

16 October 2012

The Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: StrongerSuperSuperStream@treasury.gov.au

Dear Sir/Madam,

Re: Superannuation data and payment regulations (rollover and contributions)

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST welcomes these draft regulations, and welcomes the addition of enhancements to previous draft regulations.

6.33 Request for rollover or transfer of withdrawal benefit

AIST submit that the forms specified in Schedules 2A and 2B should be mandated to ensure that trustees are required to rollover or transfer whole balances as quickly and efficiently as possible.

Allowing trustees to produce forms that are different in appearance (even if not in content) may slow down the process. It may create confusion in the minds of members who are comparing forms accessed from different funds, and may result in members not proceeding with a transfer or rollover.

AIST also submits that the Regulations include additional information on the mandated forms to be used when a fund receives a request to rollover part of a member's withdrawal benefit. The additional information that should be required for a part payment is the dollar amount or percentage of the amount to be rolled over or transferred. A member may also be asked to nominate the preservation status of the amount to be transferred (i.e., preserved or non-preserved).

In order to ensure that the rollover and transfer of benefits occur as quickly and efficiently as possible, the forms specified in Schedules 2A and 2B should be amended to include the receiving fund's unique superannuation identifier.

6.33D Validation of member's details by transferring fund – general

AIST submits that the operation of this Regulation should be subject to transitional provisions. Specifically, it should be acknowledged that the “electronic interface provided by the Commissioner” will not be mature and fully functioning from 1 July 2013.

It is not reasonable, and would be onerous and inefficient, for funds operating on a high-volume basis to be required to enter member data on an individual basis because the ATO's tax file number validation service was not yet able to manage batch processing.

6.34A Member details for rollover or transfer

The provisions of subparagraph (3) should be amended to recognise that the design of SuperStream does not require the combined transfer of money and information. In many instances, the transfer of money and information will involve separate processes linked by the used of unique identifiers. The separate processes may also involve separate third party providers.

In this circumstances – which reflect the design characteristics of SuperStream – it is extremely difficult to ensure that the two separate processes will necessarily occur on the same business day. Accordingly, AIST recommends that the transfer of money and information must occur no later than one business day after the first process has occurred.

6.34B Receiving fund must electronically receive information from transferring fund

The drafting of paragraph (2) requires clarification. It is submitted that the policy intent of this paragraph would be better expressed by deleting the words “*or payment*”.

6.34C Receiving fund must allocate amount to member

AIST questions the use of the words “accompanied by” in subparagraphs 6.34C(b)(ii) and 6.34C(c)(ii), as there is no requirement for a rollover or transfer to be accompanied by the required information. Rather, the requirement is for a rollover or transfer to be “associated with” the required information – and for this to happen through the use of unique identifiers. AIST therefore submits that the words “accompanied by” in subparagraphs 6.34C(b)(ii) and 6.34C(c)(ii) be replaced by “associated with”.

AIST supports the 3 day performance standard prescribed in 6.34C(2). However, AIST submits that an exception to this standard should be permitted in specific and articulated circumstances approved by a regulator and disclosed to members. Examples of this circumstance could include a file build following an annual reporting period, or migration of data for a merging fund.

AIST proposes that the following paragraph be inserted as Regulation 6.34C(3):

(3) The requirement to allocate the amount within 3 business days in paragraph (2) shall not apply where the fund has:

- i. a written operating requirement to suspend the allocation of amounts transferred or rolled over for a limited period for a specific purpose; and*
- ii. obtained prior written approval from APRA for the period and purpose of the suspension;*
- iii. disclosed the period and purpose of the operating requirement to members in the fund's Product Disclosure Statement.*

7.07A Initial registration of employee

There is an explicit requirement in subparagraph 7.07F for employers to provide the information required under Regulations 7.07A(2) and 7.07D(1) to funds on a “correct and complete” basis. However, this requirement is not specified in Regulations 7.07A(2) and 7.07D(1) themselves. For the sake of clarity and consistency this should be remedied.

The requirement in paragraph (2) – and elsewhere in the proposed Regulations – for an employee’s full name should be clarified. AIST submits that the following naming conventions be regarded as acceptable:

- full name
- first name, last name
- first initial, last name

AIST accepts that an employer cannot be required to provide information it does not have to a fund, but submits that 7.07A should be supplemented by an additional provision to improve the extent and quality of data in the superannuation system.

AIST proposes that the following paragraph be inserted as Regulation 7.07A(4):

“(4) Where an employer has not provided information to the fund under paragraph (3), the employer is required to give the information to the fund as soon as it is received by the employer and no later than the next contribution return submitted by the employer to the fund.”

7.07F Incomplete contribution information

This regulation could operate in a way that is not in the best interest of a member. Specifically, the requirement in paragraph (4) to return a contribution within 10 business days if a full name is not received would often disadvantage a member. The fund should be given the discretion to be able to continue to seek member information from an employer, and should be able to do this for one month from receipt of the contribution. This recommendation is in line with the AIST recommendation above for an additional Regulation 7.07A(4).

Schedule 1 Transition arrangements

AIST notes the intention to for Schedule 1 to detail the transitioning in process. AIST has assumed in this submission that these arrangements will be logical, in the required sequence, and monitored and reviewed to ensure that unintended consequences are quickly and efficiently addressed.

AIST underlines the importance of adequate consultation on the transitional arrangements, and notes that there may be elements to those arrangements that require the regulations to be revisited.

Compliance

AIST restates its concerns that there are no requirements to report non-conformance with the minimum requirements. While strongly supporting the stated intention of the ATO to apply these requirements with discretion and in recognition of their newness, AIST nonetheless continues to advocate for a requirement on both employers and fund to report non-compliance.

This is not about seeking application of the penalty regime, but is about ensuring that the requirements become widely understood and applied in the community, and about ensuring the ATO is best able to focus its efforts at education.

We suggest that the relevant provisions of this draft legislation and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act) need to be aligned. There is a difference in emphasis in that the latter requirements apply the onus on the trustee of the fund to decide the level of verification required.

If you have any further questions regarding this submission, please contact David Haynes, Project Director on 03 8677 3803 or dhaynes@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Fiona Reynolds'.

Fiona Reynolds
Chief Executive Officer