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Mr. Tim Bryant
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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Dear Mr. Bryant,

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

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the Committee's inquiry into the two Bills.

About ASFA

ASFA is a non-profit, politically non-aligned national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comment

ASFA is very concerned about the short time frame given to the industry to provide submissions and comment on the Bills to the Parliamentary Joint Committee.

The two Bills will have an important and substantial impact on the superannuation industry. The tight turnaround to provide comment and consult fully with our members is not long enough nor is it appropriate for such important changes.

That said, we make the following recommendations on the Bills.

Summary of recommendations

1. Superannuation Legislation Amendment (Stronger Super) Bill 2012

Recommendation 1.1

ASFA strongly recommends the establishment of a Governance Body to oversee the implementation, development and review of the Data Standards and that such a Governance body have strong industry representation and delegated regulation making powers.

Recommendation 1.2

Part 4 – application provision

ASFA recommends that item 20 be amended to delete (3)(b) – the capacity for regulations to be made delaying the implementation date for small employers.

2. Superannuation Supervisory Levy Imposition Amendment Bill 2012

Recommendation 2.1

ASFA recommends that the Bill be amended to require:

- The ATO to release the business case that it has been reported they prepared in regard to their request for funding.
- The business case to be subject to review by independent experts specialising in information technology systems and designs.
- The funding for the ATO 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.
- The levy amount recovered from APRA regulated funds should relate to the amount of SuperStream activity directly attributable to APRA regulated funds. Other categories of superannuation funds should pay their fair share of costs if a levy is to be applied to APRA regulated funds.

Recommendation 2.2

ASFA recommends that the Bill be amended so that the ability to issue more than one levy determination applies only to the financial year 2012-13.

1. Comments on Superannuation Legislation Amendment (Stronger Super) Bill 2012

Schedule 1 - Data and payment standards relating to superannuation and retirement savings

1.1 Comments on the Measure

ASFA has always been supportive of the Government's intention to mandate the use of data and payment standards for the superannuation industry.

This enabling legislation is the first step towards achieving that goal and ASFA notes that the ATO has been consulting on draft standards for superannuation rollovers and superannuation contributions and member enrolments since late 2011 and that they propose releasing candidate standards in late June of this year.

However, ASFA has some concerns around governance of the standards, the length of time being taken by the ATO to formulate and publish a candidate standard and the process of moving both funds and employers to the new standards and we would like to take this opportunity to put those concerns on the record.

Governance of the standards

A central issue to this enabling legislation is the issue of the governance arrangements around the development, implementation and maintenance of the standards. Under the legislation as framed development of the standards is vested with the ATO with a requirement to consult with APRA (the absence of which does not defeat the effectiveness of the standards). There is no requirement for the ATO to consult with the users of the standards, superannuation funds, employers, RSA providers and their intermediaries and agents.

Separately, the Government has announced the creation of a Standards Advisory Council of which no details have been provided as to its membership or powers apart from an expectation it will inform government on the effectiveness of the standards.

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.

In the absence of a formal consultation requirement ASFA acknowledges the efforts of the ATO to consult with the proposed end users of the standards. However, the consultation process has resulted in the standards users being required to convince the ATO on the merits of its arguments rather than having a more direct and formalised role in the development process.

To demonstrate the impact of this ASFA offers the following:

When the Government announced in September 2011 that data standards would be mandated for employer contributions and the rolling over of benefits between funds the Government announced that the Standards would be based on the Government's Standard Business Reporting (SBR) framework. Early discussions with the ATO on the proposed standards revealed an intention to define the necessary terms in the SBR taxonomy and to create a standard that set out the data requirements and transaction structure and an SBR consistent format. At this early stage the industry questioned the absence of the inclusion in the data standard of a transport protocol and a security protocol. The absence of these components would result in each industry participant having to agree with each other industry participants that they wish to enact with the method by which the data would be exchanged and the security arrangements that would be used to protect the data.

After a period of time the ATO formulated a view that the standards would be expanded to specify that the SBR transport protocol would be used and that AUSKEY would be the security protocol.

In recent weeks it has become apparent that the SBR protocol is not 'fit for purpose' and the ATO has separately advised that AUSKEY is not able to be used as the security protocol.

The ATO is currently consulting on both an alternative transport protocol and security key.

ASFA is concerned that it has taken so long to respond to industry concerns and determine appropriate solutions and attributes this, in part, to the absence of a formalised governance arrangement with industry participation and a power to control and direct the standard developers.

On boarding of users to the new standards

A separate issue is the hard start dates for use of the standards set in the legislation for both superannuation funds and employers. It is acknowledged by all parties that the various industry segments (funds, medium and large employers and small employers) cannot all start processing transactions on the prescribed date. There must of necessity be a period during which transactors are on-boarded to the new processes in an orderly and managed manner. This means that on the relevant start date most, if not all, of the prescribed participants will be in breach of the standards, a strict liability offence under the legislation. That industry participants have to rely on the goodwill and the common sense of the regulators to not impose a penalty is a less than desirable situation.

Separately, ASFA requests that the ATO be requested to urgently set out to industry the manner in which it sees the standards being adopted and implemented by those subject to the legislation. Transparency of the ATO's views is considered essential if industry confidence in the standards development and implementation path is to be maintained.

Despite the above concerns ASFA recognises that if the implementation timeframe is to be met there is an urgent need for the standards to be formally published by the ATO, and as such we urge an early passage of this legislation. ASFA is supportive of the legislative structure of the enabling provisions being in the SIS Act with the detailed requirements being made through regulation.

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.

ASFA urges the ATO to clearly outline their process around the development of the standards, the consultation process, their next steps and why they have made last minute changes to the manner in which SBR is to be the basis for the development and implementation of the standards

Recommendation 1.1

ASFA strongly recommends the establishment of a Governance Body to oversee the implementation, development and review of the Data Standards and that such a Governance body have strong industry representation and delegated regulation making powers.

1.2 Comments on the provisions

1.2.1 Part1 – Main Amendments

Item 1, Division 2 - Compliance with data payment regulations and standards relating to RSAs

Item 2, Division 2 – Compliance with superannuation data and payment standards

The above items establish a strict liability offence for non-compliance with the data standards. Given the nature of how data is prepared and delivered by the superannuation industry, there is the potential for a single error to be repeated within a single data file, exposing the data supplier to significant penalties. We note that the regulator has discretion over the giving of directions and the imposition of penalties. As explained above there will be a requirement for this discretion to be exercised immediately on each of the prescribed standards commencement dates (i.e. 1 July 2013, 1 July 2014 and 1 July 2015). ASFA seeks information from the ATO as to the range of factors and circumstances that will be considered by the ATO in both exercising this discretion and

prior to the issuing of directions and imposition of any penalties in relation to non –compliance with the standards.

1.2.2 Part 4 – Application

20 Application of amendments

This section states that the standards will apply to small employers (an employer with fewer than 20 employees) from 1 July 2015 or a later date if so prescribed in the regulations.

ASFA urges that the 1 July 2015 commencement date for small employers not be extended.

As employers with fewer than 20 employees currently have access to the Small Business Superannuation Clearing House, a free service provided by the Government through the Department of Human Services ASFA suggests that rather than anticipate an extended implementation date that a concerted effort be made by all parties (Government, superannuation funds, and both superannuation and employer industry associations) to encourage small employers to commence using this service at the earliest possible opportunity.

Recommendation 1.2

ASFA recommends that item 20 be amended to delete (3)(b) – the capacity for regulations to be made delaying the implementation date for small employers.

2. The Superannuation Supervisory Levy Imposition Amendment Bill 2012

2.1 Australian Taxation Office costs related to SuperStream

ASFA appreciates that the current budgetary environment is a challenging one for the Government. However, any proposal to recover from APRA regulated superannuation funds the costs of activities to be undertaken by the Australian Taxation Office needs to be carefully considered both in regard to the quantum sought to be raised and the relevance of this to the operations of the superannuation funds that will be subject to the levy.

If the ATO expenditure relates wholly or partly to building core capabilities within the ATO this should be funded out of general taxation revenue, as are most other costs incurred by the ATO. New and additional levies on superannuation funds are not an efficient or equitable way for funding the activities of government.

At the very least, ASFA strongly considers that any levy amounts should relate to only what is reasonably and efficiently required to implement the SuperStream measures.

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

Imposition of an additional levy amount will directly impact on the accounts of members of superannuation funds.

In this context, the levy for APRA regulated superannuation funds in 2011-12 totalled \$46.8 million. If the Bill is passed the total levy likely to be proposed for 2012-13 (including the new money for the ATO) could be four times that.

Funds are deeply concerned about how such an increased levy will impact on members' accounts. The feedback ASFA has received is that the impact will be more like \$10 a year per affected account, rather than the \$4 an account mentioned in the Explanatory Memorandum. The reason for this is that there are some millions of accounts in Eligible Rollover Funds, exempt public sector accounts, Self Managed Superannuation Funds and accounts subject to the member benefit protection due to low balance.

Self Managed Superannuation Funds will also benefit from the SuperStream initiatives through more efficient rollover processes from other funds and also more efficient mechanisms for receiving contributions from employers who do not have a direct connection with the trustees of the SMSFs concerned. Allowance for this should be made in both the APRA levies and in the levy charged to SMSFs by the ATO.

There is also the question of whether ATO expenditures of the order proposed are justified on cost benefit grounds. Any additional costs to funds need to be considered in the context of possible future efficiency savings. The latest fund expense figures provided to ASFA by Rice Warner indicate that in 2010-11 the total cost to APRA-regulated funds for processing contributions was \$230 million, with a further \$145 million for benefit processing. A 50 per cent reduction in both (which could be on the optimistic side) gives a \$190 million or so a year figure for cost savings to funds.

The median cost per active member of contribution processing for active members (about a third of total member accounts) was \$16. The APRA levy in regard to SuperStream ATO expenses proposed in 2012-13 would be around \$12 per active account. Over all accounts, the figures are contribution processing costs of around \$5 an account and an APRA levy of \$4 for ATO costs.

The cost benefit ratio of the ATO expenditure and required fund expenditure on the face of it would be unlikely to pass any usual private or public sector benchmarks.

ASFA has for a long time advocated the need for transparency and accountability on the part of superannuation funds. The imposition of the proposed additional levy on funds does nothing to achieve these objectives, instead placing an increased financial burden on funds and fund members.

ASFA considers that prior to any levy being set in regard to SuperStream expenses for the ATO there be a requirement for:

- The ATO to release the business case that it has been reported they prepared in regard to their request for funding.
- The business case to be subject to review by independent experts specialising in information technology systems and designs.
- The funding for the ATO 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.
- The levy amount recovered from APRA regulated funds should relate to the amount of SuperStream activity directly attributable to APRA regulated funds. Other categories of

superannuation funds should pay their fair share of costs if a levy is to be applied to APRA regulated funds.

Given that the Bill, if passed, would provide the scope for more than one levy determination to be made in regard to 2012-13, adoption of a more transparent and accountable approach to the ATO funding would still allow any necessary levy to be set for 2012-13 in regard to SuperStream.

Recommendation 2.1

ASFA recommends that the Bill be amended to require:

- The ATO to release the business case that it has been reported they prepared in regard to their request for funding.
- The business case to be subject to review by independent experts specialising in information technology systems and designs.
- The funding for the ATO 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.
- The levy amount recovered from APRA regulated funds should relate to the amount of SuperStream activity directly attributable to APRA regulated funds. Other categories of superannuation funds should pay their fair share of costs if a levy is to be applied to APRA regulated funds.

2.2 More than one supervisory levy determination each year

The *Superannuation Supervisory Levy Imposition Amendment Bill 2012* if enacted will amend the *Superannuation Supervisor Levy Imposition Act* to enable more than one superannuation supervisory levy to be collected in a financial year.

The Explanatory Memorandum indicates that this amendment will provide flexibility for the Treasurer in the event that amendments to the *Australian Prudential Regulation Authority Act 1998* (APRA Act), that 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.

ASFA does not oppose such provision provided that it can only be used in the circumstances described in the Explanatory Memorandum. Superannuation funds should be provided with certainty in regard to their supervisory levy obligations. Allowing multiple levy determinations to be made, other than in the special case indicated, could place unexpected burdens on superannuation funds in that member fees for administration would have already been set by the start of the financial year and there may be limited, or less than desirable, alternative mechanisms for funding additional levy obligations. APRA is able to cope (and has coped very successfully in the past) with any under or over collection of levies due to unexpected changes in the number of funds or assets under management.

ASFA considers that the Bill should be amended so that this provision only applies to levy determinations in respect of 2012-13.

Recommendation 2.2

ASFA recommends that the Bill be amended so that Schedule 1 contains the following provision:

- 1 At the end of section 7

Add:

- (5) Without limiting subsection (3), the Treasurer may make more than one determination, for the financial year 2012-13, about any or all of the matters referred to in that subsection.

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If you have any queries or comments regarding the contents of our submission, please contact me

Yours sincerely

Pauline Vamos
Chief Executive Officer