

# Chapter 1

## Overview of inquiry

### Referral of the bills

1.1 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 Parliamentary Joint Committee on Corporations and Financial Services for inquiry.<sup>1</sup> The committee set a reporting date of 13 June 2012.

### Conduct of inquiry

1.2 Details of the committee's inquiry were made available on the committee's website. In addition the committee wrote directly to a range of members of the financial services and superannuation industry inviting written submissions. The committee received eight submissions, which are listed at Appendix 1.

1.3 The committee also held a public hearing in Sydney on 4 June 2012 and heard from Treasury and Australian Taxation Office officials and a number of industry members. The names of the witnesses who appeared are at Appendix 2.

1.4 The committee thanks the organisations and individuals who contributed to the inquiry.

### Context of inquiry

1.5 The 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'.<sup>2</sup> The SuperStream measures were recommended by the independent Super System (Cooper) Review in 2009–10. The Explanatory Memorandum (EM) for the bills stated:

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.<sup>3</sup>

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1 House of Representatives, *Votes and Proceedings No. 108*, 24 May 2012, p. 1487; Selection Committee Report, *House of Representatives Hansard*, 24 May 2012, p. 64.

2 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).

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

1.6 The Regulation Impact Statement (RIS) provided an overview of the scale of the superannuation system:

As at 30 June 2010, the superannuation system comprises over \$1.23 trillion in assets. It is estimated that the Australian superannuation system processes more than 100 million transactions annually, at a cost of over \$3.5 billion annually to process. These include member support (e.g. call centre) activities (\$1 billion), contribution management (\$1.25 billion), reporting (\$250 million), and benefit payment services (\$1 billion).<sup>4</sup>

### *Costs and savings of SuperStream measures*

1.7 It is estimated that the SuperStream measures are expected to save \$1 billion in processing costs per year. When averaged over the 33 million superannuation accounts, this translates to a saving in the order of \$30 per account each year.<sup>5</sup> Research undertaken by the Financial Services Council (FSC) estimated that the reforms would deliver savings of up to \$20 billion by 2020 (based on current asset growth).<sup>6</sup>

1.8 The cost for implementing public sector capability for the SuperStream reforms is \$467 million over seven years. This will be paid by a SuperStream levy on Australian Prudential Regulation Authority (APRA) regulated funds. The Minister for Financial Services and Superannuation told the parliament:

If you averaged the full levy increase of \$121 million to apply in 2012–13 across the approximate 33 million accounts existing today, the cost is roughly in the order of a mere \$4 per account.<sup>7</sup>

### *Impact on industry*

1.9 In addition to the levy, industry will incur other capital costs to implement the SuperStream reforms. The FSC estimate its members, who represent around one third of the superannuation industry, will incur capital costs of approximately \$250 million.<sup>8</sup> It suggests this is a conservative estimate that 'does not include costs related to member communications and product administration and it is based on a survey of efficiency superannuation entities with high technological capabilities'.<sup>9</sup>

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4 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 40.

5 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 4.

6 Financial Services Council, *Submission 6*, p. 3.

7 The Hon. Bill Shorten, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, *House of Representatives Hansard*, 24 May 2012, pp 14–15.

8 Financial Services Council, *Submission 6*, pp 3, 10.

9 Mr Andrew Bragg, Senior Policy Manager, Financial Services Council, *Proof Committee Hansard*, 4 June 2012, p. 3.

1.10 The Australian Institute of Superannuation Trustees commented on the productivity gains of the reforms for industry and employers:

During the Cooper review a number of studies were done about the savings of these measures to the superannuation industry, and those investigations suggested that there would be savings in the order of at least \$1 billion a year to the superannuation industry, representing administration. Subsequently there have been other reports, and they tend to fall in between the level of 20 per cent to 25 per cent savings in administration costs just for the superannuation industry. Although this has not been quantified to my knowledge, we would anticipate similar levels of savings to employers in the long term through the implementation of this legislation. We would also expect high levels of savings, in the hundreds of millions of dollars a year, to government.

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This is a lot of short-term pain for a long-term gain.<sup>10</sup>

## Overview of the bills

1.11 The Superannuation Legislation Amendment (Stronger Super) Bill 2012 consists of two schedules:

- schedule 1 which introduces a framework of superannuation data and payment standards for superannuation transactions; and
- schedule 2 which amends the *Australian Prudential Regulation Authority Act 1998* to enable costs associated with the implementation of the SuperStream measures to be included in a levy that is payable to the Commonwealth.

1.12 The Superannuation Supervisory Levy Imposition Amendment Bill 2012 contains one schedule, proposing one amendment.

1.13 The schedules to the bills are discussed below.

## Superannuation Legislation Amendment (Stronger Super) Bill 2012

1.14 The Minister for Financial Services and Superannuation, the Hon. Bill Shorten, MP, outlined the context of the amendments set out in the Superannuation Legislation Amendment (Stronger Super) Bill 2012:

These amendments are part of the SuperStream package of measures designed to enhance the back office of superannuation. The superannuation industry is currently dominated by paper based transactions that are inefficient in both processing costs and the time taken for transactions to occur and superannuation to be deposited into member accounts...

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10 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 4 June 2012, p. 7.

It is estimated that the SuperStream proposals could save the industry and, therefore, members of superannuation funds up to \$1 billion per year. Much of the benefit of these savings should flow through to members in the form of lower fees and charges.<sup>11</sup>

### ***Schedule 1: superannuation data and payment standards***

1.15 As outlined in the EM, Schedule 1 of the Superannuation Legislation Amendment (Stronger Super) Bill 2012 amends the:

- *Superannuation Industry (Supervision) Act 1993* (inserts a new Part 3B); and
- *Retirement Savings Accounts Act 1997* (inserts a new Part 4A).

1.16 The Superannuation Legislation Amendment (Stronger Super) Bill 2012 introduces 'a framework to support the implementation of superannuation data and payment regulations and standards that will apply to specified superannuation transactions undertaken by superannuation entities/retirement savings account providers ([Retirement Savings Account] RSA providers) and employers'.<sup>12</sup>

1.17 Schedule 1 also amends the *Taxation Administration Act 1952* to 'introduce an administrative penalty framework for non-compliance with the superannuation data and payment regulations and standards'. The proposed framework provides a graduated approach to dealing with contraventions by including an administrative penalty regime and a strict liability offence regime.<sup>13</sup> The EM outlines:

The strict liability offences do not carry penalties of imprisonment and most of the maximum penalties are 20 penalty units, except in the case of a failure to comply with a direction of a Regulator in which case the maximum penalty is 50 penalty units given the more serious nature of failing to comply with a direction.<sup>14</sup>

1.18 In addition to the compliance framework, the regulators (the Australian Taxation Office (ATO) and APRA), will 'support the roll-out of the new data and payment regulations and standards through help and education activities'.<sup>15</sup>

1.19 As summarised in the EM, Schedule 1 of the Bill:

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11 The Hon. Bill Shorten, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, *House of Representatives Hansard*, 24 May 2012, pp 13–14.

12 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 3, 11.

13 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 7, 17.

14 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 17.

15 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 8.

- enables superannuation data and payment regulations and standards to be made relating to superannuation entities, RSA providers and employers;
- provides the Commissioner of Taxation (Commissioner) with the ability to issue mandatory superannuation data and payment standards for superannuation entities, RSA providers and employers;
- enables superannuation data and payment regulations and standards to deal with payments and information related to superannuation transactions and reports;
- introduces a new penalty framework to ensure trustees of superannuation entities, RSA providers and employers comply with the superannuation data and payment regulations and standards...;
- provides the Regulators with the power to give directions to superannuation trustees, RSA providers and employers in certain situations where there is reason to believe contraventions of the superannuation data and payment regulations and/or standards have occurred or are likely to occur; and
- amends the SIS Act and RSA Act to enable the Commissioner to correct and rectify information in the Commissioner's possession for the purpose of ensuring the information complies with the superannuation data and payment regulations and/or standards.<sup>16</sup>

### *Transitional provisions*

1.20 Transitional provisions are provided for in Schedule 1, item 20 of the bill. The EM outlined that the amendments stipulated in Schedule 1 of the bill are proposed to apply:

- to RSA providers and trustees of a superannuation entity in relation to conduct that occurs on or after 1 July 2013;
- to an entity that is a medium to large employer on 1 July 2014 in relation to conduct that occurs on or after 1 July 2014; and
- to an entity that is a small employer on 1 July 2014 in relation to conduct that occurs on or after 1 July 2015, unless the regulations prescribe an alternate application date after 1 July 2015.

1.21 A medium to large employer is defined as employing 20 or more employees as at 1 July 2014, and a small employer fewer than 20 employees.<sup>17</sup> The transitional provisions are in acknowledgement of the 'significant change in systems and behaviour across the funds and employers'. The RIS stated:

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16 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 8–9.

17 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 21–22.

To mitigate risk and recognise the amount of change that will be required to adopt the data and e-commerce standards, it is proposed that a phased implementation occur. This approach will provide funds, employers and service providers with certainty in terms of investment decisions and planning lead times.<sup>18</sup>

### *Impact on employers*

1.22 The EM for the bills outlines that the SuperStream reform measures 'will temporarily increase compliance costs for superannuation funds... though the impact will vary considerably and is dependent on whether compliance with the data and payment standards is outsourced to a third party provider... or an information system upgrade is undertaken'.<sup>19</sup>

1.23 The RIS provided an impact analysis on the mandated use of data and e-commerce standards. The analysis is based on the use of the Standard Business Reporting (SBR) framework which contains many of the data terms needed to support superannuation transactions. The SBR simplifies government-to-business reporting by:

- removing unnecessary or duplicated information from government forms;
- adopting a common reporting language, based on international standards and best practice;
- providing an electronic interface to agencies directly from accounting software which will also provide validation and confirm receipt of reports; and
- making financial reporting a by-product of natural business processes.<sup>20</sup>

1.24 The RIS proposed that data and e-commerce standards will use the SBR framework for formatting transaction messages and utilise the eXtensible Business Reporting Language (XBRL) which is an international standard for financial reporting. The RIS outlined the impact of mandated standards on superannuation funds and trustees will vary according to their current operating systems:

All funds and administrators will need to upgrade existing systems in order to transmit and receive messages consistent with the data and e-commerce standards. This is likely to impose the greatest cost on those funds and administrators with a wide range of legacy systems that will need to interact with the new data standards or who have recently made significant systems

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18 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 42.

19 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 5.

20 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 41.

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expenditure inconsistent with the new standards. This is a 'transitional cost' which over time is expected to be recouped by ongoing operational savings.

To mitigate costs associated with the adoption of the data and e-commerce standards, superannuation funds and trustees have the opportunity to determine to what extent they integrate required changes (in particular the XBRL format) into their administrative systems. Funds will have options ranging from the implementation of a low cost XBRL translation layer (enabling them to send and receive XBRL messages) through to a high cost option of fully integrating XBRL components across all systems (including legacy systems) at a database level. Additionally, the use of third party providers (such as administrators or clearing houses) provides an option to outsource the requirement to send and receive messages in the new format.<sup>21</sup>

1.25 The RIS highlighted that impact on employers will vary depending on their existing use of technology, the number of employees and the degree to which they adopt and outsource the data and e-commerce standards. Smaller employers who rely on cheques and paper forms, for example, 'will be able to utilise the free clearing house offered by the Medicare Small Business Superannuation Clearing House' for processing information (discussed further in chapter 3).<sup>22</sup>

### ***Schedule 2: costs for SuperStream included in levy***

1.26 Schedule 2 of the Superannuation Legislation Amendment (Stronger Super) Bill 2012 'amends the *Australian Prudential Regulation Authority Act 1998* to enable costs associated with the implementation of the SuperStream measures to be included in the determination specifying the amount of the levy that is payable to the Commonwealth'.<sup>23</sup>

1.27 The levy for the SuperStream costs will be collected through existing collection mechanisms for the Superannuation Supervisory Levy. The EM outlined this process and that APRA is funded primarily through industry levies that are determined by the annual Portfolio Budget Statements:

Under subsection 50(1) of the APRA Act, the Minister is to make, for each financial year, a determination specifying the amount of levy money payable to the Commonwealth, in respect of levy (or each class of levy) for that financial year. The amount specified in the determination is to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions and administering the function of making determinations about the release on

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21 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 44.

22 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 45.

23 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 5.

compassionate grounds of benefits that are in a superannuation entity or retirement savings account...

The APRA Act currently requires APRA to collect and return the proportions collected on behalf of Australian Securities and Investments Commission (ASIC), Department of Human Services (DHS) and the Australian Taxation Office (ATO) to the Commonwealth in the first instance. Once the ATO, DHS and ASIC amounts have been met in consolidated revenue, the APRA Act provides that APRA receives the residual amounts collected through the levy to fund its supervisory activities.

This disbursement method and the variation in the timing that levies are paid by regulated institutions can cause cash flow difficulties for APRA.

The amendment in Part 2 of Schedule 2 to this Bill will provide an amendment to the APRA Act to ensure that levies collected by APRA are allocated on a proportionate basis between the Commonwealth and APRA's special account. This revised process will enable a more timely allocation of revenue to support APRA's regulatory functions.<sup>24</sup>

## **Superannuation Supervisory Levy Imposition Amendment Bill 2012**

1.28 The Hon. Bill Shorten, MP, Minister for Financial Services and Superannuation, commented on the Supervisory Levy bill component of the SuperStream package and the amendment proposed in the Superannuation Supervisory Levy Imposition Amendment Bill 2012:

The superannuation supervisory levy will pay for implementation costs to improve the administration and management of super accounts, making the processing of everyday transactions easier, cheaper and faster for both members of funds and employers...

This bill will provide the Treasurer increased flexibility in determining the maximum restricted and unrestricted levy amounts, the restricted and unrestricted levy percentages and the superannuation entity levy base to be used in finalising the levy amount.<sup>25</sup>

1.29 Schedule 1 of the Superannuation Supervisory Levy Imposition Amendment Bill 2012 amends the *Superannuation Supervisory Levy Imposition Act 1998* 'to enable the Treasurer to make more than one determination for a financial year'. This is a single amendment inserted at the end of section 7 of the *Superannuation Supervisory Levy Imposition Act 1998* and is intended to:

...provide flexibility for the Treasurer in the event that amendments to the Australian Prudential Regulation Authority Act 1998 (APRA Act), that

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24 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 27–28.

25 The Hon. Bill Shorten, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, *House of Representatives Hansard*, 24 May 2012, pp 14–15.



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provide for costs associated with the implementation of SuperStream to be included in the Minister's determination that specifies the amount of levy money payable to the Commonwealth, are delayed beyond 30 June 2012.<sup>26</sup>

1.30 The amendment in this schedule applies from 1 July 2012.<sup>27</sup>

### **Structure of the report**

1.31 Chapter 1 has provided an overview of the inquiry and the bills.

1.32 Chapter 2 will explore governance of the proposed data standards system and transparency of the SuperStream levy costs.

1.33 Chapter 3 will discuss the compliance measures for the regime, implementation and the impacts of the measures on small business. The chapter concludes with closing comments from the committee and a recommendation that the bills be passed.

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26 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, pp 33, 34.

27 Explanatory Memorandum, Superannuation Legislation Amendment (Stronger Super) Bill 2012, Superannuation Supervisory Levy Imposition Amendment Bill 2012, p. 34.

