

Transfer of Lost Member Accounts to the ATO

ASFA Submission

October 2009

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25 September 2009

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Re: Exposure Draft – Lost Members’ Superannuation Accounts

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the exposure draft *Superannuation Legislation Amendment (Lost Members’ Superannuation Accounts) Bill 2009* and its Explanatory Memorandum. The Bill seeks to amend the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLA) to require superannuation providers to transfer the balance of a lost member’s account to the Commissioner of Taxation where the balance of the account is less than \$200; or the account has been inactive for a period of five (5) years and the provider has insufficient records to identify the owner of the account. This was announced in the 2009 Federal Budget.

In ASFA’s response dated 19 December 2008 to the Treasury discussion paper “Superannuation Clearing House and the Lost Members Framework” it was stated that the major contributing factors to the lost member problem are the inability of superannuation funds to search for duplicate accounts using the Tax File Number (TFN) of members and the ability of an employer sponsor to enrol a new member in a fund with minimal information. Solving these two problems would, going forward, reduce the growth of lost members and enable the introduction of an efficient process for consolidating accounts.

ASFA continues to be of the view that enabling TFNs to be used to search for duplicate accounts and mandating a minimum data standard for recruitment of fund members will deliver a more efficient system where fewer accounts are lost.

ASFA’s comments on the exposure draft are as follows:

1. The definition of “lost member”

The current definition of a lost member in the *Superannuation Industry (Supervision) Regulations 1994* (SISR) is very broad and covers both inactive members and members with unreliable addresses or no addresses at all. Based on the exposure draft, it appears as if a newly established active member (enrolled through an employer sponsor, like a casual employee) could also fall within the definition of “lost member account”. This could happen where the employer has provided an incorrect or no address for the member and the account balance is below \$200 at the time of the “unclaimed money day”.

However, ASFA understands that the intent of the amendments is to catch those members already falling under the definition of lost member where their accounts are below \$200. In other words the amendments are not imposing any new standard or definition so as to catch within its intent members who were not previously defined as lost members.

Based on the feedback from its membership, ASFA suggest that there is an element of confusion in regard to the strict application of 24B(1) of Part 4A of the exposure draft. It is therefore recommended that the intent of section 24B(1) of Part 4A be supported with an appropriate statement in the Explanatory Memorandum (EM) that reflects the contention that the legislation is not imposing any new standards onto the definition of lost member.

2. Trustees to determine if the fund has insufficient information to be able to identify the owner of the account at any time in the future

Sub section 24B(2)(c) requires a super fund to form a view on whether it is possible to pay a benefit at any time in the future having regard to the detail the fund holds on a member. In attempting to explain this requirement, example 1.1 in the EM is unhelpful. The example refers to a member whose only known detail is his or her name. The member also has had no contributions made within the last 5 years. The example goes on to say that even though the member makes contact with the fund and provides valid proof of identification documentation, the fund still, in terms of the example, could not be satisfied that the individual is the person on whose behalf the account was opened. Subsequently the account is an inactive account of an unidentifiable member and is therefore a lost member account.

ASFA understands that the intent of this example is to make it clear that where a fund holds an absolute minimum amount of data on a member such as a name like D Duck, M Mouse or J Smith, for example, that it would be difficult for the fund to satisfy itself that any inquirer could be the person on whose behalf the account was opened. Whereas this is true to an extent, the wording in the example is unhelpful in that it fails to appreciate that in practice, a fund is unlikely to know whether it is possible to pay a benefit, until after it has assessed an application to access the account.

The conflict here for Trustees is that under sub section 24B(2)(c) they are required to make a judgment as to whether it is possible to pay a benefit at any time in the future, whereas often even though the data held on a member might be limited, once they interact with that member by way of conversation or correspondence (usually around the time an application to access the account is received), sufficient extra data can be obtained to make possible a benefit payment if necessary.

Trustees are therefore challenged by this notion of determining a future event based on current circumstances when industry practice has shown that those circumstances can change dramatically once contact is made. To this extent ASFA suggests that there is need for further guidance in relation to sub section 24B(2)(c). At the very least example 1.1 in the EM needs to be reworked to acknowledge this conflict and to provide some comfort that the subjective nature of this requirement has some corresponding relief at Section 24D where the Trustee has 30 days to make good any error or omission.

3. Loss of insurance cover

Further to point 2 above, ASFA is concerned that where a lost member who has been inactive for 5 years is transferred to the ATO, that there may be a subsequent loss of insurance cover. It may not be a big issue with accounts under \$200, but it may well be for those that are paid to the ATO based on the 5 year no transaction rule, as the account balances here could be substantially more than \$200 and are likely at times to have insurance.

Since the Trustee is required to make a judgment call in line with sub section 24B(2)(c) that having regard to the information held by the Trustee it will not be possible to pay an amount to the member at any time in the future, there has been some concern expressed by ASFA members that this may lead to complaints that Trustees had not done enough to find the member.

ASFA recommends that further guidance be issued including an indemnity to Trustees insofar as the potential loss of insurance cover for members that may occur as a result of the account being transferred to the ATO.

4. Family Law splittable amounts and lost members

Section 24E(4) states that where a member's account is a lost member account, and a non-member spouse is entitled to payment of an amount as a result of a payment splitting order under the *Family Law Act 1975*, the fund is to separate the member's account into two components and pay both to the ATO regardless of whether the non-member spouse is a lost member.

ASFA would firstly like to point out that Regulation 11 of the *Family Law (Superannuation) Regulations 2001* defines what an unsplitable interest is. Paragraph 11(1A)(b) of these regulations states that a withdrawal benefit that is less than \$5000 is not able to be split. However, example 1.8 in the EM provides a scenario where a benefit of \$180 is split. ASFA suggests that the example be reworked to reflect the current Family Law requirements.

5. Unrestricted non-preserved benefits

Where a lost member account is paid to the ATO more relevantly under the last 5 years inactive scenario, some of the account may be unrestricted non-preserved. However, there is no reference to the fund having to provide preservation components to the ATO, and more importantly, Section 24G does not cater for the ATO being able to pay an unrestricted non-preserved amount directly to the member. The way Section 24G reads means that monies can only be paid directly to the member if the amount is under \$200 or the member is over the 'eligibility age'.

This may be by design, but ASFA believes that the ATO should be at least trying to ensure that if there is an unrestricted non preserved amount, it should be able to be paid direct to the member just as it would have been had it been paid from the fund.

It is also highlighted that the mechanism for reporting and paying lost members accounts to the ATO needs to be supported by appropriate data specifications that allows for the reporting of the components of the benefit.

6. Administration Efficiency

ASFA believes that the reporting and payment process for lost member accounts as proposed within the exposure draft is overly complicated and administratively inefficient.

The exposure draft proposes that providers undertake the following administrative steps in the reporting and payment process:

- i. Determine if a member is a lost member, as defined by the SIS Regulations, at the unclaimed money date (currently that is either 30 June or 31 December).
- ii. Determine those lost members included under point 1 whose account balance is under \$200 at the unclaimed money date or who have had no transactions within the 5 years prior to the unclaimed money date.
- iii. For those members included under point 2, calculate the member's account balance as at the unclaimed money date.
- iv. Just prior to the time that payments are due to be made to the ATO – which can be anytime between the unclaimed money date and scheduled statement date, determine if the members included under point 2 still meet the definition of a lost member account.
- v. If a member still meets the definition, then determine each of the following so each amount can be reported to the ATO: balance at unclaimed money date, changes to the balance since the unclaimed money date, balance at the date the payment is to be made. A payment is then made for the balance at the payment date for these members.
- vi. If a member does not still meet the definition then determine the following so each amount can be reported to the ATO, notwithstanding that no payment is required to be made: balance at unclaimed money date, changes to the balance since the unclaimed money date, details of payment already made to the member, balance at the date the report is sent.

This process is over complicated as:

- i. There is a need to undertake cross referencing of whether a member meets the definition of a lost member account at the unclaimed money date and again just before a payment is made.
- ii. Balances and the actual change in the balance have to be calculated for reporting purposes at two separate points in time – the unclaimed money date and the payment date
- iii. For members who meet the definition of a lost member account at the unclaimed money date but do not meet the definition at the payment date, they still need to be reported to the ATO, notwithstanding that no payment is required to be made.

For administration efficiency ASFA would like to suggest the alternative process:

- i. Funds be required to report on and make payment to the ATO for lost member accounts at any time that is after the unclaimed money date but before the scheduled report date.
- ii. Only members who meet the definition of a lost member account immediately before a report and payment is to be sent need to be reported. This includes determining whether a lost member has an account balance under \$200 at the payment date rather than the unclaimed money date as currently proposed in the exposure draft.

- iii. The information reported to the ATO only includes the member's details and the balance paid to the ATO – together with the necessary tax and preservation components. There should be no need to report the balance at the unclaimed money date and changes to the balance. And there should be no requirement to report any member for whom a payment is not required to be made.

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Yours sincerely

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