

1 June 2012

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

**FSC Submission – Superannuation Legislation Amendment (Stronger Super) Bill 2012; and
Superannuation Supervisory Levy Imposition Amendment Bill 2012**

Thank you for the opportunity to provide a submission to the Parliamentary Joint Committee's inquiry into these Bills.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 130 members who are responsible for investing \$1.8 trillion on behalf of more than 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Please find our submission enclosed. We look forward to discussing the contents with you. I can be contacted on 02 9299 3022.

Yours sincerely

ANDREW BRAGG
SENIOR POLICY MANAGER



**FSC SUBMISSION – PARLIAMENTARY JOINT COMMITTEE ON
CORPORATIONS AND FINANCIAL SERVICES**

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

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INTRODUCTION

The Financial Services Council (FSC) strongly supports the SuperStream package of reforms which were recommended by the independent Super System (Cooper) Review of the system in 2009-10. The reforms are principally designed to achieve two policy outcomes:

1. Consolidation of multiple superannuation accounts; and
2. Standardisation of processes and transactions.

The FSC strongly supports the objective of the Government's SuperStream policy to mandate common data and payment standards to lift the efficiency of the superannuation industry. We acknowledge that this legislation is vital to enable the introduction of these measures.

In the longer term, these outcomes will deliver significant efficiency gains and cost reductions to superannuation members and employers.

Despite the significant costs in creating the SuperStream reforms, research the FSC undertook in 2010 suggests that the reforms will deliver cost savings of up to \$20 billion by 2020 (on the basis of current asset growth).¹ This research estimated that there would be an initial \$1 billion cost the industry would bear to achieve these savings.

Ultimately, these estimates have proven to be reasonably accurate.

In a conservative assessment undertaken by the FSC in May 2012, we estimate that FSC members will incur capital costs of approximately \$250 million to deliver SuperStream. This is in addition to the budgeted \$467 million cost which the industry will incur for the ATO to build SuperStream capability.²

The combined costs for SuperStream will be borne by the industry, regardless of whether the expenditure is exercised by the public sector (ATO) or the private sector (super funds).

These Bills deals with two matters: (1) the standardisation of processes and transactions by providing the Australian Taxation Office (ATO) with the capacity to develop, apply and enforce

¹ [http://www.ey.com/Publication/vwLUAssets/Pub_-_The_20_billion_prize/\\$FILE/ASU_Pub_The_20_billion_prize.pdf](http://www.ey.com/Publication/vwLUAssets/Pub_-_The_20_billion_prize/$FILE/ASU_Pub_The_20_billion_prize.pdf)

² See additional industry costs below for details

data standards and (2) the imposition of a new industry levy to pay for SuperStream. It does not include provisions on consolidation, which are due to be tabled at a later date.

The FSC has reservations about the lack of detail surrounding the levy in terms of the expenditure, transparency and application. In essence, we seek:

1. Detailed information on the allocation of expenditure;
2. Transparency of executing expenditure; and
3. A consistent approach on the levy mechanism as applies to the current APRA arrangements for the superannuation industry.

Accordingly, along with the Australian Institute of Superannuation Trustees, Association of Superannuation Funds of Australia and Industry Super Network, we also provide the Committee with a submission which outlines our concerns. We support the joint submission which illustrates the degree of uncertainty throughout the industry in respect of this Bill.

RECOMMENDATIONS

1. The ATO as the principal expender of monies should be required to table a detailed costs breakdown of the two major policy objectives (namely consolidation and standardisation as referred to in Subsection 50(6)).
2. Regular, transparent reporting to the SuperStream Advisory Council on expenditure and progress against budgeted plans should be required.
3. The levy should be applied in a consistent manner with APRA's existing framework for levying superannuation funds for supervision.
4. In expending the levied amounts, the ATO must provide transparency of expenditure and only expend monies once appropriate consideration has been given to all avenues (such as tendering).
5. A Cost Regulatory Impact Statement must be undertaken prior to the levy mechanism being finalised.

SUPERSTREAM LEVYContext

In our support of the SuperStream reforms, the superannuation industry anticipated that there would be a cost incumbent upon the industry and the public sector in delivering the package. Further, our reckoning was that the public sector costs would be recouped via a cost recovery levy given the need for regulation had been established.

The cost that would be recouped by the levy was first unveiled in the Budget on 8 May 2012. The Budget outlined that \$467.1 million over seven years would be levied from the industry to pay for the public sector costs of delivering SuperStream.

This entry in Budget Paper No. 2 was accompanied by a concise outline of the expected expenditure of the \$467.1 million.

\$121.5 million is due to be levied in the 2012-13 financial year (which commences in four weeks). This is a significant sum which will be levied in addition to the annual APRA levy which amounted to \$46.8 million in 2011-12.

Expenditure details

The FSC is concerned that there is no detail surrounding the expenditure of levied monies.

Despite Subsection 50(6) outlining that the SuperStream measures are related to the facilitation of account consolidation and the creation of data standards, there is not yet any discourse of how monies will be allocated between the twin objectives.

As the ATO is expending the levied amount, there should be a breakdown of costs in terms of spending on each policy objective and capital expenditure vs. ongoing costs.

Table 1 – SuperStream industry costs (forward estimates) 2012-13 THROUGH 2015-16 (does not include \$82.1m for 2016-17 & 2017-18).

EXPENDITURE per STAKEHOLDER	ATO	GOVERNMENT EX- ATO
TOTAL	286.5	8.7
CAP EX ONLY	48.7	9.7
<u>STANDARDISATION</u>	XX	XX
CAPITAL	XX	XX
OPERATIONAL / ONGOING P/A	XX	XX
Standardisation measure 1 (e.g. compliance with data standards)	XX	XX
Standardisation measure 2 etc	XX	XX
<u>CONSOLIDATION</u>	XX	XX
CAPITAL	XX	XX
OPERATIONAL / ONGOING P/A	XX	XX
Consolidation measure 1 (e.g. TFN usage)	XX	XX
Consolidation measure 2 (e.g. creation of new ATO SuperMatch system)	XX	XX

XX denotes an unknown cost figure.

RECOMMENDATION:

The ATO as the principal expender of monies should be required to table a detailed costs breakdown of the two major policy objectives (namely consolidation and standardisation as referred to in Subsection 50(6)) as above.

Regular, transparent reporting to the SuperStream Advisory Council on expenditure and progress against budgeted plans should be required.

Cost recovery

As noted, the FSC agrees that it is appropriate that the superannuation industry should be subject to cost recovery to pay for the expense of regulation. The Australian Government Cost Recovery Guidelines (**the guidelines**) specify circumstances where the need for regulation justifies cost recovery.³

We believe on three of the following grounds, the principle of cost recovery is met:

- Issuance of data standards;
- Compliance with data standards; and
- Enforcement of data standards.

Accordingly our focus is on expenditure of levied monies and the manner in which they are raised from the industry. This should occur in a cost effective, efficient and consistent way. The guide is instructive in outlining the design and implementation of cost recovery mechanisms. It focuses on the above three factors – particularly on consistency.

As an existing mechanism for levying superannuation funds exists through APRA, we believe consistency is paramount. This is particularly the case as the present arrangements are applied in an equitable, transparent and efficient manner.

The guidelines state that (amongst other key principles), in designing a cost recovery mechanism):

Charges can be collected in a variety of ways and based on different measures of costs. Agencies should choose the appropriate approach for a particular product/service by: designing a charging mechanism that is not inconsistent with other Australian Government policies.⁴

Indeed, this overriding theme of appropriate cost-recovery was the principle first applied at the time of the introduction of a superannuation industry levy. Thus, the Explanatory Memorandum for the *SUPERANNUATION SUPERVISORY LEVY BILL 1991* reads

The Bill proposes to effect full cost recovery of the superannuation aspects of Insurance and Superannuation Commission (ISC).

³ http://www.finance.gov.au/publications/finance-circulars/2005/docs/Cost_Recovery_Guidelines.pdf

⁴ Guidelines – page 40

This is a theme which has been applied consistently to various amendments to this legislation over time and Ministerial Determinations under the legislation. Thus, trustees of regulated superannuation funds, ADFs and PSTs are liable to pay a supervisory levy each year to APRA or the ATO. Depending on the entity type, the levy is either a flat amount or an amount based on a percentage of the entity's levy base, subject to a minimum and maximum levy amount. It is perhaps useful for comparison purposes if we set out the current mechanical process for determination and allocation of the supervisory levy. It is this form of process, which we suggest be adopted in relation to the proposed levy-

- Under Legislative Instrument [F2011L01331](#), the Minister for Financial Services and Superannuation and Corporate Law on 29 July, 2011, made a determination regarding the supervisory levy imposed on superannuation entities for 2011/12;
- 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](#)).

The class of levy to accommodate Super Stream costs and to be paid into the APRA Special Account, as contemplated by the Bill, in our view, should be calculated and allocated to agencies in a similar way to the current levy, as outlined above.

RECOMMENDATION: The levy should be applied in a consistent manner with APRA's existing framework for levying superannuation funds for supervision.

In addition to a consistent application of the levy as occurs today, there should be a direct link to costs incurred by the agency (the ATO). The guidelines stipulate:

For regulatory products or services, cost recovery charges ideally should reflect the costs of undertaking individual activities. As far as possible, the agency should identify costs against particular activities to minimise the need to distribute costs arbitrarily among activities.⁵

Transparency, oversight and commercial practices

As stated, transparency is of the utmost importance given the significant level of expenditure. The guidelines state:

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.⁶

RECOMMENDATION:

In expending the levied amounts, the ATO must provide transparency of expenditure and only expend monies once appropriate consideration has been given to all avenues (such as tendering).

A Cost Regulatory Impact Statement must be undertaken prior to the levy mechanism being finalised.

⁵ Guidelines - P34

⁶ Guidelines P38

ADDITIONAL INDUSTRY COSTS

As stated, the levy seeks to alleviate and meet the costs to be incurred by the ATO and other government agencies in order to facilitate the two objectives of SuperStream - account consolidation and compulsory data standards. However, there are further substantial costs which the industry will bear in the development of SuperStream – these will be significant.

The costs (capital and ongoing) contemplated by the legislation relate only to public sector expenditure (funded by the levy). They do not take into account the expenditure which will be incurred by the superannuation industry. These are additional private sector costs.

The following outlines an industry estimate on the private sector costs to deliver SuperStream based on the information we know of the reforms.

In addition to the \$467 million ATO budgeted costs, we estimate that FSC members will pay a further \$250 million. The latter figure is based on an FSC survey.

FSC member companies represent around one third of the superannuation industry.

This amount includes private sector (super fund) capital costs which represent anticipated expenditure directly related to SuperStream which commences in stages over the next three years (from 2012-13).

We believe this to be a conservative figure, it does not include costs related to member communications and product administration and is based on a survey of efficient superannuation entities with high technological capability.

OTHER MATTERS

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.