement by considering the circumstances of each individual case on its own merits.

The feedback provided during the Review indicated that the existing legislation has been effective in allowing the Minister the discretion and flexibility to consider each case on its merits. The Government supports the retention of this approach.

Outcome: The Government will maintain the flexibility of the existing arrangements which enables a case-by-case assessment of whether a fund has experienced a 'substantial diminution of the fund leading to difficulties in the payment of benefits'.

What level of compensation should be provided?

The Government sought comments on the level of compensation provided under Part 23.

The provisions of Part 23 currently give the Minister discretion to provide compensation up to 100 per cent of the eligible loss. This discretion ensures that public interest considerations can be taken into account in assessing the level of financial assistance provided in cases of fraudulent conduct or theft.

The Government has maintained a long-standing practice of capping financial assistance provided under Part 23 to 90 per cent of the eligible loss. This cap is intended to assist ameliorate the risks of moral hazard by providing incentives for superannuation fund members to ensure that their fund is being managed in a prudent manner. The provision of financial assistance for the full eligible loss

would undermine the financial incentives for superannuation fund members to monitor the management of their retirement savings as they would always be assured of having their total funds replaced.

At this stage, many superannuation fund members may be limited in their ability to act on concerns about the management of their retirement savings. In particular, members may be unable to shift their retirement savings between superannuation funds to address their concerns. However, members can raise concerns they may have regarding the management of their retirement savings directly with the trustee or with the Regulator. Moreover, the Government has been negotiating with the Senate to pass legislation that will provide superannuation fund members with greater choice over the fund into which their retirement savings are paid.

The capping of financial assistance for eligible losses is consistent with international best practice and with other major Government assistance programs in Australia. Financial assistance schemes overseas generally limit the compensation paid through either a percentage or a monetary cap. The United Kingdom Pensions Compensation Board limits payments of assistance to 90 per cent of loss suffered (except where a person is within 10 years of retirement, where 100 per cent is paid). The OECD also reports that a number of countries including Canada, the US and France impose caps on payments, while Japan and the UK provide a percentage-based limit on compensation.

Other Commonwealth assistance programs have also imposed a limit on compensation paid. In 1991, the then Labor Government enacted the *Life Insurance Policy Holders' Protection Levies Collection Act 1991* to establish a trust fund for the purpose of providing compensation in the life insurance industry after the failure of two life insurance companies due to fraud (Occidental and Regal). This legislation limited restitution to not more than 90 per cent of amounts due and payable under a life policy, or due and payable in respect of the surrender of a life policy. The legislation also provided compensation for 100 per cent of the administration expenses incurred in meeting liabilities. The HIH Support Scheme, which was established in March 2001 in response to the collapse of the HIH Insurance Group, also imposes a 90 per cent limit in some circumstances.

The cost of providing financial assistance under Part 23 is recouped through an industry levy imposed on regulated superannuation entities eligible for financial assistance. The cap on financial assistance ensures that the cost of losses resulting from theft or fraudulent conduct are shared equitably between members of funds who have suffered losses, and other superannuation fund members. The provision of 100 per cent compensation to members of affected funds would require a further reduction in the benefits for members of other funds in the industry.

The maintenance of the 90 per cent cap on financial assistance provided under Part 23 was supported by a majority of stakeholders during the Review consultations. In particular, stakeholders acknowledged that capping financial assistance reduces moral hazard risks by providing incentives for superannuation fund members to take care in managing their retirement savings. It was also noted that the existing arrangements promote an equitable outcome between members suffering losses and members funding the financial assistance as all assistance granted is recovered from the superannuation industry by way of a levy. A small number of stakeholders suggested that financial assistance should cover the full eligible loss. However, this proposal was also linked to the taxpayer meeting the cost of financial assistance.

Outcome: The Government will retain the Ministerial discretion in section 231 of the SIS Act to ensure that public interest issues may be taken into account in determining the amount to be granted as financial assistance.

Coverage of post-retirement savings under Part 23?

The Government sought comments on whether post-retirement superannuation savings should come within the scope of Part 23.

The objective of Part 23 is to provide financial assistance for all eligible losses suffered by a regulated superannuation fund or approved deposit fund regardless of whether the loss suffered affects member benefits in the pre- or post-accumulation phase. Therefore, Part 23 financial assistance may be paid under the current legislation to compensate for the loss of post-retirement savings resulting from fraudulent conduct or theft.

While Part 23 assistance is not available for those people who suffer losses to post-retirement savings that are not held by a regulated superannuation fund or an approved deposit fund, the Government notes that there are other protections in place.

Specifically, the *Life Insurance Act 1995* provides policyholder protection in relation to assets held in statutory funds such that, on wind-up, statutory fund assets are quarantined to statutory fund liabilities. Additionally, directors of life companies have a duty under the Life Insurance Act to the owners of policies in the statutory funds of the company. The order of preference in the *Corporations Act 2001* applies so that the liquidator's costs and employee entitlements attributable to the fund are met first, and then liabilities to policyholders.

In addition, the *Financial Services Reform Act 2001* (FSR Act) amended the Corporations Act to introduce a range of measures to protect investors, including the requirement that anyone who carries on a business of providing financial services (which includes providing financial product advice and dealing in a financial product for post-retirement purposes) must obtain an Australian Financial Services Licence (AFSL). The legislation requires that AFSL-holders who provide financial services to retail clients have in place arrangements for compensating those clients who suffer loss or damage due to breaches of AFSL obligations.

However, many issues have arisen in relation to the exact form that such compensation arrangements should take, including the availability of professional indemnity insurance for AFSL-holders. The Government has released two papers concerning compensation arrangements and is currently examining submissions received in response to those papers. In light of this, the application of the compensation requirements under the FSR Act has been deferred until 11 March 2005, during which time the details of the requirements will be further developed. In the interim, the compensation arrangements that applied under the Corporations Act prior to the FSR Act will continue to apply.

Outcome: The Government will continue to provide financial assistance under Part 23 for any eligible loss suffered by a regulated superannuation fund or approved deposit fund, including losses to post-retirement savings held in those funds.

ADMINISTRATION OF PART 23 APPLICATIONS

The Government sought comments on the process for determining applications under Part 23.

Decisions under Part 23 of the SIS Act are currently made by the Minister. Under the legislation, the Minister is required to write to APRA seeking its advice on each application before making a decision. The Government considers that the Minister is the most appropriate person to make decisions under Part 23 as it ensures that public interest issues can be taken into consideration. There was support from stakeholders for the continuation of this approach.

During the Review, concerns were raised about the length of time taken to grant financial assistance and the resulting impact on fund members. In the bulk of cases dealt with to date, a key factor influencing the length of the process has been the extensive and complex task facing the successor trustee in reconstructing the accounts of the fund to gather evidence of fraudulent conduct or theft and identify the eligible loss. While some administrative issues were encountered in subsequently assessing applications, these primarily reflected a lack of precedents and experience in the operation of the Part 23 provisions. The experience acquired in dealing with Part 23 applications since the first grant of assistance was made in June 2002 should ensure that these delays are minimised in the future.

A number of stakeholders considered that the transparency of the Part 23 decision-making process would be enhanced by the Minister tabling the advice received from APRA on applications and the reasoning for the determination. Under the current arrangements, transparency within the decision-making process is provided by tabling the Minister's request for advice to APRA on each application in both Houses of Parliament. In addition, details of the amount paid under Part 23 is available as a matter of public record in the Federal Budget.

While there is merit in promoting transparency, the advice provided by APRA contains confidential information which may be commercially sensitive and may imply or specify that particular individuals have been involved in the alleged fraudulent conduct or theft. The disclosure of this information may have implications for investigations conducted and recovery or disciplinary action undertaken by APRA. On balance, the Government considers that this information should remain confidential in order to maintain the integrity of APRA's regulatory functions.

The current provisions of Part 23 impose several conditions on the payment of financial assistance. These conditions are intended to ensure that payments are applied by the fund trustee in a timely manner and for the intended purpose, namely, for the benefit of the fund beneficiaries. It will be necessary to amend these conditions as a consequence of the Review outcome which will allow a trustee to make an application on behalf of both current and former members of the fund, so that the trustee may distribute the grant to former beneficiaries of the fund.

The Minister is also provided with the discretion to impose additional conditions on a grant of financial assistance. The Minister has consistently used this discretion to impose a requirement that any monies recovered that relate to claims included as part of the application for assistance, must be refunded to the Commonwealth up to the amount of the grant. Therefore, in the event that recovery action is successful, any monies recovered would be returned to the Commonwealth and the amount recouped under the industry levy process would be reduced accordingly. The Government considers that it is appropriate to retain this discretion.

Outcome: The Government will retain the Minister as the decision maker in relation to applications made under Part 23.

Outcome: The Government will retain the requirement for the Minister's request to APRA for advice on an application lodged by a trustee to be tabled in both Houses of Parliament.

Outcome: The Government will amend the conditions in section 233 of the SIS Act to enable a grant of assistance to be distributed by the trustee to all members of the fund at the time the loss was suffered (including both current and former beneficiaries of the fund).

FUNDING PART 23 PAYMENTS

The Government sought comments on the funding of Part 23 financial assistance.

Under the current Part 23 arrangements, all financial assistance granted is initially funded from the Consolidated Revenue Fund and the Government subsequently recoups this amount through industry levies imposed on regulated superannuation funds and approved deposit funds that are eligible for financial assistance. These levies are imposed under the Levy Act. The levy payable is based on the asset size of the fund. However, a fund that has received a grant of assistance is exempt from any levies imposed to recoup financial assistance granted in that particular financial year.

There were mixed views from stakeholders on the use of industry levies to recoup the cost of financial assistance provided under Part 23. While some stakeholders supported industry funding, others considered that the taxpayer should bear part or the total cost of financial assistance. However, the Government considers that it is in the industry's best interest to ensure the safety and security of superannuation, thus the industry should bear the cost of the Part 23 arrangements.

During June 2003, the Government made amendments to the Levy Act to improve the efficiency of the levy process. The amendments enable one levy to be made for one or more determinations under Part 23 made in a particular financial year, therefore enabling one levy to recoup the aggregate of financial assistance granted in a financial year. The amendments also allow a maximum and minimum levy amount to be set, similar to provisions in the *Superannuation Supervisory Levy Imposition Act 1998* which governs the levy process for the Industry Supervisory Levy (ISL). (The ISL is the levy imposed on all superannuation funds to recover the cost of supervision by APRA.)

The purpose of setting a minimum levy amount is to ensure that the smallest amount any fund may be levied is administratively sensible and cost effective to collect. (For example, in the absence of a minimum levy amount, some funds would be liable for a levy of 20 cents.) The maximum levy amount is intended to ensure that the amount large funds are levied is not disproportionate to the maximum amount they are currently levied for the ISL. It also recognises that access to Part 23 financial assistance will be somewhat more difficult for larger funds given the requirement to demonstrate difficulty in making payments and that, to date, smaller superannuation funds have been the primary recipients of Part 23 financial assistance.

The consultations indicated broad support for the amendments and the resulting efficiency gains in the collection of the levy. However, proposals were put forward to remove the maximum levy amount that could be charged to a fund and to impose a global cap on the amount that can be recouped under the levy in a single financial year. The Government considers that the application of both the minimum and maximum levy amounts promotes an equitable distribution of the cost of financial assistance across the industry. In addition, the existing legislation provisions allow for assistance granted in one financial year to be recovered over a series of levies to reduce the burden on the superannuation industry in the event that large losses were sustained in one financial year. On this basis, the Government does not consider it necessary to remove the maximum levy amount or impose a global cap on the amount that can be recovered from industry in a single financial year.

Outcome: The Government will maintain the current funding arrangements and levy process for financial assistance provided under Part 23.