



AIST submission

Parliamentary Joint Committee on Corporations & Financial Services:

- **Superannuation Legislation Amendment (Stronger Super) Bill 2012**
- **Superannuation Supervisory Levy Imposition Amendment Bill 2012**

30 May 2012



Australian Institute of Superannuation Trustees

1 Background

The Government has released numerous pieces of legislation to give effect to its Stronger Super package of reforms to the superannuation industry. One element of the package involves measures designed to enhance the “back office” of superannuation, collectively known as SuperStream.

The current status of the legislative framework for SuperStream is as follows:

- Schedule 3 of the Tax Laws Amendment (2011 Measures No.2) Act 2011 commenced on 1 July 2011 and allows the use of Tax File Numbers (TFNs) as the primary superannuation account identifier and to facilitate the consolidation of multiple member accounts.
- Regulations pursuant to this legislation have been developed to support the use of TFNs to facilitate the account consolidation process.
- From 1 July 2012, funds which operate more than one account for the same individual will be encouraged to consolidate those accounts where possible.
- Bills concerning the payslip reporting of superannuation contributions and new measures on the disclosure of superannuation information have been the subject of reports by the House Economics Committee and Joint Committee on Corporations and Financial Services respectively, and remain before Parliament.
- Subsequent tranches of legislation will address further SuperStream measures (eg, account consolidation).
- Other Stronger Super legislation concerning MySuper core provisions, trustee obligations and giving APRA prudential standards making power have been introduced to Parliament, and have been subject to Committee consideration.

The Superannuation Legislation Amendment (Stronger Super) Bill 2012 (“SuperStream legislation”) provides a system of superannuation data and payment standards. This legislation will, *inter alia*, give the ATO administrative responsibility in this area, and supports other SuperStream legislative instruments that will enable funds to assist their members to find and consolidate their superannuation interests.

The Superannuation Supervisory Levy Imposition Amendment Bill 2012 (“levy legislation”) allows for more than one levy in a financial year, in order that a levy on APRA regulated funds can collect costs associated with SuperStream.

AIST supports the phased introduction of SuperStream for super funds and employers and recognises that there will be significant savings for super fund members, employers, super funds and Government, if properly designed and implemented.

AIST has been working towards these goals through our participation in the SuperStream Working Group, and by our advocacy for these reforms publicly and amongst our members.

2 AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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3 Executive summary

AIST supports the SuperStream legislation as a key element in the implementation of SuperStream measures to improve the administrative efficiency of the superannuation system.

However, there needs to be greater continuity in the governance and oversight of SuperStream and measures to ensure that associated expenditure is cost-effective, transparent and accountable.

AIST makes the following key comments on this legislation:

- It should be a statutory requirement of the SuperStream legislation for the SuperStream Advisory Council announced by the Government to be consulted by the ATO on the standards to meet minimum governance requirements.
- AIST recommends that the capacity in the SuperStream legislation to have different requirements be limited to transition arrangements, and that the regulations prescribe a day from which different requirements will not be permitted.
- The scope of the SuperStream legislation should be extended to allow the development of SuperStream measures beyond the first stage of processing contributions and rollovers. This legislation should provide the framework that will achieve efficiencies throughout the superannuation system.
- The SuperStream legislation should include requirements for superannuation funds and employers to report on compliance with the standards.
- The levy legislation should be extended to include:
 - a requirement on Government to provide detailed cost breakdowns, including the scope of the expenditure to be recouped by the levy and the amount being spent in each component area.
 - a regular transparent reporting arrangement to the SuperStream Advisory Council on expenditure and progress against budgeted plans be forthcoming
- These matters are urgent given the tight deadlines for implementation of SuperStream. If the legislation is enacted, super funds will be required to use SuperStream data standards for specified transactions from 1 July 2013, with mandatory requirements for employers to be implemented during 2014 and 2015.

AIST supports other measures proposed in the legislation before the Committee.

4 Recommendations

4.1 SuperStream Advisory Council

The “Regulation impact on business” on page 4 of the Explanatory Memorandum states that *“The SuperStream Advisory Council will oversee the implementation and the ongoing effectiveness of the SuperStream changes”*. However, there is no other mention of such a body in the Explanatory Memorandum; no mention at all in the Exposure Draft: and no requirement at all for superannuation and employer industry consultation beyond section 17 of the Legislative Instruments Act 2003.

This is a critical oversight in a framework to support the implementation of data and payment standards mandated for superannuation funds and employers, especially where the Government intends to recoup its costs of \$467 million from APRA regulated superannuation funds.

In the *Stronger Super Information Pack* [p.9] it states that the establishment of an advisory governance body to advise on the implementation and maintenance of the standards is one of the four key elements in the package of reforms that make up SuperStream.

While the Legislative Instruments Act 2003 provides for consultation with business that is appropriate and reasonably practicable, the Government has specifically announced in this case that the consultation will be through the SuperStream Advisory Council.

Furthermore, the definition of explanatory statement in subsection 4(1) of the Legislative Instruments Act 2003 requires that the explanatory statement prepared in respect of each legislative instrument include a description of consultation undertaken or, if there was no consultation, an explanation for its absence. There is no description in the Explanatory Memorandum to this legislation of the future consultation to be taken in preparing the standards beyond the cursory comment on page 4.

AIST recommends that this omission be redressed by amending the proposed section 34K(9) to read:

*“(9) The Commissioner of Taxation must consult with:
(a) APRA; and
(b) 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.”*

The Explanatory Memorandum should further expand upon the details of the SuperStream Advisory Council in terms that are consistent with the announcement in the *Stronger Super Information Pack* (page 16), that is:

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

These additions to the legislation and Explanatory Memorandum will ensure consistency with announced Government policy and ensure that the requirements of section 17 of the Legislative Instruments Act 2003 are met.

4.2 Capacity to have different requirements

The capacity for specified classes of superannuation entities or employers to have different compliance requirements regarding the standards provided by subsection 34K(2) should be strictly limited to transitional arrangements for a limited period, or to minor variations from the standards.

The Explanatory Memorandum [paragraph 1.31] states that this “*provides the flexibility to tailor the application of certain requirements to different classes*”. In the context of SuperStream, flexibility beyond very narrow bounds will compromise the standardisation that SuperStream provides.

AIST recommends that subsection 34K(2) be amended to limit its application to a specified period as a transitional arrangement, and that the regulations prescribe a day from which different requirements will not be permitted.

4.3 Scope

The primary focus of the SuperStream measures to date has been in relation to improved efficiency in the making and processing of contributions and rollovers, and this is reflected in the definition of superannuation data and payment matters in the proposed subsection 34K(5) and the kinds of payments and information listed in the proposed subsection 34K(6).

However, it was clear during the consultations on the design and implementation of SuperStream measures, that the focus on contributions, rollovers and reporting to Government was the first stage of the SuperStream process. Further and wider ranging efficiencies throughout the superannuation system are the ultimate goal

In the *Stronger Super Information Pack*, it states:

The adoption of data and e-commerce standards will have substantial benefits for all participants and will enable participants to communicate by using standardised business terms, while electronic transmission will allow for a more automated and timely processing of transactions with fewer errors. [p.11]

These efficiencies can also be obtained through superannuation transactions involving group insurers, custodians, investment managers and other participants in the superannuation system.

AIST recommends that this legislation be sufficiently flexible to cover the development of superannuation data and payment standards on a wider basis over time. This measure would then be similar to the approach that is being taken in relation to the payslip measure.

AIST recommends that this be given effect by the addition of the following new subsections:

Proposed subsection 34K(1)(b) to be renumbered as subsection 34K(1)(b)(i), and insert a new subsection 34K(1)(b)(ii):

[or] “any other person or entity prescribed by the regulations in their dealings with superannuation entities.”

Proposed subsection 34K(3)(b) to be renumbered as subsection 34K(3)(b)(i), and insert a new subsection 34K(3)(b)(ii):

[or] “any other person or entity prescribed by the regulations in their dealings with superannuation entities.”

Delete “and” at the end of the proposed subsection 34K(5)(a)(ii), and replace with “or”, and insert new subsection 34K(5)(a)(iii) as follows:

[or] “(iii) such other person or entity as prescribed by the regulations; and”

4.4 Statutory reporting mechanisms

The legislation does not include any requirement for either superannuation funds or employers to report on compliance with the superannuation data and payment standards. If the standards are to have universal application, the confidence of participants in the superannuation system (especially that all participants are using the standards), then an appropriate reporting framework is required.

The reporting framework should operate on an exceptions basis, so as to avoid additional unnecessary administration. Reporting should also make allowance for the receiving party to contact the sending party that is in breach on the standard requirement, and allow a reasonable period of at least 21 days from notification by the receiving party for the sending party to remedy the contravention.

This allowance should be conditional upon correct superannuation payments being made within the required time. This is in line with the period proposed in subsection 34R(5). The sending party should not be guilty of an offence in the first instance of this occurring.

4.5 Transition arrangements

The legislation is silent on transitional arrangements. There are a number of existing legislative requirements in relation to data standards, for example, those specifying minimum required rollover details.

The explanatory memorandum should identify the need for transitional arrangements, and flag consequential amendments to amend existing requirements in line with SuperStream requirements.

4.6 Levy

The 2012/2013 Federal Budget included provision of \$467.1 million for implementing the SuperStream reforms million over 7 years. This is to be funded via a levy on APRA regulated funds, the cost of which will be borne ultimately by superannuation members.

The levy will be applied using the power to be provided in the Superannuation Supervisory Levy Imposition Amendment Bill 2012. That Bill expands the matters for which a superannuation supervisory levy can apply to include the SuperStream measures to be established by the Superannuation legislation Amendment (Stronger Super) Bill 2012.

By any measure, this is a significant amount of money. Expenditure in the 2012-13 financial year alone is estimated at \$121 million, mostly for ATO costs.

However, the Government has provided only limited details on how and where this money will be spent. Transparency and disclosure has not been provided to date, even though the industry has been participating in good faith on the Government's SuperStream Working Group.

In accordance with best practice on governance, the Government needs to disclose the details of the SuperStream expenditure and establish robust processes.

In addition to the \$467 million levy, super funds are facing SuperStream implementation costs estimated at hundreds of millions of dollars. Significant costs will also be incurred by employers, software developers and superannuation administrators, and which are also likely to be in the hundreds of millions of dollars.

The Bill should be amended to include a requirement that:

- The Government provide a detailed costs breakdown of the two major policy objectives (namely consolidation and standardisation as referred to in Subsection 50(6)); and
- A regular transparent reporting arrangement to the SuperStream Advisory Council on expenditure and progress against budgeted plans be forthcoming.