Stronger Super

Outcomes of Consultation Process

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FOREWORD

As part of the Stronger Super reforms announced by the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, on 16 December 2010, the Government announced its support, or support in principle, for 139 of the 177 recommendations of the Super System Review (SSR). The majority of these supported recommendations were referred for consultation with industry and other stakeholders before implementation. On 1 February 2011, the Minister announced a Peak Consultative Group to head this process.

Four streams within the reforms were identified: MySuper, SuperStream, Governance, and Self Managed Superannuation Funds (SMSFs), with a working group of stakeholders and regulators established for each. These Working Groups reported into the Peak Consultative Group.

This process ran from late February to the end of June 2011 with many hours of discussion producing pages of issues and suggestions. Treasury officials participated in all Working Group and Peak Consultative Group meetings as part of the process for developing advice to the Minister on how the reforms should be implemented.

The attached report represents a summary of these discussions. By definition it is not a full record of all issues covered but aims to provide a high level overview of the outcomes. Treasury is aware of the detailed suggestions provided by stakeholders as part of this process and will take these into account in providing its advice to the Government.

The vast majority of the Stronger Super reforms were strongly endorsed through the consultation process. In these cases, a suggested approach to their implementation was generally able to be developed if time permitted. It must be recognised, however, that the scope of these reforms is vast and, in some cases, covered areas recognised as very complex. The combination of the breadth of the review and a fairly compressed window of time meant that some of the supported recommendations could not be addressed to the desired level. We have noted this where relevant and suggested that further consultation would be beneficial. In a few areas it was not possible to achieve consensus on the most appropriate way to implement Government policy as articulated in the Stronger Super report. In these cases, we have set out the different perspectives to assist the Government in developing its position.

While the report addresses the full range of issues covered in the consultation process, with reference to the relevant recommendations in the Super System Review, there are some aspects which warrant highlighting. These are set out below:

MYSUPER

A key outcome of the consultation process was to settle on a proposed definition of MySuper. We recognised the Government's policy objective as being to ensure that the substantial proportion of members of superannuation funds who have their assets invested in the default investment option of workplace default funds would benefit from a '*diversified investment strategy at an overall cost aimed at optimising fund members' financial best interests as reflected in the net investment returns over the longer term'* [Recommendation 1.6(a)].

We suggest this can be achieved through the articulation of specific requirements for the default investment option of an existing licensed registrable superannuation entity (RSE) that wishes to be approved to offer a MySuper product, rather than creating a parallel licensing regime for a completely separate product.

The Stronger Super reforms will impose obligations on MySuper trustees aimed at ensuring MySuper offers value for money to relevant members. In the SSR report there was considerable focus on the costs incurred by many members of default funds as a result of them being in products with an array of 'unnecessary and complex' features. The impact of costs across the three core streams of a superannuation account — investment management, administration and member servicing, and insurance — is clearly recognised by those involved in the consultation process. It is also recognised, however, that value for money is a function of the quality of the product as well as the price charged. Reflecting this view, we encourage the Government to frame its requirements for approval to offer a MySuper product around:

- an administration fee set by the trustee that adequately covers the expected significant investment in technology and back-office efficiencies appropriately required under the SuperStream initiatives but not extending to features which would not reasonably be utilised by most members of the product;

- an insurance strategy that provides commission-free default death and total and permanent disability (TPD) cover on an opt-out basis recognising that under the account consolidation initiatives of SuperStream there is likely to be a reduced incidence of members having insurance cover provided through multiple superannuation accounts; and

- a fit-for-purpose investment strategy with the trustee clearly articulating the level of risk they have deemed appropriate for default members and how the portfolio will be managed against this risk target; the level of real return that could be reasonably expected for this level of risk taken over rolling 10 year periods (or such other period as is determined appropriate); and the costs this strategy is expected to incur, as well as the costs actually incurred, and why this represents value for money. We conclude that this three dimensional framework for describing the investment management component of the MySuper product is superior to looking solely at costs for testing whether 'value for money' is being delivered. This should not be interpreted as seeking to avoid the challenge to deliver investment returns in a more cost efficient way — including a review by trustees of where costs are incurred and the expected reward for this expenditure. Rather it aims to give appropriate recognition to the critical importance of a well-diversified portfolio in delivering sustainable risk-adjusted returns and the fact that some key contributors to diversity incur higher than average costs (for example, infrastructure, property, private equity, and absolute return strategies).

While MySuper can be seen through the lens of addressing current inefficiencies in the superannuation system by mandating a simply structured, fairly priced product for all default funds, we believe the initiative provides the opportunity for the emergence of a world best-practice defined contribution product for a mandatory contribution system. To this end we see its potential to become a whole-of-life product which should ensure individuals who do not have the confidence or interest to access investment choice or choice-of-fund can have a high expectation of a result which is aligned with their retirement income objectives. This could include the delivery of appropriate risk and returns through the accumulation stage, a transition to retirement stage and, potentially, a post-retirement decumulation stage. While this is not the first priority in the establishment of MySuper, we commend the development of a platform onto which these features could, in time,

be built. Consistent with this, we advocate permitting a trustee to provide members with a default lifecycle investment strategy as part of their MySuper offer.

These core attributes aside, there was considerable discussion about the appropriate degree of flexibility provided to a trustee offering a MySuper product in terms of its design and pricing. We suggest that the current environment for the provision of insurance (that is, based on demographics and risk profile) be maintained and we note the argument (though this was not unanimously agreed) that there is a case for a discounted administration fee to be offered in larger workplaces. In relation to the question of whether a MySuper trustee can offer more than one investment strategy, we were heavily guided by statements in the SSR, and the Government's response to it, that a single investment strategy was envisaged. Weighing against this was the recognition in the SSR that there might be situations where a master trust could have multiple MySuper sub-funds to reflect the fact that it is serving a range of different employers. We note, therefore, that the Government will need to determine how strictly the guidance around a single MySuper investment strategy will apply and whether, and under what circumstances, any exception to this will be granted.

SUPERSTREAM

The impact of the reforms to improve back office efficiency and fund-to-fund transfers under the SSR was recognised and strongly supported throughout the consultation process. Given the scale of some of the key recommendations in this area, the SuperStream Working Group will continue to meet with Government officials during 2011 to iron out practical issues to enable implementation. The attached report focuses on key policy initiatives announced in the Stronger Super response to the SSR.

A key expected benefit of the reforms around the use of tax file numbers to identify accounts is the ability to consolidate multiple accounts held by the same person. The consultation process settled on suggesting a two stage process to Government: automatic consolidation between funds of inactive accounts with balances of less than $1,000 (with the ability for a member to opt-out) during 2013-14 followed by an ongoing program of account consolidation triggered by a change of employment post the introduction of MySuper.

The value of these initiatives to counter the problem of many people holding multiple accounts, often with small balances, and seeing their savings eroded through the payment of multiple administration fees and insurance premiums, is widely endorsed. The need to ensure that members clearly understand the impact of a move to consolidate their accounts, including on their insured position, was often emphasised during discussions as was ensuring that there is a genuine ability for a member to opt-out of this process if they determined that it was in their interests to operate multiple accounts.

We were unable to reach a consensus on the appropriate protocols for account consolidation post MySuper. Many supported the view that all inactive accounts, irrespective of size or type, should be part of an ongoing initiative to improve system efficiency through consolidation on an opt-out basis. Others argued that this should be limited to superannuation accounts with small balances. The final position on this will need to be determined by the Government.

The perspectives of employers, who are a critical stakeholder in the collection of superannuation contributions, were provided during this process. The value of a standard methodology for making electronic contributions is recognised but a concern about the ability of small business owners to be fully across these initiatives was voiced. The potential contribution of the Medicare small business

clearing house is recognised and alternative mechanisms for reducing the administrative load on employers were discussed.

The Government's policy objective of ensuring workers' superannuation entitlements are fully protected through the 'Securing Super' proposals received strong endorsement with discussions focussed on the best way to achieve these objectives. It was recognised, however, that the practical implications of these improvements, particularly around payroll systems, are significant and a suitable transitional period to accommodate these would be appropriate.

GOVERNANCE

The recommendations aimed at heightening the obligations on directors of superannuation fund trustee boards, and increasing transparency around the management and operation of superannuation funds, are endorsed. While there is widespread support for principles which clarify how directors, individually and jointly, must prioritise their obligation to the membership of the fund they govern, concern was raised about the extent to which this could expose them as individuals to the risk of litigation. We believe that careful drafting of whichever legislative solution the Government determines is appropriate should address this issue.

While the proposal to protect fund members through the requirement on a trustee to establish an operational risk reserve is supported, we suggest that this be seen as part of an overall risk management strategy by a trustee. Accordingly we encourage an approach whereby rather than the size of this reserve being universally mandated, it should be determined by APRA following a review of other risk mitigation strategies in place.

SELF MANAGED SUPERANNUATION FUNDS

The role of the growing SMSF sector is recognised and there is strong endorsement of the proposals to ensure integrity of this sector of the industry whilst continuing to provide the flexibility which makes it so attractive to many.

There are a couple of aspects of the proposed reforms where an agreed position was not able to be reached within the time available and these are highlighted in the report. Our expectation is that these can be settled through further focused dialogue.

ACKNOWLEDGEMENT

Many people gave generously of their time throughout this process. The contribution of the Working Groups in each of the four streams is particularly appreciated as it would not have been possible to cover the breadth of issues we have without their efforts.

I would also like to record my appreciation to the members of the Peak Consultative Group who worked constructively to achieve common ground despite quite different perspectives on many issues. Representatives of the various Government regulatory agencies attended Peak Group meetings to provide input on relevant issues and this is much appreciated. Special acknowledgement must go to those members not directly involved in the superannuation industry. As users of the system, distinct from providers to it, they offered a valuably different perspective on many issues.

Indeed the merit of establishing an independent advocacy service for consumers of superannuation services was raised during the consultation process and the proposal warrants further consideration.

Representatives of the Treasury also provided important practical support during this consultation process and particular appreciation is due to Jonathan Rollings and Trevor Thomas for their guidance.

We hope that the Government finds the contribution of the consultation process valuable in determining its implementation strategy for the Stronger Super reforms.

Paul Costello
Chair, Peak Consultative Group
July 2011

MySuper Consultation Summary

Issue	Outcomes of consultations
Definition of MySuper (recommendations 1.1, 1.2, 1.16)	It is agreed that the most appropriate mechanism for the introduction of MySuper should be as the default investment product of an appropriately licensed trustee. Its features should include: specific trustee duties to optimise members' financial interests and to consider scale; a fit-for-purpose investment strategy; mandatory requirements around fees; a requirement to accept all types of contributions; death and total and permanent disability insurance (where available depending on occupational and demographic factors) offered on an opt-out basis; and a commitment to standardised disclosure and reporting requirements written in plain English. Accordingly, MySuper should be able to fit within an existing fund alongside existing products but the trustee must ensure that MySuper members are separately identifiable (although such a requirement would need to be mindful of how to identify members who have an interest in both MySuper (default) and choice products (non-default) offered by the trustee). Assets belonging to MySuper members must also be separately identifiable but not necessarily held separately. This should enable full economies of scale to be achieved in the investment program. All default funds for the *Superannuation Guarantee (Administration) Act 1992* (SG Act) purposes (including those specified in awards and enterprise agreements) must be funds with a MySuper product and there would need to be suitable transitional arrangements for this.
Trustee duty to formulate a single diversified investment strategy aimed at optimising members' financial interests as reflected in long-term net returns (recommendation 1.6(a))	It is agreed that, in order to achieve the objective of optimising members' financial interests, it is important for the trustee in formulating the investment strategy for their MySuper product to consider not only the expected returns and expected costs but also whether the risk being taken in the default investment strategy is appropriate.

Issue	Outcomes of consultations
Scale (recommendation 1.6 (b))	There is support for the requirement that the trustee of each MySuper product must be required to examine and conclude annually whether the MySuper product has sufficient scale to continue providing optimal benefits to members. It was noted that the scale of the whole fund (assets and members), as well as the MySuper product within the fund, may be relevant in making this judgement however it was concluded that while size was relevant it was not the only indicator of likely success. It was recognised that there would be cases where smaller, appropriately resourced and skilled funds would be able to demonstrate that they could meet the requirement to provide optimal benefits to members.
Licensing of MySuper providers (recommendation 1.7(a))	There is support for the addition of a licence condition on existing RSE licences to offer a MySuper product. This would mean that trustees would need to apply only for a licence variation rather than for a new RSE licence.
Exception to requirement for a single MySuper product per RSE (recommendation 1.7(c))	The existence of multiple brands within a financial group, resulting from mergers and acquisitions, is recognised. The ability for each of these brands to offer a MySuper product within an RSE would require an exception to the principle set out in the Stronger Super statement that each RSE would be able to offer only a single MySuper product. The Government will need to determine, as soon as practicable, whether, and on what basis, such an exception would be made.
Lifecycle investment options (recommendations 1.7(c))	Throughout the consultation process it was accepted that many members in the default investment strategy of a superannuation fund rely on a trustee's expertise and ability to ensure that the investment strategy is appropriate for their needs. It was also agreed that this reliance could quite reasonably extend through to the expectation that the risk being taken in the default investment strategy is appropriate for the stage of life of the member. Accordingly, there is support for allowing trustees to offer a lifecycle investment strategy within the definition of a 'single investment strategy' for their MySuper product where the trustee considers it appropriate. Note: A lifecycle strategy would allow the trustee to alter risk levels through the asset allocation for members as they age and transition towards retirement (and potentially beyond retirement).

Issue	Outcomes of consultations
Single/multiple pricing point(s) (recommendations 1.7(c), 1.7(g), 1.16)	The question of whether a provider should be able to offer their MySuper product at a differential price was addressed in some detail. There was agreement on the following aspects of single/multiple pricing: • trustees should continue to be allowed to offer insurance within MySuper products at differential pricing based upon demographic and workplace factors; • all members in a MySuper product should pay the same price for the same investment strategy (that is, no tiered pricing based on an individual member's account balance) as it was concluded that no one member's assets could materially alter the economies of scale of the total MySuper investment pool; and • employers should, if they choose, be able to pay some of the trustee's stated price on behalf of their employees in a MySuper default product. The issue on which a consensus view was not able to be reached was whether the administration fee (as distinct from the costs related to the investment strategy or the insurance cover as set out above) paid by members of a MySuper product could vary due to the efficiencies identified by the trustee in managing the accounts of those employees at larger workplaces. The competing views were that: • the MySuper product should be offered at a standard administration fee to all members regardless of the characteristics of the employer. This would be appropriate on the basis that all members contribute to overall economies of scale and that, to the extent any differential in the cost of servicing workplaces currently existed, there was an expectation these would be minimised by the SuperStream initiatives once they were fully implemented; and • the MySuper product should be able to be offered at a variable administration fee reflecting the efficiencies of servicing a particular employer (but at a level which fully recovers all relevant operating costs that is, no 'loss leading' permitted). It was proposed that if this were the case, the standard administration fee charged to members (that is, not reflecting any discount for scale) would be used for comparability purposes in the headline tables produced by APRA. It was also proposed, under this approach, that if a member left a workplace where a lower than standard administration fee was applied, but decided to remain a member of the MySuper product, the maximum administration fee they could be charged would be the standard administration fee paid by other MySuper members. This would address the risk of members being 'flipped' to more expensive personal products on leaving employment as they would have the option of remaining in the MySuper product.

Issue	Outcomes of consultations
Single/multiple pricing point(s) Continued. (recommendations 1.7(c), 1.7(g), 1.16)	Consistent with recommendation 1.7(g): • any administration fee discount offered in larger workplaces would need to be identified in the MySuper product fee schedule to ensure simplicity and transparency. It was further argued that if variable administration fees were not permitted the largest employers may feel compelled to establish a separate MySuper product under a new RSE. This question will need to be settled by the Government before the introduction of MySuper.
Fair and reasonable allocation of costs (recommendation 1.7(d))	The principle that the administration fee charged to MySuper members should not include the costs of services that they are not likely to use is strongly supported. It is suggested that the requirement to ensure that this objective is delivered should be 'principles-based' rather than set down in a formula and a trustee should be able to demonstrate to APRA or an auditor that MySuper members incur a fair and reasonable allocation of costs and do not cross-subsidise other members.
Buy and sell spreads and switching fees (recommendations 1.7(e) and (f))	The question of whether buy and sell spreads (different prices for making contributions into or taking money out of the fund) should be allowed in a MySuper product generated two responses: • one view was that charging buy/sell spreads to members was equitable to ensure that members entering/leaving an investment strategy were not subsidised by those members remaining in that strategy; and • the alternative view was that there was no direct link between buy/sell spreads and individual member actions and these costs could therefore be recovered as part of ongoing investment fees. Furthermore, if a lifecycle investment strategy was adopted by the trustee, there would be non-member initiated investment redemption costs which should be characterised as investment costs, rather than buy/sell spreads. In support of the recommendation that these fees, if applied, should be subject to limits, there is agreement that if buy/sell spreads were to be permitted within a MySuper product, there should be an obligation on the trustee to substantiate this on a cost recovery basis to APRA (that is, verifiable transaction costs directly associated with a member entering or leaving an investment). It is agreed that where separate switching fees for member initiated transactions are charged by the trustee, these should also be limited to being on a cost recovery basis and the trustee must also be able to demonstrate this to APRA.

Issue	Outcomes of consultations
Fees allowed in MySuper (recommendations 1.7(f), 1.7(k))	There is support for MySuper fees being limited to four headline fees as follows: • administration fees; • investment fees (including performance-based fees); • exit fees (limited to cost-recovery) which should only be payable when the member leaves the fund entirely (including any choice offering); and • switching fees (limited to cost-recovery and must be member initiated). It was noted that entry fees would not be allowed (as announced in the Stronger Super policy statement). It is also suggested that, as a general principle, some other types of fees should be allowed where these reflected verifiable costs that could be demonstrably linked to choices made by a particular member (for example, family law fees, contribution splitting fees and death nomination fees, etc.). It is suggested that APRA should collect and publish data on the four headline fees and Product Disclosure Statements should also include these fees.
Performance-based fees (recommendations 1.7(h), 3.2, 3.3)	There is support for requiring trustees to include the following provisions in any performance-based fee arrangement with a fund manager in respect of assets of the MySuper product (including internal investment teams where utilised): • a reduced base fee should be set that reflects the potential gains the investment manager could receive from performance-based fees paid (taking into account any fee cap); • measurement of performance on an after costs and (where possible and appropriate) after-tax basis; • an appropriate benchmark and hurdle for the asset class reflecting the risk of the actual investments; • a testing period of appropriate length; and • provisions for the adjustment of the performance-based fee to recoup any prior or subsequent underperformance (for example, high water marks, clawbacks, vesting arrangements and rolling testing periods). If a performance-based fee does not contain each of these provisions, a trustee must be able to justify that the arrangement is in the best interests of the members of the MySuper product.

Issue	Outcomes of consultations
Fees in choice products (recommendation 1.20)	It was agreed that to prevent a barrier to portability both within and between funds, exit and switching fees by choice products should also be on a cost-recovery basis (to be consistent with MySuper)**.**
Scope and cost of intra-fund advice and mandatory or proactive provision (recommendations 1.7(m), 5.13, 7.2, 7.3)	It was noted that the Government, through Stronger Super and the Future of Financial Advice (FOFA) reforms, had committed to intra fund advice being used as a special category of advice exempt from the additional requirements being implemented as part of the FOFA reforms. A general definition for 'intra-fund' advice, based on the existing class order relief and current FOFA expansion proposals, will need to be included in legislation to provide certainty regarding the financial advice costs that trustees would be able to share among the MySuper membership. Notwithstanding this, it is agreed that intra-fund advice should not initially be a mandatory feature of MySuper products, or need to be provided proactively, however this should be revisited two years after MySuper is fully operational and access to advice for members under the new framework is able to be assessed.
Commissions on advice and insurance recommendations 1.7(o) 1.8, 1.11, 1.14, 1.24, 1.25, 1.26, 5.12)	This issue was considered as part of consultations on the FOFA reforms.
Provision of financial advice (other than intra-fund advice) (recommendations 1.9, 1.12, 1.13, 1.22,)	This issue was considered as part of consultations on the FOFA reforms.
Cost of financial advice to employers (recommendations 1.10, 1.23)	There is support for ensuring that the costs of advice and services provided to employers should not be borne by MySuper members. It was widely agreed, however, that this should not be interpreted as extending to services which assist employers to interact efficiently with the superannuation fund (for example, the provision of clearing house services or services in regard to the operation of defined benefit funds). Nor should services to work places which are designed to educate or benefit members or potential members be prohibited under this provision. Deductibility and bundling of advice costs should be consistent with the outcomes of the FOFA reforms.

Issue	Outcomes of consultations
Switching advice duties (recommendation 1.15)	It is agreed that the disclosure requirements under section 947D of the *Corporations Act 2001* should apply to switching advice to leave a MySuper product.
Transition (recommendations 1.18, 1.19)	It is believed that two years from 1 July 2013 should be sufficient for a trustee to seek approval for their licence to be amended in order to offer a MySuper product . It is generally agreed that, to the extent permitted by law, members and their account balances in the default investment option of a fund should be transferred to the MySuper product as quickly as possible after the legislation becomes effective. Consistent with this principle, moving balances on an opt-out basis was considered preferable to mooted successor fund transfers. There were contrary views regarding the legal implications of an opt-out approach. One view was there was no legal impediment to mandating an opt-out process for transferring assets from existing default products to a MySuper product while the alternative view was that this would impinge on existing contracts. It is suggested that this question needs to be resolved by Government as part of determining the most appropriate transition strategy. There was agreement that it would be useful to develop a communication strategy for the transitional period which could include a directed disclosure to members advising them of the MySuper transition (prescribed wording and presentation) in order to ensure all members get the same information. There could also be a public information campaign targeted to employers and members. While two years from 1 July 2013 should be sufficient for funds to be licensed to offer a MySuper product, the transfer of accrued balances to MySuper may require an additional period (for example, one year) after 1 July 2015. Such an extension should operate as an exception granted on application to APRA. It was acknowledged that where an existing default fund in a workplace was not deemed to be a MySuper product by the end of the transitional period, employers would need temporary relief from the requirement (recommendation 1.2) to have a MySuper product as the default fund in order to allow an alternative, MySuper compliant, product to be agreed as the default fund and arrangements made for the commencement of contributions.

Issue	Outcomes of consultations
Insurance transitional period (recommendation 1.18)	It is agreed that insurance arrangements for existing funds would need to be prospective. An appropriate transitional period will need to apply to allow existing contracts to lapse and new contracts to be negotiated as, typically, funds have three year contracts with insurers however the duration of these contracts vary. It was noted that members in default investment options may have elected to change their cover and this is a contractual arrangement so there will need to be a capacity for members to retain their cover if their account is moved into MySuper.
Investment choices / safe harbour (recommendations 1.27, 1.28)	While trustees will have an explicit duty to exercise due diligence in the selection and monitoring of investment options made available to members, it is agreed that where a trustee meets this duty, and other trustee covenants in section 52, they should be protected from civil liability. It is suggested that, beyond the documentation (application form and Product Disclosure Statement) of the members' choice of an investment option, no additional written consent should be required.
Collection and publication of MySuper product-level data (recommendations 1.7(l), 4.1, 4.2, 4.7, 4.8, 4.13, 4.14, 4.15)	There is support for a standard methodology for calculating data that is either published by APRA or used by trustees. Related to this, consistency of labelling of investment options will also be important for comparability. APRA acknowledged that it would need to consult separately with the industry on the detail of the type of fund data it will collect and publish.
Disclosure: Investment performance (recommendations 4.3, 4.6, 4.7, 4.8, 4.9, 4.10)	There is support for the proposals set out in these recommendations to be developed into a reporting standard by APRA following further consultation with ASIC and the industry. There was also support for the proposal (recommendation 4.6) for a risk measure (or probably risk measures) to be disclosed alongside expected return to assist current and prospective members better understand the profile of a MySuper product. For MySuper products, it was agreed that the outcomes should be consistent with the data published by APRA to avoid any confusion for members. For choice products, the investment performance data would have to be calculated consistent with reporting standards.

Issue	Outcomes of consultations
Disclosure: Product dashboard (recommendations 4.11, 4.12, 4.19)	There is support for the recommendations in relation to improved and standardised disclosure around risk, return and cost of MySuper and other investment products offered by a trustee. There was insufficient time during the consultation process to properly address the proposed Total Annual Expense Ratio (TAER) as the methodology for measuring MySuper costs although it was recognised that current measures of cost did not appropriately capture all relevant expenses. Given the importance of this disclosure regime, and the complexity around the measurement and reporting of risk, as well as costs, it is suggested that further consultation by APRA and ASIC on this framework be commenced as soon as practicable to ensure it is able to be fully complied with on the introduction of MySuper from 1 July 2013.
Disclosure: Systemic transparency (recommendations 4.16, 4.17,4.18)	It was noted that general fund information and documents could be disclosed through an annual report or on the public section of a fund's website. In relation to providing transparency around the arrangements for the management of the fund, it was noted that disclosure around trustee remuneration may be difficult where the fund does not directly meet these costs.
Opt-out life and total and permanent disability (TPD) insurance (recommendations 5.1, 5.6)	It is agreed that opt-out life and TPD insurance should apply to both MySuper and choice products so that a member's insurance arrangements could operate independently of whether they were fully, partly or not at all invested in the MySuper product. However, it is suggested there should be capacity for trustees to be exempt from opt-out arrangements in situations where it is not possible to get external insurance on an opt-out basis at a reasonable cost. It was noted that there could be administrative problems with members being able to opt-out of insurance cover at any time and it is suggested that where the current arrangements provide for opt-out when a member joins a fund or on each anniversary, these should be retained. It was also noted that while members should be allowed to opt-out then opt back in, there would need to be disclosure at the time of opting out that opting back in may involve additional assessment (for example, health checks).

Issue	Outcomes of consultations
Insurance types and definitions (recommendations 5.1, 5.6, 5.9, 5.10)	It is suggested that the definitions of insurance that can be offered in superannuation (life, TPD and income protection insurance) should be aligned with definitions used for the conditions of release and tax deductibility. It was also noted that to the extent that funds offer a broader definition of TPD insurance than an 'any' occupation definition, these amounts are currently able to be paid into the member's account until another condition of release is met (such as preservation age). It is agreed that members should be able to increase or decrease their level of insurance while remaining in a MySuper product. For all types of insurance it is felt that the definitions should be consistent across the MySuper and choice segments for the release of insurance payments. There is broad support for the view that consumers would be well served if there was a standard definition of TPD across funds. This is particularly relevant given the broader policy objective of consolidation of multiple accounts giving rise to the risk that a member may find themselves uninsured for a disability in their active fund that would have been insured in their previous fund. It was agreed that an appropriate period should be allowed for trustees to transition to new insurance arrangements.
Default insurance and tailoring (recommendations 1.7(n), 5.3, 5.4)	It was generally agreed that there should be a standard default level of life and TPD insurance in MySuper but that the default cover could be replaced by a default insurance strategy (including the benefit structure) tailored for particular employers or industries.
Insurance strategy (recommendations 5.4, 5.5)	It is agreed that all trustees should be required to have an insurance strategy that sets out the reasoning for the levels of insurance offered to members. The strategy would be available to members although additional disclosure of market sensitive information could be made confidentially to APRA.
Income protection insurance (recommendation 5.9)	It was noted that while funds are increasingly offering income protection insurance, it may not be suited to all members as a default (offered on an opt-out basis). It is agreed that, while income protection insurance should be permitted, it should be left up to the trustee to decide whether to offer this type of insurance as part of their insurance strategy and whether it is opt-in or opt-out.
Disclosure: Insurance (recommendation 5.11)	It is suggested that there should be standardised methodology for the disclosure of premiums for the default insurance offered by the trustee. There was a strong view presented that superannuation funds should not be required to disclose the TPD claim success rate on their website as this could create a risk of adverse selection against funds and impact on the profitability of insurers.

Issue	Outcomes of consultations
Self-insurance (recommendation 5.16, 6.16)	Self-insurance is primarily an issue for Exempt Public Sector Superannuation Schemes (EPSSSs), for which it was noted that State Governments provide an implicit guarantee. Given this implicit guarantee, it was argued that these schemes should be able to continue to self-insure. It was also noted that certain EPSSSs may not be able to commercially insure their members for the benefits they currently receive, particularly members in high-risk occupations, such as police officers or fire fighters.
Technically insolvent defined benefit funds (recommendation 6.11)	It was noted that defined benefit funds can be technically insolvent and recover, and hence should be allowed to continue to accept superannuation guarantee contributions when they are in an unsatisfactory financial position. It is suggested that the existing dialogue between APRA and defined benefit funds will determine whether they can continue to accept SG contributions when the fund is technically insolvent.
Defined benefit funds (recommendations 6.13, 6.14, 6.15)	It was noted that if a defined benefit (DB) fund without accumulation components (or an accumulation interest with a defined benefit design) meets Superannuation Guarantee (SG) requirements, it should be able to continue to accept SG contributions for default members and be deemed to be MySuper compliant without needing a separate authorisation for a MySuper product, or for the product to meet the mandatory features of a MySuper product. For default members whose SG requirements are not fully met by the DB component, the accumulation component for those members would need to meet the MySuper requirements. Resignation benefits (which can be a crystallised accumulation amount that a member in a DB fund may receive on leaving an employer) would have to be placed into a MySuper product following a suitable protection period of 90 days. As MySuper products will have default life and TPD insurance, it was noted that a MySuper product should not have to offer opt-out insurance to members with an interest in the DB part of the fund if it provides insurance cover. However, it should be able to offer insurance to these members on an opt-in basis. It was also noted that fees should be able to be split between the defined benefit part and the accumulation part of the fund (subject to a fair and reasonable allocation of cost between MySuper and the DB).
Post-retirement income products (recommendations 1.7(j), 7.1)	It is agreed that MySuper products should not include mandatory post-retirement products, at least initially. More detailed work is required on post-retirement issues before this should be adopted as a feature and it is suggested that this be done during the transitional period to MySuper. Notwithstanding this, the scope for My Super to become a 'whole-of-life' default product in the future was recognised as having some attraction.

Issue	Outcomes of consultations
Post-retirement investment strategy (recommendation 7.4)	It is agreed that a separate investment strategy for post-retirement members in MySuper products is not required given that MySuper will only cover the pre-retirement phase initially. Further consideration should be given to a separate investment strategy for a retirement income stream within a MySuper product as part of future deliberations on mandating the offering of retirement income streams in MySuper.
Mergers/Transfers of members (recommendation 10.9)	Under current legislative requirements, fund-to-fund mergers or transfers must comply with the successor funds transfer test (SFT) and ensure equivalency of rights. An intra-fund transfer requires the trustee to act in the best interests of all members (both those being moved and those remaining), and in practice would require similar benefits as would be required under the SFT. It is noted that the existing test of equivalency is well-understood and likely to facilitate mergers and transfers when compared to a test of overall disadvantage.
Capital gains tax roll-over relief (recommendation 10.11)	It was noted that the transition to MySuper would need to be mindful of possible capital gains tax (CGT) and stamp duty consequences. It was suggested that CGT relief should be ongoing, irrespective of any transition to the MySuper regime and should not be confined to circumstances where APRA has compelled the merger. If a trustee determines that it is in the best interest of fund members to merge funds before MySuper commences then, it is argued, the merger should attract CGT relief.
Abolishing member protection rules (recommendation 10.14)	There was support for abolishing the member protection rules but only where it was timed to coincide with related account consolidation initiatives being considered as part of the SuperStream reforms.
Licensing and trustee duties for eligible rollover funds (ERFs) (recommendations 10.15, 10.16)	It was noted that trustees of ERFs should be separately licensed but will have similar duties to trustees of MySuper products. In addition, it was suggested that ERF trustees cross-match accounts in the ERF sector to assist members to locate and consolidate their lost superannuation.

Issue	Outcomes of consultations
Exempt Public Sector Superannuation Schemes (EPSSS) complying with MySuper	It is noted that EPSSS could comply with the MySuper requirements by either: • opting to be regulated by APRA to receive a licence condition (that is, no longer be an exempt scheme); or • continue to operate without being regulated, and updating the Heads of Government agreement (HOGA) to reflect the Stronger Super reforms and the regulation of advice in superannuation. It was noted that transitional issues would have to be worked through with the States and Territories if the HOGA is updated.

SUPERSTREAM CONSULTATION SUMMARY

Issue	Outcomes of consultations
Provision of required member information to a super fund (recommendations 9.1, 9.2, 9.3)	Throughout the consultation process it was agreed that the quality of data submitted to superannuation funds by employers is integral to the integrity of information flows. A minimum data set will be required and there is broad agreement that web services will need to be developed to achieve this outcome. These services should be linked back to key processes (such as member verification), target behavioural change and execute as a single process within transactions to ensure ease of use. The SSR recommended that funds should not accept a member (and associated contribution) if sufficient information were not able to be provided. In the situation where an employer could not obtain a tax file number (TFN) they would be required to forward the superannuation contribution concerned to the ATO, along with other identifying details they have, with the contribution to be treated as unclaimed money. As a result of the consultation process, an alternative approach is recommended whereby the employer would be required to forward the superannuation contribution to a fund with as much information as possible and the fund would have six months to obtain a TFN and other identifying details. If the fund were unable to obtain the TFN, it would then send the money to the ATO and it would be treated as unclaimed money. The employer would be able to continue to make contributions to the fund until they are advised by the fund that they are unable to establish an account and all future contributions should be sent to the ATO.
Data standards (recommendations 9.4, 9.5, 9.6, 9.7, 9.8)	There is unanimous support that data standards be mandated for all superannuation transactions and that a phased implementation approach be adopted. Linkages will exist between data and payments for all superannuation transactions. Some concerns were raised about the ability of SMSFs to comply with mandated data standards, particularly SMSFs which are self-administered, so it is suggested that a longer transitional period may be needed. This could be considered further by the SuperStream working group. It was agreed that mandatory standards be based on the Standard Business Reporting (SBR) framework for: a) defining SuperStream terms and relationships; and b) defining transaction and reporting message formats (subject to resolution of some design and implementation issues). It is further agreed that the new standards be adopted by all participants irrespective of whether it has been specified as a licensing condition or similar. Any changes to the taxonomy and message structure should be approved by a new governance body. It was recognised that to achieve the behavioural changes required there will be a need for incentives to encourage

Issue	Outcomes of consultations
Data standards Continued (recommendations 9.4, 9.5, 9.6, 9.7, 9.8)	employers to comply with the new data and e-commerce standards and a range of tailored sanctions developed (again after allowing for an appropriate transitional period). It is agreed that the Bulk Electronic Clearing System (BECS) standard should be used as the basis for SuperStream electronic payments. There is agreement that the introduction of data standards should provide the Government with opportunities to revise the current reporting arrangements. The reuse of data standards should provide an opportunity to streamline reports through consolidating requirements, improving the stability of information reported and regularity of reporting. ISO20022 and APCA reforms are to be considered during the design process to ensure future alignment.
Account consolidation (recommendations 9.11, 9.12, 9.13, 9.14, 9.15)	There was considerable discussion throughout the consultation process on the most effective way to reduce the recognised problem of workers accumulating multiple superannuation accounts throughout their working life with attached costs. Through improved means to identify where a person holds duplicate accounts, it was recognised that many of these accounts could be consolidated with a resultant increase in retirement balances through lower operating costs. A phased process for consolidating APRA regulated accounts in the near term is suggested: 1 July 2011: Funds may use TFNs as the primary locater to find duplicate accounts. 1 January 2012: Funds can, where the member provides consent on an opt-in basis, use TFNs to search SuperSeeker (the ATO's website for lost accounts) to locate lost accounts and consolidate these with the active account. 1 July 2012: Funds must undertake intra-fund consolidation from this date with the process to be completed by 1 July 2013. 1 July 2012: The ATO will update SuperSeeker to include active accounts and from December 2012 funds can search SuperSeeker for all accounts with member consent. 1 July 2013: Consolidation of lost and inactive accounts (no contribution or rollover for at least two years) under $1,000 commences unless tagged by the member for retention. Abolition of member protection will occur from this date. Prior to the commencement of these changes, there will be a process to confirm with members whether they wish to opt-out of this consolidation exercise. The protocols developed by the ATO for

Issue	Outcomes of consultations
Account consolidation Continued. recommendations 9.11, 9.12, 9.13, 9.14, 9.15)	determining the account for co-contributions should apply to determine which account should receive the assets under this exercise. The Government is encouraged to resource the ATO to support this initiative as soon as practicable. July 2014: Changes to the enrolment process for new employees through the use of an online combined TFN declaration and superannuation fund nomination form. Where a new employee does not indicate that they wish to direct superannuation contributions to an existing fund, the default position would be that an account would be opened in the default fund of the employer. A consensus view on the most appropriate guidelines for the consolidation of APRA regulated accounts from 1 July 2014 was not able to be achieved during the consultation process. While there was a unanimous view that consumers should be given every opportunity to determine whether they wished to be a member of more than one fund and 'tag' accounts accordingly, there were two competing views on what should happen where no such election is made: • the view that all inactive (two year rule to apply) accumulation accounts should be consolidated into the current employer's default fund irrespective of the size of the account balance; and • the view that this process should be limited to those accounts with less than $1000, or alternatively, should be limited to those accounts created as a result of default workplace arrangements. There was recognition that where accounts are consolidated under this initiative there is a possibility that a consumer's insurance arrangements will be impacted. There were a range of proposals considered in relation to this issue which aimed to balance the important role played by insurance cover provided through superannuation funds to address the level of underinsurance in the market, and the fact that account balances are often eroded through premiums on multiple insurance policies. On balance it is suggested that where there was an insured benefit attached to an account which would be closed as a result of this consolidation initiative, the cover should be provided in the new fund up to the automatic acceptance limit of that fund with a member having the ability to opt-out of this higher level of cover once it had been established (in order to reduce the possibility of anti-selection). It is, however, recommended that this issue be given further careful thought by the SuperStream Working Group, ideally including the perspective of the group insurance providers, before a final position is adopted.

Issue	Outcomes of consultations
Account consolidation Continued. (recommendations 9.11, 9.12, 9.13, 9.14, 9.15)	While the ability for a member to 'tag' an account as being ineligible for consolidation under these proposals was supported, there was a strong view that there should be no opportunity for this to be abused through making this a default condition of joining a fund. It would need to be an overt act by a member who placed a value on continuing to operate an inactive account.
Securing Super: Payslip reporting and fund reporting to employees (Securing Super and recommendation 9.16)	The Government's clear policy objective of ensuring that workers' superannuation entitlements are paid in a timely manner was noted. The proposals to ensure employees are advised of the amount of superannuation actually paid into a fund (in addition to accrued entitlements currently required under the existing Fair Work legislation) as well as moves to require funds to notify members, and their employer, if regular payments are not being made for an employee, were also supported. There is support, subject to ATO requirements, for the concept of amending the BAS so that employers would need to provide details of total contributions paid in the period, and sign a declaration of SG compliance, as a way of highlighting superannuation obligations. There was, however, considerable concern expressed by employers and payroll providers in relation to the ability of payroll systems to be appropriately configured to meet the requirement to report actual payments made and that, at the very least, an appropriate transitional period may be needed to allow employers time to adjust. Payroll providers advised that this option may not be cost effective. It is recommended that further detailed consultation regarding the implementation of these initiatives be undertaken. The following steps, and timeframes, are suggested: Step 1 — 1 July 2012: In addition to the reporting of superannuation contributions accrued during the period covered by a payslip, there should be a requirement on employers to report the date upon which the contributions are to be made to the superannuation fund; Step 2 — 1 July 2013 (subject to payroll systems being able to deliver this capability in a cost-effective manner and consistency with complementary initiatives being developed as part of SuperStream): Employers will be required to report the actual payments made; Step 3 — 1 July 2013: Funds to commence reporting electronically to members whether contributions have been received or not during a quarter (the advice would go out shortly after the expiry of the SG payment deadline) with members being invited to check transactions on the fund's portal. Simultaneous reporting to the ATO was considered but is not recommended. The challenges currently experienced by employers, especially small business, in meeting the administrative requirements of superannuation funds were outlined as part of the discussions around this initiative and there was clear support for the standardisation of requirements and other efficiencies (for example, Medicare clearing house) being introduced through SuperStream.

Issue	Outcomes of consultations
SuperStream Governance (recommendation 9.17)	It was agreed that a governing body is required to oversight the implementation of SuperStream on an ongoing basis to maintain the integrity of the data standards through approval of any changes to the superannuation definitions within the SBR taxonomy. Two broad options were identified: 1) an advisory council established within an existing government framework and 2) a standalone body with control over the SuperStream standards. The majority view throughout the consultation process was that the first option was supported but that a review of whether a standalone body was required or not should be undertaken in 2015.
SuperStream Implementation (recommendation 9.9, 9.17)	There is a clear view that the large scale change required to support the introduction of data standards and electronic transactions for superannuation requires a phased approach while providing certainty in terms of investment decisions and planning lead times. The following phased approach is suggested for data and e-commerce changes: 1 January 2012 — Data standards published and available for use; 1 July 2013 — Data standards and use of e-commerce becomes mandatory for all rollovers between superannuation funds. Data standards and use of e-commerce becomes mandatory for clearing houses, administrators and APRA regulated superannuation funds where contributions are received in the new standard format; 1 July 2014 (or such other date which is determined through the ongoing consultation process regarding data standards for SMSFs) — Data standards and use of e-commerce becomes mandatory for large and medium sized employers making contributions and for self managed superannuation funds receiving contributions from employers in the new standard format; 1 July 2015 — Data standards and use of e-commerce becomes mandatory for small employers making contributions. It is recognised that to achieve the behavioural changes required there is a need for incentives to encourage employers to comply with the new data and e-commerce standards and a range of tailored sanctions developed. Account consolidation measures should commence with the initial TFN measures (where funds can use TFNs as a primary locater of member accounts within a fund from 1 July 2011) and follow a phased approach with the complete account consolidation model in place by 1 July 2014. The SuperStream program of reforms will be supported by the build and use of enabling services to be provided by the ATO on a phased basis from July 2012.

GOVERNANCE CONSULTATION SUMMARY

Issue	Outcomes of consultations
Create distinct office of 'trustee-director' and clarify trustee and trustee director duties (recommendation 2.1)	There is general support for recommendation 2.1 of the Super System Review to amend the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to create a duty for directors to give priority to the interests of members over shareholders or any other third party; to strengthen requirements to deal with conflicts of interest and conflicts of duty; and to increase the standard of care, skill and diligence required of directors to that of a 'prudent person of business'. There is also support for the development by APRA of a prudential standard on conflicts of interest and duties for trustees and directors of APRA regulated funds. It is suggested that the requirement to have specific regard to the likely long term consequences of any decision, including its impact on the community, the environment and the entity's reputation (recommendation 2.1(e)) would be better addressed through APRA guidance than through legislation. It is considered that an industry-wide Code of Governance could list, as far as practicable, the governance duties on a director of a trustee company which exist across the various legislative and regulatory instruments, without adversely affecting their operation at law. It is suggested that the adoption of, and compliance with, the Code would be voluntary but that APRA should be entitled to enquire, on an 'if not, why not' basis, why the trustee has determined that it is not in the best interests of their members to adopt or comply with the Code. Whilst supporting the broad initiative to more clearly articulate the obligations of a director of a trustee company, the consensus is that the creation of a new office of trustee-director is not required. It is suggested that, rather than creating a new office of trustee-director, reforms could focus on clarifying in the SIS Act those duties that appropriately apply to individual directors rather than to the corporate trustee (for example, to act honesty and to exercise independent judgement). Concerns were raised during the consultation process that aspects of the proposed changes could inadvertently give rise to additional liability on individual directors. It is noted, however, that under existing legislation individual directors are already liable individually to some extent (subsection 52(8) of the SIS Act and sections 180-183 of the Corporations Act), and members have the ability to sue directors (subsection 55(3) of the SIS Act). It is acknowledged that with further consultation and appropriate drafting of legislation/regulations, the objective of clarifying the obligations of directors of trustee companies can be achieved without exposing directors to additional, inadvertent risks of liability.

Issue	Outcomes of consultations
Voting prohibitions on a director (recommendation 2.8)	Consideration was given to the proposal to amend the Corporations Act so that it would not be possible for the constitution of a trustee company to prohibit a director from voting on an issue of trustee company business (other than in the event of a conflict of duty or interest). On the basis that the current position whereby, on an equal representation board, an independent director is not permitted a casting vote is retained, there was strong support for the proposal that all directors are guaranteed a vote. An alternative position was that in an equal representation board, an independent director's ability to vote should be a matter which is left to individual boards to determine.
Requirement for a trustee to provide reasons for a decision (recommendation 2.9)	There is support for trustees being required to provide a beneficiary with reasons for decisions in relation to a formal complaint by the beneficiary on matters that affect the individual and, in addition, to other parties who are entitled to bring a formal complaint under the *Superannuation (Resolution of Complaints) Act 1993* (SRC Act) (for example, claimants to death benefits). It is suggested that a 'decision' should be defined in accordance with the SRC Act.
Interaction of section 197 of the Corporations Act and sections 56 and 57 of the SIS Act (recommendation 2.10)	While the general view arising from the consultation process was that there is little practical conflict arising from the interaction of section 197 of the Corporations Act and sections 56 and 57 of the SIS Act, to remove any uncertainty, it is agreed that the relationship of these sections could be clarified in the legislation.
Selection of service provider (recommendation 2.14)	There is in principle support for amending the SIS Act so that it overrides any trust deed requirement for the trustee to use specific service providers. It was noted, however, that various legacy arrangements were likely to be in place and that these may not be able to be easily unwound. It is suggested that appropriate transitional arrangements may be required to deal with these situations.
Managing conflicts of interest: register of gifts and benefits (recommendation 2.15)	There is support for a register of gifts and benefits, subject to a tightly defined materiality test. Consultation revealed that many trustees already have such registers.

Issue	Outcomes of consultations
Managing conflicts of interest: establishing a conflicts policy (recommendation 2.17)	There was support for a requirement for trustees to have a conflicts policy (noting the suggestion under recommendation 2.1 that APRA guidance on the issue be developed). Consultation revealed that many trustees already have such policies.
Code of trustee governance (recommendations 2.18, 2.19, 2.20)	While there are currently several voluntary industry codes of trustee best practice, there is support for the development of a single voluntary industry Code. While the Code was regarded as a matter for industry to pursue, it was recognised that APRA should be consulted in the development of such a Code and that this Code could supplement, or displace, APRA guidance material in certain areas.
Investment strategy: costs, after-tax returns and valuation of assets (recommendations 3.1, 3.4 and 3.5)	While it is recognised that many trustees currently have specific regard to the impact of costs and tax as part of their investment strategy, and have requirements as to the timeliness and independence of valuations, there is support for amending paragraph 52(f) of the SIS Act to enshrine the requirement to have regard to these matters. Costs: while it is clearly recognised that fees reduce gross returns, it is suggested that APRA should provide guidance on this issue so as to acknowledge that, where the trustee believes incurring costs will improve net returns to members, it would not be inconsistent with the trustee's SIS Act duties to incur those costs. Taxation: it is suggested that the requirement to consider the impact of taxation on investments, including in the drafting of investment mandates where this is considered appropriate by the trustee, should refer to 'expected' taxation consequences as the actual consequences may not be certain at the time of the decision. Valuation information which is timely and independent: whilst this is recognised as critical to the integrity of investment returns, it is noted that there may be limited cases where a trustee may need to accept a valuation which does not conform to these standards (subject to a materiality threshold).
Disclosure of voting behaviour (recommendation 3.6)	There is support for the disclosure of proxy voting policies and procedures, even though consultation revealed that many trustees already do so. Questions were raised about the level of detail, and manner in which how a particular trustee voted would be disclosed and it is suggested that further consultation on this issue be undertaken. It is also suggested that disclosure of votes should be required no more frequently than annually.

Issue	Outcomes of consultations
Disclosure on portfolio holdings (recommendation 4.16)	There is in principle support for disclosure of a fund's substantial portfolio holdings on a regular basis. In determining the level of detail required to be reported, there should be regard to balancing the benefits of reporting/disclosure against the costs of producing the data. Further discussion with APRA would be necessary to determine what data would be collected (by APRA) and disclosed (by the fund) and the frequency of collection and disclosure. During consultation, APRA and ASIC advised that they will undertake discussions to ensure alignment of reporting and disclosure requirements.
Centralised superannuation website (recommendation 4.20)	There is support for ASIC's MoneySmart website being the centralised website envisaged by the Super System Review as a vehicle for providing access to standard superannuation information. It is not thought necessary to require trustees to link to the site, but it was suggested that there may also be opportunities to use the website content to provide efficiencies in relation to Product Disclosure Statements by incorporating, by reference, standard material on the website.
Superannuation complaints (recommendation 5.7)	The *Superannuation (Resolution of Complaints) Act 1993* (SRC Act) sets two time limits before total and permanent disability (TPD) claims can be dealt with by the SCT: • a TPD claim must be lodged with the trustee within two years of the member's cessation of employment (subsection 14(6B)); and • a complaint to the Superannuation Complaints Tribunal (SCT) must be lodged within two years of the first decision of the trustee to reject a TPD claim (subsection 14(6A)). Whilst subsection 14(6A) can operate for the SCT to review TPD complaints regardless of whether the claimant has terminated their employment, in practice a TPD claim is usually lodged after a claimant has ceased working and after their employment has terminated. Under general law, a claimant has the right to apply to a court to review a trustee's decision usually within six years of a cause of action arising, which in the case of a TPD claim is usually the date of the trustee's decision. This is a longer period of review than that applicable to lodging a complaint with the SCT. It is highly preferable for the SCT to be the mechanism for dispute resolution in respect of superannuation complaints and, accordingly, the time limits of the SCT and courts should be aligned as far as practical. However, trustees and the SCT face considerable difficulties when dealing with TPD claims where the claimant has ceased working a long time ago. It is suggested that only the time limit in subsection 14(6A) be extended and that the period in that section should be six years unless subsection 14(6B) applies, in which case it should be four years. Whilst subsections 14(6A) and 14(6B) do not necessarily operate consecutively, in practice the total of the two time limits will more closely align the SCT time limits with those applicable to the courts. Extending the SCT time limit would not add to the trustee's record keeping obligations as the trustee is obliged to maintain those records in the event that a court action was lodged.

Issue	Outcomes of consultations
Binding death benefit nominations (recommendations 5.14 and 5.15)	There is agreement that the operation of binding death benefit nominations (BDNs) is complex and involves a difficult balance between ease of administration for trustees and equitable distribution of benefits on the death of a member. While some trustees do not accept BDNs, others have adjusted their governing rules to allow for 'non-lapsing BDNs'. In this context, it is agreed that there would be little practical effect in increasing the time for having to re-confirm a BDN from three to five years and, so, recommendation 5.15 is not supported. Concerns were raised about the potential complexity in legislating for BDNs to lapse on various significant life events (such as marriage, death, divorce or birth of a child) and it was noted that under existing law if an event (such as divorce) causes a person to cease to be a dependant, the BDN would have no effect anyway. Accordingly, recommendation 5.14 is not supported. It is clearly recognised that there are a number of important policy issues present in considering the matter of BDNs and non-lapsing BDNs and that, before making any change, it would be helpful to have a further review into the interaction between the SIS Act, the law of equity and the law of trusts and estates (in all states and territories). Accordingly, for the time being, the consensus is that there should be no change until this issue has been more fully explored.
Operational risk requirements (recommendation 6.1)	The proposal to impose financial requirements on trustees as a means of managing operational risk is supported, with acknowledgement that any financial requirement should be able to be met through the trustee's own capital or an operational risk reserve built up from member levies, or both. Consultation indicated that it is currently considered best practice (where risk analysis indicates) for trustees to maintain operational risk reserves. It is suggested that a high level requirement be set out in legislation regarding operational risk reserves and that trustees be required to formulate a strategy for managing these reserves in accordance with the existing requirements set out in paragraph 52(2)(g) of the SIS Act. APRA indicated that, following further detailed consultation with the industry, it intended to develop standards on this issue covering the need for a trustee to be allowed time to build up operational risk reserves and outlining the risk factors on which individual fund reserve requirements would be based. In relation to the size of the reserve required for any particular fund, there is general support for risk-based and tailored calculations. During consultation, APRA indicated that it may be appropriate (as a starting point) for a minimum reserve requirement to apply to all APRA regulated trustees, reflecting the inherent risks of operating a fund. Concern was expressed that if a standard minimum across the industry were introduced, trustees may be inclined to adopt the minimum as a default without giving due consideration to the specific risks inherent in managing their particular fund. On balance, it is considered that the most effective mechanism to establish and maintain reserves would be if trustees were to determine the risks associated with managing their fund in accordance with APRA prudential standards and their current Risk Management Strategy (RMS) and Risk Management Plan (RMP). APRA would then periodically monitor and review reserves levels as part of their ongoing prudential supervision of the operations of funds and trustees.

Issue	Outcomes of consultations
Risk management (recommendations 6.4 and 6.5)	There is support for removing the obligation on trustees to prepare a RMP for a fund when the trustee's RMS is considered to cover all risks relevant to the fund. There was also support for removing the requirement for a trustee to make a copy of the RMP available to members. However, it was noted that providing a summary of the information to members would constitute good practice.
Providing APRA with an administrative power to impose fines (recommendation 10.4)	There is in principle support for APRA to be able to impose fines (infringement notices) in appropriate situations. However, further work is required to identify which areas of the law fines should apply to. It is agreed that fines should only be used for straight forward, factual situations where no judgement was required, and only in cases of strict or absolute liability.

SMSF CONSULTATION SUMMARY

Issue	Outcomes of consultations
ATO to be given power to impose penalties, rectification orders and compulsory trustee training where contraventions occur (recommendations 8.2, 8.3 and 8.4)	It is agreed that the new penalty framework should be based on the attributes of the *Taxation Administration Act 1953.* The penalty should be determined based on the seriousness of the contravention, not the behaviour that gave rise to the contravention, as this is less subjective, consistent with existing tax penalties and would prove a superior deterrent. Behaviour giving rise to a contravention should be taken into account in determining any remission of penalties. It is agreed that the ATO should have the power to direct trustees to rectify a contravention, with the direction to rectify being used to ensure the SMSF was put back in the position it was before the contravention. It is agreed that the ATO should be able to direct trustees to undertake some form of education when contraventions occur. This direction should form part of the overall penalty framework and should be used as an alternative to, or in conjunction with, the other available penalties depending on the seriousness of the contravention. Education courses should provide trustees with general awareness of the rules and their obligations, and trustees should be required to provide the ATO with proof of completion of the course or training.
Financial adviser competency: RG146 to be enhanced to include SMSFs and improved knowledge of the SIS Act (recommendation 8.6)	It is agreed that RG146 should be enhanced to include SMSF knowledge, but that SMSF knowledge should be integral to the general superannuation knowledge component of RG146 and not be developed as a separate subject or component. Enhancements to RG146 are being considered by the *Future of Financial Advice* Expert Advisory Panel and feedback from consultation was passed onto the Panel.

Issue	Outcomes of consultations
SMSF Auditor registration (recommendation 8.8)	This issue generated a range of views during the consultation process. While there is agreement with the principle that SMSF Auditor registration was appropriate, there was division on the practical mechanism for registration. Consensus was reached on the following key components of SMSF Auditor registration: • registration was appropriate and should be controlled and regulated by ASIC; • ASIC is to set up an examination panel which should include industry representatives, to develop a competency exam; • registration should be subject to annual renewal with a requirement to show appropriate current SMSF audit experience; • applicants must satisfy a 'fit and proper person' test; • there should be minimum ongoing continuing professional development (CPD) requirements incorporating SMSF technical knowledge and audit-based training; • SMSF Auditors should be bound by Codes of Ethics for Professional Accountants and National Auditing Standards; and • SMSF Auditors should be required to hold appropriate PI insurance. Consensus was not reached on the most appropriate mechanism to be adopted by ASIC for approving auditors to undertake SMSF audits. While there was significant support for the position that all SMSF Auditors should undertake an examination to demonstrate competency, the Working Group advocated for a distinction based on the minimum number of audits completed in the past 12 months. This approach would see all auditors who had not completed a minimum number of audits in the past year be assessed and undertake a minimum level of professional development, while those completing more than the minimum number of audits in the previous year would not be required to sit the examination but would still be required to demonstrate compliance with agreed professional knowledge standards. It was argued that this is appropriate because requiring competent and experienced Auditors to undertake such an entry level exam would do little to increase overall professional standards and would mean incurring additional costs in an area which, for many firms, is a marginally profitable component of their business. Some members of the Working Group proposed that recognition be given for membership of professional associations recognised in Schedule 1AAA of the SIS Regulations in determining the requirements to be met for registration. It is agreed that the exam would be set by the 'examination panel', appointed and regulated by ASIC, which should include industry representatives from Schedule 1AAA approved associations. Discussion between the industry, the regulators and the Government is ongoing on this matter.

Issue	Outcomes of consultations
Auditor Independence (recommendation 8.9)	There was general consensus that the existing independence requirements imposed by the Australian Professional and Ethical Standards Board (APESB) under APES 110 are appropriate for SMSF Auditors. It was also acknowledged that better guidelines developed specifically for SMSF Auditors would enhance knowledge and understanding in this area. It is recommended that the APESB develop additional guidance materials specifically addressing SMSF Auditor independence. It was considered appropriate to include adherence to APES 110 as a condition of initial and on-going registration. SMSF Auditors should be required to provide declarations in relation to their independence annually as part of the SMSF Auditor registration and also as part of each audit opinion they provide to SMSF trustees.
In-specie transfers between related parties (recommendation 8.13)	There was significant opposition within the Working Group and Self-Managed Super Fund Professionals' Association of Australia (SPAA) in the Peak Group to the proposal that all transfers between SMSFs and related parties be conducted on market where a ready market exists. Weighing against this was the view that transfers between related parties should always occur through a market where one exists to remove any mischief (perceived or otherwise) of manipulation of capital gains tax (CGT) or excess contributions tax (ECT). The point was made that APRA regulated funds are able to nominate a transfer date for off-market transfers and therefore the potential for price manipulation is not constrained solely to the SMSF sector. It was argued, therefore, that the banning of off-market transfers where an underlying market exits would place the SMSF sector at a significant disadvantage compared to APRA regulated funds. On balance it was concluded that prudential standards should be developed for off-market transfers for APRA regulated funds to complement the proposed restriction on SMSFs outlined in the recommendation. It was also concluded that a review of extending this measure to (Small APRA Funds) SAFs should also be considered although the different level of oversight applying to APRA regulated funds was acknowledged. The majority of the Peak Group supported implementation of the recommendation to require assets to be transferred between SMSFs and related parties through an underlying market where one exists. It is agreed that where an underlying market does not exist, acquisitions or disposals of assets between SMSFs and related parties should be supported by a valuation from a suitably qualified independent valuer.

Issue	Outcomes of consultations
Collectables and personal use assets (recommendation 8.14)	It is agreed that additional restrictions should be placed on storage, acquisitions and disposals, leasing and insurance where a SMSF invests in collectables and other personal use assets. It was noted that legislative amendments have now been made to the SIS Act and Regulations and additional restrictions are now imposed on SMSF trustees investing in collectables and personal use assets which are consistent with the Peak Consultative Group's recommendation. Although supportive of the legislative amendments, it is believed the amendments in their current form will require additional ATO clarification and guidance on the new SIS Act section 62A and SIS Regulation 13.18AA.
SMSF data collection (recommendation 8.15)	The consensus view is that the recommendation to provide the ATO with a specific mandate to collect and produce SMSF statistics would result in increased costs, which are expected to outweigh the benefits achieved from the data collection.
Valuation requirements (recommendations 8.16 and 8.17)	It is agreed that the frequency of valuations should be dependent on the types of assets held by the SMSF and whether the fund is in the accumulation or pension phase. It is generally agreed that SMSFs should be required to annually value assets if they have in-house assets or assets supporting pensions. In all other situations, SMSFs should be required to obtain a formal valuation every three years, although it would be expected that they informally value their assets annually. It is agreed that where it is not possible to obtain a formal valuation, due to the nature of the asset, SMSFs should be required to have documentation justifying the value chosen. There was support for the proposal that the ATO consult with industry and develop valuation guidelines and it was agreed that the valuation requirements in recommendation 8.16 be consistent with these guidelines.
SMSF registration (recommendations 8.20, 8.21, 8.22 and 8.23)	It is agreed that issues relating to proof of identity and rollover procedures will be incorporated into the work being undertaken through SuperStream with further input from SMSF Working Group members. Capturing service provider details at registration was supported in principle however there was concern over who would be considered a service provider and the level of the penalty for non-disclosure. It is agreed that the benefits of SMSF naming conventions would be marginal and the costs incurred to implement naming conventions for SMSFs would outweigh any benefits. This measure would only be supported if it could be implemented in a cost effective manner.

Issue	Outcomes of consultations
Illegal early release (recommendations 8.24 and 8.25)	There is support for sanctions, including the imposition of the highest marginal tax rate, to be imposed on those who illegally access their superannuation benefits early. Concern was expressed about the imposition of penalties on the victims of a scheme or those who received poor advice. It is agreed that the penalty regime for illegal early release scheme promoters should be modelled on existing promoter penalties but restricted to SIS Act issues and that the ATO is to clarify its ability to exercise discretion in classifying amounts as income.
Rollovers to SMSF captured under AML/CTF Act (recommendation 8.26)	It was noted that APRA regulated funds already have the processes in place to adhere to *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) requirements and it is agreed that a standard, formalised process may speed up rollovers to SMSFs and should form part of the SuperStream Working Group ongoing agenda. It was agreed that further consultation with APRA regulated funds and the SMSF sector is necessary.
SIS amendments (recommendations 8.19, 8.27, 8.28 and 8.29)	It is agreed that there are no unnecessary administrative requirements on SMSF trustees and therefore no further industry consultation was required for recommendation 8.19. There is support for the objective of reducing administrative costs but it is argued that standard deeming provisions as proposed would add no practical value and may result in complacency and a lack of awareness by SMSF trustees of their trust deed. It was also noted that legislation other than the SIS Act and Income Tax Assessment Act may apply to SMSFs and including the proposed standard deeming provisions would not prevent changes being made to the trust deed as a result of changes to those laws. There is also agreement that the SIS Regulations be amended so that the existing covenant requiring separation of fund assets from those of the members and others become an operating standard, and that SMSFs should be required to consider life and TPD insurance as part of their investment strategy.