

10 March 2017

Mr Stephen Lau  
Australian Taxation Office  
Via email

Email: [superconsultation@ato.gov.au](mailto:superconsultation@ato.gov.au)

Dear Mr Lau,

**Re: Draft Law Companion Guideline LCG 2017/D3: Superannuation reform: Transfer Balance Cap - Superannuation death benefits**

AIST welcomes the opportunity to comment on this Draft Law Companion Guideline, which seeks to clarify the treatment of death benefits with respect to the Transfer Balance Cap (“LCG 2017/D3”, the “Draft LCG”).

Our comments relates to the treatment of reversionary and non-reversionary death benefit income streams, covered in depth in paragraphs 6-9. AIST notes paragraph 8 which explains that where the trustee has the discretion to determine to whom the death benefit is paid, the form in which it will be paid or the value of the death benefit, a death benefit income stream will be considered to be non-reversionary.

However, we note that the preceding paragraph concludes that a binding death benefit by itself does not make a superannuation income stream reversionary. This raises an interesting problem with our reading of paragraph 8, as where a trustee releases an income stream to a beneficiary under a binding death nomination, it will only satisfy the second condition.

AIST notes that the only mention of this in the explanatory memorandum to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* (“the Bill”) is where it refers to reversionary income streams being able to provide beneficiaries with a delay of 12 months in any corresponding credits to their Transfer Balance Account. In discussions we have had with Treasury and others, this was so that reversionary beneficiaries could choose whether they might (or not) commute these income streams, or as paragraph 3.82 of the Explanatory Memorandum to the Bill states, “arrange their financial affairs” (and similarly at paragraph 12 of the draft LCG).

In the event that a beneficiary to an income stream that had been commenced under a binding death nomination, this would leave the beneficiary in what, to them, would be the same situation, however their Transfer Balance Account would be immediately credited, putting them at a distinct disadvantage relative to those in receipt of reversionary income streams.

Although unable to suggest a solution to the problem within the scope of the draft LCG, we believe that a fairer reading of the second condition in paragraph 8 would have been the degree of options that the beneficiary had, rather than that of the trustee.

We believe that this is an unintended policy outcome (for the purposes of the transfer balance cap) and recommend that this be raised with Treasury at the earliest opportunity for immediate legislative (or alternative) rectification.

For further queries regarding our submission, please feel free to contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at [rwebb@aist.asn.au](mailto:rwebb@aist.asn.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

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 \$700 billion profit-to-members 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.*