

13 October 2011

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

Email: [superamendments@treasury.gov.au](mailto:superamendments@treasury.gov.au)

**RE: Exposure Draft – Electronic portability form for lost superannuation**

Dear Sir/Madam,

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.

In making our submission to Treasury, AIST confirms the following regarding the proposed Exposure Draft ("the ED"):

- AIST supports this measure and believes that a 'one-touch' consolidation of super interests is in the interests of all Australians, especially those with lost superannuation. We look forward to when similar technology may be used to consolidate additional accounts that aren't lost;
- We continue to support a taxpayer's right to decline to provide their Tax File Number (TFN), however we consider it reasonable that the tool requires a TFN to operate; and
- We support the ability of such a form to offer a manual solution where certain validation is unable to be provided, however we caution against removal of existing identification requirements in this instance.

AIST also supports the remaining provisions of the ED.

### **'One-touch' consolidation of super interests**

AIST supports and encourages the concept whereby a member can, with 'one touch', have the trustees of their lost accounts advised of a potential destination and that these trustees then may act without the need for additional requirements. We applaud the intended outcome, stated in paragraph 1.8 of the Explanatory Memorandum ("the EM") that:

*Lost members, after first locating their benefits through SuperSeeker, may pre-fill a transfer request and submit it electronically to the ATO. The ATO will verify the identity of the lost member and match it to the recorded account, and will also verify the status of the nominated receiving fund. If the verification processes are successfully completed, the ATO will electronically transmit the transfer request to the fund that reported the member as lost (the transferring fund). The transferring fund will then be able to send the member's benefits to the nominated receiving fund under the current portability arrangements.*

We are enthusiastic about the possibility that this process may, potentially, be adapted to members' other holdings beyond lost accounts.

Throughout this submission, we have looked at examples which illustrate our understanding of how this measure should work. We are aware that the 'how this all works' part is yet to be created in the regulations.

AIST would also like to acknowledge the work of administrators Superpartners who have assisted in providing background material that has been used in drafting this submission.

### **Tax File Number (TFN) disclosure**

AIST supports the right of members to decline to quote their TFN throughout. Whilst we understand the ATO's SuperSeeker facility requires a TFN to search the lost member register, we encourage efforts to enable searches in the future without the need for TFNs.

AIST also understands that the Commissioner of Taxation may require the power to provide TFNs to funds or RSA providers in order to administer the scheme. We agree that this is necessary, however we believe that the existing processes that allow for transfer of super monies without the requirement for a TFN should be retained.

Further to these, though, we strongly recommend that taxpayers searching for lost super through the electronic portability tool must be made aware that if they provide their TFN for use with this tool it may be passed on to their super fund. This will allow taxpayers to use a different process.

**Example**

Marina, aged 40, is an accountant who has worked for a number of accounting firms but is now looking to start her own business. She estimates that she may have as many as eight superannuation accounts, some of which may have recorded her as a lost member, but she would like to have her super monies moved to her account with ABC Super Fund.

Marina tries out the ATO's new electronic portability form and finds that she has lost superannuation monies with XYZ Super Fund. She reads the warning, however, and is uncertain that she really wants the ATO to send her TFN through to XYZ Super with her transfer request. She cancels her request and after using the ATO's SuperSeeker tool to get the details of her lost account, rings XYZ Super directly for a copy of their transfer form.

**Regulations may prescribe a scheme**

AIST supports the preparation undertaken in this ED to allow for how this scheme will operate in both the *Superannuation Industry (Supervision) Regulations 1994* ("the SIS Regulations") and the *Retirement Savings Account Regulations 1997* ("the RSA Regulations"). We are concerned that two key aspects of this do not appear to be emphasised enough:

- That the process will be prescribed in full in the regulations; and
- That existing regulations will be amended where there is the possibility that these may hinder the effectiveness of this ED.

A good example of this is the existing standard portability form, specified in Schedule 2A of the SIS Regulations. As stated above, it is the intention of this ED that there be a one touch approach to transfers requested via this facility and we believe that it is important that the regulations, when crafted, reflect this. As such, Schedule 2A may need to be amended or replaced to ensure that funds requirements when receiving requests from the Commissioner of Taxation aren't ambiguous.

If this measure is to be successful, there should be no need for additional requirements once the electronic form has been completed. The tool should provide verification of the following at a minimum:

- Member's consent (to both ATO and transferor funds) to transfer;
- TFN validity;
- Transferee fund is compliant with the Tax Acts;
- Ability of transferee fund to accept transfers;
- Member's account details at the transferee fund; and
- Member's identity.

We believe that funds will need to register to be an eligible transferee fund for the purposes of this form.

**Example**

Silas, aged 30, tries out the ATO's new electronic portability form and finds that he has lost superannuation monies with PQR Super Fund. He uses the form to request that this lost amount is sent through to MNO Super.

When PQR Super receives the data, they understand that the ATO's form has already verified the following:

- Silas' consent to transfer the funds out of PQR Super;
- Silas' tax file number is valid and belongs to Silas;
- MNO Super is a compliant superannuation fund;
- The ability for MNO Super to accept transfers in has been verified;
- The account details at MNO Super are valid; and
- Silas' identity has been verified.

Upon receipt of the request, PQR Super find that there are no additional requirements and promptly process the transfer of money over to MNO Super.

**Requirements under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ("the AMLCTF Act") and accompanying rules**

We note that transfers out of a superannuation fund are considered to be 'designated services' under the AMLCTF Act. For the same reasons as those given above, attention must be applied to all areas under the AMLCTF Act and accompanying rules that could affect the intended operation of this measure, particularly those that relate to identification of members.

For this to be fully effective, we believe that transfers should be removed from the list of designated services under the AMLCTF Act (for all matters except suspicious transaction reporting), if, and only if, they satisfy the following criteria:

- The request is received from the Commissioner of Taxation; and
- The request was submitted through the electronic portability tool; and
- The request is for a transfer of benefits to a superannuation fund or retirement savings account that is provided by a 'reporting entity' as regulated by the AMLCTF Act.

Critically, this measure will be deemed an unequivocal failure if funds receive a request to transfer from the Commissioner and still need to obtain further identification from a member.

### Where electronic submission of the transfer request is not available

We applaud the provisions discussed at paragraph 1.9 of the EM, where members may print the transfer request and post it to the fund, where electronic submission to the fund is unavailable. However, we believe that conceptually, the requirements to process paper forms generated through this tool are the same as those presently in use and are therefore cautious about any moves to remove existing identification requirements in these instances.

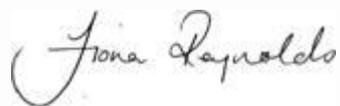
We note the list of reasons why the electronic request form may fail at paragraph 1.9 and consider this list to be valuable. Although we are aware that this is clearly not an exhaustive list, we recommend that a more complete list be provided in order for the ATO to be in a position to answer queries from taxpayers about the instances that submission may not proceed.

### Additional provisions

AIST supports all remaining provisions in this ED.

If you have any further questions regarding this submission, please contact Tom Garcia, Policy and Regulatory Manager on (03) 8677 3804 or [tgarcia@aist.asn.au](mailto:tgarcia@aist.asn.au).

Yours sincerely

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

Fiona Reynolds

Chief Executive Officer