

15 January 2016

Mr. Tom Reid
Law Design Practice
The Treasury

Email: XXXXXXXXXX

Dear sir/madam,

Re: Commissioner of Taxation's power to modify law

In brief:

AIST supports giving the Commissioner of Taxation the power to modify superannuation and taxation law to provide beneficial outcomes for taxpayers. While necessary safeguards are provided, the ATO should also be required to publish an annual report on the use of this power, on an overall basis and addressing each case.

Whenever, Parliament empowers a government agency to change the application of laws or otherwise delegates to executive government the power to make delegated legislation, such empowerment needs to come with appropriate checks and balances. Most importantly, there is a need to ensure accountability, transparency and consistent application of the power.

This is an issue AIST has raised about the granting of Prudential Standard-making power to APRA in relation to superannuation, and, more recently, about the proposed increased powers proposed for APRA in relation to appointment of superannuation fund trustees. It is also an issue in the present instance.

AIST notes that this measure is consistent with the announcement made in the 2015/2016 Federal Budget to modify the operation of superannuation or taxation law to ensure no unintended consequences for taxpayers when applying the law.

We further note that the proposed remedial power can only be used where it has a beneficial outcome for affected taxpayers, and where the exercise of power is not inconsistent with the purpose or object of the law. It can not result in a less favourable result.

AIST supports the intent of the proposed legislation, and believes it will smooth the administration of superannuation and taxation law, particularly in relation to non-contentious technical issues. In this way, the legislation can be seen as a means of cutting red-tape, contributing to the government's target for red tape reduction, and supporting the private sector.

We further note and support the each of the safeguards built into existing and proposed legislation. Without these safeguards, there would be greater accountability and transparency problems with the measures.

In particular, it is important that the proposed power is used as means of last resort, when it is clear that unintended consequences can not be ameliorated in any other way. It should not, for example, be used as a short-cut to tidy up outdated record-keeping requirements imposed on taxpayers (such as references to technology or mediums that may no longer be available).

However, we have also identified an area where these safeguards should be strengthened: the lack of reporting requirements is an issue that requires further consideration.

The ATO should be required to regularly, and no less often than annually, publicly report on the use of the Commissioner's power to modify law. This reporting should provide reasonable details of the circumstances involved in each case, justification for use of the power and an explanation of the beneficial outcome for affected taxpayers. These reporting requirements should be built into legislation.

AIST also seeks that this detailed reporting be supplemented by an annual overall report by the ATO on the use of the Commissioner's powers to modify law.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', written in a cursive style.

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 \$650 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 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.