

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: 1300 926 484  
w: [www.superannuation.asn.au](http://www.superannuation.asn.au)



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Chris Denney  
Contributions and Accumulations Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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

Dear Mr Denney,

## **EXPOSURE DRAFT: SUPERANNUATION DATA AND PAYMENT STANDARDS**

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in response to the call for comments on the above exposure draft legislation and explanatory statement.

### **About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

### **Comments on the Measure**

ASFA is strongly supportive of the Government's intention to mandate the use of data and payment standards for the superannuation industry.

This enabling legislation is the first step towards achieving that goal and ASFA notes that draft standards for superannuation rollovers and superannuation contributions and member enrolments were released for comment in late 2011. ASFA considers it essential that the data standards be supported by a comprehensive framework that includes security protocols, performance standards, roles and responsibilities, web service end point, governance standards and proof of identity standards. Without this clearly defined framework there will be difficulty in the impacted parties implementing the standards in a manner that achieves the desired efficiencies.

ASFA considers the SuperStream measures to be the key component of the Government's Stronger Super reforms as they have the greatest potential to improve members' retirement outcomes through the creation of a more efficient superannuation system.

ASFA is supportive of the proposal to insert the enabling provisions in the SIS Act with the detailed requirements being made through regulation.

### **Comments on the exposure draft legislation**

On our reading, the legislation, as drafted, is sufficient to achieve the broad objectives for which it is designed.

However, it remains unclear what role trustees of superannuation entities play in enforcing compliance with the standards. The legislation states that non conformance with the standards does not affect the validity of the transaction. This would indicate that the non-conforming transaction may still be accepted and processed by the superannuation entity. Whilst it is clear that the person providing the information in a non-compliant format is committing an offence, it is not clear whether the recipient of the data commits an offence by receiving the data in the incorrect format. ASFA seeks clarification of this issue either in the legislation (if that is required) or by including in the explanatory memorandum a statement as to how these provisions operate to achieve full compliance with the legislation.

It would also appear that there is no obligation on the recipient of the data to report non-conformance to the regulator. This could lead to the situation where detection of non-conformance relies solely on the diligence of the regulator. Throughout the Simpler Super and Stronger Super consultation processes ASFA has consistently argued that superannuation funds have a role to play in assisting the regulators to achieve compliance with the various superannuation laws and that there should be an express obligation on a fund trustee (and its agents) to report to the appropriate regulator any identified non-compliance. ASFA still holds this view.

ASFA considers that ultimately, true conformance with the standards will only be achieved by ensuring that arrangements cannot be put in place that circumvent the fundamental intention of the legislation. If the result is that employers and funds can continue to process transactions under current arrangements, even with the imposition of administrative penalties, then the desired improvement in processing arrangements will not be achieved.

### **Item 30**

This item refers to superannuation data and payment standards issued by the Commissioner of taxation under section 34M.

We note that there is no section 34M in the draft and that subsection 34K(3) states that the 'Commissioner of Taxation may, ....., determine standards ... relating to superannuation data and payment matters'.

### **Section 34Q – Regulator’s power to give directions to certain circumstances – trustees of superannuation entities**

Subsection 34Q(2)(a) requires the regulator to give consideration to the harm that may be done to the interests of beneficiaries of the superannuation entity.

Given that the standards will also enable the enrolment on new members by standard employer sponsors, should 34(2)(a) also refer to potential beneficiaries of the superannuation entity?

### **Division 3 – Infringement notices**

#### **34S When an infringement notice may be given**

Subsection 34S(1) refers to a person who 'has contravened an offence of strict liability in Division 2'.

ASFA considers that the more conventional expression would be "commits an offence of strict liability under Division 2' or 'contravenes an offence of strict liability provision in Division 2'.

In the interests of clarity of understanding and ease of interpretation ASFA requests that the use of the following phrases in Division 3 be reviewed:

- contravened an offence of strict liability in Division 2
- contravention of an offence of strict liability in Division 2

## **Part 2 – Application**

### **45 Application**

This section states that the standards will apply to small employers from 1 July 2015 or a later date if so prescribed in the regulations.

ASFA urges that the 1 July date not be extended and that urgent consideration be given to requiring small employer to be compliant from 1 July 2014. These employers (i.e. those with fewer than 20 employees) currently have access to the Small Business Superannuation Clearing House, a free service provided by the Government through the Department of Human Services’.

A concerted effort should be made by all parties (Government, superannuation funds, and both superannuation and employer industry associations) to encourage small employers to commence using this service immediately.

### **Comments on the exposure draft explanatory memorandum**

#### ***General Comments***

ASFA considers that generally the Explanatory Statement adequately explains the scope, purpose and operation of the provisions.

However one matter that requires further explanation is the operation of the penalty provisions in an environment where transactions are batched together for processing environment. For example, if a single batch of data contains a single error that is repeated across several thousand transactions is that a single contravention or multiple contraventions? ASFA considers that, as these penalty provisions will be administered by both APRA and the ATO, the explanatory statement should provide guidance as to the Government’s expectation for the administration of the penalty provisions.

#### ***Specific comments***

##### **Paragraph 1.25**

The word ‘and’ should be inserted after the words ‘regulations and standards’.

##### **Paragraph 133**

This paragraph deals with the capacity for the Commissioner to develop regulations that will prescribe that superannuation entities are to nominate (and maintain) bank account details connected to a product.”

There are industry concerns about the privacy of this information, the capacity for misuse of the account numbers and the potential to increase fraud risk. ASFA seeks the inclusion of a statement that, in developing the processes by which persons can confirm the validity of a banking account number consideration will be given to addressing these industry concerns.

##### **Paragraph 1.40**

This paragraph deals with the capacity of the standards to adopt or incorporate other third party standards that exist. ASFA supports this and requests that the paragraph be expanded to include a broader list of existing payment standards that are considered, at this stage, to be candidates for adoption. For example it would assist the industry if an indication could be given as to the acceptability of Off System BSB, Direct Debit and BPay as payment standards.

##### **Paragraph 1.75**

The words ‘to believe’ should be inserted after the words ‘reasonable grounds’.

**Paragraph 1.77**

The word 'to' should be inserted after the words 'is not liable'.

**Paragraph 1.91**

The word 'have' should be replaced with 'has'.

\* \* \* \*

If you have any queries or comments regarding the contents of our submission, please contact our principal policy adviser, Robert Hodge on (02) 8079 0806 or via e-mail to rhodge@superannuation.asn.au.

Yours sincerely  
Margaret Stewart



General Manager, Policy and Industry Practice