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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TAX LAWS AMENDMENT (2012 MEASURES NO. 5) BILL 2012

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EXPLANATORY MEMORANDUM

(Circulated by the authority of Minister for Financial Services and Superannuation, the  
Hon Bill Shorten MP)



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## ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
SMSF	self managed superannuation fund



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## ***General outline and financial impact***

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### **Stronger Super**

On 16 December 2010, the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, announced the Stronger Super reforms.

Stronger Super represents the Government's response to the review into the governance, efficiency, structure and operation of Australia's superannuation system, the Super System Review. The Government released the Super System Review's final report on 5 July 2010.

To provide input on the design and implementation of the Stronger Super reforms, the Government undertook extensive consultations with industry, employer and consumer groups. The Government announced its decisions on the key design aspects of the Stronger Super reforms on 21 September 2011.

### **ROLL-OVERS TO SELF MANAGED SUPERANNUATION FUNDS**

*The Tax Laws Amendment (2012 Measures No. 5) Bill 2012: Roll-overs to self managed superannuation funds* amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act).

The amendment provides that a new designated service be included at Table 1 of section 6 of the AML/CTF Act to capture the roll-over of funds from a superannuation fund that is not an SMSF (the transferring fund) to an SMSF (the receiving fund).

It is intended that this amendment will have the effect of requiring the transferring superannuation fund to comply with a range of obligations under the AML/CTF Act.

Since trustees and members of an SMSF are generally the same, there is greater scope for assets, once received in the SMSF, to be diverted for illicit purposes. The Super System Review recommended introducing a new designated service to apply to roll-overs of assets to an SMSF to ensure consideration is given to the money laundering/terrorism financing

risks associated with the roll-over of assets, and that appropriate customer identification and reporting obligations exist when assets exit the formal financial sector.

***Date of effect:*** The requirement will apply from 1 July 2013.

***Proposal announced:*** This measure was part of the Stronger Super reform package, announced on 16 December 2010 as a response to the Super System Review.

***Financial impact:*** This Schedule has no significant financial impact on Commonwealth expenditure or revenue.

***Human rights implications:*** This Schedule does not raise any human rights issue.

***Compliance cost impact:*** A trustee of a superannuation fund effecting a roll-over to an SMSF will have to ensure that they meet the requirements of the AML/CTF Act.

## **Summary of regulation impact statement**

***Impact:*** A RIS exemption was granted for this Stronger Super reform and will be subject to a post-implementation review.



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# **Chapter 1**

## ***Roll-overs to self managed superannuation funds***

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### **Outline of chapter**

1.1 Schedule # to this Bill amends subsection 6(2) of the AML/CTF Act to require that superannuation benefits that are rolled over into SMSFs are captured as a designated service. This chapter explains this requirement which will assist in reducing the risk that superannuation benefits that are rolled over into SMSFs are used for illicit purposes.

### **Context of amendments**

1.2 The Super System Review noted that as trustees and members of SMSFs are generally the same, there is greater scope for assets, once received in the SMSF, to be diverted for illicit purposes.

1.3 The Review therefore recommended that roll-overs to SMSFs be captured as a designated service under the AML/CTF Act (recommendation 8.26).

1.4 Under the AML/CTF Act, AUSTRAC is Australia's financial intelligence unit and AML/CTF regulator with supervisory, monitoring and enforcement functions.

1.5 The roll-over of a superannuation benefit to another fund, including SMSFs, is not captured as a designated service under the AML/CTF Act because preservation requirements mean that the assets are retained within a regulated financial sector and therefore the transaction represents a very low risk of being used for money laundering or terrorism financing. However, because the trustees and members of an SMSF are generally the same, the money laundering/terrorism financing risk profile markedly increases because there is greater scope for assets, once received in the SMSF, to be diverted for illicit purposes.

1.6 Schedule # to this Bill implements the Government's response to the review and amends Table 1 at subsection 6(2) of the AML/CTF Act to include a new designated service at item 42A to capture the roll-over of superannuation benefits to an SMSF.

## Summary of new law

1.7 Schedule # to this Bill amends Table 1 of subsection 6(2) of the AML/CTF Act by inserting a new designated service at item 42A concerning the roll-over of funds from a regulated superannuation fund that is not an SMSF (the transferring fund) to an SMSF (the receiving fund).

1.8 This amendment will have the effect of requiring the transferring superannuation fund to comply with a range of obligations under the AML/CTF Act, including the customer identification requirements under Part 2 and the reporting obligations under Part 3.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A roll-over to an SMSF from a superannuation fund that is not an SMSF is a 'designated service'. This will mean that regulated superannuation funds that are not SMSFs are required to meet certain obligations when they roll-over assets to an SMSF.	A roll-over to an SMSF from a superannuation fund that is not an SMSF is not a designated service.

## Detailed explanation of new law

1.9 A roll-over of superannuation benefits from a regulated superannuation fund that is not an SMSF to an SMSF will be a designated service under the AML/CTF Act.

1.10 The AML/CTF Act imposes a number of obligations on reporting entities when they provide designated services, which include: customer identification and verification of identity; record-keeping; establishing and maintaining an AML/CTF program; ongoing customer due diligence; and reporting (suspicious matters, threshold transactions and international funds transfer instructions).

1.11 The AML/CTF Act and the supporting AML/CTF Rules together implement a principles-based and risk-based approach to regulation. Where a reporting entity provides a designated service to a customer, the reporting entity is required to determine, on a risk-sensitive

basis, the appropriate measures proportionate to the perceived risk of money laundering or terrorism financing.

1.12 Designated service has the meaning given by section 6 of the AML/CTF Act.

1.13 Under the AML/CTF Act, a reporting entity which offers a designated service to a customer must first carry out a procedure to identify and verify the customer before providing a designated service to the customer. That is, the reporting entity must have appropriate risk-based systems and controls in place to ensure it is reasonably satisfied that the customer is who they claim to be.

1.14 The trustee of a superannuation fund (other than an SMSF) effecting the roll-over is the provider of the designated service.

1.15 The customers of this designated service are the member of the transferring fund who requests the roll-over and the SMSF that is receiving the roll-over.

1.16 This measure is intended to ensure consideration is given to the money laundering/terrorism financing risks associated with the roll-over of assets to an SMSF and that appropriate customer identification and reporting obligations exist when assets exit the formal financial sector.

## **Application and transitional provisions**

1.1 The measure will apply to roll-overs to SMSFs made on or after 1 July 2013.

## **Consequential amendments**

1.2 None