

20 October 2015

Senior Adviser
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via Email

Email: superannuation@treasury.gov.au

Dear Ms. Sykes,

Re: Superannuation Laws Amendment (Unclaimed Superannuation Money) Regulation 2015

In brief:

AIST welcomes the:

- exclusion of members using electronic means to communicate with their fund from being lost members, and
- capacity for ERFs to transfer balances to members' active accounts without their consent.

However, the removal of lost member requirement to be 'employer-sponsored' should exclude ERFs transferring balances into active accounts.

Overall, however, AIST call for a complete overhaul of lost and unclaimed super rules as they are unnecessarily complicated, confusing and not in members' interests.

Thank you for the opportunity to comment on this draft Regulation.

The Amendment proposes the third substantive change to lost and unclaimed superannuation legislation/regulation arising from Government announcements in the 2014 and 2015 Budgets.

AIST has responded to each of each of these changes and has consistently called on the Government to simplify and streamline lost, uncontactable and unclaimed super legislation^{1 2}.

¹ Most recently: Garcia, T. (2015). *Re: Treasury Legislation Amendment (Spring Repeal Day) Bill 2015*. [pdf] Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/gykwbb4> [Accessed 19 Oct. 2015].

² See also: Garcia, T. (2014). *Re: Superannuation – Increases to the Lost Member Small Account Threshold*. [pdf] Melbourne: Australian Institute of Superannuation Trustees. Available at: http://www.aist.asn.au/media/12548/2014_02_03_submission_Small%20account%20threshold.pdf [Accessed 19 Oct. 2015].

The Government should do this through a thorough review of the legislation and regulations, and the practical implementation of these requirements by the ATO and super funds. AIST repeats this call in relation to this proposed change, noting that there is even this regulatory change contains a contradiction.

Such a review should then feed into a wider review of account consolidation measures, including the operation of the existing *intra-fund* account consolidation policy requirements, the previously proposed *inter-fund* consolidation policy options and Government measures to encourage account consolidation (e.g., through MyGov).

There remain large numbers of superannuation accounts with low account balances. However these accounts are at a greater risk of fee and insurance premium erosion following the abolition of member benefit protection in July 2013 as part of the implementation MySuper.

A review should consider if there should be a requirement for super funds to introduce an inter-fund consolidation policy, and policy on the treatment of small, lost and inactive accounts in a manner consistent with the promotion of members' best interests.

The above measures were under consideration during the design stage of the Stronger Super consultations, and specifically by the SuperStream Working Group. However, they were put on hold pending a review of the impact of increasing the small lost member account threshold to \$2,000 and the operation of intra-fund consolidation policy.

As the threshold has continued to increase, and there have been a range of ad hoc changes to lost and unclaimed superannuation, and the level of lost and unclaimed superannuation continues to be high, the need for this review remains and is becoming increasingly urgent.

Lost member definitions

- **Written communication by electronic means**

AIST supports amending the definitions of 'lost member' to include online and electronic interactions. This change is in members' best interests as a member who has used their super fund's website to access their account or update their contact details is clearly not uncontactable.

Not only does this change recognise the existence and increasing prevalence of modern means of communications, it will assist super funds and the Government to better define the number of truly uncontactable members.

The members contact with their fund should be recorded and verifiable. AIST also suggests that the reference to 'the fund's website' in proposed subparagraph 1.03A(1)(a)(i) should be amended to instead refer to all online and self-service means of accessing details about a members superannuation interest.

As regulatory barriers to innovation are dismantled, members will increasingly use apps, social media and as yet unknown channels to access benefit information. The regulatory framework should anticipate and meet these changes.

Removal of lost member requirement to be ‘employer-sponsored’

AIST opposes the unqualified removal of the requirement that an inactive lost member of a superannuation fund must have joined the fund as a standard employer-sponsored member.

AIST does not understand the characterisation of this requirement as being ‘outdated’ and neither is this explained in the Explanatory Memorandum. Furthermore, it is not the case that this change would make any difference to a funds ability to correctly identify and report lost inactive accounts.

AIST would support the removal of the requirement for all superannuation funds *other than* eligible rollover funds that have an active and demonstrable policy and program of transferring member account balances in their fund to active accounts in other superannuation funds.

A change to the amendment on this basis is necessary to give effect to the intention of the proposed Item 8 (transfers to eligible rollover funds – see below). If this change is not made, there will be unnecessary transfers of member account balances. This would involve both unnecessary administration, cause confusion and uncertainty amongst members as to the location and status of their superannuation benefit, and hence not be in members’ best interest.

Furthermore, an exclusion for ERFs undertaking such activities recognises their key role in facilitating account consolidation and locating addresses for uncontactable members.

This is the contradiction referred to in the introduction of this submission: the benefit intended by Item 8 (transfers from eligible rollover funds) will largely be obviated if this exemption is removed for ERFs undertaking this key role, as such ERF will necessarily have large numbers of inactive members.

- **Permanent exclusion from being a lost member**

Under regulation 1.03A(2) of the SIS Regulations, a member is permanently excluded from being a lost member if they have indicated by a positive act that they wish to remain a member. AIST comments on this provision (notwithstanding it not being directly changed by the proposed measures) as it has caused confusion as to its scope, is not consistently applied and is impacted on by the proposed change.

The extension of SIS Regulation 103A to include written communication by electronic means is likely to mean that more members will be permanently excluded from being lost members, but that this is also more likely to be applied in inconsistent ways.

In order to address this, the Explanatory Memorandum should explicitly recognise that members who have contacted their fund using written communication by electronic means after they have joined means they can be excluded from being a lost member. However, this exclusion should not necessarily be “permanent”, but should be subject to their still being contactable.

- **Transfers from eligible rollover funds**

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AIST supports the amendment allowing the trustees of ERFs to transfer member account balances to active accounts in other superannuation funds without consent, and would further support the introduction of a requirement on all ERFs to regularly and comprehensively undertake such transfers as a condition of their authorisation.

AIST submits that an ERF should be able to transfer such balances to super funds where the ERF reasonably believes that the fund has received at least one contribution or rollover in respect of the member within the past 24 months (and not 12 months as proposed). This would reflect the variable nature of work patterns, contribution flows and not unusual leave without pay arrangements that extend beyond a year.

If you have any further questions regarding this submission, please contact David Haynes, Executive Manager Policy & Research on 03 8677 3800 or at dhaynes@aist.asn.au.

Yours sincerely,



Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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