



AIST submission

**Response to Treasury: Exposure Draft –
Superannuation data and payment
standards**

23 February 2012



Australian Institute of Superannuation Trustees

1 Background

The Government has released numerous pieces of legislation to give effect to its Stronger Super package of reforms to the superannuation industry. One element of the package involves measures designed to enhance the “back office” of superannuation, collectively known as SuperStream.

The current status of the legislative framework for SuperStream is as follows:

- Schedule 3 of the *Tax Laws Amendment (2011 Measures No.2) Act 2011* commenced on 1 July 2011 which allows Tax File Numbers (TFNs) to be used as the primary superannuation account identifier and to facilitate the consolidation of multiple member accounts [“TFN legislation”].
- Regulations pursuant to this legislation have been developed to support the use of TFNs to facilitate the account consolidation process.
- From 1 July 2012, funds which operate more than one account for the same individual will be encouraged to consolidate those accounts where possible.
- Treasury has released an Exposure Draft containing the payslip reporting of superannuation contributions measure (“payslip measure”). Consultation on this draft legislation closed on 20 February, and AIST made a submission on this related matter.
- Treasury also released an Exposure Draft concerning disclosure of superannuation information. Consultation on this draft legislation closed on 20 February, and AIST also made a submission on this related matter.
- Subsequent tranches of legislation (eg, account consolidation) will address further SuperStream measures.

This Exposure Draft provides a framework and basis for superannuation data and payment standards (“SuperStream legislation”). This legislation will, *inter alia*, give the ATO administrative responsibility in this area, and supports other SuperStream legislative instruments that will enable funds to assist their members to find and consolidate their superannuation interests.

AIST participated throughout the industry consultations on Stronger Super, including in relation to SuperStream.

2 AIST

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 is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST’s services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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3 Executive summary

AIST supports this legislation as a key element in the implementation of SuperStream measures to improve the administrative efficiency of the superannuation system.

AIST makes the following key comments on this legislation:

- The Stronger Super legislation needs to use a consistent formulation about superannuation trustees having ultimate responsibility for compliance with requirements for the operation of the superannuation system. Supporting documentation (such as the Explanatory Memorandum) should also identify that third party providers act as agents of superannuation funds in many instances, including the operation of superannuation data and payment standards.
- AIST recommends that the capacity to have different requirements be limited to transitional arrangements, and that the regulations prescribe a day from which different requirements will not be permitted.
- The scope of this legislation should be extended to allow the development of SuperStream measures beyond the first stage of processing contributions and rollovers. This legislation should provide a framework for further efficiency improvements throughout the superannuation system. For example, standards for superannuation fund and custodian or insurer transactions.
- There should be a statutory requirement for the SuperStream Advisory Council announced by the Government to be consulted by the ATO on the standards.
- Penalties for contravention of the standards should be capped at a maximum level for each transfer of data, and not be determined on a cumulative and unlimited line item basis.
- The legislation should include requirements for superannuation funds and employers to report on compliance with the standards.

AIST supports all other measures proposed in this Exposure Draft.

4 Recommendations

4.1 Duty to comply

The legislation gives the duty to comply with superannuation data and payment standards to superannuation trustees and employers. This is appropriate as superannuation funds are responsible for funds entrusted to them, and employers are responsible for the payment of superannuation contributions on behalf of their employees.

Administrators and other entities, such as clearing houses, participating in the operation of the superannuation system are involved on the basis of their acting as agents for superannuation entities. They will be required to comply with the standards when they are acting as agents, and this should be explicitly stated in the Explanatory Memorandum. However, the ultimate responsibility for compliance with this measure rests with the superannuation entities, and not with unregulated third parties.

The approach taken by the Government in its response to the report of the Super System Review (the Cooper Review) was to reject the Review's recommendation for the registration of administrators by APRA on the grounds that it would diminish the ultimate responsibility of superannuation trustees for the operation of their fund.

AIST recommends that there be a consistent formulation used in the implementation of Stronger Super legislation, and associated regulations and standards about responsibility for the operation of the superannuation system. This formulation would confirm that superannuation trustees have responsibility for the operation of superannuation entities and associated functions, but that aspects of the operation of superannuation entities may be outsourced to agents and intermediaries (without diminishing the ultimate responsibility of the trustees).

Whilst these arrangements will be addressed in an outsourcing prudential standard to be issued by APRA, differing approaches to the identification and division of responsibilities between entities may be confusing and not in the best interests of the operation of the superannuation system.

AIST anticipates that APRA prudential supervision of outsourced arrangements will include reviewing agents' compliance with the standards in accordance with appropriately negotiated outsourcing contracts.

4.2 Capacity to have different requirements

The capacity for specified classes of superannuation entities or employers to have different compliance requirements regarding the standards provided by subsections 34K(2) and 34K(4) should be strictly limited to transitional arrangements for a limited period. Minor variations from the standards should also be allowed on a limited basis in exceptional circumstances.

The Explanatory Memorandum [paragraph 1.31] states that this "*provides the flexibility to tailor the application of certain requirements to different classes*". In the context of SuperStream, flexibility beyond very narrow bounds will compromise the standardisation that SuperStream provides.

AIST recommends that subsections 34K(2) and 34K(4) be amended to limit its application to transition arrangements, and that the regulations prescribe a day from which different requirements will not be permitted.

4.3 Scope

The primary focus of the SuperStream measures to date has been in relation to improved efficiency in the making and processing of contributions and rollovers, and this is reflected in the definition of superannuation data and payment matters in the proposed subsection 34K(5) and the kinds of payments and information listed in the proposed subsection 34K(6).

However, it was clear during the consultations on the design and implementation of SuperStream measures, that the focus on contributions, rollovers and reporting to Government was the first stage of the SuperStream process. Further and wider ranging efficiencies throughout the superannuation system are the ultimate goal.

In the *Stronger Super Information Pack* of September 2011 it states:

The adoption of data and e-commerce standards will have substantial benefits for all participants and will enable participants to communicate by using standardised business terms, while electronic transmission will allow for a more automated and timely processing of transactions with fewer errors. [p.11]

These efficiencies can also be obtained for superannuation transactions involving group insurers, custodians, investment managers and other participants in the superannuation system.

AIST recommends that this legislation be sufficiently flexible to cover the development of superannuation data and payment standards on a wider basis over time. This measure would then be similar to the approach that is being taken in relation to the payslip measure.

AIST recommends that this be given effect by the addition of the following new subsections:

Proposed subsection 34K(1)(b) to be renumbered as subsection 34K(1)(b)(i), and insert a new subsection 34K(1)(b)(ii):

[or] “any other person or entity prescribed by the regulations in their dealings with superannuation entities.”

Proposed subsection 34K(3)(b) to be renumbered as subsection 34K(3)(b)(i), and insert a new subsection 34K(3)(b)(ii):

[or] “any other person or entity prescribed by the regulations in their dealings with superannuation entities.”

Delete “and” at the end of the proposed subsection 34K(5)(a)(ii), and replace with “or”, and insert new subsection 34K(5)(a)(iii) as follows:

[or] “(iii) such other person or entity as prescribed by the regulations; and”

4.4 SuperStream Advisory Council

In the *Stronger Super Information Pack* [p.9] it states that the establishment of an advisory governance body to advise on the implementation and maintenance of the standards is one of the four key elements in the package of reforms that make up SuperStream.

However, there is no mention of such a body in either the Exposure Draft or the Explanatory Memorandum. While the Legislative Instruments Act 2003 provides for consultation with business that is appropriate and reasonably practicable, the Government has specifically announced in this case that the consultation will be through the SuperStream Advisory Council.

Furthermore, the definition of explanatory statement in subsection 4(1) of the Legislative Instruments Act 2003 requires that the explanatory statement prepared in respect of each legislative instrument include a description of consultation undertaken or, if there was no consultation, an explanation for its absence. There is no description in the Explanatory Memorandum to this legislation of the future consultation to be taken in preparing the standards.

AIST recommends that this omission be redressed by amending the proposed section 34K(9) to read:

“(9) The Commissioner of Taxation must consult with:
(a) APRA; and
(b) an advisory governance body established by the Commissioner of Taxation and comprising consumer representatives and representatives connected with the operation of the superannuation system;
in preparing the superannuation and data standards.”

The Explanatory Memorandum should further expand upon the details of the SuperStream Advisory Council in terms that are consistent with the announcement in the *Stronger Super Information Pack*.

These additions to the legislation and Explanatory Memorandum will ensure consistency with announced Government policy and ensure that the requirements of section 17 of the Legislative Instruments Act 2003 are met.

4.5 Contravention of the legislation

The legislation prescribes compliance requirements that operate at a member level, and penalties that apply at a line item level for both employers and superannuation funds. It is noted that in the context of this legislation compliance is about the “manner” in which data and payments are transferred.

AIST acknowledges that there will be a grace period in relation to the operation of the penalty regime. We also understand that the ATO may make directions where a contravention or likely contravention has occurred, and may then apply penalties with a high level of discretion. Despite this, AIST believes that the penalty regime is unnecessarily punitive.

The punitive nature of the regime is not the penalty of 20 penalty units or \$2,200 for an individual offence. It is the cumulative impact of penalties applying on a line item basis in relation to monthly or quarterly transactions often involving large numbers of members.

Example

ABC Pty Ltd pays superannuation contributions monthly for 115 members of XYZ Superannuation Fund. The payroll officer at ABC Pty. Ltd. returns to the company after an extended family leave break and is unaware of changed data and payment format requirements. He wrongly (but with no wrongful intent) sends data using a previously applicable (but now outdated) format. Correct superannuation payments are made within the required time.

This simple administrative error, which results in no financial damage to their employees, has exposed ABC Pty. Ltd to potential penalties of over \$250,000.

AIST recommends that the penalties for both employers and superannuation funds be capped at 200 penalty units for each transfer of data and payments between employers and superannuation funds, with a lower cap of 50 penalty units for contraventions by small employers. A maximum of 500 penalty units should for each transfer between superannuation funds.

These levels of penalties still ensure that the maximum penalty is greater than the cost of compliance, but has regard to the particular circumstances of different participants in the superannuation system, and is less punitive.

4.6 Statutory reporting mechanisms

The legislation does not include any requirement for either superannuation funds or employers to report on compliance with the superannuation data and payment standards. If the standards are to have universal application and gain the confidence of participants in the superannuation system (especially that all participants are using the standards), then an appropriate reporting framework is required.

The reporting framework should operate on an exceptions basis, so as to avoid additional unnecessary administration. Reporting should also make allowance for the receiving party to contact the sending party that is in breach on the standard requirement, and allow a reasonable period of at least 21 days from notification by the receiving party for the sending party to remedy the contravention.

This allowance should be conditional upon correct superannuation payments being made within the required time. This is in line with the period proposed in subsection 34R(5). The sending party should not be guilty of an offence in the first instance of this occurring .