

# SUPER SYSTEM REVIEW FINAL REPORT

## **PART ONE**

### **Overview and Recommendations**

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30 June 2010

The Hon Chris Bowen MP  
Minister for Financial Services, Superannuation and Corporate Law  
Parliament House  
CANBERRA ACT 2600

Dear Minister

**Review of the Governance, Efficiency, Structure and Operation of Australia's Superannuation System**

We are pleased to present the final report of the Super System Review.

We have developed ten recommendation packages aimed at benefiting members.

MySuper sits at the heart of our recommendations. It is designed to focus funds on the core purpose for which they exist: optimising retirement incomes for members.

SuperStream is a recognition that bringing the back office of super into the 21st century is critical to the overall functioning of the super system.

We are confident that all of our recommendations will enhance Australia's world class retirement savings system and we commend them to you.

Yours sincerely

Jeremy Cooper  
**Chair**

**Kevin Casey**

**Greg Evans**

**Sandy Grant**

**David Gruen**

**Meg Heffron**

**Ian Martin**

**Brian Wilson**



## TERMS OF REFERENCE

The then Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, announced the Super System Review (**Review**) on 29 May 2009.<sup>1</sup> The Review was initiated with the support of the superannuation industry.<sup>2</sup> The terms of reference are as follows:

### Review into the governance, efficiency, structure and operation of Australia's superannuation system.

#### Scope

1. The Review will comprehensively examine and analyse the governance, efficiency, structure and operation of Australia's superannuation system, including both compulsory and voluntary aspects, addressing, but not limited to, the following issues:
  - 1.1 Governance:** examining the legal and regulatory framework of the superannuation system, including issues of trustee knowledge, skills and training; and thoroughly assess the risks involved in the use of debt and leverage and the development of investment options that lead to a weakening of the diversification principle in the superannuation system;
  - 1.2 Efficiency:** ensuring the most efficient operation of the superannuation system for all members, whether active or passive members and whether making compulsory or voluntary contributions, including removing unnecessary complexities from the system and ensuring, in light of its compulsory nature, that it operates in the most cost effective manner and in the best interests of members;
  - 1.3 Structure:** promoting effective competition in the superannuation system that leads to downward pressure on system costs, examining current add-on features of the superannuation system; and, examining other structural legacy features of the system; and
  - 1.4 Operation:** maximising returns to members, including through minimising costs, covering both passive defaulting members, who should receive maximum returns and value for money through soundly regulated default products, and active selecting members, who should not be negatively impacted by conflicts of interest that may inhibit advice being in the best interests of members.
2. The Review to be conducted around the concepts of the best interests of the member and the maximising of retirement incomes for Australians.
3. The Review to be conducted with reference to improving the regulation of the superannuation system, whilst also reducing business costs within the system.
4. The Review will be a systemic examination, including all superannuation fund sectors.
5. In conducting its work, and in determining its recommendations, the Review will have regard to the Communiqué of Principles (see separate attachment to this release).
6. The Review will comparatively examine international jurisdictions and will consult with experts as needed from other jurisdictions.

7. The Review is excluded from considering the issues before the Australia's Future Tax System review concerning system inputs such as the level of superannuation contributions, taxation including taxation concessions and other incentives.
8. The Review is excluded from considering the development of a superannuation clearing house or the project addressing the consolidation of lost accounts, as these are the subject of separate and already commenced processes.

### **Composition and Consultation**

9. The Review to be led by an expert panel made up of a full-time Chair and five<sup>3</sup> part-time members, supported by a secretariat drawing on the skills of the key policy and regulatory agencies of the Commonwealth, as well as market expertise. The Review may also draw on external expertise where necessary.
10. The Review will consult the superannuation industry, other stakeholders and the broader public.

### **Timing**

11. The Review will make recommendations to the Government by 30 June 2010 on possible options for reform, including appropriate transitional arrangements. The Review may report on particular issues prior to the finalisation of the final report.

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## 1 REVIEW HIGHLIGHTS

### 1.1 Engagement

Australians have contributions made to their super funds whether they like it or not. Members should not have to be interested, financially literate, or investment experts to get the most out of their super. If members want to engage and make choices, then the system ought to encourage and facilitate them doing so. If members are not interested, then the system should still work to provide optimal outcomes for them. The super system should work for its members, not vice versa. This is the basis of the Panel's new 'choice architecture'.

### 1.2 MySuper

MySuper is a simple, well-designed product suitable for the majority of members. The MySuper concept is aimed at lowering overall costs while maintaining a competitive market-based, private sector infrastructure for super. The concept draws on and enhances an existing and well-known product (the default investment option). MySuper takes this product, simplifies it, adds scale, transparency and comparability, all aimed at achieving better member outcomes.

### 1.3 SuperStream

SuperStream is a package of measures designed to bring the back-office of superannuation into the 21st century. Its key components are the increased use of technology, uniform data standards, use of the tax file number as a key identifier and the straight-through processing of superannuation transactions.

### 1.4 Regulating for efficiency

APRA would have an increased mandate to oversee and promote the overall efficiency and transparency of the superannuation system. To this end, APRA would be given a standards-making power in superannuation as a tool for driving transparency and comparability of member outcomes.

### 1.5 SMSFs

The SMSF sector is largely successful and well-functioning. Significant changes are not required, but measures relating to service providers, auditors and the regulatory framework are recommended.

### 1.6 Scale matters

There are substantial benefits for members arising out of increased scale in the superannuation industry. MySuper providers would be exposed to scrutiny and pressure on this issue and would be required to consider each year whether they had sufficient scale to optimise outcomes for members.

## 1.7 Governance

Nearly all the issues looked at in the Review link back to trustee governance in some way or other. Improving governance practices and structures is key to improving member outcomes. A Code of Trustee Governance is proposed.

## 1.8 Helping members compare

In order to make meaningful choices (or to understand their personal situation) members need to be able to make 'like with like' comparisons between competing superannuation products. Standard product 'dashboards' and standardised investment performance reporting would lift the fog that has clouded this area so far.

## 1.9 Insurance in super

Commissions should be banned on all insurance products in super, including group risk and personal insurance. Trustees will continue to be able to offer life, TPD and income protection insurance in MySuper and choice investment options.

## 1.10 Systemic transparency

Each fund would be required to provide free of charge on its website, detailed financial and operational information about the fund (including its portfolio holdings) and about the fund's management to greatly increase accountability and availability of information to those who are interested.

## 1.11 Whole of life focus

The super system exists to enhance retirement incomes for working Australians, not simply to accumulate assets. MySuper should be a whole of life product and include a single type of retirement income stream product chosen by the trustee and not just cater for members in the pre-retirement phase. Trustees would have a duty to address longevity, inflation and investment risks for retirement phase members in developing their strategies.

## 1.12 Data

Improving the quality and availability of data and research on the superannuation industry facilitates decision-making, ensures participants in the industry are held to account by members, regulators and peers and gives confidence in the integrity of the system. The importance of this issue justifies regulatory intervention so APRA would have an increased role in this area.

### 1.13 Dollar savings for the system

Treasury estimates short-term annual system savings of about \$1.55B and long term annual system savings of around \$2.7B as a result of MySuper and SuperStream.

### 1.14 Dollar savings for members

Treasury estimates that the MySuper and SuperStream proposals would, in the long-run, see a cut of around 40 per cent in fees for the average member. This would lift their final superannuation balance by around \$40,000 or 7 per cent after 37 years in the work force.

#### About this final report

This final report supersedes all of the Panel's preliminary reports. The final report of the Super System Review comprises the following:

- **Part One:** Overview of the Review, including a consolidated list of all the Panel's recommendations and a summary of how they impact members; and
- **Part Two:** The Panel's 10 recommendation packages, each in its own chapter.

## 2 THE PANEL'S 10 SUPER POLICY PRINCIPLES

The Panel recognises the wider government policy concerns that affect the superannuation system: overall fiscal sustainability, broader retirement policy and taxation policy among them. However, in shaping its recommendations, the Panel has formulated 10 principles about superannuation, which have underpinned its decision-making process.

The Panel believes that these principles have broader application than just this Review. They should be the guiding principles by which policy is developed in relation to superannuation generally, to ensure consistency of approach to superannuation policy by successive Australian governments.

1. Superannuation must always be for the benefit of members. The superannuation system does not exist to support intermediaries. Trustees must be relentless in seeking benefits for members.
2. The superannuation system needs to be well-regulated to address prudential and other risks so that members can have the confidence to invest their retirement savings for their long-term financial benefit.
3. Transparency and disclosure are essential for the effective operation of the system, but are not substitutes for well-designed products that work in members' interests. Disclosure is a necessary, but not a sufficient, condition for ensuring that member interests prevail.
4. Individual choices for members should be available and respected, but members must recognise and accept the increased responsibility that comes with making those choices.
5. The superannuation system must be supported by high quality research and data, as well as by intermediaries with high professional standards.
6. Financial literacy is an important long term goal, but a compulsory superannuation system cannot depend on all its participants having the skills necessary to comprehend complex financial information or being investment experts.
7. Fees and costs matter; they detract from members' retirement savings and need to be managed as diligently as the generation of investment returns. Technological improvements, and innovation generally, should be encouraged to help lower costs and benefit members.
8. Superannuation is a large and complex system with an increasingly important social and macroeconomic dimension. It must be regulated and administered coherently and rule changes, including to taxation rules, should be made sparingly and in a way that engenders member confidence.
9. The system must have sufficient flexibility to accommodate its inherent growth path and should strive for continual improvement, rather than abrupt changes. Where possible, government and trustee decisions about superannuation should be taken with a long-term perspective.
10. Governments should not seek to direct super fund trustees to invest in particular assets or asset classes, nor to prevent investments in certain types of assets or asset classes unless there are prudential or regulatory reasons for doing so. This is regardless of how much it might seem in the national interest to do so.

### 3 THE CASE FOR REFORM

#### 3.1 The superannuation system in 2035

Australians have over a trillion dollars<sup>4</sup> in superannuation savings.<sup>5</sup> The compulsory nature of super contributions means that by 2035, Australians are projected to have increased their collective super savings to \$6.1T.<sup>6</sup>

This Review provides a valuable opportunity to take stock of the current system in light of how it might develop and to make recommendations designed to enhance its simplicity, efficiency and equity.

Just as in 1993, when the current architecture of the system was established, it is hard to envisage exactly the course those changes will take. In 1993, total superannuation assets amounted to \$183B,<sup>7</sup> and the industry was dominated by corporate funds and by large, partly-funded public sector schemes. The SMSF sector, as we know it today, did not exist.

For an overview of the superannuation system today, see appendix B.

Forecasting the size and structure of the superannuation system over the coming 25 years is not an easy task, given the system's dynamism and complexity. However, Treasury projections show a quite dramatic decrease in the number of funds so that the large APRA fund sector is dominated by fewer, larger super funds.

**Table 1: The Australian superannuation industry in 2035 (including SMSFs)**

	1996	June 2009	2035 (nominal) <sup>8</sup>	2035 (current)
Overall industry scale	\$245b	\$1.1t	\$6.1t	\$3.2t
Ratio of accumulation to post-retirement assets	-	4:1	3:1	3:1
Biggest fund	-	\$41.5b	\$350b	\$187b
Number of large APRA funds (excluding ERFs)	4734	447	74	74
Average large APRA fund size	\$40m	\$1.5b	\$53b	\$28b
Average accumulation member balance	\$15,000	\$70,000	\$335,000	\$180,000
<b>Total super assets - proportion of GDP</b>	<b>47%</b>	<b>90%</b>	<b>130%</b>	<b>130%</b>

#### 3.2 The key challenges

The projected figures in table 1 are based on Treasury modelling and are subject to a number of assumptions (explained in appendix C). They do, however, throw into sharp relief the sorts of issues that the Panel believes that government and community need to be thinking about and addressing now, to position the super system to respond the challenges of the future.

### 3.2.1 Issues for the future

**Funds will be much larger:** The average fund will be much larger in real (2010 dollar) terms. This, in turn, will have implications for fund governance, for investment and prudential regulation. The largest funds will be very large by current standards, though even they will remain relatively modest by global standards.

**Asset-based fees will grow:** Asset-based fees will grow with the size of the asset pool and will require continued vigilance to ensure that total dollar fee levels remain appropriate, rather than merely focusing on percentages not increasing or trending slightly downwards.

**Member account balances will be larger:** Member account balances will be substantially larger in real terms, than at any time in the history of superannuation. This will put pressure on member transfer and remediation processes across the system and will increase concerns around identity theft and fraud and trustee accountability to members. It might also encourage greater member engagement as superannuation balances make a more material contribution to the retirement incomes of more Australians.

**Economically significant:** The superannuation system will continue to be an important factor in the Australian economy and financial markets. The efficiency of the sector will have macro-economic effects.

**Competing in the global market place:** Local funds will increasingly find themselves competing with large global funds, not just in markets for listed securities, but also for specific assets, such as infrastructure, private equity and direct property.

### 3.2.2 Issues that need to be addressed now

The future growth of the industry sets the current issues in their broader context and highlights the need for reform.

**Member interests are not always paramount:** Superannuation is compulsory and fully outsourced to the private sector. System design and regulatory settings have perhaps not taken this into account sufficiently. Member interests are not always paramount.

**Immature system for its size:** Overall, it is a system that has not yet reached a level of maturity commensurate with its monetary scale.

**'Efficiency' is outside the regulatory net:** The regulatory model has focused mainly on prudential safety which, while important, has left the efficiency of the system for members in the hands of market participants.

**Too much complexity:** Members perceive superannuation as too complex and opaque and there is an overall lack of transparency and comparability of superannuation products.

**Disclosure to members has failed to achieve its objectives:** Whatever the actual level of engagement and literacy among members, a regulatory model largely built around detailed disclosure and member choice has not worked for a substantial portion of the member population.

**Ambiguity about trustee role when members make active choices:** Where members do make choices about their superannuation in a large APRA fund, there is a lack of clarity about how much responsibility they are taking and how much the trustee is looking after them.

**Past-performance data given too much prominence – sometimes at member expense:** Much of the explicit and implicit marketing that occurs in superannuation is based on past investment return performance, often pre-tax and unaudited and almost always without reference to volatility.

**Antiquated division of industry along ‘retail’ and ‘industry’ lines persists:** The sectoral classifications such as ‘industry’ and ‘retail’ are redundant and in some cases obscure clear identification of the issues.

**Inadequate accounting and financial reporting standards:** The accounting and financial reporting standards applying to super are inadequate because they are directed to entity reporting; a perspective in which only a fraction of participants are interested.

**Back office dominated by manual transactions:** The back office of super is in urgent need of an upgrade and annually costs members hundreds of millions of dollars more than it should.

**Lack of scale:** Many funds lack the scale necessary to provide optimal outcomes to their members and, in some cases, trustee self-interest has hindered rationalisations that are clearly in members’ interests.

**Fees too high:** Fees in superannuation have not reduced in line with what could have been expected given economies of scale that are clearly present or available.

**Too much tinkering:** The frequency of changes to rules about super can undermine member confidence in the system.

### 3.3 Why hasn’t competition delivered optimal outcomes already?

In classical economic theory, markets efficiently allocate resources, shape products and determine prices. In superannuation, competition in the market for super at the consumer level (ie between funds competing for the business of a new member) has so far been relatively weak.

This is because superannuation is different. In addition to the fact that super is compulsory, normal consumer demand-led competition is made more difficult because:

**Failure to exercise choice:** Often a member doesn’t choose the fund to which they belong. New employees typically simply become a member of their employer’s default fund;

**Lack of price awareness:** Compulsory contributions don’t come directly out of members’ pockets, nor do the fees and other costs charged by the fund (at least not until they retire). This makes people much less price aware and much less likely to make a decision based on price or cost;

**Lack of interest:** Members are often not engaged with their super until closer to retirement and so will not be sufficiently interested to respond to competitive behaviour on the part of funds until that time (if at all);

**Agency and structural issues:** There are limited opportunities for member vigilance, on the one hand, or incentives for agency vigilance, on the other, to reduce prices;

**Complexity:** Super is inherently complex and many consumers do not feel confident making decisions about it;

**Lack of comparability:** Even if members are engaged up to a point, there is a lack of contestability at consumer level because of product complexity and lack of information and transparency about fees and performance; and

**Frictions:** Lastly, even if someone is interested in switching funds, often the paperwork and other ‘frictions’ in changing funds become too big a disincentive and they give up.

It has to be said that the original superannuation architecture was somewhat optimistic in that it relied on notions of market forces, disclosure and competition (along with trust concepts) to resolve consumer issues surrounding complex products, structures and conflicts.

The Panel therefore accepts that the model of member-driven competition through ‘choice of fund’ (in the form of SG Act choice and consequent portability) has struggled to deliver a competitive market that reduces costs for members.

The Panel also believes that the failure of competition to deliver desirable outcomes for members encapsulates the broader issue in the industry as it currently operates: it is remote from the member. The Panel recognised early on that, for real benefits to flow to members as a consequence of this Review, the superannuation system must operate from the member perspective.

## 4 THE SUPER FUND MEMBER

### 4.1 The theory of rational and informed investors vs real life experience

A key tenet of the 1997 Wallis Report was that super fund members should be treated as rational and informed investors, with disclosure and market conduct controls being the main regulatory instruments with which to oversee the industry.<sup>9</sup>

More specifically, these settings assume that members have the tools at their disposal, and the necessary regulatory protections in the market place, to enable them to make optimal decisions about their investment strategies, about when to enter and exit the market, and about what to do with their super on reaching retirement. In a compulsory system, it also assumes that members have the requisite degree of interest.

But, for many members, this is not the case.

The 2006 Adult Literacy and Life Skills Survey of Australians published by the Australian Bureau of Statistics (ABS) in January 2008, found that 46 per cent of 15-74-year olds, or some seven million people, would struggle to understand documentation such as job applications, maps and payroll forms. Fifty-three per cent of surveyed Australians reached just the second of five levels in a practical numeracy test, while 70 per cent (about 10.6M people) managed only to progress to level 2 in a series of problem-solving exercises. Level 3 is regarded by the survey developers as the minimum required for individuals to meet the complex demands of everyday life and work in the emerging knowledge-based economy.<sup>10</sup>

While these financial literacy statistics are stark, the fact remains that a compulsory system based on informed investors making rational choices fails to confront this reality.



## 4.2 Engagement with super

The financial literacy issues highlight one of the ongoing tensions and debates for this Review: what it means to be an ‘engaged’ super member and how ‘engagement’ should be pursued, facilitated or encouraged. The Panel’s key concern has been the suggestion that a certain level of engagement and financial literacy is necessary for the system to work properly.

Since the introduction of the ‘Choice of Super’ legislation, switching rates between funds have actually declined from around 5 per cent in 2005 to 2 per cent by the end of 2009.<sup>11</sup> A Roy Morgan Research report, based on over 50,000 interviews conducted annually, indicates that approximately 80 per cent of super fund switches come as a result of members changing employers or employers changing default fund providers.<sup>12</sup>

Of those who default into a super fund chosen by their employer, or award, roughly 80 per cent are in the default investment option.<sup>13</sup> Of that 80 per cent, anecdotal evidence suggests that approximately 20 per cent of default investment option members do choose to be in the default investment option. This suggests that approximately 60 per cent of members do not make active choices.

However, the Panel is conscious not to overstate the level of member ‘disengagement’. The Panel recognises that there are segments of the community very much engaged with their super and who spend time thinking and making active decisions about superannuation.

One thing is clear: the level of engagement of any individual member will depend on a range of factors, for example the member’s age, account balance, and broader financial and life circumstances. The key point from the Panel’s perspective is that a compulsory system needs to be able to cater for these different degrees of engagement: the significant proportion of members who are not engaged with their super, or in a position to make the sorts of decisions required of them; and the informed, financially literate, or well-advised members.

## 4.3 Philosophical framework of MySuper and the choice architecture model

These realisations about financial literacy and engagement have led the Panel to propose the new ‘choice architecture’ framework for the Australian superannuation system that is detailed in this report. This framework is an adaptation of contemporary thinking in the field of behavioural economics. This field is currently being applied overseas to a variety of complex public policy challenges involving consumers - for example, in the fields of health care, child nutrition, road safety and sustainability, as well as retirement savings.<sup>14</sup>

The key tenet of this approach is the concept of ‘libertarian paternalism’ – the idea that the outcomes experienced by inert or disengaged consumers should have inbuilt settings that most closely suit those consumers’ objective needs, as assessed by the expert providers of the product or service in question.<sup>15</sup>

Importantly, this does not amount to a centrally-determined ‘boilerplate’ option for everybody, as it must at all times have regard to the collective characteristics of the particular consumers affected, any of whom can at any time opt out if they want to take more control for themselves. Nor is it a completely *laissez-faire* system of unimpeded choices where providers can be indifferent to the selection decisions made (or not made) by individuals. This is because the default setting must always be one that reflects a positive judgment about the most appropriate outcome for the consumer (member) in the eyes of the product provider (being the trustee in the case of a superannuation fund).

## 5 INTRODUCTION TO THE RECOMMENDATION PACKAGES

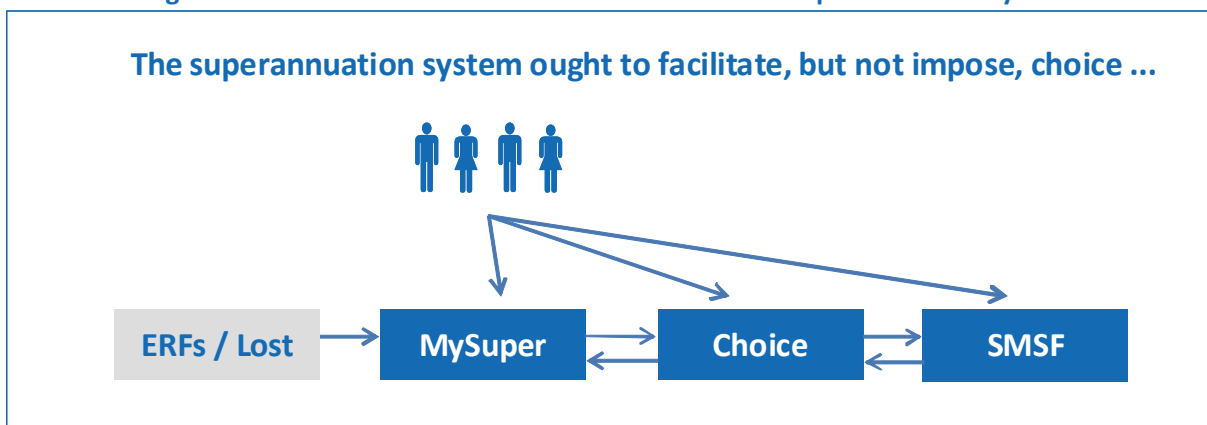
The Panel has framed its recommendations in 10 ‘packages’, each being a chapter in Part Two of this report, making up a comprehensive blueprint for reform. Earlier versions of some of these packages have been released as preliminary reports during the course of the Review (see appendix A for a full listing of these preliminary reports).

Wherever possible, the Panel has pitched its recommendations, and its analysis, at what it regards as the key conceptual issues and not matters of legislative or operational detail. Given the time and resources available to it, the Panel necessarily had to refrain from engaging in a more granulated review of the complicated legislative and regulatory environment that has built up around the superannuation system.

### 5.1 Chapter 1: MySuper and the choice architecture

The Panel has re-cast the architecture of the superannuation industry to a member-oriented, rather than an industry-oriented, perspective. It believes that the system should facilitate, but not be based on, choice. That is, the degree of engagement a member wants to exercise in relation to their superannuation should dictate the regulatory settings and the nature of the products available.

**Figure 1: A choice architecture model for Australia’s superannuation system**

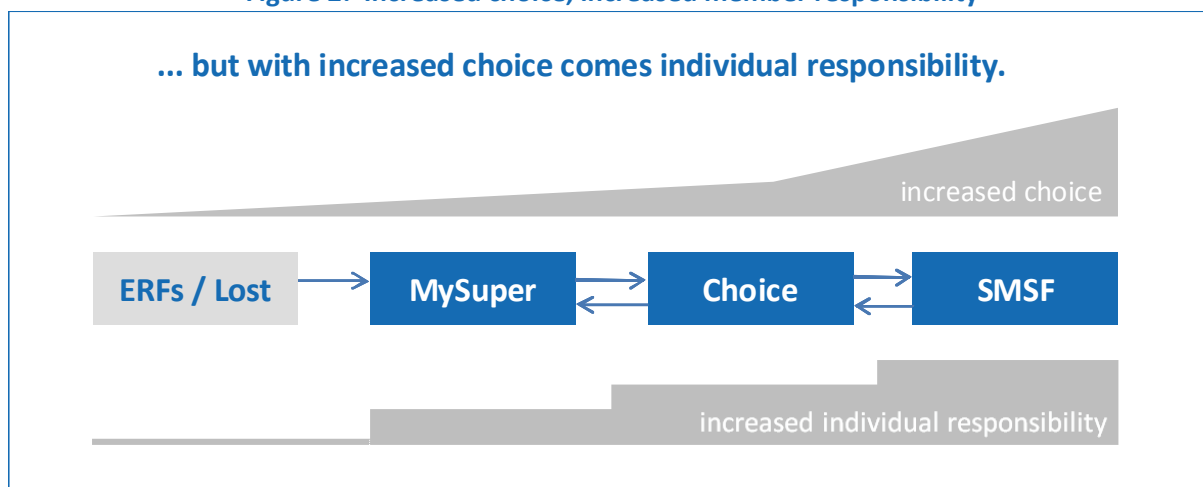


Broadly speaking, the architecture recognises four types of members.

- There are some members who simply want someone else to take care of it all for them. MySuper is particularly designed to cater to these members.
- There are some members who want to exercise choice over the investment strategies applied to their superannuation balances, but want to have their accounts administered for them. These members can elect to be in the choice segment, though they might decide that a MySuper product meets their needs and elect to have their money invested there (or in a combination of MySuper and choice products).
- There are some, and the number has increased sharply in recent years, who choose to be fully responsible for the investment and administration of their superannuation arrangements. These members can choose to operate an SMSF.

- The system also has to cater for members who have lost their superannuation account. The objective here is to reconnect members and their accounts quickly and efficiently and to introduce measures that make this less likely to occur in future.

**Figure 2: Increased choice, increased member responsibility**



### 5.1.1 MySuper

The MySuper component of the choice architecture model aims to provide a simple, cost effective product with a single, diversified portfolio of investments for the vast majority of Australian workers (roughly 80 per cent of members) who are in the default option in their current fund.

MySuper is designed with two large groups of members in mind: those who take no real interest in their super (at least not initially) and those who choose to be in a large, low-cost and well-managed product where the investment strategy is designed and implemented by the trustee.

MySuper would have a number of features designed solely with the member in mind: specific trustee duties designed to deliver lower cost outcomes for members; increased transparency leading to better comparability, especially of costs and long-term net performance; provision of intra-fund advice; simpler communications; and an embedded retirement product. It has been designed to sit within the existing superannuation structures and is based on existing widely offered and well understood default investment options.

### 5.1.2 Choice

The choice sector is also an important component of Australia's superannuation system. The Panel recognises that a competitive choice sector works well for members who want to tailor their superannuation.

But, even within choice, there are graduated degrees of member responsibility and engagement. While the Panel believes that the trustee should be protected when a member chooses a particular investment option that causes that member to suffer loss, the trustee also has a responsibility to apply a greater level of scrutiny to the sorts of products that are offered to super fund members in the master trusts, platforms or wrap environment. It should not be possible for trustees merely to preside over a menu of investment options principally selected by 'dealer groups' or other external parties.

Currently, the Australian financial services regulatory regime does not assess the suitability of products made available to retail investors, including members of certain types of super funds. Instead, disclosure is said to enable investors to decide for themselves what product is appropriate and neither APRA nor ASIC passes judgment on the merits or suitability of the investment.

This regulatory policy affects super because members are able to access a wide range of non-super financial products through master trusts, platforms and wraps (often many hundreds of products). This has resulted in some members sometimes choosing risky and illiquid investments that are arguably unsuitable as retirement products.

The Panel has recommend a refined duty on the part of a choice trustee to carry out appropriate due diligence and monitoring of investment options they offer. The details of this new duty would be fleshed out in standards to be developed by APRA in consultation with the industry.

## 5.2 Chapter 2: Trustee governance

The Panel believes that the combined effect of a compulsory system (outsourced by government to the private sector) and legislated preservation of benefits demand a higher level of governance in respect of super fund members than the level required for shareholders in major listed companies. Investors in listed companies have chosen to invest and are free to sell their holdings at any time.

The Panel has recommended several initiatives to improve trustee governance.

The Panel sees value in creating a distinct new office under statute, that of ‘trustee-director’. The duties, powers and standards required of this office would be recorded clearly in the SIS Act and nowhere else. These statutory duties would enhance, expand and clarify the duties set out in section 52(2) of the SIS Act as well as appropriately adapt the chapter 2D directors’ duties from the Corporations Act. The identification and management of conflicts of interests and of duties are a particular priority. Though conflicts are covered under the general law pertaining to trustees, it is clear from the Review’s analysis that there is a need for greater clarity of what is required of superannuation fund trustees and trustee-directors in this regard.

Changes are also required in relation to the structure of trustee boards, including their size and the tenure of trustee-directors. Contemporary best practice in corporate governance for listed companies includes the presence of independent directors on the board. The Panel believes that a minimum number of ‘non-associated’ trustee-directors (such that they can genuinely influence the decisions of those boards) should be required on all superannuation trustee boards.

To support the recommended legislative changes, the Panel proposes the establishment of a Code of Trustee Governance which would reflect the unique context of a superannuation fund. This Code would not be binding law and, as such, would be more flexible than legislation and could keep pace more easily with changes in the industry. This Code would be developed by industry.

As part of improving accountability to members, the Panel has recommended that a trustee should provide a member with reasons for its decisions in relation to a member’s formal complaint.

### 5.3 Chapter 3: Investment governance

The investment of fund assets is one of the key parts of the role played by a trustee of a superannuation fund. The governance of the investment function is key in ensuring that the steps involved in the investment process are efficient and that risk is managed properly at all levels.

The Panel recognises that the investment of a modern superannuation fund is a complex activity requiring a wide range of technical expertise and skills. For this reason, most APRA-regulated funds employ a range of service providers, including fund managers, asset consultants and custodians, to assist them. This in turn places pressure on the trustee to ensure that the process of appointment and the process of monitoring these ‘agents’ are designed to promote the interests of members.

The Panel has identified a number of areas in which a measure of tightening in the regulatory system seems appropriate.

Performance-based fees were, until recently, typically only charged by hedge funds or in the context of mandates relating to alternative assets. Quite quickly, they have become much more widespread. The Panel’s view is that performance-based fees should be the exception, rather than the rule, for superannuation fund investments and has recommended that a performance-based fee standard be adopted for MySuper products.

Members accumulate their retirement savings and retire on after-tax returns, not pre-tax ones. Yet, there is a wide variation in the extent to which most trustees and investment managers have regard to the optimisation of tax outcomes for members. The benefits of dividend imputation credits and capital gains tax discounts are only realised where the underlying investments are held at the time of the dividend distribution, or for a specified period.

Investment ‘churn’ or portfolio trading that ignores tax consequences can result in the premature turnover of assets where the potential after-tax benefits to members are lost.

Research on the quantum of the leakage has found that portfolio turnover resulting from investment decisions made without regard to tax can affect after-tax returns significantly. The Panel believes that the SIS Act should be amended so that trustees have an obligation to have regard to the tax consequences of their investment strategies.

Similarly, the Panel also considers that the SIS Act should be amended so that trustees have an obligation to have regard to the expected costs of particular investment strategies and the availability of independent and timely asset valuations.

### 5.4 Chapter 4: Outcomes transparency

Transparency and comparability are critical to the efficiency and operation of a market-based savings system, even where participation is compulsory. The Panel believes that there is presently a lack of transparency, comparability and, ultimately, accountability in the Australian superannuation system that can only be effectively improved through targeted and proportionate regulation.

The Panel considers that, to make progress quickly toward accurate comparability, APRA should have a new power to make ‘outcomes reporting standards’ as to the way large APRA funds report and advertise the investment performance and costs of their investment options. Large APRA funds would be required (among other things) to:

- report past performance in a standard format that also discloses the volatility associated with the return; and
- classify their investment options according to a new ‘risk and return targeting’ approach.

In financial markets, there is great benefit in what could be termed ‘systemic transparency’: that is, disclosure to the system at large, including regulators, academics, analysts, advisers and informed investors. ‘Systemic transparency’ is what is largely missing in the Australian super system. There is too little high quality information available to experts who would be able to use such information for the ultimate benefit of members as a whole. Systemic fund information about large APRA funds should sit alongside specific member-focused and event-driven disclosure obligations.

The Panel considers that there needs to be a low-cost, but dramatic, change in this area. This is where large APRA funds must see themselves as different from other businesses. Trustees must get used to being more transparent about their funds. The Panel therefore believes there should be new standards for web-based systemic disclosures for large APRA funds in a range of areas, including details of their portfolio holdings every six months.

Members also need a certain minimum amount of information when considering superannuation investment options, including MySuper. The Panel believes this can be provided through the development of a plain English product ‘dashboard’ that would provide members with a standardised format in which to compare:

- the investment option’s risk and return targets;
- whether the investment option was illiquid; and
- fees and costs, including a projected Total Annual Expense Ratio (**TAER**).

## 5.5 Chapter 5: Insurance in superannuation

Insurance can be an important aspect of superannuation as it provides benefits to members (and their dependants) when members are no longer able to work due to death or total and permanent disablement (**TPD**) before normal retirement age.

However, insurance cover embedded in super comes at the cost of foregone retirement savings and earnings. In this context, trustees have an important role in setting appropriate insurance offerings for their members. Default insurance must be tailored for members who do not consider their insurance needs, and who rely on the trustee’s judgment for adequate insurance. For members who do consider their insurance needs, they should be able to opt-out of cover entirely or to have access to additional cover.

Death and TPD insurance, in particular, meet the needs of members so that they have sufficient benefits in the event that they need to access their retirement savings early. Income protection insurance can complement these types of insurance by providing benefits when disability is believed

to be temporary, not permanent. In the Panel's view, no other type of insurance is consistent with the objectives of superannuation and nor should it be paid for from member super savings.

Insurance is a complex product for member and trustee alike and it is a crucial component of superannuation. Accordingly, all trustees should develop a considered insurance strategy and monitor its implementation. The risks associated with fund self-insurance of life and TPD benefits are high and so self-insurance should only be permitted in limited circumstances.

Information about insurance must be more widely available and trustees must make it easier for members to compare insurance options, recognising the financial impact on members. The Panel thinks that much of this can be easily accomplished on the fund's website.

In superannuation, insurance is generally automatically provided to members and, consequently, members will continue to have coverage without the need to have advisers remunerated by trailing commissions. In the Panel's view, commissions add unnecessarily to the insurance premiums that members pay.

## 5.6 Chapter 6: System integrity

Trustees of large APRA funds need direct access to a risk-weighted pool of capital, whether an operational risk reserve within the fund or capital held separately by the trustee. Changes proposed in order to improve access to capital according to the assessed risk of the fund should be phased in over time so as to lift prudential standards while minimising any inter-generational equity issues and disruption to funds.

Trustees need to give explicit consideration to liquidity risk management at both whole of fund and investment option level.

Administrators and commercial clearing houses are systemically significant to the superannuation system and should be subject to APRA regulation and licensing, including a requirement to hold capital in their own right.

The funding standards for defined benefit funds should be strengthened to focus on the level of vested benefits rather than minimum requisite benefits. The Panel believes that defined benefit funds need to be considered carefully and specifically when there is any change to legislation as costs for these funds can be inadvertently increased when legislation does not sufficiently take them into account.

Given the superannuation system's sole purpose, externalities, whether a national interest in developing infrastructure, or promoting sound environmental, social and governance outcomes, always need to be reflected in the risk and return valuation of a potential investment, but not as ends in themselves.

## 5.7 Chapter 7: Retirement

Australia's superannuation system exists to deliver private income to enhance the living standards of retired Australians. Successive governments have committed to the 'three pillar' framework as the underpinning of Australia's retirement incomes policy, blending near-universal employee

participation in the superannuation system with an adequate social security safety net and incentives for discretionary savings by individuals beyond the employer-mandated levels.

To date, the retirement income product market has been under-developed, largely reflecting the relatively small balances that many retiring workers hold as a consequence of the immaturity of the SG system (being less than 20-years old). Currently, the market is dominated by account-based products in which the risks associated with investment markets, longevity and inflation are directly borne by the member. However, balances will increase substantially in the period ahead and this, combined with demographic ageing, should help spur product development. Treasury estimates that post-retirement assets will more than triple in real terms by 2035 to reach \$850B.

MySuper should be a whole of life product and include a single type of retirement income stream product, chosen by the trustee.

Because retirement needs vary considerably, there is no 'one-size-fits-all' retirement income product that the government should mandate. It is important that trustees consider longevity issues more explicitly when developing investment strategies. It is also important that the regulatory system supports product innovation.

Good financial advice can be very helpful as members plan for retirement and as they manage assets in the retirement phase. There is a strong case for requiring MySuper products to provide proactive intra-fund advice periodically to this group of members.

## 5.8 Chapter 8: Self-managed super solutions

The Panel recognises that within the SMSF sector, members (who also act as the trustees) should have ultimate responsibility for their retirement savings. Unless there is a countervailing public policy reason, trustees of SMSFs should be free, as much as possible, from government intervention.

In effect, the work of the Panel has led it to conclude that the SMSF sector is largely a successful and well-functioning part of the system, as reflected in the Panel's statistical summary issued in December 2009. In fact, the Panel suspects that the most significant aspect of its work in the SMSF sector is what it has not recommended (for example, minimum fund size or specific trustee educational requirements). The SMSF recommendations are not dramatic and largely relate to compliance, audit, adviser competency and like measures. There were some recommendations about assets that the Panel thought ought not to be in SMSFs (for example, collectables) but these were not material in quantum.

Some trustees are capable of looking after all of the affairs of their SMSF. Most ultimately delegate some or all of the tasks of running an SMSF to service providers. In some respects, service providers in the SMSF sector have a unique role. They are, in a sense, the first line of defence for the community in a sector that is characterised by a do-it-yourself philosophy. Recognising this, the Panel believes that higher competency and advice standards are needed for SMSF service providers. The Panel also believes that the sector would be more efficient if trustees had access to better resources and simplified legislation.

The Panel also recognises that other parts of the SMSF regulatory framework need to be improved. The ATO needs a greater range of flexible penalties if it is to achieve appropriate and proportionate regulatory outcomes. Likewise, given the pivotal role approved auditors play in underpinning the SMSF regulatory framework, their competence and independence should be raised to a level where



they provide the level of assurance that a compliance-based regulatory framework demands. The SMSF registration process needs to be improved to combat frauds and illegal early access schemes.

## 5.9 Chapter 9: SuperStream

‘SuperStream’ is the name the Panel has chosen to describe the package of measures designed to enhance the current ‘back office’ of superannuation. It includes new standards to improve the quality of data provided by employers, to allow the use of tax file numbers (TFNs) as a primary identifier and to require the use of technology to improve processing efficiency. SuperStream also includes improvements to the way fund-to-fund rollovers are processed and the way contributions are made.

Excessive costs caused by manual processing of both money transfers and data in super can be significantly reduced by requiring electronic transmission of linked financial and member data at all levels, using standardised formats. Use of the TFN as the primary identifier is critical to this process.

There will be an enhanced role for the ATO in facilitating a more efficient back office for superannuation. Further, the Panel proposes that the present array of controls over superannuation contributions should be simplified and streamlined, with the ATO having sole regulatory responsibility.

Improved data quality and search processes should lead to a reduction in the number of inactive or lost member accounts in the system.

## 5.10 Chapter 10: Regulatory settings

Changes are required to the regulatory system in order to achieve the efficiencies that the Panel seeks for the industry.

The Panel believes that APRA must have a standards-making power in relation to superannuation to allow it to take on the significant tasks of overseeing and promoting industry efficiency (as well as its existing prudential role). The Panel sees this complemented by a fresh approach to graduated regulatory enforcement and sanctions.

The Panel is of the view that efficiency can also be achieved by enhanced cooperation and coordination between the regulators with respect to their superannuation functions. This could take several forms, including secondment arrangements between ASIC and APRA or an operational merger of their superannuation capabilities with or without a co-location in major offices. The ATO should be resourced so that it can carry out its new role with respect to SuperStream as well as its current roles in the industry.

In the Panel’s view, further efficiencies can be achieved by facilitating rationalisation of legacy products in superannuation and, to that end, suggests that the equivalence test for successor fund transfers be changed to a test of ‘no overall disadvantage’ with the intention of allowing more transfers to proceed. There is also benefit in giving the Federal Court the jurisdiction to determine superannuation product rationalisation where the successor fund transfer test cannot be met. CGT relief in these instances should be expanded and made permanent.

Inefficiency is also a by-product of a complex legislative framework and the Panel believes that a restructure of the SIS Act could be helpful to the industry. The Panel suggest that the SIS Act be organised so that, among other things, the provisions applying to each sector of the new choice architecture are set out separately.

As a way to determine if the Panel's recommendations have been effective in advancing efficiency in the industry, the Panel believes that the Productivity Commission should review the impact and implementation of MySuper and SuperStream and the functioning of the retirement product market five years after the Government's response to this report.

With a view to advancing members' interests, the Panel believes that 'member protection' should cease in the new choice architecture so that subsidisation of 'protected' members by 'unprotected' members does not continue to occur. The Panel also endorses an extension of the General Employee Entitlement and Redundancy Scheme (**GEERS**) to cover up to three months of unpaid SG Act contributions and a change of name for the Superannuation Complaints Tribunal (**SCT**) to become the 'Superannuation Appeals Tribunal' to better reflect its role.

## 6 HOW THE RECOMMENDATIONS BENEFIT MEMBERS

The Panel's terms of reference were quite explicit that its work was to be '*conducted around the concepts of the best interests of the member and the maximising of retirement incomes for Australians*'.

The Panel has therefore framed its recommendations in a way that reinforces the principle that superannuation must be for the benefit of members and imposes new requirements on trustees to ensure that they make decisions and conduct their operations so that members benefit.

The Panel has also developed numerous proposals to make super easier, simpler and more efficient for members.

### 6.1 Optimising costs and fees for members

#### 6.1.1 MySuper fees in current market conditions

The aim of MySuper is lowering overall costs for members while supporting and encouraging a competitive market-based, private sector infrastructure for superannuation. The Panel's objective is to make super better value for money and MySuper is designed with this in mind.

While the Panel has not recommended a cap on fees, the Panel has recommended changes in legislation and regulation to make fees more transparent and to assist members to compare fees across the industry. These measures, along with sharper duties on trustees, should see better management of overall costs.

As part of the Review, the Panel commissioned a report from Deloitte Actuaries and Consultants seeking Deloitte's view of reasonable and achievable total costs for an average member with a \$25,000 account balance, assuming the adoption of the MySuper model. Deloitte's methodology involved using current market information to estimate the likely costs and fee ranges for the various

components of the MySuper product, without taking account of the impact of SuperStream and other Panel recommendations.

Deloitte's view of what the current market could provide in the way of fees for MySuper is shown in the following table:

**Table 2: Estimated total annual percentage costs for MySuper products of varying sizes (investment costs, plus operating costs and intra-fund advice)**

MySuper fund size/investment strategy	\$2b	\$5b	\$10b	\$20b
Passive balanced	0.60%	0.46%	0.38%	0.32%
Passive conservative	0.58%	0.45%	0.37%	0.32%
Active balanced	0.94%	0.83%	0.70%	0.60%
Active conservative	0.80%	0.70%	0.59%	0.49%
Active balanced (with alternatives)	1.04%	0.89%	0.77%	0.66%
Active conservative (with alternatives)	0.89%	0.76%	0.64%	0.54%

A copy of the full Deloitte report is at appendix D.

For a variety of reasons, fees currently paid by super fund members cover a wide range across the different fund types and sectors. However, nearly all default fund members are today paying more than the 0.66 per cent total fees projected by Deloitte for the highest cost investment option in a \$20B MySuper product, with some members paying more than twice this amount. This estimated saving would represent a significant boost to retirement savings. Treasury estimates an average fee for default fund members of 97bps per annum, based on the Rice Warner *Superannuation Fee Report 2008*.

Being a current market estimate, Deloitte's numbers do not take account of any savings from the SuperStream proposal to modernise the 'back office' of the super industry (see chapter 9). The Panel asked Deloitte to keep the account balance used in the examples low, reflecting the relatively low average account balances in the system. An account balance of \$250,000 would see operating costs, including for intra-fund advice, of between 0.05 per cent for a \$2B fund and 0.03 per cent for a \$20B fund, to which percentage-based investment management fees would have to be added.

### 6.1.2 Would lower fees harm investment returns?

Concern has been expressed that MySuper would be seen as 'cheap and nasty' with its members disadvantaged because they would be forced into poorly-performing low cost investment strategies. This is not so. The cost estimates shown in table 2 include an element of performance fees and range across passive and active investment strategies, including exposure to alternative asset classes.

MySuper trustees would be required to consider and implement, as appropriate, what they consider to be the optimal investment strategy to maximise net returns for their members.

There is no justification for the assertion that MySuper would prevent trustees and fund managers from pursuing certain types of investment strategies that they might otherwise consider. The MySuper concept is predicated on trustees being required to design and implement an investment strategy that is for the benefit of members, which means trustees have to weigh the expected returns of any strategy against considerations of liquidity, risk and cost. The Panel is confident that

trustees would be able to identify strategies that offer competitive net (that is, after taxes, fees and costs) returns to members within the regulatory framework governing MySuper.

It is clear from Deloitte’s work, and other material analysed by the Review, that there are substantial benefits from scale in the super industry. In MySuper, trustees would have to consider annually whether their MySuper product would have enough scale to provide optimal benefits to members.

### 6.1.3 Future impact of MySuper and SuperStream on fees

The Panel has sought to quantify (as set out in table 3) the potential impact of two major reforms – MySuper and SuperStream on fees that members might pay in the future.

**Table 3: Projected annual savings from MySuper and SuperStream\***

Source of savings	Short-run	Long-run
MySuper	\$0.55b	\$1.7b
SuperStream	\$1.0b	\$1.0b
<b>Total annual savings</b>	<b>\$1.55b</b>	<b>\$2.70b</b>

\* The SuperStream reforms are expected to involve initial up-front costs for the industry and the full benefits might not be realised immediately. These short-run costs have not been quantified. However, they are expected to be relatively low in the longer term.

These fee savings would provide significant benefits to ordinary workers. Treasury estimates that an average wage earner paying average MySuper fees could benefit from around a 40 per cent fee cut, lifting their final superannuation balance by around \$40,000 or 7 per cent.

Given the uncertainties involved, these estimates should be seen as broadly indicative only. Details of the Treasury assumptions underpinning these projections are set out in appendix C.

## 6.2 Better retirement benefits

The better management of costs and fees goes directly to improving the bottom line for members, that is, greater retirement benefits. The information in section 6.1 illustrate what positive results can be achieved with the MySuper and SuperStream proposals.

While increased retirement benefits are the overall aim of the Panel’s recommendations, specific recommendations that significantly contribute to this result are:

- (a) movement of a greater share of the value derived from investments of super assets from agents to members as competition, scale and efficiency gains are realised, increasing members’ net wealth;
- (b) prohibiting adviser commissions on insurance provided through superannuation, that can be up to 20-30 per cent of member premiums;<sup>16</sup>
- (c) removing trailing commissions on advice and limiting performance-based investment management fees;
- (d) requiring trustees to manage investments for after-tax returns and to align investment management arrangements with member interests;

- (e) giving MySuper trustees a duty to consider longevity risk and inflation risk in relation members in retirement phase;
- (f) removing barriers in the tax legislation and SIS Act to fund consolidation so that scale can be more easily achieved; and
- (g) requiring trustees to have not only an investment strategy, but also an insurance strategy so that costs in both areas are actively considered and managed by the trustee.

### **6.3 Enhanced security of the system**

Imposing a capital (or reserving) requirement on trustees will help ensure their viability, which is of course of utmost importance to members.

Licensing of administrators and clearing houses (and capital requirements for them) means that member records are more secure and, generally, reduces the risk of operational failure in administrators and clearinghouses. Bringing these entities into the regulatory net gives comfort to members that the regulatory oversight extends to all critical operations of the system.

Defined benefit members will be more secure in knowing that the focus of funding will be on their vested benefits not minimum requisite benefits.

Further, trustees will be required to manage liquidity risks better both in the fund as a whole and in individual investment options which reduces the risk for members that there will be no cash available to pay their benefits when they come due.

The strengthening of governance standards for trustee boards and trustee-directors will help ensure that persons involved with the fund at the highest level are of high quality and capability.

Maintaining confidence in the system is important and securing the system's stability is fundamental.

### **6.4 Better information**

Increasing the transparency of the system and providing more meaningful information would be of obvious benefit to members. The Panel believes that the provision of better information to members and their advisers would make superannuation less opaque and increase the likelihood that members understand what is happening with their superannuation.

The new 'forward looking' investment option disclosure 'dashboard' would enable members to examine likely future performance, rather than basing investment choice on past investment performance. The Panel believes that this way of preparing and disclosing investment option data will aid members in figuring out some of the technical information that is associated with their super.

MySuper trustees will be required to provide their members with intra-fund advice proactively at various stages throughout their working lives and as they approach retirement and during their retirement. The Panel sees intra-fund advice as being of great value to members as it comes from the trustee, the entity that is most familiar with the fund's operation.

## 6.5 Greater efficiency

As a consequence of the SuperStream proposals, super will be easier to locate and harder to lose.

Currently, there are approximately 12M members with superannuation,<sup>17</sup> yet there are over 33 million accounts.<sup>18</sup> Equally frustrating for members (and trustees and administrators) is the laborious process of reuniting members with their 'lost' super. There was more than \$13.6B in lost super as at 30 June 2009.<sup>19</sup>

The Panel's recommendations to enable greater use of TFNs to help in identifying member accounts, to require electronic transmission of linked financial and member data (using standardised formats) and to facilitate auto-consolidation of multiple accounts will go far in making the system more efficient for members.

Members will also benefit from the Panel's emphasis on the availability of electronic information both from their fund and from government. The establishment of the government's super website means that there will be a central, authoritative repository for information about superannuation. A website-based approach will be more efficient (and less costly) as information can be updated easily and quickly and members can access the information at any time.

## 7 IMPLEMENTATION

While pitching its recommendations at a high conceptual level, the Panel has endeavoured throughout the Review to be satisfied that its ideas and recommendations are practicable. In part, this has been in an effort to minimise any unintended consequences of its proposals.

The Panel appreciates the work involved in taking high level recommendations and implementing them in practice. To that extent the Panel has, where possible, given as much direction as it can to enable the Treasury, with its responsibility for implementing recommendations that are accepted by Government, to understand the Panel's thinking. In the same vein, the Panel urges Treasury to have regard to the 10 super policy principles to clarify areas of ambiguity.

Inevitably, there will be matters of detail that will not be addressed in a project of this nature and these will have to be resolved in the subsequent consultation process.

The Panel's recommendations are expected to benefit members substantially in the long term through cost savings and improved efficiencies. Counter-balancing these savings, the Panel acknowledges that some of its recommendations would increase some fund costs in the short term, particularly the implementation of certain aspects of the MySuper and SuperStream reforms.

When making recommendations, the Panel has been conscious of the Government's best practice regulation principles. As a result, the Panel's largely principle-based reforms aim to maximise the overall benefit to members, while minimising the cost borne by the industry.

The Panel has not presumed to recommend a specific timetable or sequence of implementation, although it would clearly be preferable for implementation planning to commence immediately on some of the key proposals including MySuper and the various SuperStream proposals. Many of the other key recommendations depend on further detailed consultation with the industry, and any reforms requiring legislative changes need to be very carefully planned and accommodated within

the government's broader legislative program. The Panel is, however, confident that all the reforms proposed are eminently capable of being implemented, and will result in significant net gains to members.

## 8 OUTSTANDING ISSUES

As part of the Review process, the Panel released three comprehensive issues papers, detailing myriad issues about governance, operations, efficiency and structure across the superannuation industry today (see appendix A for a list of the issues papers).

The Panel's priority has been to address those issues that it believed would bring about the greatest benefit to members and the superannuation industry. However, the Panel recognises that there are still a number of second order, but still important, changes that could result in benefits for members. In this regard, the Panel believes that policy makers and regulators should continue to progress these issues and commends to them the issues papers – and the submissions that responded to these papers — as an important on-going resource.

## 9 ACKNOWLEDGEMENTS

The Panel wishes to thank the large number of organisations, particularly APRA, the ATO, ASIC and everyone who participated in roundtables, focus groups and meetings with the Panel, or assisted with research. The Panel was grateful to receive the many thoughtful, considered and useful submissions and thanks the many organisations who made submissions in all three phases of the Review. The Panel was also particularly grateful that so many individual members made submissions about their own experiences and issues.

The Panel also acknowledges the support Minister Bowen and the Government have given to the Review process, while always respecting the independence of the Panel. The Panel also acknowledges the initiative of Assistant Treasurer, Senator the Hon Nick Sherry, in instigating the Review.

The Panel is also grateful for the administrative support it has received from many areas of the Department of the Treasury. There were also many other supporters of the Review who assisted in various ways during the process (by providing meeting venues, ideas and feedback, good quality coffee, discussion forums and support) and we thank them as well.

There were many friends of the Review (too many to name individually) and the Panel thanks each of them for their support and encouragement.

Lastly, the Panel wishes to acknowledge the outstanding support provided by all members of the Review secretariat (listed in appendix E) drawn from both the private and public sectors.

## 10 LIST OF RECOMMENDATIONS

### 10.1 Chapter 1: MySuper and choice architecture

#### Recommendation 1.1

The 'choice architecture model' should be adopted as the structure for Australia's superannuation industry.

#### Recommendation 1.2

The SG Act should be amended so only a MySuper product is eligible to be a 'default' fund nominated by an employer.

#### Recommendation 1.3

The relevant legislation should be amended so:

- (a) only MySuper products are eligible to be nominated; and
  - (b) all MySuper products are able to be nominated,
- for 'default fund' purposes in awards approved by Fair Work Australia.

#### Recommendation 1.4

In 2012, the Productivity Commission should conduct a review of the processes by which default funds are nominated in awards to assess whether the processes are sufficiently open and competitive.

#### Recommendation 1.5

Any fund that is a 'successor fund' (as defined in the SIS Act) to a fund currently nominated as a default fund under an award should, where the successor fund is a MySuper product, be accepted automatically as a default fund under the award, so that there is no impediment to consolidation for those funds that wish to do so.



### **Recommendation 1.6**

The SIS Act should be amended to apply statutory duties to MySuper trustees to:

- (a) formulate and give effect to a single, diversified investment strategy at an overall cost aimed at optimising fund members' financial best interests, as reflected in the net investment return over the longer term; and
- (b) actively examine and conclude whether, on an annual basis, its MySuper product has sufficient scale on its own (with respect to both assets and number of members) to continue providing optimal benefits to members.

### **Recommendation 1.7**

The SIS Act should be amended to require trustees of MySuper products to satisfy objective criteria relating to:

- (a) APRA licensing;
- (b) acceptance of contributions;
- (c) single, diversified investment strategy;
- (d) absence of costs cross-subsidisation;
- (e) buy and sell spreads;
- (f) switching fees;
- (g) fee discounts;
- (h) performance-based investment management fees;
- (i) e-super disclosures;
- (j) retirement income stream product;
- (k) entry and exit fees;
- (l) benchmarking;
- (m) intra-fund advice;
- (n) insurance;
- (o) absence of commissions and like payments; and
- (p) member engagement.

### **Recommendation 1.8**

**Neither advice to members (other than intra-fund advice), nor advice to employers should be 'bundled' with MySuper products.**

### **Recommendation 1.9**

**Advice to members of a MySuper product (other than intra-fund advice) should only be provided on request and trustees should only be able to deduct the costs of advice about superannuation from a member's account with the member's written agreement.**

### **Recommendation 1.10**

**The cost of advice or services provided to employers should not be borne in any way, directly or indirectly, by MySuper members.**

### **Recommendation 1.11**

**Trustees of MySuper products should not:**

- (a) pay or fund any product-based up-front or trailing commission or other similar payment;  
or**
- (b) make or fund any payment that relates to volume,**

**in respect of superannuation advice or other products or services provided to members.**

### **Recommendation 1.12**

**Members of MySuper products should only be provided with advice about superannuation (other than intra-fund advice) under arrangements that require the member to renew the advice service each year on a renewal notice from the adviser.**

### **Recommendation 1.13**

**ASIC should, in consultation with industry, devise a standard form which requires clear identification of the advice service to be provided where a fund member renews an ongoing advice service.**

### **Recommendation 1.14**

**Trustees of MySuper products should not pay premiums for insured member benefits that include or fund an up-front or trailing commission or like payment.**

### **Recommendation 1.15**

Legislation should apply specific and thorough conduct and enquiry duties on persons (including trustees) providing switching advice to a MySuper member built on the current requirements of section 947D of the Corporations Act.

### **Recommendation 1.16.**

Members should only be able to be moved involuntarily out of a MySuper product if they are:

- (a) transferred to an ERF;
- (b) flipped from a MySuper product in a master trust to another MySuper product in another division of that trust; or
- (c) transferred under legislative requirements such as auto-consolidation of accounts or temporary resident arrangements.

### **Recommendation 1.17**

The presentation of retirement forecasts should be mandatory for MySuper products, and should be developed in consultation with industry in accordance with the approach identified by the Panel.

### **Recommendation 1.18**

The superannuation industry should have at least two years to transition to MySuper and the new choice architecture.

### **Recommendation 1.19**

Both APRA and ASIC should oversee the transition referred to in Recommendation 1.18.

### **Recommendation 1.20**

Trustees of choice sector products should also not be able to charge entry fees and should only charge exit fees on a cost recovery basis.

### **Recommendation 1.21**

Neither advice to members (other than intra-fund advice), nor advice to employers should be bundled with choice products or with any other product in the choice architecture model, including products offered to SMSFs.

### **Recommendation 1.22**

**Advice to members of a choice product or of any other product in the choice architecture model (other than intra-fund advice) should only be provided on request and trustees should only be able to deduct the costs of advice about superannuation from a member's account with the members' written agreement.**

### **Recommendation 1.23**

**The costs of advice to employers should not be borne in any way, directly or indirectly, by members of choice products or by members of any other products in the choice architecture model.**

### **Recommendation 1.24**

**Trustees of choice products or of any other product in the choice architecture model should not:**

- (a) pay or fund any product-based up-front or trailing commission or other similar payment;  
or**
- (b) make or fund any payment that relates to volume,**

**in respect of superannuation advice or other products or services provided to members.**

### **Recommendation 1.25**

**Members of choice products or of any other product in the choice architecture model should only be provided with advice about superannuation (other than intra-fund advice) under arrangements that require the member to renew the advice service each year on a renewal notice from the adviser.**

### **Recommendation 1.26**

**Trustees of choice products or of any other product in the choice architecture model should not pay premiums for insured member benefits that include or fund an up-front or trailing commission or like payment.**

### **Recommendation 1.27**

**Choice trustees must offer a range of options sufficient to allow members to obtain a diversified asset mix if they choose, but members can choose to be undiversified and the trustee would have no obligation to assess the appropriateness of the investment strategy chosen by the member. Trustees would be subject to new express duties in selecting and monitoring options.**

### **Recommendation 1.28**

**A choice trustee that discharges its duties in selecting and monitoring investment options should not be exposed to civil liability in the event that a member suffers damage by reason of illiquidity or other circumstances affecting the investment option, including diminution in value or failure.**

## **10.2 Chapter 2: Trustee Governance**

### **Recommendation 2.1**

**The SIS Act should be amended to create a distinct new office of ‘trustee-director’ with all statutory duties (including those which would otherwise be in the Corporations Act) to be fully set out in the SIS Act, along with re-focused duties for trustees. The duties for trustee-directors should include:**

- (a) To act solely for the benefit of members, including and in particular:**
  - i. to avoid putting themselves in a position where their interests conflict with members’ interests;**
  - ii. to give priority to the duty to members when that duty conflicts with the trustee-director’s duty to the trustee company, its shareholders or any other person;**
  - iii. to avoid putting themselves in a position where their duty to any other person (such as another super fund or a service provider) conflicts with their duty to members;**
  - iv. to avoid putting themselves in a position where their duty to any other person (other than members) conflicts with their duty to the trustee company;**
  - v. not to obtain any unauthorised benefit from the position of trustee or trustee-director; and**
  - vi. not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee’s functions and powers.**
- (b) To act honestly.**
- (c) To exercise independent judgment.**
- (d) To exercise the degree of care, skill and diligence as an ordinary prudent person of business would exercise in dealing with the property of another for whom the person felt morally bound to provide.**
- (e) To have specific regard to (among other matters) the likely long term consequences of any decision, including the impact of the decision on the community and the environment and on the entity’s reputation for high standards of conduct.**

**The duties for trustees should include:**

- (f) To keep the money and other assets of the entity separate from any money and assets, respectively:**

  - i. that are held by the trustee personally; or**
  - ii. that are money or assets, as the case may be, of a standard employer-sponsor or an associate of a standard employer-sponsor, of the entity.**
- (g) To formulate and give effect to an investment strategy in respect of the fund as a whole and each investment choice option, that has regard to the whole of the circumstances of the entity including, but not limited to, the following:**

  - i. the risk involved in making, holding and realising, and the likely return from, the entity's investments having regard to its objectives and its expected cash flow requirements;**
  - ii. the composition of the entity's investments as a whole, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;**
  - iii. the liquidity of the entity's investments having regard to its expected cash flow requirements;**
  - iv. the ability of the entity to discharge its existing and prospective liabilities;**
  - v. the expected costs of the strategy, including those at different levels of any interposed legal structures and under a variety of market conditions; and**
  - vi. the taxation consequences of the strategy, in light of the circumstances of the fund.**
- (h) To formulate and give effect to an insurance strategy which includes, but is not limited to, the types of insurance to be offered and the default minimum and permissible maximum levels of cover to be offered as well as the cost and value for money to members.**
- (i) If there are any reserves of the entity, to formulate and to give effect to a strategy for their prudential management, consistent with the entity's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.**
- (j) To allow a beneficiary access to any prescribed information or any prescribed documents.**
- (k) To act fairly between all beneficiaries of the fund and to act impartially between beneficiaries of the same class.**

### **Recommendation 2.2**

Trustee-directors should not be required to have specific pre-appointment skills or training. However, APRA should consider further strengthening its administration of the 'fitness' test under the SIS Act including requiring potential trustee-directors to be fully briefed before accepting the position (or deciding to seek nomination, where applicable) as to their responsibilities and potential liabilities. The Code of Trustee Governance should address the on-going training requirements that trustees and trustee-directors must meet on an annual basis.

### **Recommendation 2.3**

The board of the trustee must demonstrate on an annual basis that it has the collective skill set to govern the APRA-regulated fund or funds for which it is responsible and this should be one of the subjects covered in the independent annual review of the board.

### **Recommendation 2.4**

The SIS Act should be amended so that it is no longer mandatory for trustee boards to maintain equal representation in selecting its trustee-directors. The Panel expects that trustees would review and amend corporate constitutions to ensure consistency with this recommendation.

### **Recommendation 2.5**

The SIS Act should be amended so that policy committees are no longer mandatory where the trustee board does not have equal representation.

### **Recommendation 2.6**

The SIS Act should be amended so that if a trustee board does not have equal representation, the trustee must have a majority of 'non-associated' trustee-directors (as described in chapter 2).

### **Recommendation 2.7**

For those boards that have equal representation because their company constitutions or other binding arrangements so require, the SIS Act should be amended so that no less than one-third of the total number of member representative trustee-directors must be non-associated and no less than one-third of employer representative trustee-directors must be non-associated.

### **Recommendation 2.8**

The Corporations Act should be amended so that any provision of a trustee company constitution that prohibits any trustee-director from voting on any trustee company business (other than in the event of conflict of duty or interest) is ineffective.

### **Recommendation 2.9**

SIS Act section 101 should be amended to require a trustee to provide a member with reasons for its decision in relation to the member's formal complaint.

### **Recommendation 2.10**

Section 197 of the Corporations Act should have no application to a director of a company to the extent that the company is acting as a trustee of an RSE and the Corporations Act should be amended accordingly.

### **Recommendation 2.11**

All trustees should be required, as a condition of their RSE licence, to have an appropriate level of indemnity insurance cover and to provide an annual certificate of currency to APRA.

### **Recommendation 2.12**

The enforcement provisions of the SIS Act and the Corporations Act should be reviewed and an appropriate proportionate penalty regime should be designed to take into account the new duties imposed on trustees and trustee-directors.

### **Recommendation 2.13**

In order for a trustee-director to act as a trustee-director on the board of more than one APRA-regulated fund, the person and both boards need to attest to APRA that at the time of appointment there is no reasonably foreseeable conflict between the person's duty to the members of each fund and to the person's duty to each trustee company. There would be a transitional period for existing trustee-directors with multiple board positions. APRA would need the appropriate regulatory tools to administer this requirement.

### **Recommendation 2.14**

The SIS Act should be amended so as to override any provision in the governing rules of an APRA-regulated fund that requires the trustee to use a specified service provider in relation to any services in respect of the fund.



### **Recommendation 2.15**

**A record of all gifts, emoluments and benefits (subject to an appropriate materiality threshold) provided to trustees, trustee-directors and management should be kept in a register maintained by the trustee and disclosed to APRA annually as well as in the annual fund report to members and on the fund’s website.**

### **Recommendation 2.16**

**APRA should develop a prudential standard that sets out particular examples of conflicts of interest and conflicts of duty to illustrate behaviour that would not be allowed in relation to all APRA-regulated funds so as to ensure that trustee-directors and trustees observe their duty of loyalty to members.**

### **Recommendation 2.17**

**Trustees of APRA-regulated funds should, as a condition of their RSE licence, be required to articulate and follow a conflicts policy specifically tailored to their business structure that addresses all relevant issues regarding their role under the SIS Act and as a fiduciary to the members of the fund.**

### **Recommendation 2.18**

**An industry council (coordinated by APRA) should develop, in consultation with all stakeholders, a Code of Trustee Governance for trustees of superannuation funds and their trustee-directors to assist with identifying best practice in the industry. The Code could cover, but not be restricted to:**

- (a) the imposition of a higher standard of competence and a greater commitment of time from those appointed to chair a super fund board than is required of other trustee-directors;**
- (b) board size, including whether a maximum is appropriate and any transition period for successor fund transfers and mergers;**
- (c) length of time in office and retirement by rotation;**
- (d) development of an enhanced conflicts-handling policy, including maintenance of an affected-decisions register and regular reporting to APRA;**
- (e) skill set for each director to demonstrate within the first 12 months of appointment;**
- (f) a skill matrix for the trustee board and analysis of how the current composition of the board provides the skills required under the matrix;**
- (g) a procedure for a rigorous and independent annual review of the performance of each trustee-director and the overall collective competence and performance of the board;**
- (h) gender and other diversity requirements;**
- (i) tendering for and benchmarking service providers; and**
- (j) minimum ongoing training requirements.**

### **Recommendation 2.19**

**If industry cannot work together to establish such an industry council, or cannot finalise a Code of Trustee Governance within two years, then APRA should create the Code.**

### **Recommendation 2.20**

**There should be an annual audit of the trustee's performance against the requirements of the Code of Trustee Governance and the results of that audit should be made available on the fund's website.**

## 10.3 Chapter 3: Investment Governance

### Recommendation 3.1

That section 52(2)(f) of the SIS Act be amended to include ‘the expected costs of the strategy, including those at different levels of any interposed legal structures and under a variety of market conditions’, as one of the factors to which APRA fund trustees must ‘have regard’.

### Recommendation 3.2

An enforceable ‘performance fee standard’ should be developed by APRA in consultation with industry.

### Recommendation 3.3

No performance-based fees may be paid by the trustee of a MySuper product unless the payment conforms with the ‘performance fee standard’.

### Recommendation 3.4

That section 52(2)(f) of the SIS Act be amended to include ‘the taxation consequences of the strategy, in light of the circumstances of the fund’, as one of the factors to which APRA fund trustees must ‘have regard’, and to ensure that trustees consider those taxation consequences when giving instructions in mandates to investment managers.

### Recommendation 3.5

That section 52(2)(f) of the SIS Act be amended to include ‘the availability of valuation information that is both timely and independent of the fund manager, product provider or security issuer’, as one of the factors to which APRA fund trustees must ‘have regard’.

### Recommendation 3.6

All large APRA funds should publish their proxy voting policies and procedures, and disclose their voting behaviour to members on their websites.

## 10.4 Chapter 4: Outcomes transparency

### Recommendation 4.1

With an enhanced rule-making power, APRA, in consultation with ASIC and industry, should develop outcomes reporting standards as an overlay to the existing accounting standards AAS 25 and ED 179 to facilitate consistent and comparable reporting by large APRA funds of investment performance and costs at investment option level, including for MySuper products.

### Recommendation 4.2

In addition to whole of fund reporting, APRA should publish investment return performance data for MySuper products.

### Recommendation 4.3

All funds should be required to publish on their websites an investment option performance table (as shown in table 4.1 in chapter 4) showing investment returns and costs at investment option level, in accordance with an outcomes reporting standard to be developed by APRA in consultation with ASIC and the industry.

### Recommendation 4.4

APRA should be the sole public sector agency responsible for collecting data for all public purposes in respect of all APRA funds and EPSSs. APRA should have the primary responsibility for the publication of all superannuation data in as disaggregated a form as is consistent with privacy principles.

### Recommendation 4.5

The ATO should continue to collect data in relation to SMSFs.

### Recommendation 4.6

It should be mandatory, when referring to past performance of a MySuper product or a choice investment option, to disclose a standardised measure of the uncertainty or volatility associated with the return (an example of which is shown in table 4.1 in chapter 4). This requirement, and the volatility measure to be used, should be in an outcomes reporting standard to be developed by APRA in consultation with ASIC and the industry.

#### Recommendation 4.7

All forms of cost and fee disclosure by superannuation funds should be on a pre-tax basis, ie gross of tax, in accordance with an outcomes reporting standard to be developed by APRA in consultation with ASIC and the industry.

#### Recommendation 4.8

An outcomes reporting standard should be developed by APRA, after consultation with ASIC and the industry, outlining how investment returns have to be calculated both gross and net of all costs (administration and investment) and taxes and then disclosed only in a format governed by the standard.

#### Recommendation 4.9

In consultation with industry, government should finalise the details of an investment option performance table for MySuper products and choice investment options, building on the model proposed by the Panel. APRA should then specify this in an outcomes reporting standard. Specifically, the consultation would progress the development of a standardised disclosure format containing:

- (a) gross investment returns, costs and investment returns net of all costs (administration and investment) and taxes for investment options for 1, 5, and 10-year periods; and
- (b) the number of quarters of negative investment returns the investment option has incurred in the past 10 years, or a proxy figure developed using data published by APRA for those options with a history of less than 10 years.

#### Recommendation 4.10

Investment option performance table data would have to be maintained by trustees and be easily accessible on the fund's website for as long as the fund remains in existence.

#### Recommendation 4.11

Trustees of large APRA funds should disclose each diversified investment option's investment return target and risk target, as shown in Figure 4.1 of chapter 4 in a product 'dashboard'. A similar approach should be required for undiversified options, with the underlying asset class or classes being disclosed in place of the 'investment return target'.

#### **Recommendation 4.12**

In consultation with industry, APRA should develop an outcomes reporting standard dealing with all of the requirements for the product ‘dashboard’. Specifically, the consultation should progress the development of a product ‘dashboard’ containing the:

- (a) net investment return target (after-tax), which should be expressed as a percentage above CPI, over a rolling 10-year period;
- (b) range of possible outcomes for a MySuper product or choice investment option (ie risk target) over a 10-year period in a visual, diagrammatic format;
- (c) the projected liquidity of the MySuper product or investment option;
- (d) projected Total Annual Expense Ratio (TAER) which would capture all the projected costs to at least the first non-associated entity level; and
- (e) relative ranking of overall fees (as collected and published by APRA).

#### **Recommendation 4.13**

As part of the development of an outcomes reporting standard, APRA, in consultation with the industry, would ensure trustees report costs to APRA on a consistent basis. The standard would prescribe:

- (a) ‘cost categories’ and their composition;
- (b) requirement for ‘cost categories’ to be subject to an annual audit;
- (c) ‘cost categories’ to be reported in the APRA annual return at the whole of fund and MySuper levels; and
- (d) costs to be disclosed to at least the first non-associated entity level.

#### **Recommendation 4.14**

Trustees offering MySuper products should be required to participate in APRA-approved benchmarking surveys that would measure their relative efficiency against peers in a number of key areas (eg administration costs per member, service standards) in accordance with an outcomes reporting standard to be developed by APRA in consultation with ASIC and the industry. APRA should be required to publish the results of such benchmarking surveys.

#### **Recommendation 4.15**

APRA should have explicit powers to collect superannuation fund data on a ‘look-through’ basis so that it can achieve an understanding of the fund’s asset allocation, risk, returns and costs.

#### **Recommendation 4.16**

Trustees of large APRA funds should be required to disclose their complete portfolio holdings on a six-monthly basis in accordance with an outcomes reporting standard to be developed by APRA in consultation with ASIC and the industry. This would require disclosure to APRA within 60 days after the end of each six month period, corresponding with normal financial years and half-years, and then public disclosure of the same information, on the fund's website, three months later.

#### **Recommendation 4.17**

Trustees of large APRA funds should maintain a website that provides, free of charge, systemic transparency about the fund and the fund's management.

#### **Recommendation 4.18**

Trustees should retain the last 10 years' worth of such information and make it available on the fund's website.

#### **Recommendation 4.19**

Trustees should be required to publish on the fund website the historical Total Annual Expense Ratio (TAER), which would capture the historical costs to at least the first non-associated entity level, for each MySuper product or choice investment option within the fund.

#### **Recommendation 4.20**

Government should task ASIC, in consultation with industry, other regulators and consumer groups, to establish a central website about superannuation to draw together features, including standard disclosure of legislative, tax and other super-related features, and to be a portal to other superannuation-related information. All large APRA funds would be required to link their websites to this site.

## **10.5 Chapter 5: Insurance in superannuation**

#### **Recommendation 5.1**

Life insurance cover and TPD cover (where available, depending on occupational and demographic factors) must be offered on an opt-out basis in MySuper products.

### **Recommendation 5.2**

The requirement for a minimum level of life insurance that must be offered by eligible choice funds as set out in Regulation 9A and Schedule 1 to the Superannuation Guarantee (Administration) Regulations 1993 should be repealed.

### **Recommendation 5.3**

Trustees of MySuper products, and trustees of large APRA funds that offer insurance, should have a statutory duty to manage insurance with the sole aim of benefiting members, including:

- (a) selecting insurance cover with regard to the cost and value for money for members;
- (b) negotiating the terms of the insurance contract, including adequacy of the level of default cover; and
- (c) pursuing claims that the insurer has denied in part or in total where there is a reasonable expectation of success.

### **Recommendation 5.4**

The SIS Act should be amended to require trustees of MySuper products, and large APRA funds that offer insurance, to devise and implement an insurance strategy specifying the types of insurance to be offered and the default and permissible maximum levels of cover to be offered.

### **Recommendation 5.5**

APRA should issue guidance material to trustees to help them in developing an insurance strategy.

### **Recommendation 5.6**

In the choice sector, trustees should be allowed to offer life and TPD insurance on an opt-out or opt-in basis, or not at all.

### **Recommendation 5.7**

The Superannuation (Resolution of Complaints) Act 1993 should be amended to allow the SCT to consider complaints in respect of TPD claims when the claim has been lodged with the trustee within six years of the member ceasing employment and the complaint has been made to the SCT within two years of the trustee's decision.



### **Recommendation 5.8**

The SIS Act should be amended so that the trust deed of a large APRA fund is deemed to define total and permanent disablement in the same way as the insurance policy held by the trustee at the relevant time.

### **Recommendation 5.9**

Income protection may be offered on an opt-out or opt-in basis, or not at all by trustees of MySuper or choice funds.

### **Recommendation 5.10**

Apart from life, TPD and income protection insurance, no other type of insurance (for example, trauma insurance) should be permitted to be paid for by members through their superannuation and any existing policies outside those categories should be phased out.

### **Recommendation 5.11**

Trustees of large APRA funds should be required to publish on their websites the terms and conditions applicable to each type of insurance offered by the fund, along with other information relevant to members, including:

- (a) a plain English explanation of the policy terms;
- (b) premium tables showing the gross premium charged for each category of member (if relevant) at each \$1,000 of cover at current age with a standard frequency of payment. Any additional cost associated with the insurance should be noted as part of this disclosure; and
- (c) TPD claim success rate on a basis to be determined after consultation with the industry.

### **Recommendation 5.12**

Up-front and trailing commissions and similar payments should be prohibited in respect of any insurance offered to any superannuation entity, including to SMSFs, regardless of rules on commissions that might apply outside superannuation.

### **Recommendation 5.13**

MySuper trustees should pro-actively offer intra-fund advice to members in relation to their insurance in MySuper.

#### **Recommendation 5.14**

**The SIS Act should be amended so that binding death nominations would be invalidated when certain 'life events' occur in respect of the member. The current systems used by States and Territories under which testamentary dispositions are invalidated could be used as guidance for creating a single national model.**

#### **Recommendation 5.15**

**Subject to recommendation 5.14 being implemented, the SIS Act should be amended so that binding death benefit nominations only have to be reconfirmed every five years.**

#### **Recommendation 5.16**

**After a suitable transition period, self-insurance of any fund benefits, including death and TPD benefits, should not be permitted in any large APRA fund except defined benefit funds (or sub-plans) that are currently allowed to self-insure.**

## 10.6 Chapter 6: Integrity of the system

### Recommendation 6.1

**New capital requirements for trustees on a risk-weighted basis should be phased-in over time:**

- (a) the SIS Act should be amended so that the governing rules for all large APRA funds are deemed to include a provision enabling the trustee to maintain a dedicated and identifiable operational risk reserve separate from member account balances;**
- (b) all large APRA funds must hold a minimum level of operational risk reserve, which reserve cannot be fully offset by trustee capital;**
- (c) legislation should define a minimum dollar figure for operational risk reserves and a maximum amount, expressed as a percentage of assets in the fund. APRA should have the power to increase the minimum level of capital on a risk-assessed basis. Details of defining a risk-weighted requirement between the minimum and maximum should be developed by APRA in consultation with industry;**
- (d) should APRA's assessment of risk in the fund lead it to the view that it would be appropriate for the fund to hold a higher level of reserve than the maximum amount set out in legislation, APRA should use other tools available to it to cause the trustee to reduce the risk exposure of the fund;**
- (e) any capital requirement that would otherwise be imposed under the trustee's Australian financial services licence in respect of non-superannuation business should be in addition to the capital requirement imposed under the SIS Act;**
- (f) trustees of SAFs should be required to hold an amount of net tangible assets in their own right, calculated by APRA having regard to the operational risk reserve that would be required if the aggregate of SAFs under trusteeship were a single fund; and**
- (g) the capital adequacy requirements for prudentially-supervised conglomerate groups should have regard to the operational risk reserves in any superannuation fund or funds that are in the group and adequacy requirements for group trustees should have regard to the risk-weighted assets of the rest of the conglomerate group.**

### Recommendation 6.2

The SIS Act should be amended to:

- (a) define ‘superannuation administrator’ and empower APRA to license superannuation administrators, to impose conditions modelled as appropriate on the conditions applicable to RSE licensees, and to enable APRA to impose, modify or revoke additional conditions. Licence conditions should include a risk-weighted capital requirement;
- (b) require that trustees may only use a superannuation administrator licensed by APRA for administration functions which are covered by the outsourcing operating standard. This process should be funded by a levy on those administrators;
- (c) require commercial clearing houses to be licensed as administrators; and
- (d) make clear that the trustee remains liable to the member in the first instance even if the trustee has outsourced administration to a licensed administrator.

### Recommendation 6.3

Obligations imposed by way of licence conditions on external administrators should be replicated where appropriate by variations to the licence conditions of RSE licensees that operate an in-house administration system.

### Recommendation 6.4

Section 29PD of the SIS Act should be repealed, so that the trustee is not required to make a copy of the trustee’s RMP available to a member or to the employer sponsor in the case of a defined benefit scheme.

### Recommendation 6.5

The SIS Act should be amended to provide that, if a trustee makes a formal decision that the RMS fully addresses all risks relevant to one or more of the RSEs under its trusteeship and documents that fact within its RMS, it is not obliged to prepare a separate RMP in relation to the nominated RSE(s).

### Recommendation 6.6

The Risk Management Plan should explicitly include a liquidity management component to ensure that trustees identify and manage liquidity risk at both the fund level and the investment option level.

### **Recommendation 6.7**

The exception to the portability rules for illiquid assets should be retained for choice products only, but the member's written consent should no longer be required provided that there is adequate disclosure to the member before they select an illiquid investment option.

### **Recommendation 6.8**

Subject to recommendation 6.7, the current portability rules should be retained for both MySuper and choice products.

### **Recommendation 6.9**

The trustee's RMP should have particular regard to liquidity characteristics of investment options offered to members in the retirement phase.

### **Recommendation 6.10**

APRA should issue a prudential standard that focuses on funding to protect vested benefits and specifies the time period within which a defined benefit fund that is in an unsatisfactory financial position must be restored to a satisfactory financial position, in much the same way that the SIS Act presently addresses insolvency of funds and minimum requisite benefits.

### **Recommendation 6.11**

The SIS Act should be amended so that a defined benefit fund which is technically insolvent should not be allowed to accept SG Act contributions unless the fund actuary and the trustee form the view that it is reasonable to believe that the fund will be restored to solvency within the period prescribed under the SIS Act.

### **Recommendation 6.12**

The definition of 'superannuation contributions' in the Corporations Act should be clarified so that there is no doubt that defined benefit contributions are afforded the same protection as accumulation contributions.

### **Recommendation 6.13**

Defined benefit funds should automatically qualify as 'default' funds for SG Act purposes in respect of the defined benefit provided to members so long as the fund meets the requirements of the SG Act to receive contributions.

#### **Recommendation 6.14**

If the defined benefit fund is a hybrid fund, then the MySuper criteria must be met for accumulation members in order for the fund to be accepted as a default fund under the SG Act in respect of those members.

#### **Recommendation 6.15**

If a member has both defined benefits and accumulation benefits as part of the defined benefit fund's benefit design, and the accumulation benefit is not necessary to meet the employer's SG Act obligations, then the MySuper criteria do not have to be met in respect of those members.

#### **Recommendation 6.16**

Trustees of defined benefit funds (or sub-plans) that are presently allowed to self-insure death and TPD benefits should continue to be allowed to do so.

#### **Recommendation 6.17**

In developing investment strategies, trustees should explicitly consider both short and long term risks, consistent with their stated investment horizon. Trustees would not be required to make decisions based on ESG issues but as ESG issues represent one type of long term risk, trustees should consider ESG issues as they think appropriate.

#### **Recommendation 6.18**

The government should not mandate that superannuation fund trustees participate in any particular investment class or vehicle, including infrastructure.

## **10.7 Chapter 7: Retirement**

#### **Recommendation 7.1**

MySuper products must include one type of income stream product, either through the fund or in conjunction with another provider, so that members can remain in the fund and regard MySuper as a whole of life product. The Government should consult comprehensively with industry before mandating the post-retirement arrangements to apply to MySuper products.

### Recommendation 7.2

Trustees should be required to offer intra-fund advice proactively to MySuper members as they approach normal retirement age. Over time, advice should be available on as broad a range as possible of the financial issues that members will face in retirement, subject to the requirements of the sole purpose test. In the near term, advice should address investment allocation and alternative retirement products offered within the fund.

### Recommendation 7.3

Trustees should offer intra-fund advice proactively to MySuper members in the retirement phase at periodic intervals.

### Recommendation 7.4

Trustees must devise a separate investment strategy for post-retirement members in MySuper products which has regard to the factors as set out in section 52(2)(f) of the SIS Act as well as inflation and longevity risk.

## 10.8 Chapter 8: Self-managed super solutions

### Recommendation 8.1

The current membership limit of four members for a SMSF should not be increased.

### Recommendation 8.2

Legislation should be passed to provide the ATO with the power to issue administrative penalties against SMSF trustees on a sliding scale reflecting the seriousness of the breach. The penalties should not be payable from the corpus of the fund, and may be applied jointly or severally against the trustees or trustee directors.

### Recommendation 8.3

SIS legislation should be amended to provide the ATO with the power to issue relevant persons with a direction to rectify specified contraventions within a specified reasonable time. A breach of a direction should be a strict liability offence.

#### **Recommendation 8.4**

The ATO should be given the power to enforce mandatory education for trustees who have contravened SIS legislation. Such education should be provided by a body (which could include commercial providers) approved by the regulator and would be at the cost of the trustees and not the corpus of the fund.

#### **Recommendation 8.5**

The ATO should be given the power to issue binding rulings in relation to SMSFs, subject to the implementation of the Panel's recommendation to restructure the SIS Act in chapter 10 of this report.

#### **Recommendation 8.6**

The Government should task ASIC, in consultation with industry and the 'expert advisory panel', to develop the SMSF specialist knowledge component of RG 146, which would focus on increased knowledge and competency with respect to the SIS Act.

#### **Recommendations 8.7**

Government should legislate to require advisers to hold an AFSL where they provide advice in relation to the establishment of an SMSF. The accountants' licence exemption should not be replaced by any new exemption or restricted licensing framework.

#### **Recommendation 8.8**

Government should:

- (a) appoint ASIC as the registration body for approved auditors and give ASIC the power to determine the qualifications (including professional body memberships as appropriate) required for eligibility to be registered, set competency standards, develop and apply a penalty regime including the ability to deregister approved auditors. The registration requirements for approved auditors should be linked to minimum ongoing competency and knowledge standard; and
- (b) task the ATO to police the approved auditor standards and enable information to be appropriately shared between ASIC and ATO so as to carry out their roles effectively.

#### **Recommendation 8.9**

Subject to the Government implementing recommendation 8.8, ASIC should develop approved auditor independence standards, which auditors must meet as part of their ongoing registration requirements, as outlined in recommendation 8.8.



### **Recommendation 8.10**

The 2007 relaxation of the borrowing provisions and the consumer protection measures that have recently been announced should be reviewed by government in two years' time to ensure that borrowing has not become, and does not look like becoming, a significant focus of superannuation funds.

### **Recommendation 8.11**

Legislation should be passed to require credit providers to collect and provide relevant data to APRA that would enable the RBA to publish statistics on the level of finance being provided to superannuation funds.

### **Recommendation 8.12**

SIS legislation, in relation to SMSFs, should be amended so that:

- (a) the 5 per cent IHA investment limit be removed so that no IHA investments would be allowed;
- (b) SMSFs with existing IHA investments be provided a five year transition period, in which to convert to a SAF or, alternatively, dispose of their IHA investments. No acquisitions of IHA investments would be permissible during the transition period; and
- (c) APRA-regulated funds be exempt from these changes.

### **Recommendation 8.13**

SIS legislation relating to acquisitions and disposals between related parties in SMSFs (but not APRA-regulated funds) should be amended so that, either:

- (a) where an underlying market exists, all acquisitions and disposal of assets between SMSFs and related parties must be conducted through that market; or
- (b) where an underlying market does not exist, acquisitions or disposals of assets between related parties must be supported by a valuation from a suitably qualified independent valuer.

#### **Recommendation 8.14**

SIS legislation, in relation to SMSFs, should be amended so that:

- (a) the acquisition of collectables and personal use assets by SMSF trustees be prohibited;
- (b) SMSFs that own collectables or personal use assets be provided a five year transition period, in which to convert to a SAF or, alternatively, dispose of those assets. No acquisitions of collectables and personal use assets would be permissible during the transition period; and
- (c) APRA-regulated funds be exempted from these changes.

#### **Recommendation 8.15**

Government should provide the ATO with a specific mandate to collect and produce SMSF statistics, the details of which be developed in consultation with industry, which provide greater understanding of the SMSF sector and its performance.

#### **Recommendation 8.16**

The Government should legislate to require SMSFs to value their assets at net market value.

#### **Recommendation 8.17**

The ATO, in consultation with industry, should publish valuation guidelines to ensure consistent and standardised valuation practices.

#### **Recommendation 8.18**

Government, after appropriate industry consultation, should amend the Corporations Act to ensure SMSF trustees provide all SMSF members with certain key information on an annual basis.

#### **Recommendation 8.19**

Government, after appropriate industry consultation, should amend legislation to remove SMSF trustee administrative burdens that are identified as unnecessary.

### **Recommendation 8.20**

Government should legislate so that:

- (a) proof of identity checks be required for all people joining an SMSF, whether they are establishing a new fund or joining an existing fund; and
- (b) identification measures should not apply retrospectively except for existing SMSFs wishing to organise rollovers from a large APRA fund.

### **Recommendation 8.21**

The Panel recommends that the SMSF registration process capture the details of the person who has provided advice in relation to the establishment of the SMSF and the service providers who establish the SMSF (if they are different entities). This information should also be available to ASIC to assist in regulating AFSL holders and form part of the risk assessment process for both ASIC and the ATO.

### **Recommendation 8.22**

Controls should be put in place to ensure SMSFs can be neither established with, nor subsequently change their name to, the name of, or a name similar to, an existing large APRA fund and that other naming rules applicable to bodies corporate under the Corporations Act be applied to SMSFs.

### **Recommendation 8.23**

Government should provide a system (Super Fund Lookup or an alternative) to:

- (a) provide appropriate SMSF information to large APRA funds (which would include member level details, confirmation that identification of member/trustees has occurred and the SMSFs bank account number) to enable the large APRA fund to verify the details of SMSF membership before processing rollover requests to SMSFs; and
- (b) require the large APRA fund, upon appropriate confirmation, to immediately process the request and electronically transfer the rollover to the validated SMSF bank account.

### **Recommendation 8.24**

Legislation should be passed to provide for criminal and civil sanctions to enable the ATO to penalise and discourage illegal early release scheme promoters.

### **Recommendation 8.25**

The Government should amend existing tax laws so that:

- (a) amounts illegally early released be taxed at the superannuation non-complying tax rate; and
- (b) an additional penalty, based on a sliding scale of penalties that takes into account the individual circumstances, should apply.

### **Recommendation 8.26**

Legislation should be passed so that rollovers to an SMSF be captured as a designated service under the AML/CTF Act.

### **Recommendation 8.27**

The Government should amend the SIS Act so as to automatically deem anything permitted by the SIS Act or a tax act to be permitted by SMSF trust deeds.

### **Recommendation 8.28**

Legislation should be passed so that the covenant requiring separation of fund assets from personal or employer assets, as set out in section 52(2)(d) of SIS, be replicated in a SIS operating standard.

### **Recommendation 8.29**

The Government should amend the investment strategy operating standard so that SMSF trustees are required to consider life and TPD insurance for SMSF members as part of their investment strategy.

## 10.9 Chapter 9: SuperStream

### Recommendation 9.1

Relevant legislation should be amended so that in respect of employees who are members of accumulation funds, an employer must provide to the superannuation fund (or clearing house) its ABN and at least:

- (a) on first making a contribution in respect of a particular employee to that fund after the amendment comes into effect, the full name, date of birth, current address, email address (if known), mobile phone number (if known) and TFN of that employee, date of commencement of employment and the amount of the contribution being remitted in respect of that employee;
- (b) for each subsequent contribution in respect of each employee, the employee's name, TFN and the amount being contributed for that employee. If the contribution is made via a clearing house, the fund SPIN should also be required;
- (c) an employer that fails to meet the data requirements set out in (a) or (b) above becomes liable for an administrative financial penalty payable to the ATO in respect of each employee and each day it fails to meet the obligations. The ATO should have a measure of discretion about collection of the penalty. Alternatively, an employer that fails to meet the standards may be deemed to have failed to meet its SG Act obligations; and
- (d) a fund should be prohibited from accepting as a member any person for whom there is not provided sufficient identification data (full name, address and date of birth) to provide a proper preliminary identification, and from accepting any contribution which cannot be reasonably identified as being attributable to a particular member.

### Recommendation 9.2

If, after having been provided a reasonable opportunity, the employee fails to provide a TFN or other required details to the employer, the employer's SG Act obligations are satisfied if the employer electronically provides such employee identification details as it has to the ATO together with the requisite contribution. The ATO would then treat the contribution as unclaimed money. On provision of the TFN, the ATO would remit the amount held for that employee to the employer's default superannuation fund, together with the employee's TFN, name, date of birth and, where provided to the ATO, current address, email address and mobile phone number.

### Recommendation 9.3

The ATO should establish an employment web page where an employer can both register the tax status of a new employee in lieu of completing the paper TFN declaration and simultaneously advise the fund to which super contributions would be paid. The ATO would then communicate the new member details to the fund electronically.

#### **Recommendation 9.4**

**APRA should convene a stakeholder group including at least the ATO, employers, payroll providers, super administrators and trustee representatives to devise online forms covering all the common processes between:**

- (a) the employer and the fund;**
- (b) the fund and the member; and**
- (c) different funds, such as occurs with ‘rollovers’.**

#### **Recommendation 9.5**

**The Government should be prepared to mandate the use of the forms, unless it is satisfied that there is near universal voluntary uptake.**

#### **Recommendation 9.6**

**The Government should consider imposing a prescribed fee to be paid by the employer to any super fund to which the employer contributes on behalf of a member when the contribution is made other than in electronic form accompanied by sufficient details to adequately identify the member. That is, the fee will only apply if the contribution is paid by non-electronic means (such as by cheque) or if any payment is not linked with adequate member details. In order to give employers and industry time to adapt, such a fee should come into effect after education and an appropriate transition phase.**

#### **Recommendation 9.7**

**A condition of holding a licence to administer superannuation funds should be the capacity to provide e-commerce facilities to employers of all sizes.**

#### **Recommendation 9.8**

**Treasury should convene a working group comprising representatives of relevant segments of the financial sector to devise the process for development of SBR-compatible standards that provide for linked personal and financial data transmission and facilitate related software development. The standards should address transactions between employer and fund, fund and member, and between funds.**

**Development work should be financed through an industry levy.**

**All administrators and clearing houses should be required to adopt these standards as a licence condition.**

### **Recommendation 9.9**

As a standard licence condition, clearing houses (including administrators offering a clearing house service) should be required to provide linked member and funding data electronically to the fund within two business days of receipt of clean data.

### **Recommendation 9.10**

Having regard to the extended use of personal information proposed in SuperStream, Treasury should be tasked with preparing a Privacy Impact Assessment to help identify and assess any privacy impacts of the 'SuperStream' proposals adopted by the Government.

### **Recommendation 9.11**

Relevant legislation should be amended to permit superannuation fund trustees and their agents to:

- (a) use TFNs as a primary search key to link contributions and rollovers with member accounts;
- (b) seek confirmation from the ATO in relation to each new member that the quoted TFN is correct;
- (c) seek confirmation from the ATO in relation to each requested rollover to a SMSF that the member holding the quoted TFN is a member of that SMSF; and
- (d) exchange the TFN with other trustees to identify accounts in multiple funds held by the same individual, and hence permit the trustee of the fund to which contributions are currently being made to invite the member to initiate consolidation of the accounts.

### **Recommendation 9.12**

Necessary legislation should be enacted to permit the trustee to auto-consolidate accounts without prior reference to the member, where multiple accumulation accounts within a single fund share a common TFN and member surname and the multiple accounts have not been established by deliberate elections by the member concerned.

### **Recommendation 9.13**

The ATO should develop electronic means to display all the super funds of which an individual logging on is currently a member. Similarly, the ATO should provide an electronic facility to include all member accounts for which it holds TFN identification.

### Recommendation 9.14

To facilitate consolidation of multiple accounts:

- (a) procedures should be established between the ATO and administrators and clearing houses so that when an employer seeks to enrol a new member, the fund administrator (or clearing house if one is used) must validate the TFN provided with the ATO to ensure that it is the number for the individual named; and
- (b) at the same time, the ATO should be required to check its data base to see whether it holds unclaimed money for that member. If so, it should advise the administrator and transfer the money. The ATO should also determine whether the member has more than one account. If the member has more than one account, the administrator of the new fund should be notified and then determine with the member whether they wish to consolidate their accounts.

### Recommendation 9.15

Relevant legislation should be amended to:

- (a) remove from super funds the current exemption from initial customer identification requirements under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* when a member exercises a choice to join that fund, or to roll into that fund the whole or part of a benefit from another fund. Risk-based customer identification would ordinarily be satisfied if the member has provided their TFN to the fund and the trustee has confirmed with the ATO that the TFN is correctly associated with the details for that member or the trustee has confirmation from its own records or another APRA-regulated fund that they have previously provided that level of identification;
- (b) enable the trustee of an APRA-regulated fund, with the authority of a member, to initiate a rollover of all or part of that member's benefit from another fund as though the member had initiated the request to the exiting fund, without further proof of the member's identity being required;
- (c) require the trustee of any fund receiving such a request to normally remit the member's balance electronically to the new fund within two clear business days, subject to a capacity for APRA to provide relief from this provision when prudential considerations require it;
- (d) amend the choice of fund form to make it more user-friendly and to enable the member to tick a box requiring all super accounts to be consolidated, with the nominated APRA-regulated fund to action as above. In view of the greater engagement of most SMSF members, and risks identified in the use of SMSFs for illegal early release of superannuation, this facility should not be extended to the trustees of SMSFs at this stage; and
- (e) override any provision in the governing rules of any fund with a defined contribution component that would otherwise prevent the consolidation of member accounts.



### Recommendation 9.16

Relevant legislation should be amended so that:

- (a) an employer is required to remit salary sacrificed and SG Act contributions no less frequently than it is required to remit a member's after-tax contributions;
- (b) the timing of payment of SG Act contributions should be adjusted after SuperStream has been implemented so that SG payments align with employers' payroll cycles;
- (c) the employer is required to report on each payslip issued to an employee the amount of superannuation to be paid to the employee's fund, whether SG, salary sacrificed or after tax contributions;
- (d) the ATO is specified as the sole regulator generally responsible for compliance with all aspects of superannuation contributions, other than those relating to compliance with industrial awards. APRA should retain responsibility for overseeing the solvency of defined benefit plans and any action needed to restore a DB fund to a satisfactory financial position; and
- (e) when an employee makes a complaint that an employer is not meeting its SG Act obligations, the ATO should continue, on a risk-assessed basis, to assess the employer's compliance with its SG Act obligations for all employees in the particular workplace, and not only the complainant.

### Recommendation 9.17

The Government should task Treasury with coordinating the initial implementation phase of SuperStream, and with advising on sustainable governance and oversight arrangements for the system into the future.

## 10.10 Chapter 10: Regulatory settings

### Recommendation 10.1

APRA's mandate should be broadened to include the task of overseeing and promoting the efficiency of the funds it regulates and the system in which they operate.

### Recommendation 10.2

APRA should be given general standards-making power in relation to superannuation (including prudential matters) in order to address the recommendations in this report and to drive efficiencies in the industry.

### **Recommendation 10.3**

That APRA's mandate be broadened to include the collection and publication of data aimed at the efficiency and outcomes of superannuation funds and research into issues arising from that data to assist trustees in achieving better outcomes for members.

### **Recommendation 10.4**

Legislation should be amended to give APRA an administrative power to impose fines, contestable in a court, as an alternative to criminal prosecution in relation to selected SIS Act provisions.

### **Recommendation 10.5**

The Government should explore with APRA and ASIC ways in which the two regulators can work more closely together in discharging their superannuation mandates, in particular in implementing the Review's recommendations in relation to MySuper and increased efficiency more generally.

### **Recommendation 10.6**

The Government should ensure that the ATO is adequately resourced to continue its existing superannuation responsibilities, including the new functions it will administer under SuperStream and other Panel recommendations.

### **Recommendation 10.7**

The Government should consider arrangements for the Productivity Commission to assess, in relation to the Review's recommendations implemented by the Government, five years after the Government's response to this report:

- (a) the implementation and impact of the MySuper regime;
- (b) the implementation and impact of the SuperStream changes; and
- (c) the functioning of the market for retirement products.

### **Recommendation 10.8**

The Government should have the Productivity Commission assess and advise on possible improvements to the regulatory framework for superannuation five years after the Government response to this report.

### **Recommendation 10.9**

The SIS Act should be amended so that the successor fund transfer test is one of ‘no overall disadvantage’ rather than ‘equivalence’.

### **Recommendation 10.10**

The Federal Court should be given new jurisdiction to determine and facilitate product rationalisation in the superannuation industry where the successor fund transfer regime (as amended by the recommendation made in this Review) still does not fulfil legacy product rationalisation objectives.

### **Recommendation 10.11**

CGT rollover relief should be given to superannuation funds in the terms previously afforded by the *Tax Laws Amendment (2005 Measures No.2) Act 2005* and should be permanently available to the industry.

### **Recommendation 10.12**

New Retirement Savings Accounts should not be allowed to be established after MySuper becomes effective and a mechanism should be considered for facilitating existing RSAs to be transferred to MySuper or other superannuation products.

### **Recommendation 10.13**

New Approved Deposit Funds should not be allowed to be established after MySuper becomes effective and a mechanism should be considered for facilitating existing ADFs to be transferred to MySuper or other superannuation products.

### **Recommendation 10.14**

The Government should legislate to abolish the member protection rules.

### **Recommendations 10.15**

The SIS Act should be amended to create a specific RSE licence class for trustees of ERFs. ERF trustees should be subject to very similar duties as apply to MySuper trustees (bearing in mind the different functions and characteristics of ERFs).

### **Recommendation 10.16**

**In order to have ERFs more effectively fulfil their intended function:**

- (a) The RSE licence for each trustee of an ERF should be subject to the condition that they actively cross match with any active fund seeking the service. All ERF licensees must provide an online facility for people to search for lost super; and**
- (b) All funds should be required to cross match with ERFs for a new member.**

### **Recommendation 10.17**

**The name of the SCT should be changed to reflect more appropriately its role. ‘Superannuation Appeals Tribunal’ is suggested.**

### **Recommendation 10.18**

**The SIS Act should be re-written and restructured to separate and to identify clearly those provisions that are common for all sectors of the superannuation industry and those provisions that are only applicable to particular sectors under the choice architecture model.**

### **Recommendation 10.19**

**GEERS should be extended to cover up to three months of unpaid employer SG Act contributions.**

## ENDNOTES

- 1 Senator the Hon Nick Sherry, Media Release no. 066, *'Expert Panel and Terms of Reference for Review into the Governance, Efficiency and Structure and Operation of Australia's Superannuation System'*, 29 May 2009, <<http://ministers.treasury.gov.au>>.
- 2 Senator the Hon Nick Sherry, Media Release no. 066, *'Communiqué of Principles'*, 28 April 2009, <<http://ministers.treasury.gov.au>>.
- 3 On 4 August 2009, the Minister for Financial Services, Superannuation and Corporate Law, Chris Bowen MP, announced the appointment of two additional part-time members of the Review Panel.
- 4 A trillion dollars is one thousand billion dollars – that is, \$1,000,000,000,000. In this report, millions of dollars are shown as \$M, billions of dollars are shown as \$B and trillions of dollars are shown as \$T.
- 5 Over the period from June 1999 to December 2009, total superannuation assets grew from \$411.4B to \$1.2 trillion, approximately equal to Australia's gross domestic product. Looked at another way, in December 2009, superannuation assets held by funds were almost half the size of the level of assets held by Australia's banks and other authorised deposit taking institutions and almost as large as the deposits held by Australian residents in Australian banks.
- 6 Treasury estimate (see appendix C for assumptions).
- 7 APRA, *'Superannuation Trends'*, January 2005, <[www.apra.gov.au/Statistics/upload/Superannuation-Trends-PDF.pdf](http://www.apra.gov.au/Statistics/upload/Superannuation-Trends-PDF.pdf)>.
- 8 Basis for forecasts can be found in the key assumptions underpinning the 25-year scenario in appendix C.
- 9 Financial System Inquiry Final Report, 1997. For example, recommendation 8 (p 264) concerning disclosure requirements for superannuation and other financial products being 'sufficient to enable a consumer to make an informed decision relating to the financial product.'
- 10 ABS (2008), *'Adult Literacy and Life Skills Survey, Summary Results, Australia'*, Cat no. 4228.0, 9 January 2008, <[www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B22A471C221C7BADCA2573CA00207F10/\\$File/4280\\_2006%20\(reissue\).pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B22A471C221C7BADCA2573CA00207F10/$File/4280_2006%20(reissue).pdf)>.
- 11 Roy Morgan (2010), *Superannuation and wealth management in Australia*, Report May 2010, pp. 30-31.
- 12 Roy Morgan (2010), *Superannuation and wealth management in Australia*, Report May 2010, pp. 47.
- 13 SuperRatings, *'Submission to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into the Structure and Operation of the Superannuation Industry'*, September 2006; Choice, *'Super in a volatile environment'*, 12 May 2008 [www.choice.com.au](http://www.choice.com.au); The Australia Institute, *'The case for a universal default superannuation fund'*, September 2009; Gallery G., Gallery N., McDougall L. (Queensland University of Technology), *'Don't Judge a Superannuation Default Investment Option by Its Name'*, 19 April 2010 <http://treasurer.gov.au/DisplayDocs.aspx?doc=transcripts/2008/007.htm&pageID=004&min=njs&Year=2008&DocType=2>; Australian Super, *'Review of Australian Super's default investment option'*, February 2010.
- 14 Sunstein, Cass, Administrator of the White House Office of Information & Regulatory Affairs, 17 February 2010 speech entitled *'Humanizing Cost-Benefit Analysis'*, [http://www.whitehouse.gov/omb/oira\\_speech\\_02172010/](http://www.whitehouse.gov/omb/oira_speech_02172010/).
- 15 Thaler R. H., and Sunstein, C. R., *Nudge: Improving about health, wealth and happiness*, Yale University Press, 2008 and Mitchell, O and Utkus, S, *Pension Design and Structure: New Lessons from Behavioral Finance*, Oxford University Press, 2004.
- 16 Chant West, *Insurance in Superannuation*, Research Report, May 2010.
- 17 See ABS, *Employment Arrangements, Retirement and Superannuation, Australia*, April to July 2007.
- 18 APRA Annual Superannuation Bulletin June 2009 Table 3.
- 19 ATO Annual report 2008–09 <[www.ato.gov.au/content/downloads/cor00216293AR0809.pdf](http://www.ato.gov.au/content/downloads/cor00216293AR0809.pdf)>.

