

The Association of Superannuation Funds of Australia Limited  
ABN 29 002 786 290  
ASFA Secretariat  
PO Box 1485, Sydney NSW 2001  
p: 02 9264 9300 (1800 812 798 outside Sydney)  
f: 02 9264 8824  
w: [www.superannuation.asn.au](http://www.superannuation.asn.au)



14 June 2011

The 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)

Dear Manager,

**RE: Draft Superannuation Industry (Supervision) Amendment Regulations 2011**

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission with respect to the above draft regulations that were released for comment on 24 May 2011 that will:

- facilitate the confiscation of superannuation funded directly with the proceeds of crime;
- amend the list of EPSS schemes; and
- amend the operation of SIS with regards to when a public sector scheme ceases to be an EPSS Scheme.

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds as well service providers some of whom deal with self managed superannuation funds (SMSFs), has over 90% of the approximately 12 million Australians with superannuation as members. ASFA members manage or advise on the bulk of the \$1.3 trillion in superannuation assets as at September 2010. ASFA is the only organisation that represents all types of superannuation funds and associated service providers.

**Comments on the draft regulations**

*EPSS Schemes*

ASFA supports the proposal to amend the list of EPSS Schemes to remove from the list those schemes that have chosen to be APRA regulated. ASFA also supports the

proposal to clarify within the regulations the time at which an EPSS Scheme ceases to be an EPSS Scheme.

ASFA considers that the proposed wording will be effective in achieving this result.

#### *Information Provided in a PDS*

ASFA appreciates the inclusion of the note after the example in subregulation 4.02(2) as to the operation of the information requirement under the new Short PDS regime and its use of 'incorporation by reference' to provide certain required information.

ASFA considers that the wording is sufficient to convey the necessary information about the changed disclosure requirements.

#### *Proceeds of Crime*

ASFA is supportive of the policy that removes the capacity of criminals to recover of the proceeds of crime by placing them within the superannuation system and beyond the reach of court issued forfeiture orders.

ASFA notes that the actual terms used in the various listed laws are 'forfeiture order' and 'confiscation order'. As such it is suggested that both terms be included in the explanatory memorandum.

ASFA considers that the wording of items 3, 4, 5, 6 and 7 in Schedule 1 will be sufficient to achieve the objective of permitting trustees to comply with a court order to pay the proceeds of crime to the crown.

ASFA notes that under the listed law 'restraining orders' and 'freezing orders' may also be issued and that where this is the case they must generally be in force for at least 6 months prior to the property being forfeited. ASFA further notes that at least one state also has a register of restraining orders.

As the SIS regulations will now permit the release of a member's benefits in response to a forfeiture order, this means that a fund trustee must recognise and comply with such an order. However, it is not clear whether it also follows that a trustee must recognise and comply with a restraining or freezing order with respect to the member's benefits or whether SIS still has precedence when a member requests the trustee to rollover or cash their benefits. As penalties exist for contravening such orders ASFA seeks clarification on the applicability of a restraining or freezing order to a superannuation fund trustee and its interaction with member requests for the rollover or payment of benefits. We note that should restraining or freezing orders not be applicable then there is the potential for the policy objective to be frustrated.

ASFA has long been concerned with avoiding the possibility that trustees become embroiled in legal disputes involving family court and insolvency/bankruptcy matters. Our preference is that a trustee merely be required to comply with a court order.

To this extent, ASFA seeks clarification that a trustee should not be obliged to participate

in a 'consent order' process or be expected or required to lodge an objection to any orders on behalf of the member.

ASFA would also like to raise the issue of the short timeframe to implement the necessary system changes by 1 July 2011. To this extent, it would be of assistance if:

- Attorney General's Department could advise:
  - Whether there is any intention to create a standard form for use by the Commonwealth and the States and Territories for serving these orders.
  - Where such requests will come from (which courts etc).
  - Whether there is a standard time for payment.
- The Privacy Commissioner could advise if there are any privacy issues in advising on a member statement that a payment had been made to the Commonwealth or to a State or Territory government as "forfeiture of the proceeds of crime".
- ASIC could advise their view on the following:
  - What disclosure is required to members generally about the new provision?
  - What disclosure is required to the member whose benefit is subject to a forfeiture order?
- APRA could advise their view on the following:
  - Whether a payment under a forfeiture order should be treated as a benefit payment and not as a refund of contributed amounts.
  - How such a payment should be reflected on the member's statement.
- The ATO could confirm that such a payment is a crystallisation event and that the proportioning rule applies.
- AUSTRAC could advise whether the serving of a forfeiture order places an obligation on the trustee to lodge an AML/CTF suspicious matter report.

Should you have any questions please contact our Principal Policy Adviser, Robert Hodge, on 02 8079 0806.

Yours sincerely



David Graus  
General Manager, Policy & Industry Practice