

Chapter 2

Governance and transparency

2.1 The Regulation Impact Statement (RIS) highlighted that the organisations that Treasury had consulted with 'recognised the importance of data and e-commerce standards to streamlining back-office processes and achieving efficiency savings' and that there 'was strong support...for mandating the data standards in order to bring about the desired behavioural change and outcomes'.¹ The Association of Superannuation Funds of Australia (ASFA) commented:

ASFA considers the SuperStream measures to be the key component of the Government's Stronger Super reforms as they have the greatest potential to improve members' retirement outcomes through the creation of a more efficient superannuation system.²

2.2 The Financial Services Council (FSC) welcomed the SuperStream reforms and outlined the difficulties that industry had previously encountered in establishing data standards for the superannuation industry:

Over the past decade, the industry has endeavoured to agree on a set of data standards for managing transactions between entities; however, we lack the capacity to compel external stakeholders and sometimes our own stakeholders to comply with industry developed standards. The introduction of these compulsory standards is therefore a welcome development as it will standardise processes for employers and funds in dealing with one another.³

2.3 The Australian Institute of Superannuation Trustees (AIST) provided further context on the challenges the superannuation industry had encountered in establishing a standardised data system. It emphasised the importance of common standards to ensure that costs outlaid for SuperStream requirements by each industry member are functional across the broad spectrum of stakeholders:

It is critical in the development of common data standards that they be truly common and that there are no exemptions for self-managed funds or for small employers. It is critically important to get the maximum efficiency benefit, that there be one set of data standards, one set of common payment standards. The mechanism to do that is appropriately a government mechanism. The ATO, for example, is the entity that holds tax file

1 The Treasury, 'Regulation Impact Statement: Stronger Super Implementation', September 2011', p. 46. See also Australian Institute of Superannuation Trustees, *Submission 3*, p. 4.

2 Association of Superannuation Funds of Australia, *Submission 1*, p. 4.

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

numbers, and the identification of individual members is an important part of this process, to ensure that there is no unnecessary account consolidation.⁴

2.4 Mr Murray, Principal Adviser on Superannuation in Treasury, and Mr Olesen, Deputy Commissioner, Superannuation at the Australian Taxation Office (ATO), made the following comments:

Mr Murray: The background to these measures is that the superannuation industry has been trying for a considerable number of years to establish its own common standards and address these issues. Unfortunately, for various reasons, the industry has been unable to come to any agreement. The outcome of that has been a considerable number of different processes among the funds, there are considerable deadweight costs in the industry and they have these provisions for different requirements. The government has therefore been required to come in and become the decision-maker, to take control and push these reforms through, because unfortunately, to date, industry has not been able to come to an agreement itself.

...

Mr Olesen: ...I think the industry have tried at various times to develop some common data standards to use, but ultimately they have not been successful—hence, the government has taken these reforms.⁵

2.5 While submitters to this inquiry were broadly supportive of the measures in the bills, they did raise the following key concerns with the SuperStream measures:

- governance of the standards; and
- transparency on expenditure of levy funds.

Governance of the standards

2.6 Following the completion of the SuperStream Working Group's task to oversee development of the project, the government stated that it would establish a SuperStream Advisory Council.⁶ The council is intended to provide advice to government on the design details and implementation of the SuperStream data and e-commerce standards. The *Stronger Super Information Pack* outlined that:

The Advisory Council members will be appointed by the Government and will meet regularly to monitor the implementation of data and e-commerce standards. The Council will provide a structured forum where stakeholders identify improvements in the standards and the protocols around them and make recommendations for changes to Government. The Council will also

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

5 *Proof Committee Hansard*, 4 June 2012, p. 11.

6 The Explanatory Memorandum acknowledges that the 'SuperStream Council will oversee the implementation and the ongoing effectiveness of the SuperStream changes', p. 4.

report to Government on what the agreed measures of success for SuperStream are showing.⁷

2.7 The council will be supported by a secretariat within government. Membership for the council is yet to be announced, although the Minister for Financial Services and Superannuation has called for nominations from individuals interested in being appointed to the SuperStream Advisory Council.⁸ In addition, a consultation paper on the levy was released by Treasury inviting industry comment.⁹

2.8 A number of submitters asserted that the governance for the proposed SuperStream framework should be formally recognised in legislation, not just noted in the Explanatory Memorandum to the bills.¹⁰ The AIST suggested that '[this] is a critical oversight in a framework to support the implementation of data and payment standards'.¹¹

2.9 ASFA suggested that a formal, legislated governance body be established to oversee the implementation, development and review of the data standards. It has suggested that this body should have strong industry representation and delegated regulation making powers.¹²

ASFA considers it essential that the development of data standards be supported by a comprehensive legislative framework that includes a strong governance arrangement which involves the users of the standards. Such oversight is necessary to ensure that the standards development considers and defines security protocols, performance standards, roles and responsibilities, web service end point, governance standards and proof of identity standards. Without this clearly defined framework there will be difficulty in the impacted parties implementing the standards in a manner that achieves the desired efficiencies.¹³

7 Treasury, *Stronger Super Information Pack*, http://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/information_pack/superstream.htm (accessed 31 May 2012).

8 The Hon. Bill Shorten, MP, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, 'SuperStream Advisory Council – call for nominees', Media release 028, 25 May 2012.

9 Treasury and the Australian Prudential Regulation Authority, 'Proposed Financial Industry Levies for 2012–13', June 2012, <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Proposed-Financial-Industry-Levies-for-2012-13> (accessed 5 June 2012).

10 Association of Superannuation Funds of Australia, *Submission 1*, p. 4; Australian Institute of Superannuation Trustees, *Submission 3*, p. 5.

11 Australian Institute of Superannuation Trustees, *Submission 3*, p. 5.

12 Association of Superannuation Funds of Australia, *Submission 1*, p. 4.

13 Association of Superannuation Funds of Australia, *Submission 1*, p. 3.

2.10 The AIST suggested that the bill should be amended to provide for a legislated advisory governance body. It recommended that section 34K(9) be amended to require the Commissioner of Taxation to consult beyond APRA, and also consult:

An advisory governance body established by the Commissioner of Taxation and comprising consumer representatives and representatives connected with the operation of the superannuation system; in preparing the superannuation and data standards.¹⁴

2.11 The AIST also recommended that the Explanatory Memorandum be amended to include further details of the proposed SuperStream Advisory Council as included in the *Stronger Super Information Pack* (as quoted above in paragraph 2.6).¹⁵

2.12 The FSC stated that it was 'pleased with the idea of an advisory council' and that it is appropriate where there is a compulsory regime that industry have some ability to consult with the government on the maintenance of those standards.¹⁶ The Industry Super Network (ISN) is also 'supportive of the formation of the council':

ISN thinks it is an appropriate regulatory structure or body for consultation with the industry. It is important that the consultation is real and that people have time to respond and contribute on important issues. I think that is why the levy is being raised in this context. It is just a question of time.¹⁷

2.13 Mr Philip Hind, National Program Manager of Data Standards and E-commerce at the ATO, outlined:

The establishment of the SuperStream Advisory Council and the terms of reference and mode of operation of that council has in itself been the subject of very extensive consultation. We first took a discussion paper to the SuperStream working group in July or August of last year, setting out a proposed terms of reference and mode of operation and that has been through several iterations. The basic working infrastructure for government and industry to collaborate around implementation of the standard monitoring of its implementation, taking on board new improvements or changes that might be needed and jointly assessing what progress is being made—the key elements—has really been established. Now that the minister has called for nominations we would expect that that group would be able to pick up the cudgels fairly shortly and start acting as the key forum for implementation around the standard.¹⁸

2.14 The responsibilities of the SuperStream Advisory Council are as follows:

14 Australian Institute of Superannuation Trustees, *Submission 3*, p. 5.

15 Australian Institute of Superannuation Trustees, *Submission 3*, p. 5.

16 Mr Andrew Bragg, Senior Policy Manager, Financial Services Council, *Proof Committee Hansard*, 4 June 2012, p. 5.

17 Dr Sacha Vidler, Chief Economist, Industry Super Network, *Proof Committee Hansard*, 4 June 2012, p. 5

18 *Proof Committee Hansard*, 4 June 2012, p. 19.

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- Review, assess and make recommendations on proposed standards documentation.
 - Monitor implementation of the new standard, including levels of take-up and readiness of stakeholders and identify and advise on potential improvements in the implementation process.
 - Influence the timely adoption of the standards by stakeholders.
 - Review, assess and make recommendations on proposed change requests to the standard.
 - Advise on the impacts of any proposed changes to the standard on stakeholders, including consideration of costs, and timing and scheduling of change requests, and the potential benefits arising from the proposed changes.
 - Recommend potential innovation in the standards framework and how these might be trialled and tested to ensure the ongoing stability and integrity of the standards framework.
 - Review, assess and make recommendations on improvements to business practices related to the standards.
 - Review and report on measures of success and progress on the standards more generally to Government.
 - Provide advice to Government on other SuperStream issues referred by Government.¹⁹

Committee view

2.15 The committee acknowledges that industry members are seeking assurances that a sound governance framework is established to support the SuperStream measures. The committee notes that nominations for the SuperStream Advisory Council have been called for, and a consultation paper on the levy has been released.

2.16 The committee is assured that the governance framework provided through the SuperStream Advisory Council, once established, will abate industry concerns and provide an appropriate forum for industry members to converse with government on the reforms.

Transparency on expenditure of levy funds

2.17 A number of submitters asserted that there should be increased transparency on how the \$467 million of funds collected through levies on APRA regulated funds are spent to develop public sector capability for the SuperStream standards. Indeed, the ISN, FSC, ASFA and AIST provided a joint submission on the matter:

19 The Hon. Bill Shorten, MP, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, 'SuperStream Advisory Council – call for nominees', Media release 028, 25 May 2012.

The superannuation industry recognises the necessity of a levy to fund the ATO's implementation of SuperStream but believe it is vital that expenditure is carefully targeted, cost-effective, transparent and accountable. While systems changes will be considerable very little information has been provided to date on what precisely the levy will fund.

We are aware that the Government intends to publish further details, however as this is not available at the time of Committee hearings we encourage the committee to ensure that there are robust processes in place to ensure the expenditure meets the policy objectives; and ongoing consultation with superannuation funds, administrators and employers to maximise the effectiveness of these important reforms.²⁰

2.18 The group recommended that the ATO be required to provide a 'detailed costs breakdown of the two major policy objectives (namely consolidation and standardisation as referred to in Subsection 50(6))'. It also recommended that there be ongoing transparent reporting to the SuperStream Advisory Council and that the ATO and the superannuation industry look for areas where expenditure and development already planned, or in place, can be utilised to reduce ATO expenditure.²¹

2.19 ASFA noted that considerable work has already been undertaken towards data standardisation, and that the ATO should leverage off this work:

We are still getting figures from a number of our members, but remember that complex systems have been put in place. Hubs have been developed that carry the data the ATO will be tallying. In fact it is much more detailed data. Also, there are the protocols around the transmission of that data—linking to hundreds of thousands of employers. There are about four hubs, but each one carries about 25 per cent of the transactions across the industry. They have been developing those systems over the last few years. It all really started when the government issued the paper on the central clearing house [in 2008]. When those providers...disclose—and of course a lot of this is sensitive information—the amount they have spent on developing those systems, it is nowhere near the amount the levy comprises. I suppose that is the reason it is costing so much. That is what drove that. We think there is an ability to leverage off what the industry has done.²²

2.20 ASFA argued 'it remains unclear what the levies will actually pay for'²³ and commented in its submission:

The Explanatory Memorandum only has information on the proposed year by year funding with no further detail on what the money will be actually

20 Joint industry submission, *Submission 5*, pp 1–2.

21 Joint industry submission, *Submission 5*, p. 2.

22 Ms Pauline Vamos, Chief Executive Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 4 June 2012, p. 6.

23 Association of Superannuation Funds of Australia, *Submission 1*, p. 5.

spent on. Given the substantial amount sought to be recovered (\$467 million in total) much greater accountability should be demanded from the Australian Taxation Office. There has been no consultation to date with the superannuation industry in relation to the proposed ATO expenditure and it remains unclear what the levies will actually pay for.²⁴

2.21 It highlighted that if the bill is passed, the current levy of \$46.8 million for 2011–12 would increase by four times in 2012–13.²⁵ It argued that ATO core activities should be funded through general revenue and 'at the very least...levy amounts should relate to only what is...required to implement the SuperStream measures':²⁶

The funding for the ATO [should] be limited to only what is reasonably required for the purposes of the implementation of SuperStream. In particular, any funding being used to build up ATO core capabilities should come from general revenue.²⁷

2.22 The AIST noted the costs over the seven years are 'a significant amount' and that the expenditure in 2012–13 alone is estimated at \$121 million, mostly for ATO costs. It asserted that the government should 'disclose the details of the SuperStream expenditure'.²⁸

2.23 The ISN claimed it was 'surprised' when details of the size of levy (\$121 million in the first year) were first released in the budget. It argued the amount:

...is equivalent to the entire budget of APRA and more than double what was raised to fund the investors in the Trio superannuation fund from APRA regulated funds and is potentially enough money for the ATO to employ a small army of programmers. So we are interested as to how that expenditure is going to be made and are seeking further detail, and our submission will go to that primary issue.²⁹

Australian Government Cost Recovery Guidelines

2.24 The FSC agreed that 'it is appropriate that the superannuation industry should be subject to cost recovery to pay for the expense of regulation'. It referred to the *Australian Government Cost Recovery Guidelines* (the guidelines) as a point of reference for justification and procedure on cost recovery. It argued that the reforms

24 Association of Superannuation Funds of Australia, *Submission 1*, p. 5.

25 Association of Superannuation Funds of Australia, *Submission 1*, p. 6.

26 Association of Superannuation Funds of Australia, *Submission 1*, p. 5.

27 Association of Superannuation Funds of Australia, *Submission 1*, p. 7.

28 Australian Institute of Superannuation Trustees, *Submission 3*, p. 8.

29 Dr Sacha Vidler, Chief Economist, Industry Super Network, *Proof Committee Hansard*, 4 June 2012, pp 3–4.

meet the criteria to justify cost recovery as stipulated in the guidelines on the following grounds:

- issuance of data standards;
- compliance with data standards; and
- enforcement of data standards.³⁰

2.25 The FSC highlighted that the guidelines outlined that '[a]s far as possible, the agency should identify costs against particular activities to minimise the need to distribute costs arbitrarily among activities'.³¹ This point is further elaborated in the guidelines:

Therefore, to meet their transparency obligations, agencies should adopt costing models sufficiently detailed to allow the Parliament, the Government and, where relevant, stakeholders to analyse their production costs.

Agencies should develop clear costing models detailing actual costs, and how those costs relate to prices and be able to provide information on how capital costs are calculated and how capital costs and overheads are allocated among products.

The adoption of detailed costing models is also necessary in case the validity of the fees is challenged and an agency needs to demonstrate that the fees are authorised by the legislation — imposed on a basis that is consistent with fees rather than taxes for constitutional purposes.³²

2.26 The FSC has recommended, therefore, that the ATO provide transparent reporting on expenditure for the proposed levy, and 'only expend monies once appropriate consideration has been given to all avenues (such as tendering)'. It also suggests that a Cost Regulatory Impact Statement be undertaken before the levy mechanism is implemented.³³

Further levy cost details released and industry comments sought

2.27 During the committee's hearing, the panel of industry members highlighted that Treasury had published further detail on the costing of the SuperStream measures since lodging their submissions.³⁴

30 Financial Services Council, *Submission 6*, p. 7.

31 Australian Government Cost Recovery Guidelines, p. 34 as cited in Financial Services Council, *Submission 6*, p. 9.

32 Australian Government Cost Recovery Guidelines, p. 38 as cited in Financial Services Council, *Submission 6*, p. 9.

33 Financial Services Council, *Submission 6*, p. 9.

34 *Proof Committee Hansard*, 4 June 2012, pp 6–7.

2.28 On 1 June 2012, the Treasury released a consultation paper on the *Proposed Financial Industry Levies for 2012–13* and invited industry comments on the proposed levies, including the SuperStream levy. The paper provided the following break-down of high-level SuperStream deliverables across the seven years of the program.

Table 2.1: SuperStream high-level deliverables 2010–11 to 2017–18

	IT Costs (\$'000s)	Non-IT costs (\$'000)	Total (\$'000)
Data and e-commerce standard, enabling services and on-boarding	\$260,955	\$18,871	\$279,826
SuperSeeker, account consolidation and data matching	\$50,195	\$112,530	\$162,725
Program management and governance	\$0	\$7,738	\$7,738
Communications and research	\$0	\$16,820	\$16,820
Total	\$311,150	\$155,959	\$467,109

Source: Treasury and the Australian Prudential Regulation Authority, 'Proposed Financial Industry Levies for 2012–13', June 2012, <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Proposed-Financial-Industry-Levies-for-2012-13> (accessed 5 June 2012).

2.29 The Deputy Commissioner for Superannuation at the ATO provided context on the \$467 million levy over seven years in relation to the amount that the ATO spends per annum on superannuation administration:

I think the other contextual thing is perhaps to give an indication of how much the Taxation Office spends annually in its administration of super. We spend about \$350 million each year in our administration of super in various guises—compliance work, introducing new measures. That is the standard kind of spend for us in our administration of significant aspects of the system.³⁵

2.30 The ATO provided an overview of 'key reforms to the superannuation system going back to 1998':

These measures are for changes to the administration of the superannuation system where the ATO received funding. Measures where funding was absorbed by the ATO, or for initiatives to enhance operational activities (such as debt collection) have been excluded.³⁶

2.31 The following funding was allocated to the ATO for superannuation reforms over the past 14 years (a description of each measure is at Attachment 3).

35 Mr Neil Olesen, Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 4 June 2012, p. 13.

36 Australian Taxation Office, answer to question on notice 4 June 2012 (received 7 June 2012).

Table 2.1: Summary of superannuation reforms to 1998

Measure	Year	ATO funding
Stronger Super – implementation of SuperStream reforms	2012–13	\$442.5m over 7 years
Stronger Super – self managed super funds	2011–12	\$40.2m over 5 years
Superannuation – refund of excess concessional contributions	2011–12	\$15.7m over 4 years
Stronger Super – SuperStream – initial funding	2011–12	\$14.6m over 2 years
Stronger, fairer, simpler tax reform (Henry Review) (superannuation measures)	2010–11	\$175.4m over 4 years
A plan to simplify and streamline superannuation (Simple Super)	2006–07	Initially \$445.3m, revised to \$527m over 5 years
Superannuation Guarantee – improving responsiveness to inquiries by employees	2006–07	\$19.2m over 4 years
Superannuation Choice – implementation	2005–06	\$62.3m over 5 years
Supervision and funding arrangements for self-managed superannuation funds	1998–99	\$8.2m over 4 years

Source: Australian Taxation Office, answer to question on notice 4 June 2012 (received 7 June 2012).

2.32 In addition, Treasury outlined to the committee, that 'the ATO [SuperStream] costs have been through a thorough, internal government process, including detailed consideration by the department of finance'.³⁷

Procurement is probably a step down the track. The first process is for us to make some best estimates of the costs based on the design as we best understand it at the point where we are required to put the submission through for government to make the funding decision. We are talking about changes to a very complex system and you can only make your best guess as to what the costs will be for such large changes. We have some

37 Mr Nigel Murray, Principal Adviser, Superannuation, Revenue Group, Personal and Retirement Income Division, Treasury, *Proof Committee Hansard*, 4 June 2012, p. 12.

experience in doing this. Because of the size of money, it is subject to what is called the two-pass process that the department of finance runs. That requires you to put in two business cases to develop the costing subject to a lot of scrutiny from the department of finance and subject to what is known as a gateway review process along the way when delivering the changes. The way in which we deliver the work will depend on the particular component of the work we are trying to deliver. Some aspects of it will be delivered by the permanent workforce and some aspects will be delivered through private arrangements. We have a range of panel contracts in place which we use to supplement our capability around IT changes, for example. So we are currently drawing on a range of different sources to get the work done.³⁸

2.33 Mr Neil Olesen, Deputy Commissioner at the ATO, also outlined that the cost estimates would be subject to scrutiny by the Department of Finance and Deregulation, and adjusted where necessary:

A good example is that back in 2007 we had another bunch of reforms to super—the Simpler Super changes, as they were called. That was another large exercise. There was substantial government funding provided for that. It is true that for change exercises of this nature there end up being unders and overs on a per annum basis throughout the life of the project. The routine approach that Finance takes is to come in and scrutinise how the spending is going a couple of years down the track and, through that process, make any adjustments that might be necessary, depending on how the overall budget is tracking and how the deliverables are tracking at that stage. It may be that you are under in one year and over a little bit in another. I know through the simplification exercise that by the time we got to the end of the five-year window on that one we were pretty much on the money, but there were some overs and unders along the way.³⁹

Levy reviewed annually

2.34 In addition, Mr Nigel Murray, Principal Adviser on Superannuation at the Treasury, outlined that the levy is revised annually, and adjusted accordingly, by the Minister:

The process for setting the levy is an annual process, so the levy is determined by the minister annually in around June. It would be through that process that if there was a need for any adjustment for the forthcoming levy, for example, to be taken into account, they could be taken into account in that process.⁴⁰

38 Mr Neil Olesen, Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 4 June 2012, p. 12.

39 *Proof Committee Hansard*, 4 June 2012, p. 12.

40 *Proof Committee Hansard*, 4 June 2012, p. 12.

Committee view

2.35 The committee submits that broadly, the requests from industry members for transparency on levy expenditure are fair and reasonable. Accordingly, the committee is pleased that the Treasury have released further details on the SuperStream high-level deliverables for 2010–11 to 2017–18.

2.36 The committee commends the measures that Treasury has taken to encourage dialogue with industry on the costs of the SuperStream levy through the release of its discussion paper. The committee notes that industry has the ability to provide analysis and comments on the discussion paper. The committee encourages industry to use this avenue to further discuss the detail of the high-level deliverables on SuperStream that were released by Treasury during the course of this inquiry.

2.37 The committee notes that the levy is subject to annual review, and adjusted when appropriate. Further, the committee is assured that the expenditure for the SuperStream measures has, and will continue, to adhere to the robust scrutiny procedures within the relevant agencies and the Department of Finance and Deregulation.

2.38 Further, the committee notes that future procurement for the SuperStream measures will be subject to even more stringent review under the new procurement rules. The Department of Finance and Deregulation has recently reviewed the Commonwealth Procurement Guidelines and will release the new Commonwealth Procurement Rules on 1 July 2012. The new procurement rules set a more imperative tone than its former iteration.⁴¹

2.39 The committee highlights the comments from the ATO that \$350 million per year are allocated to administration of superannuation within the office. This figure provides some context to the \$467 million in total to be paid over seven years for the SuperStream levy.

2.40 The committee also considers it appropriate that the ATO provide a regular detailed breakdown of costs and its expenditure of the additional levies to the SuperStream Advisory Council based on reporting guidelines developed in consultation between the council and the ATO.

Recommendation 1

2.41 That the ATO be required to provide a regular detailed breakdown of its costs and expenditure of the additional levies to the SuperStream Advisory Council, based on reporting guidelines developed in consultation between the council and the ATO.

41 Department of Finance and Deregulation, 'Commonwealth Procurement Rules — effective from 1 July 2012', http://www.finance.gov.au/procurement/commonwealth_procurement_rules_news.html (accessed 6 June 2012).