

# Chapter 1

## Introduction

1.1 On 29 November 2012, the House of Representatives referred the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012 to the committee for inquiry and report. The committee resolved to table its report by 5 February 2013.

1.2 The bill is the fourth tranche of legislation implementing the MySuper and governance elements of the Stronger Super reforms. This inquiry continues the committee's scrutiny of the legislation that will give effect to these reforms; the earlier tranches of legislation have been the subject of previous inquiries by this committee, and readers can view those reports on the committee's website. The earlier tranches are referred to throughout this report, and for reference are listed below:

- *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012* (Core Provisions Act);
- *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* (Trustee Obligations Act); and
- *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* (Further MySuper Act).

1.3 Included in this bill are a range of distinct and unrelated measures that form part of the MySuper and governance reforms but which were not addressed by the earlier legislation. The bill includes proposed amendments that would:

- implement certain recommendations of the 2010 final report of the review into the governance, efficiency, structure and operation of Australia's superannuation system (also referred to as the Super System Review or the Cooper Review);
- address concerns raised by the superannuation sector about how some aspects of the earlier tranches will operate; and
- make consequential amendments to ensure the effective operation of the first three tranches of legislation.

1.4 Specifically, this latest bill proposes to amend the *Superannuation Industry (Supervision) Act 1993* (SIS Act), the *Corporations Act 2001* and other Acts to:

- override any provisions in a fund's governing rules that require the trustee to use a specified service provider, investment entity or financial product;
- provide the Australian Prudential Regulation Authority (APRA) with the power to issue infringement notices for certain breaches of the SIS Act;
- require persons to seek leave of the court before bringing action against an individual director for a breach of their duties;

- extend legal defences available for trustees and directors to proceedings involving breaches of MySuper obligations;
- amend existing defences related to the making of an investment or the management of reserves;
- require trustees to provide reasons for decisions made in relation to a complaint;
- increase the time limit for members to lodge complaints with the Superannuation Complaints Tribunal;
- apply the Corporations Act's requirements for adequate resources and risk management systems to dual regulated entities;
- provide that directors of corporate and individual trustees are only prohibited from voting on any company business in limited circumstances; and
- introduce other measures and make consequential amendments.

### **Conduct of the inquiry**

1.5 The committee advertised the inquiry on its website and in *The Australian*, inviting submissions from interested parties by 17 January 2013. The committee also wrote directly to stakeholders to invite submissions. In total, ten submissions were received. Details about these submissions can be found in Appendix 1.

1.6 The committee held a public hearing in Melbourne on 22 January 2013. It received evidence from representative bodies for the superannuation and financial services sectors, a representative of superannuation law practitioners, and the relevant government department—the Australian Treasury. Further details about this hearing can be found in Appendix 2.

1.7 The committee thanks the organisations that made submissions and the witnesses who gave evidence at the public hearing in Melbourne. Given the short period of time between the hearing and the reporting date, the committee would also like to express its appreciation to the witnesses that provided prompt answers to questions on notice.

### **Structure of the report**

1.8 This report is comprised of four chapters. The remainder of this chapter provides some brief details about the Stronger Super reforms with a particular focus on the nature of and rationale behind the MySuper product. Chapter 2 examines the amendments related to legal actions brought against directors, the legal defences available and the requirements for processing and considering certain claims and complaints. Chapter 3 considers the proposed infringement notice scheme. Chapter 4 examines the remaining amendments, including the service provider measures and the proposed dual regulated entities requirements. A discussion of other matters that were raised during the inquiry and the committee's overall assessment of the bill can also be found in chapter 4.

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## Background to the Stronger Super reforms<sup>1</sup>

1.9 The Stronger Super reform package was initiated in response to the 2010 report of the Cooper Review. The review panel 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.<sup>2</sup> One of the main recommendations of the Cooper Review was that a simple, low cost, default superannuation product called 'MySuper' be introduced.

1.10 On 16 December 2010, the government formally responded to the Cooper Review by releasing 'Stronger Super'.<sup>3</sup> The Stronger Super reforms aim to:

- introduce MySuper;
- 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.<sup>4</sup>

1.11 From 1 July 2013, superannuation funds will be able to offer MySuper. This product is intended to improve the simplicity, transparency and comparability of default superannuation products.<sup>5</sup> 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.<sup>6</sup>

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1 This section is adapted from the committee's October 2012 report: *Inquiry into the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012*. Further detail about the Stronger Super reforms can be found on pages 1–8 of that report.

2 Australian Government, Terms of reference – Super System Review, [www.supersystemreview.gov.au/content/terms\\_of\\_reference.aspx](http://www.supersystemreview.gov.au/content/terms_of_reference.aspx) (accessed 27 February 2012).

3 The Stronger Super reform package is part of the government's broader reform of Australia's superannuation system. Other reforms include 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 a gradual increase in the superannuation guarantee charge from nine per cent to 12 per cent. See the Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Government releases Cooper review into superannuation', *Media release*, no. 84, 5 July 2010.

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

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

6 *Stronger Super Information Pack*, 21 September 2011, [http://strongersuper.treasury.gov.au/content/publications/information\\_pack/downloads/information\\_pack.pdf](http://strongersuper.treasury.gov.au/content/publications/information_pack/downloads/information_pack.pdf) (accessed 24 September 2012).

1.12 The following statements by the Minister for Financial Services and Superannuation and a senior Treasury officer help explain the government's reasoning behind introducing MySuper and the principles that informed its design:

... 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.<sup>7</sup>

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... 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 must be a MySuper product), or opt for a saving plan with greater choice but greater responsibility.<sup>8</sup>

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7 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, second reading speech on the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012, *House of Representatives Hansard*, 3 November 2011, pp.12683–84.

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

**Figure 1.1: Recent reforms to Australia's superannuation system**

