

Chapter 1

Introduction

1.1 On 20 September 2012, the House Selection Committee referred the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 to the Parliamentary Joint Committee on Corporations and Financial Services ('the committee') for inquiry. The Minister for Financial Services and Superannuation requested that the committee table its report by 9 October 2012.

1.2 The bill is the third tranche of legislation implementing the government's MySuper and governance reforms. This tranche establishes various rules relating to the operation of MySuper products.

1.3 In March this year, the committee tabled its report into the provisions of the first two tranches of these reforms: the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 and the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2011.¹ These bills established the framework within which the MySuper products will operate.

Background to the Stronger Super reforms

1.4 The measures proposed in the Further MySuper and Transparency Measures Bill are part of the government's Stronger Super reform package. This package was initiated in response to the government-commissioned Cooper Review of Superannuation, which presented its final report in June 2010.² The review panel, led by Mr Jeremy Cooper, was tasked with developing options to improve the regulation of the superannuation system, to promote the best interests of members and maximise retirement incomes for Australians, while reducing business costs.³ On 30 June 2010, the panel presented 177 recommendations intended to 'enhance Australia's world class

1 Parliamentary Joint Committee on Corporations and Financial Services, *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 and the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2011*, March 2012.

2 *Review into the governance, efficiency, structure and operation of Australia's superannuation system*, <http://www.supersystemreview.gov.au/> (accessed 24 September 2012).

3 Australian Government, Terms of reference – Super System Review, http://www.supersystemreview.gov.au/content/terms_of_reference.aspx (accessed 27 February 2012).

retirement savings system'.⁴ Of these, the government accepted, or supported in principle, 139.⁵

1.5 The Stronger Super reform package is part of the federal government's broader reform of Australia's superannuation system. On 5 July 2010, the then Minister for Superannuation and Financial Services, the Hon. Chris Bowen MP, noted the government's response to the Cooper Review was one of three stages of reform to superannuation. The other stages are:

- the Future of Financial Advice (FOFA) reform package which applies to financial advice generally, including advice relating to superannuation products; and
- the government's Stronger & Fairer Superannuation reforms, including an increase in the Superannuation Guarantee Charge to 12 per cent.⁶

The government estimates the superannuation reforms will increase retirement superannuation balances by almost \$150,000 for a 30 year old worker earning average full-time wages.⁷

1.6 On 1 August 2010, the Prime Minister the Hon. Julia Gillard MP, the Treasurer the Hon. Wayne Swan MP and Minister Bowen announced that, if re-elected, the government would allow superannuation funds to offer a simple, low cost superannuation product. The product would be called MySuper and form part of the government's broader policy objective of increasing the efficiency of the superannuation system and lowering fees.⁸

1.7 On 16 December 2010, the government formally responded to the Cooper Review by releasing 'Stronger Super'. The government's Stronger Super reforms aim to:

- create a simple, low cost default superannuation product called 'MySuper';

4 Jeremy Cooper et al, *Super System Review: Final Report; Part two – Recommendation packages*, 30 June 2010, p. iii.

5 Australian Government, *Stronger Super – Government response*, 16 December 2010, p. 3.

6 The Hon. Chris Bowen MP, Minister for Financial Services, 'Superannuation and Corporate Law, Government releases Cooper review into superannuation', *Media Release No. 84*. The increase in the Superannuation Guarantee from 9 to 12 per cent was announced in the 2010 federal budget.

7 *Stronger Super Information Pack*, 21 September 2011, p. v
http://strongersuper.treasury.gov.au/content/publications/information_pack/downloads/information_pack.pdf (accessed 24 September 2012).

8 The Hon. Chris Bowen MP, the Hon. Julia Gillard MP, the Hon. Wayne Swan MP, 'Labor helps families save with simpler low-cost super', 1 August 2010 <http://www.alp.org.au/federal-government/news/labor-helps-families-save-with-simpler-low-cost-su/>

- make the processing of everyday transactions easier, cheaper and faster, through the 'SuperStream' package of measures; and
- strengthen the governance, integrity and regulatory settings of the superannuation system, including in relation to self managed superannuation funds.⁹

1.8 In November 2011, the Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, stated in the Second Reading Speech to the MySuper Core Provisions Bill:

...around 60 per cent of Australians do not make active choices in relation to their superannuation. And this government believes that Australians should not be charged for valet parking when they are catching the train...Having created an industry which flourishes on the back of compulsory savings mandated by legislation, it is fair that this industry, which benefits so much from the compulsory saving system in Australia, contributes to higher retirement savings through greater efficiency and lower fees.¹⁰

1.9 In a 2010 speech to the Australian Conference of Economists, Dr David Gruen of Treasury, explained the rationale for the MySuper option in the following terms:

...a key driving principle behind MySuper is that, for those people who do not actively choose an option for their superannuation savings, we want public policy to mandate a default option with carefully designed features that we judge will promote the wellbeing of those who use this option.

Crucially, this mandated default option is not imposed on anyone. Freedom of choice is a central feature of the choice architecture model that underpins the MySuper proposal. Actively engaged people can choose a MySuper default option, or they can choose from a potentially wide array of alternative 'choice' options.

The evidence is that around 80 per cent of members of superannuation funds in Australia are invested in the default option in a super fund chosen by their employer or an award. Of that 80 per cent, anecdotal evidence suggests around 20 per cent explicitly choose the default option, with the rest making no active choice.

...The idea is not to have a centrally determined option for everybody; nor is it laissez faire. While the system compels people to save into super through the Super Guarantee, the Cooper Review's proposed choice architecture means that people are able to choose between the default option (which

9 <http://strongersuper.treasury.gov.au/content/Content.aspx?doc=home.htm> (accessed 24 September 2012)

10 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 3 November 2011, pp 12683–12684.

must be a MySuper product), or opt for a saving plan with greater choice but greater responsibility.¹¹

1.10 The introduction of the MySuper product will commence on 1 July 2013. From this date, superannuation funds will be able to offer a simple, low cost default superannuation product called MySuper. This product is intended to improve the simplicity, transparency and comparability of default superannuation products.¹² From 1 October 2013, employers must make contributions for employees who have not made a choice of fund to a fund that offers a MySuper product in order to satisfy superannuation guarantee requirements.¹³

1.11 Already, the proposed legislation is having a positive effect on competition for low cost superannuation products. In September 2012, the Minister for Financial Services and Superannuation officially launched ING Direct's new simple and cost-effective superannuation product. For the first time in Australia, the product will be free of administration, contribution and management fees.¹⁴ The government estimates that by placing downward pressure on fees, the MySuper reforms will save Australian superannuants \$1.7 billion in fees annually in the longer term.¹⁵

1.12 On 1 July 2011, the Government commenced the implementation of SuperStream. The SuperStream reforms are aimed at improving the administration and management of superannuation accounts, to make the processing of transactions easier, cheaper and faster for members and employers.¹⁶ The reforms continue to be implemented.

11 Dr David Gruen, 'MySuper—Thinking seriously about the default option', *Paper presented to the special session on Superannuation at the Australian Conference of Economists*, 28 September 2010.

<http://www.treasury.gov.au/PublicationsAndMedia/Speeches/2010/MySuper-Thinking-seriously-about-the-default-option> (accessed 26 September 2012).

12 <http://strongersuper.treasury.gov.au/content/Content.aspx?doc=reforms.htm> (accessed 24 September 2012).

13 *Stronger Super Information Pack*, 21 September 2011, http://strongersuper.treasury.gov.au/content/publications/information_pack/downloads/information_pack.pdf (accessed 24 September 2012).

14 The Hon. Bill Shorten MP, 'Business embracing government's MySuper reforms', *Media Release No. 057*, 4 September 2012, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/057.htm&pageID=003&min=brs&Year=&DocType=> (accessed 24 September 2012). See also Annette Sampson, 'MySuper unleashes competition and value', *Sydney Morning Herald*, 22 September 2012, p. 13.

15 The Hon. Bill Shorten MP, 'Business embracing government's MySuper reforms', *Media Release No. 057*, 4 September 2012.

16 <http://strongersuper.treasury.gov.au/content/Content.aspx?doc=home.htm> (accessed 24 September 2012)

Consultation on the MySuper and Super Stream reforms

1.13 In February 2011, Mr Paul Costello was appointed Chair of the 'Stronger Super Peak Consultative Group'. This group was formed to advise the government on how best to implement the Stronger Super package. It was comprised of representatives of key stakeholders in the superannuation sector, including employers, employees, industry service providers and consumer advocates supported by specialist working groups.¹⁷ These groups covered MySuper, governance arrangements, self-managed superannuation funds and SuperStream.

1.14 The MySuper working group has to date issued ten issues papers.¹⁸ These cover the following:

- data collection and disclosure;
- Defined Benefit Funds;
- exempt Public Sector Superannuation Schemes and MySuper products;
- the transition to MySuper;
- Retirement Income Products;
- eligible Rollover Funds and Member Protection Rules;
- fees and costs;
- insurance;
- defining MySuper; and
- advice and insurance commissions within super.

1.15 In September 2011, the government released its Stronger Super Information Pack which contained information on key design aspects of the reforms.¹⁹

Committee inquiries into the MySuper legislation

1.16 As noted above, this committee has examined the provisions of the first two tranches of the MySuper legislation, reporting in March 2012. That report made three recommendations, one of which was that the bills be passed.

17 The Hon. Bill Shorten MP, 'Paul Costello to Chair Consultation Panel on Stronger Super Reforms', *Media Release No. 021*, 1 February 2011, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/021.htm&pageID=003&min=brs&Year=&DocType=> (accessed 24 September 2012).

18 http://strongersuper.treasury.gov.au/content/Content.aspx?doc=consultations/working_groups/mysuper/default.htm (accessed 24 September 2012).

19 *Stronger Super Information Pack*, 21 September 2011 http://strongersuper.treasury.gov.au/content/publications/information_pack/downloads/information_pack.pdf (accessed 24 September 2012).

1.17 The other recommendations sought clarification of the 'large employer' requirement in proposed subsection 29TB of the Core Provisions Bill. This subsection allows for 'large employers' to offer a tailored MySuper product. The committee recommended that the bill be redrafted:

- to clarify that this requirement needs to be satisfied upon authorisation of the MySuper product and at the end of each annual reporting period; and
- to allow the Australian Prudential Regulation Authority to grant a grace period of up to six months for large employers whose fund members have fallen below the 500 member threshold as part of the annual check.²⁰

Committee inquiry into the SuperStream reforms

1.18 On 24 May 2012, the House of Representatives introduced the Superannuation Legislation Amendment (Stronger Super) Bill 2012 and the Superannuation Supervisory Levy Imposition Amendment Bill 2012. It subsequently referred the bills to the committee for inquiry. These bills are part of the package of SuperStream measures which are designed to 'improve the productivity of the superannuation system and make the system easier to use'.²¹ As the Explanatory Memorandum to the bills noted:

The purpose...is to improve the administration and management of super accounts making the processing of everyday transactions easier, cheaper and faster for members and employers.²²

The committee noted in its report the efforts that had already been taken by industry to adopt the SuperStream measures, and improve efficiencies in the administration of superannuation for the benefit of all employers and superannuation members. It also commended the 'extensive consultation and collaboration' between industry and government officials that had been undertaken on the SuperStream measures.²³

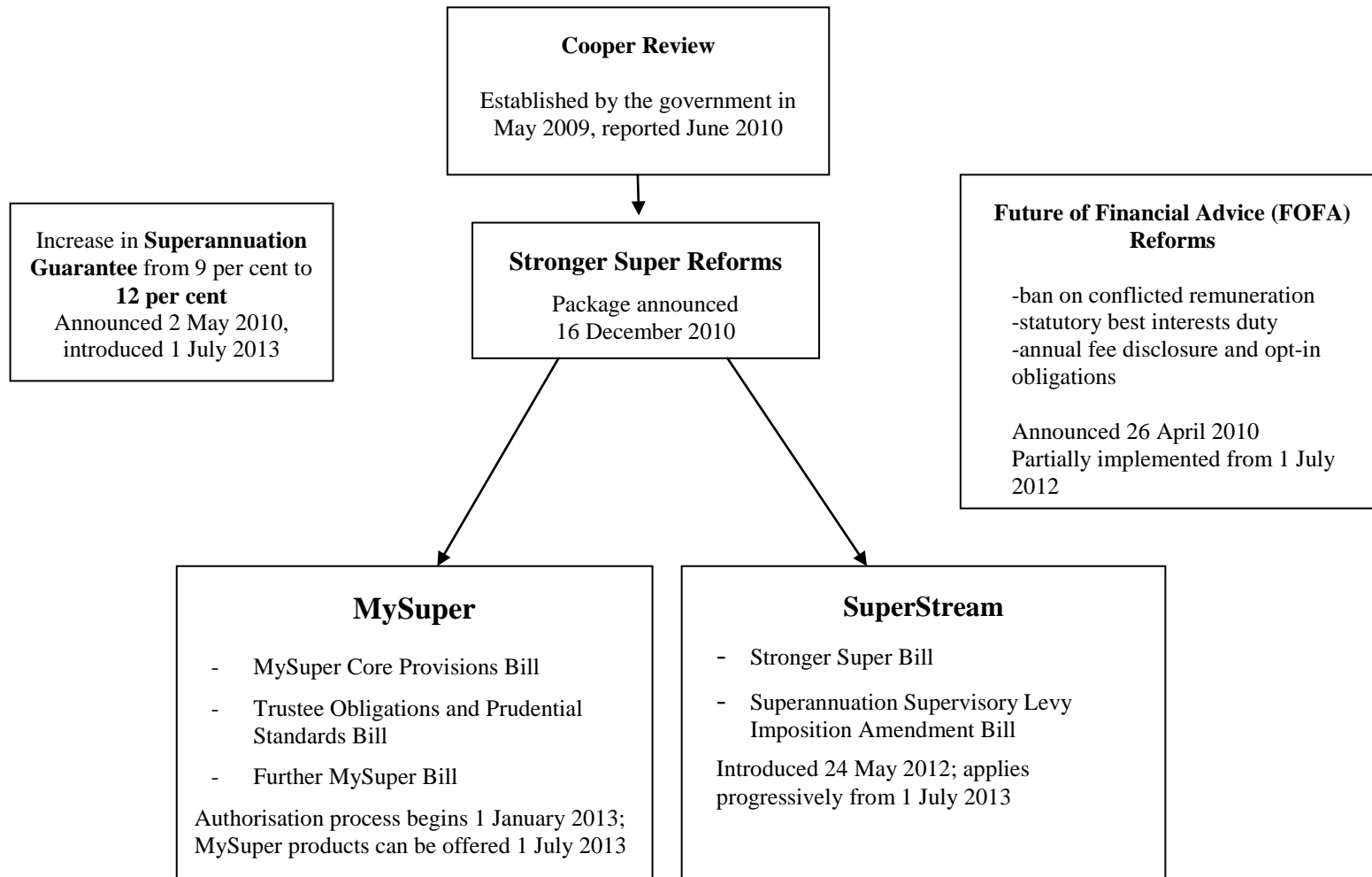
20 Parliamentary Joint Committee on Corporations and Financial Services, *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 and the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2011*, March 2012, p. 36.

21 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 40. See the chapter on 'SuperStream' for further details on the reform (pp 40–58).

22 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 25.

23 Parliamentary Joint Committee on Corporations and Financial Services, *Superannuation Legislation Amendment (Stronger Super) Bill 2012 and the Superannuation Supervisory Levy Imposition Amendment Bill 2012*, May 2012, p. 33.

Reforms to Australia's superannuation system



Consultation on the third tranche of MySuper

1.19 The committee acknowledges the extensive consultation undertaken by the government on the third tranche of the MySuper reforms. The Australian Institute of Superannuation Trustees (AIST) told the committee that there had been a 'significant and extensive' consultation process over a period of 'about 20 months' dating back to the start of 2011.²⁴

1.20 In this context, the committee queries the response from the Law Council of Australia (LCA) that it was involved only to a limited extent in the consultation on the reforms in the third tranche. Ms Michelle Levy of the LCA told the committee that the Council had only been consulted twice when, in June and August 2012, it met with the Australian Prudential Regulation Authority as part of a 'lawyers' liaison group'.²⁵

1.21 However, the committee is aware that the LCA had met with various stakeholders including Treasury officials on 3 October 2012, just two days before the hearing.²⁶ The committee would like to extend to the LCA the opportunity to clarify the record on this matter.

Conduct of the inquiry

1.22 On 21 September 2012, the committee sent invitations to various stakeholder organisations to make a submission to the inquiry. It requested submissions by 3 October 2012. The committee received 29 submissions, as listed in Appendix 1.

1.23 The committee advertised the inquiry in *The Australian* newspaper on 26 September 2012. Details of the inquiry, the bill and associated documents were also made available on the committee's website.

1.24 The committee held a public hearing into the provisions of the bill in Sydney on 5 October 2012. It received evidence from the Financial Planning Association, the Financial Services Council, the Corporate Super Specialist Alliance, the Association of Financial Advisers, the LCA, the Association of Superannuation Funds of Australia, AIST, the Industry Super Network and Treasury officials. The transcript of proceedings is available on the committee's website.

1.26 Given the 'significant and extensive' consultation process over a period of 'about 20 months' dating back to the start of 2011, the committee's enquiries have been invitations to the sector and the broader community, to further participate in the

24 Mr Gerard Noonan, Vice President, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 5 October 2012, p. 27.

25 Ms Michelle Levy, Law Council of Australia, *Proof Committee Hansard*, 5 October 2012, p. 19.

26 Mr David Haynes, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 5 October 2012, p. 27.

MySuper reform process at the time of the tabling of final draft of the legislation. The legislation reviewed at this point has already been amended in response to consultation arising from the draft legislation released in April 2012.

1.25 As with the referral of the first two tranches of the MySuper legislation, the committee has had limited time to inquire into the provisions of the third tranche. Given the reporting time constraints, the committee suggests that this report be read in conjunction with the written submissions that the committee has received.

1.26 The committee understands the government's eagerness to secure the passage of the legislation, and the importance of the underpinning public policy objectives. It supports the government's timeframe for the consideration of this tranche of the legislation in the parliament. It also believes that the proposed commencement date for the MySuper reforms of 1 July 2013 is both reasonable and appropriate. As Mr Andrew Bragg of the Financial Services Sector told the committee:

I think to be fair we have had a long period of consultation and the government has been very reasonable in providing basically 2011 to have a process, which was led by Paul Costello, to look at how the elements of the reforms should be crafted in legislation.²⁷

Acknowledgements

1.27 The committee thanks the organisations and individuals who made submissions to the inquiry and who appeared to give evidence at the public hearing in Sydney.

Structure of the report

1.28 The Superannuation Legislation Amendment (Further MySuper and Transparency) Bill 2012 amends the following Acts to implement the remaining measures relating to the MySuper reforms:

- the *Superannuation Industry (Supervision) Act 1993* (the SIS Act);
- the *Superannuation Guarantee Administration Act 1992*;
- the *Corporations Act 2001*; and
- the *Fair Work Act 2009*.

1.29 The bill has seven schedules:

- fees, costs and intrafund advice (Schedule 1);
- insurance (Schedule 2);
- the collection and disclosure of information (Schedule 3);

27 Mr Andrew Bragg, Senior Policy Manager, Financial Services Council, *Proof Committee Hansard*, 5 October 2012, p. 7.

- modern awards and enterprise agreements (Schedule 4);
- Defined Benefit Members (Schedule 5);
- the transition to MySuper (Schedule 6); and
- Eligible Rollover Funds (Schedule 7).

1.30 Chapter 2 of this report examines the provisions of, and views on Schedules 1 and 2 of the bill. Chapter 3 examines Schedules 3, 4 and 5 of the bill. Chapter 4 focuses on Schedule 6 and stakeholders' views on the provisions to move accrued default amounts to MySuper products where members do not 'opt-out'. Chapter 5 looks at Schedule 7 of the bill authorising trustees to operate Eligible Rollover Funds. It also presents a final committee comment.