



Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into the Superannuation Legislation Amendment
(Stronger Super) Bill 2012 and the Superannuation
Supervisory Levy Imposition Amendment Bill 2012

June 2012

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Members of the Committee

Ms Deborah O'Neill, Chair	NSW ALP
Senator Sue Boyce, Deputy Chair	QLD LP
Senator Mathias Cormann	WA LP
Senator the Hon Nick Sherry	TAS ALP
Senator Matt Thistlethwaite	NSW ALP
Mr Paul Fletcher MP	NSW LP
The Hon Alan Griffin MP	VIC ALP
The Hon Tony Smith MP	VIC LP
Ms Laura Smyth MP	VIC ALP

SECRETARIAT

Mr Tim Bryant, Acting Secretary
Ms Sharon Babyack, Principal Research Officer
Ms Ruth Edwards, Administrative Officer

Suite SG.64
Parliament House
Canberra ACT 2600

T: 61 2 6277 3583
F: 61 2 6277 5719
E: corporations.joint@aph.gov.au
W: www.aph.gov.au/senate/committee/corporations_ctte

Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

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Abbreviations

AAS	Australian Administration Services
AIST	Australian Institute of Superannuation Trustees
APRA	Australian Prudential Regulation Authority
ASFA	Association of Superannuation Funds of Australia
ATO	Australian Taxation Office
EM	Explanatory Memorandum
FSC	Financial Services Council
ISN	Industry Super Network
RIS	Regulation Impact Statement
RSA	Retirement Savings Account
RSA Act	<i>Retirement Savings Account Act 1993</i>
SBR	Standard Business Reporting
SIS Act	<i>Superannuation Industry (Supervisions) Act 1993</i>
XBRL	eXtensible Business Reporting Language

Recommendations

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.

Recommendation 2

3.31 The committee recommends that the bills be passed.

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.¹ 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'.² 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.³

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).⁴

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.⁵ 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).⁶

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.⁷

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.⁸ 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'.⁹

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.

...

This is a lot of short-term pain for a long-term gain.¹⁰

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...

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.¹¹

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'.¹²

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.¹³ 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.¹⁴

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'.¹⁵

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

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.

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- 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.¹⁶

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.¹⁷ The transitional provisions are in acknowledgement of the 'significant change in systems and behaviour across the funds and employers'. The RIS stated:

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.¹⁸

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'.¹⁹

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.²⁰

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

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.

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.²¹

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).²²

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'.²³

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

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.²⁴

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.²⁵

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

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.

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 2012.²⁶

1.30 The amendment in this schedule applies from 1 July 2012.²⁷

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.

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.

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).

Chapter 3

Compliance and implementation

3.1 As mentioned in chapter 2, submitters to this inquiry were broadly supportive of the measures in the bills. The two key concerns on governance and transparency of costs for the SuperStream were discussed in chapter 2. In addition, the following concerns were raised about the SuperStream measures, these will be discussed in this chapter:

- compliance; and
- implementation, including the impact of the reforms on smaller employers.

3.2 A number of other concerns were raised in brief — these are listed at the end of the chapter.

Compliance measures

3.3 A number of submitters raised concerns about various aspects of the compliance regime for the SuperStream measures.

3.4 The Australian Chamber of Commerce and Industry (ACCI) outlined the impact that non-compliance could have on employers, and suggested that a 'safe-harbour' provision be considered:

The transition to SuperStream will affect every employer and most, if not all, superannuation entities. It will take place against the background of imperfect understanding and imperfect records and data. The regulators' approach must be directed towards encouraging and assisting funds and employers to become SuperStream compliant with resort to penalty options as a last resort. SuperStream will undoubtedly take time to bed down and early resort to penalties would be unfair, and perceived to be unfair, which will not assist implementation nor to bring confidence to the system...

A principle that must be enshrined in the enforcement policy of the ATO is that it is not in the public interest for employers to be threatened with fines or prosecuted before the courts when a valid contribution has been made into a fund but in circumstances where there is a technical failure to provide the requisite information in an electronic format, or where there is a genuine bona fide reason for non-compliance.

ACCI believes that a "safe-harbour" provision for employers needs to be considered.¹

1 Australian Chamber of Commerce and Industry, *Submission 8*, pp 3–4.

3.5 The Financial Services Council (FSC) submitted that the proposed compliance measures for SuperStream are 'overly severe' and suggested that the penalty regime be reconsidered:

The FSC believes the penalties to be overly severe: a three-pronged enforcement regime of strict liability offences, infringement notices and administrative penalties under the Taxation Administration Act seem excessive, especially when viewed in light of the severity of administrative penalties that are established in Practice Statement 3550, which imposes such penalties on a "per member" basis.

The result of these combined impacts is the potential for the amounts to be paid on a possible single event or error, affecting a large number of members, could amount to penalties exceeding the value of the fund. We do not believe that this is the intention of the policy. We would seek to have the extent of these penalties reconsidered.²

3.6 Subsequently, the FSC suggested that the Australian Taxation Office (ATO) 'should be provided with flexibility where employers have sought to do the right thing (comply with the standards)':

...we believe that employer penalties are necessary to drive good behaviour, but that penalties should neither be overly stringent nor applied without administrative consideration (ATO discretion).

Accordingly, we believe the penalties in the Bill should remain intact providing the ATO is provided with interpretative flexibility. This recognises situations where an employer endeavours to comply with the law but has not done so.³

3.7 FSC recommended that the bill should include a section from the *Taxation Administration Act 1953* (Schedule 1 Section 298-20) which stipulates 'that the ATO can waive or limit penalties for employers who are attempting to comply with the data standards':

298-20 Remission of penalty

(1) The Commissioner may remit all or a part of the penalty.

(2) If the Commissioner decides:

(a) not to remit the penalty; or

(b) to remit only part of the penalty; the Commissioner must give written notice of the decision and the reasons for the decision to the entity.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the contents of a statement of reasons.

2 Financial Services Council, *Submission 6*, p. 11.

3 Financial Services Council, additional information, received 5 June 2012, pp 1–2.

(3) If:

(a) the Commissioner refuses to any extent to remit an amount of penalty; and

(b) the amount of penalty payable after the refusal is more than 2 penalty units; and

Note: See section 4AA of the Crimes Act 1914 for the current value of a penalty unit.

(c) the entity is dissatisfied with the decision; the entity may object against the decision in the manner set out in Part IVC.⁴

3.8 The Association of Superannuation Funds of Australia (ASFA) requested that further information be provided from the ATO on the range of circumstances that will be considered when issuing directions and imposing penalties for non-compliance with the standards.⁵

3.9 The Australian Institute of Superannuation Trustees (AIST) suggested that there should be a 'grace period of 18 months to two years' on compliance. It commented:

...you can send the right money to the right people at the right time, but if you do not send it in the right format you can be guilty of an offence. We think there should be an introductory period.⁶

3.10 The AIST have also suggested that there should be a legislative requirement for superannuation funds or employers to report on compliance with the data and payment standards:⁷

We had concerns with an earlier iteration of this legislation about there being an overly harsh penalty regime. We were particularly concerned about the impact of that harsh regime on employers. That has been addressed. We think there is a much better penalty regime now within the legislation that is before parliament. But now it is even more appropriate, in terms of getting people on board, that there be a mechanism to ensure that—where people do not receive data that is consistent with the data requirements or payment standards—there be a mechanism, firstly, for people to talk amongst themselves about getting the requirements right. But if it has not been addressed within 21 days there needs to be a mechanism to contact the ATO or an appropriate regulatory body.⁸

4 Financial Services Council, additional information, received 5 June 2012, p. 2.

5 Association of Superannuation Funds of Australia, *Submission 1*, pp 4–5.

6 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 4 June 2012, p. 9.

7 Australian Institute of Superannuation Trustees, *Submission 3*, p. 7.

8 Mr David Haynes, Project Director, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 4 June 2012, p. 2.

3.11 Treasury officials outlined that the bill allows for a scaled approach for non-compliance with the SuperStream measures:

Mr Murray: The approach we have taken to the enforcement provisions is to have a strict liability provision which could be used in certain circumstances, but it is not the intent that that provision be used as the starting point and, by having the infringement notice and administrative penalty regime, a lower type of penalty can be applied for breaches. It is also probably of note—and the tax office might want to add something to this—that the ATO's approach to compliance, certainly in the introductory stages to any new measure, is to take an educative approach in the first instance, but we do have these penalty provisions in there, so, in the circumstance where there may be some significant breaches and noncompliance, appropriate action can be taken if necessary.

...

Mr Denney: Having a strict liability offence ultimately means that the court can make a decision on the penalty. As my colleague Nigel Murray mentioned, the intent really when we developed the framework was that, in those most severe instances where there has been noncompliance, there was a final component to the penalty that could be pursued, but really it was designed to have some flexibility and some scalability designed into the system...⁹

3.12 The committee explored this point further with Treasury and ATO officials:

Mr FLETCHER: I am thinking of the situation of the small butcher discharging his obligation to pay superannuation for, say, two or three employees. He or she could pay the amount that is required, pay it when it is required but, if the butcher fails to include all of the items of data that are required under the standards, it is open to the regulator to prosecute him and then it is not open to him as a defence to say, 'I thought I was doing all that I was required to do.'

Mr Olesen: In a strict sense, the answer is yes. The assumption you are making is that we would investigate that and in fact then go to the trouble to prosecute a situation like that, and they are two very big steps that we are perhaps very unlikely to go to in the vast majority of cases. As you would be aware, the tax office administers a whole range of penalties, and we seek to do that in a manner that has regard to the significance of the behaviour that you are coming upon. What we would primarily be trying to do, particularly with the first couple of years of this new regime, is encourage people to understand and help them to comply with the requirements that the laws are placing upon them.

...

9 Mr Nigel Murray, Principal Adviser, Superannuation, Revenue Group, Personal and Retirement Income Division, Treasury and Mr Chris Denney, Senior Adviser, SuperStream, Personal and Retirement Income Division, Treasury, *Proof Committee Hansard*, 4 June 2012, p. 14.

Mr Murray: It is worth noting that the use of strict liability offences is not at all uncommon. In many parts of the superannuation industry, supervision legislation which regulates the superannuation industry has these types of offences. That does not mean, of course, that there is regularly action taken to enforce them. As Mr Olesen has mentioned, the Taxation Office has an approach to compliance that will generally take an educative approach first. These provisions are in the legislation, as they are in many other pieces of legislation, to provide that last step approach if that is ever necessary but that is certainly not the approach that governments or regulators would normally take in the first instance. I am also aware that the Taxation Office does publish, for example, its approach to compliance measures and would be doing similar types of things in relation to these provisions as well.¹⁰

3.13 The ATO further highlighted to the committee the educative role it would take in the first instance, particularly in the first couple of years of operation of the proposed system:

Our intention for the first couple of years would be to focus on helping people understand and meet their obligations, much the same as we did with the GST when it was introduced, much the same as we have done with other non-shortfall penalties that were introduced a couple of years ago. We have not thought to use those at all in the last two years. The focus will be very much on trying to get people to understand and meet their obligations. Then as we move into a more mature system, the framework as Mr Murray has set out gives us a range of flexible approaches. The administrative penalties would be our starting point and they allow us to impose a lower penalty that has regard to the actual behaviour that we are seeing. So people are trying to do their best and investing in the technology they need to meet these standards.

We would not be seeking to impose a penalty. But you can imagine that after a few years with a regime we might start to see funds and employers who really ought to be able to comply with the obligations not complying to the extent that becomes a serious issue. Then we have the flexibility to start using the administrative penalties in the most egregious cases. I imagine this would be several years down the track. You might contemplate prosecution action against a large employer or a large fund that has persistently, consistently and recklessly not had regard to their obligations under the standards. That would be an extraordinary case.¹¹

Committee view

3.14 The committee asserts that the compliance measures for SuperStream are necessary to protect the integrity of the standard data and payment system. It notes

10 Mr Neil Olesen, Deputy Commissioner, Superannuation, Australian Taxation Office, and Mr Nigel Murray, Principal Adviser, Superannuation, Revenue Group, Personal and Retirement Income Division, Treasury, *Proof Committee Hansard*, 4 June 2012, p. 14.

11 Mr Neil Olesen, Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 4 June 2012, p. 15.

that strict liability provisions have been a feature of superannuation legislation for over ten years and that the scalability built into the current penalty regime, along with the educative approach of the ATO on the reforms, will provide a sound balance for instances of non-compliance.¹²

3.15 The committee acknowledges the requests from ASFA that further information be provided from the ATO on the range of circumstances that will be considered when issuing directions and imposing penalties for non-compliance with the standards. The committee encourages the ATO to respond to these requests.

3.16 Given the complexity of the legislation and the nature of the strict liability penalty provisions, the committee notes that the ATO has advised that it has some administrative flexibility to waive or limit penalties where employers are attempting to comply with the data standards but commit inadvertent technical breaches. The committee urges the ATO to use its discretion to waive or limit penalties in appropriate circumstances.

Implementation

3.17 The committee received some comments on implementation of the SuperStream measures. The Australian Administration Services (AAS) expressed concern at the pace of the reforms and the FSC made a proposal on how the levy should be administered. There was also some discussion on the impact on small businesses.

3.18 The AAS, a superannuation administration provider, raised concerns about the pace of, and uncertainty surrounding, implementation of the MySuper component of the Stronger Super reforms:

The pace of the reform agenda is aggressive, and as such organisations are gearing up and spending money now to meet tight deadlines. Given the lack of certainty and clarity of detail, including upcoming legislation and regulations, there is a high risk of large amounts of Members' superannuation money being spent without a result.

...

Uncertainty around the MySuper component of the Stronger Super reforms is putting at risk the entire program. This largely stems from inconsistent messages from Treasury and APRA around the design of MySuper.

...Once a unified approach to MySuper has been determined, we then suggest Treasury and APRA clarify the detail of MySuper with the Industry, in particular the implications of legislation on Fund operations. This summit should occur no later than July 2012.¹³

12 'A significant number of the strict liability provisions in the SIS Act were introduced in 2000 under reforms introduced under the Financial Sector Legislation Amendment Bill (No. 1) 2000'. Treasury, answer to question on notice, 4 June 2012 (received 8 June 2012).

13 Australian Administration Services, *Submission 4*, p. 2.

Consistency with other government policy

3.19 The FSC highlighted certain aspects of the *Australian Government Cost Recovery Guidelines* that require cost recovery measures to 'occur in a cost effective, efficient and consistent way'. It emphasised that the guidelines require that cost recovery measures are consistent with other Australian Government policies.¹⁴ In light of this requirement, the FSC outlined the current mechanical process for determination and allocation of the supervisory levy imposed on superannuation entities:

- For superannuation funds other than small APRA funds (SAFs), the restricted levy component on the value of assets for 2011/12 was 0.01264% to 0.00965%- subject to a minimum of \$570 and a maximum of \$260,000. The unrestricted rate for 2011/12 is 0.001534% of assets ;
- SAFs were levied a flat amount of \$500;
- The levies are used to fund the operational costs of APRA, and certain market integrity and consumer protection functions undertaken by ASIC and the ATO in relation to APRA-regulated institutions;
- A separate determination sets out the amounts allocated to activities undertaken by ASIC and the ATO under each of the financial sector levy imposition Acts. The total amount allocated for the 2011/12 financial year to ASIC was \$20.7m and the total amount allocated to the ATO was \$7.2m (see Legislative Instrument F2011L01329).¹⁵

3.20 FSC argued that the levy for the SuperStream costs should be administered in a similar way to the current levy as outlined above.

Impact on small businesses

3.21 Members of the industry highlighted to the committee that the Medicare clearing house will benefit small employers in the roll out of SuperStream. Ms Pauline Vamos of ASFA and Mr David Haynes of AIST commented on the implementation process:

Ms Vamos: The industry using the standards is really not a big thing here with the clearing houses we have at the moment. The clearing houses are interposed between the employers and the funds, so whatever the data format is it goes through the clearing house and then it is given to the funds in the format they require. The big change, and this is where the on-boarding costs come in for the employers, will be for both large and small employers and for their payroll houses. That is where a lot of that will be, and we really have not started that process yet. That is the big one; that is the big gap.

...

14 Australian Government Cost Recovery Guidelines, p. 40 as cited in Financial Services Council, *Submission 6*, p. 7.

15 Financial Services Council, *Submission 6*, p. 8.

It is a different impact [between large and small employers] because the payrolls and contributions of your larger employers and your medium-sized employers are usually paid by payroll houses. There has been a lot of discussion already with payroll houses, so MYOB and all of the other payroll houses are part of this group so that they can make their system changes...

Mr Haynes: I agree with everything that Pauline has said, but the counterpoint to that will be the efficiencies that result from the implementation of SuperStream: medium sized employers who at the moment sit down and perhaps write out cheques to 18 different superannuation funds will have a streamlined approach to their superannuation and its administration where they can just send the same minimum information in one job lot, which will then go to each of the superannuation funds in question. There will be massive savings and a lot fewer headaches for employers as a result of that.¹⁶

3.22 ACCI expressed strong support for the measures taken to assist small business with compliance for the SuperStream measures:

ACCI strongly supports the continuation of the Superannuation Small Business Clearing House (administered by Medicare Australia). This will be essential for small business, particularly where they are currently using non-electronic means to make contributions and a review should be conducted to ascertain whether it should be extended to medium sized firms in the near future.¹⁷

3.23 The departmental officials provided assurances that attention has been given to the needs of small business in the development of SuperStream and stated:

The tax office will be undertaking a range of communication and education activities in the lead-up to 2015 and beyond to make sure that small and other employers have a full understanding of their obligations under these laws.¹⁸

3.24 The officials gave an overview of the two key elements that are part of the reforms to support small businesses:

- the Medicare clearing house; and
- discussions with payroll suppliers.

3.25 Mr Murray of the Treasury and Mr Hind of the ATO gave an overview of the workings of the Medicare clearing house and how it applies to the SuperStream requirements for small employers:

16 *Proof Committee Hansard*, 4 June 2012, pp 8–9.

17 Australian Chamber of Commerce and Industry, *Submission 8*, p. 5.

18 Mr Neil Olesen, Deputy Commissioner, Superannuation, Australian Taxation Office, *Proof Committee Hansard*, 4 June 2012, p. 16.

Mr Murray: The Medicare clearing house is a facility that is already available for a small business and provides a simplified electronic process for employers to use the clearing house to pass on contributions to different funds, so removing that obligation on employers. It has been quite successful and certainly the feedback that Medicare have received from employers who have used the service is that it has been very highly regarded by those small employers who have been using it. That service will continue to be available into the future.

...

Mr Hind: The small business clearing house will be converting its electronic files over to what is called the data standard format or the XBRL format, which is the technical term to describe that, within the next six to 12 months roughly and make all that available in the normal way that it transmits contributions on behalf of employers into funds. So, from an employer's perspective, if they have already signed up for the small business clearing house and are using it today or if they join at any stage during the next 12 months or so, they will find that they are able to comply with the standard with virtually no perceived change in their current business processes or operations. The small business clearing house will effectively shield them from the impact of any of that change.

...

There are about 23,000 small employers registered with the clearing house and making regular payments through the clearing house...I think it is a pretty small percentage at this stage. There is a large number of small employers in Australia, several hundreds of thousands, so 23,000 of those is a very good start but we have got a way to go and part of our effort will be trying to encourage people to understand and sign on for that service if it suits their business.¹⁹

3.26 Mr Hind, National Program Manager of Data Standards and E-Commerce at the ATO, also provided an overview of developments with payroll suppliers and outlined that suppliers were prepared for the implementation of SuperStream:

We have been talking extensively with payroll suppliers over the last 12 months about the nature of the data standard and how it is designed. One of the key design principles that we have followed is that the contributions information that is required from an employer should be able to be produced natively from a payroll system and involve the least data required to meet the obligation. In those consultations with payroll suppliers—and we have been dealing with not only the top 10 but also many of the smaller ones as well—it is clear that all of them will be able to embrace this

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

Around 3.2 per cent of small employers use the Clearing House operated by the Department of Human Services. Since its inception in mid 2010, it has processed over \$316.5 million in superannuation payments representing over 561 000 superannuation contributions made for employees.

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

standard and utilise that within their systems and therefore provide employers progressively over the coming years the capability to produce contributions in the new data standard format as effectively part of their normal payroll and contribution cycles.²⁰

Other comments from submitters

3.27 The following comments were highlighted in brief to the committee:

- ASFA recommended that the capacity for regulations to be made delaying the implementation date for small employers be removed (Item 30, (3)(b)).²¹
- ASFA also recommended that the amendment to allow the Minister to make more than one determination per year be limited to 2012–13 in line with the explanation in the EM that this amendment is to 'provide flexibility for the Treasurer in the event that amendments to the APRA Act...are delayed beyond 30 June 2012'.²²
- Subsection 34K(2) stipulates that regulations may prescribe different requirements for different classes of superannuation entities. The AIST recommended that a time limit be placed on this provision to avoid compromising the 'very narrow bounds' required for standardisation of the SuperStream measures.²³
- AIST suggested that the initial focus of the SuperStream measures was on contributions, rollovers and reporting to government. It argued that there should be capacity in the bills to accommodate 'wide ranging efficiencies throughout the superannuation system...on a wider basis over time'. It proposed a number of amendments to allow for future changes to the superannuation system to be accommodated through regulations.²⁴
- ACCI questioned whether a casual employee would count towards the determination of the size of an employer. It argued that regular casuals, or having casuals "on the books", may skew the size determination of an employer and therefore, the date that the provisions of the bill would apply to it.²⁵

20 *Proof Committee Hansard*, 4 June 2012, p. 17. See also pp 19–20.

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

22 Association of Superannuation Funds of Australia, *Submission 1*, pp 7–8.

23 Australian Institute of Superannuation Trustees, *Submission 3*, p. 6.

24 Australian Institute of Superannuation Trustees, *Submission 3*, pp 6–7.

25 Australian Chamber of Commerce and Industry, *Submission 8*, p. 4.

Concluding comments

3.28 The committee is encouraged by the efforts already undertaken by industry to adopt the SuperStream measures and improve efficiencies in the administration of superannuation for the benefit of all employers and superannuation members.

3.29 The committee highlights the staged implementation of the SuperStream reforms (see paragraphs 1.19–1.20), and asserts that this approach provides ample consideration to the needs of the full spectrum in scale of funds and employers.

3.30 The committee commends the extensive consultation and collaboration between industry and government officials that has been undertaken on the SuperStream measures. The committee applauds the open dialogue between industry and government officials and the measures currently underway to:

- consult on the costs of the SuperStream levy through the current consultation paper (as discussed in chapter 2); and
- establish a governance framework through the SuperStream Advisory Council to allow users of the data standards to monitor, review and advise government on the SuperStream measures.

Recommendation 2

3.31 The committee recommends that the bills be passed.

Ms Deborah O'Neill, MP

Chair

Appendix 1

Submissions

- 1 The Association of Superannuation Funds of Australia Limited
- 2 Law Council of Australia
- 3 Australian Institute of Superannuation Trustees
- 4 Australian Administration Services
- 5 Joint Superannuation Stakeholders
- 6 Financial Services Council
- 7 Consumers Federation of Australia
- 8 Australian Chamber of Commerce and Industry

Answers to Questions on Notice

- 1 Australian Taxation Office: Funding for new superannuation measures. Received 7 June 2012.
- 2 Australian Taxation Office: Small Business Clearing House. Received 7 June 2012.
- 4 Treasury: Strict liability offence. Received 8 June 2012.

Additional Information

Information on SuperStream penalties received from Financial Services Council.
5 June 2012

Appendix 2

Public Hearing

Monday 4 June 2012

Association of Superannuation Funds of Australia

Ms Pauline Vamos, Chief Executive Officer

Ms Margaret Stewart, General Manager, Policy and Industry Practice

Australian Institute of Superannuation Trustees

Mr David Haynes, Project Manager

Financial Services Council

Mr Andrew Bragg, Senior Policy Manager

Industry Super Network

Dr Sacha Vidler, Chief Economist

Australian Taxation Office

Mr Phillip Hind, National Program Manager, Superannuation

Mr Neil Olesen, Deputy Commissioner, Superannuation

The Treasury

Mr Chris Denney, Senior Adviser, SuperStream

Mr Nigel Murray, Principal Adviser, Superannuation

New superannuation measures administered by ATO

Measure	ATO funding
<p>Stronger Super – Implementation of superstream reforms <i>2012-13 Federal Budget, Budget Paper 2, page 280</i></p> <p>These changes implement the recommendations of the independent Super System Review (Cooper Review) of superannuation. They are designed to improve the efficiency and effectiveness of the superannuation system through the better use of technology and by standardising data and payment requirements for member related superannuation transactions (such as contributions and rollovers).</p>	<p>\$442.5m over 7 years</p>
<p>Stronger Super – self managed super funds <i>2011-12 Federal Budget, Budget Paper 2, page 324</i></p> <p>The package of Self Managed Super Fund (SMSF) reforms announced by the Government are designed to improve the operation, efficiency and integrity of this sector and increase community confidence. The reforms include: the introduction of administrative penalties that the ATO can apply in cases of non-compliance by SMSF trustees; the introduction of knowledge and competency requirements on SMSF service providers, including the registration of SMSF auditors; tightened legislative restrictions on SMSF investment in collectables and personal use assets; requiring SMSFs to value their assets at net market value and the ATO to publish valuation guidelines; the appointment of the ATO to collect and publish data on the sector; and changes to the registration and rollover processes, and illegal early release penalties to deter the use of SMSFs for illegal activity.</p>	<p>\$40.2m over 5 years</p>
<p>Superannuation – refund of excess concessional contributions <i>2011-12 Federal Budget, Budget Paper 2, page 43</i></p> <p>The Government will provide eligible individuals with the option to have excess concessional contributions taken out of their superannuation fund and assessed as income at their marginal rate of tax, rather than incurring excess contributions tax. The measure will apply where an individual has made excess concessional contributions of up to \$10,000 (not indexed) in a particular year and is only available for breaches in respect of 2011-12 or later years, and only for the first year, commencing from 2011-12, in which a breach occurs.</p>	<p>\$15.7m over 4 years</p>

Measure	ATO funding
<p>Stronger Super – Superstream – initial funding <i>2011-12 Federal Budget, Budget Paper 2, page 325</i></p> <p>The Government will provide \$14.6 million over two years to the Australian Taxation Office to develop a business case and initial capital related expenditure to implement a mechanism for members to view their superannuation accounts that have been reported to the ATO and establish governance and project teams during consultation to undertake detailed design of ATO IT systems to support the SuperStream measures.</p>	<p>\$14.6m over 2 years</p>
<p>Stronger, fairer, simpler tax reform (Henry Review) (superannuation measures) <i>2010-11 Federal Budget, Budget Paper details listed against each measure below</i></p> <p><i>Increasing the superannuation guarantee rate to 12% (Budget Paper 2, page 42)</i> The Government will increase the superannuation guarantee (SG) rate from 9 per cent to 12 per cent, with increments of 0.25 percentage points in the first two years, and 0.5 percentage points thereafter.</p> <p><i>Raising the superannuation guarantee age limit from 70 to 75 (Budget Paper 2, page 44)</i> The Government will raise the superannuation guarantee (SG) age limit from 70 to 75, with effect from 1 July 2013.</p> <p><i>Government superannuation contributions tax rebate for low income earners (Budget Paper 2, page 40)</i> The Government will provide a superannuation contributions tax rebate of up to \$500 annually for low income earners, with effect from the 2012-13 income year. The amount payable under this measure will be calculated by applying a 15 per cent rebate of tax to the concessional contributions made by or for individuals on adjusted taxable incomes of up to \$37,000 (not indexed), with an annual maximum amount payable of \$500 (not indexed). The rebate will be paid to the individual's superannuation fund to directly boost their retirement savings.</p> <p><i>Increasing concessional contributions cap for individuals over 50 with low super balances (Budget Paper 2, page 41)</i> From 1 July 2012, the Government will allow individuals aged 50 and over with total superannuation balances below \$500,000 to make up to \$50,000 in concessional superannuation contributions. This doubles the cap of \$25,000 (indexed) which is scheduled to apply from 1 July 2012. This measure will allow these individuals to 'catch up' on their superannuation contributions when they are most able. It can particularly benefit those who have had periods outside the workforce. The measure will improve the equity of the superannuation system by targeting concessions towards those with the greatest need to build their retirement savings. <i>(This measure deferred in 2012 Federal Budget for 2 years)</i></p>	<p>As announced in 2010:</p> <p>\$175.4m over 4 years</p>

Measure	ATO funding
<p>A plan to simplify and streamline superannuation (Simpler Super) <i>Announced in 2006-07 Federal Budget, funding included in 2006-07 MYEFO, additional funding in 2007 Federal Budget</i></p> <p>The plan includes proposals to dramatically simplify and streamline superannuation:</p> <ul style="list-style-type: none"> • Tax free superannuation benefits for people aged 60 and over which are paid from a taxed fund from 1 July 2007. • Abolishing reasonable benefit limits (RBLs). • Streamlining the contribution and payment rules. • Reducing the pension assets test taper rate from \$3.00 to \$1.50 for every \$1,000 of assets from 20 September 2007. 	<p>Initially \$445.3m, revised to \$527.0m over 5 years</p>
<p>Superannuation Guarantee – improving responsiveness to inquiries by employees <i>2006-07 Federal Budget, Budget Paper 2, page 330</i></p> <p>The Government will provide \$19.2 million to improve the responsiveness of the Australian Taxation Office (ATO) to inquiries about compliance with the Superannuation Guarantee arrangements. The ATO will be able to provide enhanced services to employees with concerns about the payment of employer superannuation contributions required under the Superannuation Guarantee arrangements.</p>	<p>\$19.2m over 4 years</p>
<p>Superannuation Choice - implementation <i>2005-06 Federal Budget, Budget Paper 2, pg 258</i></p> <p>The Government will provide additional funding of \$88.4 million over five years (including \$14.6 million in 2004-05) to assist with a smooth transition to superannuation choice. From 1 July 2005, more Australians will be able to choose the superannuation fund for their superannuation guarantee contributions.</p>	<p>\$62.3m over 5 years</p>
<p>Supervision and funding arrangements for self-managed superannuation funds <i>1998-99 Federal Budget, Budget Paper 2, pg 1-107</i></p> <p>As part of its response to the recommendations of the Financial System Inquiry, the Government announced an in principle decision to transfer the regulation of self-managed superannuation funds from the Insurance and Superannuation Commission (ISC) to the Australian Taxation Office (ATO). The transfer will take effect from 1 July 1999. Additional funding has been allocated to the ATO to administer these funds, and to improve their compliance with retirement income objectives by implementing an enhanced audit programme. The costs of administering self-managed superannuation funds are recovered from the Superannuation Supervisory Levy.</p>	<p>\$8.2m over 4 years</p>