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

Email: fundnotification@treasury.gov.au

Dear Manager,

SUPERANNUATION FUND NOTIFICATION

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission with respect to the exposure draft legislation Superannuation Legislation amendment (Stronger super and Other Measures) Bill (No. 2): Reporting to members.

About ASFA

ASFA is the peak policy, research and advocacy body for Australia's superannuation industry. It is a not-for-profit, sector-neutral, and non-party political national organisation whose aim is to advance effective retirement outcomes for members of funds through research, advocacy and the development of policy and industry best practice.

ASFA's focus is on whole of system issues and its core strategies are aimed at encouraging industry best practice, advocating for a system that plays a productive role in the Australian economy, and ensuring the industry delivers on its primary purpose of delivering decent retirement incomes.

Our membership - which includes superannuation funds from the corporate, industry, retail and public sectors, and, through its service provider membership, self-managed and small APRA funds - represents over 90 per cent of Australians with superannuation.

General Comments

ASFA notes that the intent of the exposure draft legislation is to implement the Government's Securing Super proposal that fund members are to be regularly advised by their fund as to whether or not contributions had been received in the relevant period.

We also note that there are two components to this, notification by Superannuation funds of receipt of the contributions and notification by employers of intended payment date of contributions. Of the two components ASFA considers that the employer payslip reporting component is by far the most important. Once armed with information provided by employers about when a contribution is expected to be paid, or has been paid, an employee has sufficient

information with which to contact their fund and confirm payment. All funds currently have processes in place to make the information available on request.

To this extent, ASFA considers that the superannuation fund notification of contributions requirement to be somewhat redundant and only of assistance to those members who decide to not monitor contributions based on the employer's payslip provided information. It would appear that the superfund notification primary purpose is to alert a fund member that the payslip information provided by the employer may be incorrect. That is the employer has not made contributions as advised or the employer has made contributions but not notified the employee of its intention to do so.

ASFA is concerned that the fund notification requirements as drafted:

- are too prescriptive
- do not recognise existing processes
- Do not recognise existing reporting requirements
- do not recognise specific circumstances such as insurance only products
- are poorly targeted, and
- will impose significant additional costs on many funds and their members

These issues are canvassed below in the Specific Comments section below.

Recommendation

ASFA strongly recommends that there be a fundamental rethink of the notification process due to the number of issues identified with the process proposed in the exposure draft.

ASFA considers that a better approach to the current prescriptive process would be to impose a requirement on trustees to:

- have a process whereby members can readily identify whether contributions have been received from the member or made on behalf of the member¹, and, for each member, do one of the following:
 - advise on a six monthly basis what contributions have been received from the member or made on behalf of the member, **or**
 - establish a personalised online account for the member and advise the member on joining and annually how to access their account information on-line; **or**
 - at least four times a year, advise the member of their ability to access information electronically about contributions that have been made by themselves or on their behalf

¹ This could be through a secure on-line portal or a call centre service

Provision should also be made to enable members to opt-out of the quarterly notification process, a measure not inconsistent with privacy and anti-spam laws.

Fundamentally, if a key objective is to better engage members with their superannuation then the legislated requirement should reflect this and encourage members to use the processes and facilities that are already available to them to confirm that their personal contributions have been correctly received and that contributions that should have been made have been made.

Absent a fundamental rethink of the process, the specific comments below address some of the issues listed above and suggest some amendments that would ameliorate the worst impacts whilst still meeting the intent of the legislation.

Specific comments

Comments on the legislation

The reporting period end dates

Corporations Act 2001 Section 761A defines a six month period as a six month period beginning on 1 January or 1 July.

A quarter is defined as meaning a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

Whilst ASFA notes the intent is for regular reporting and that the quarterly dates correspond with the end of the SG quarterly contribution periods, the dates do not align with the dates by which an employer must meet their SG obligations for those quarters. These dates are, respectively, 28 April, 28 July, 28 October and 28 January. This has implications for the issuing of a notice within 42 days of the end of a quarter. That is, notices must issue within 14 days of the end of the SG payment period.

These dates also may not align with the reporting dates of some funds which use substituted accounting periods. This lack of alignment, when combined with existing reporting requirements, will result in funds being required to report more frequently than contemplated by these new provisions. For example, a fund that is currently issuing six monthly member reports and has a 31 April accounting end of year would be sending at least three detailed reports to members each year, two under this legislation and one or two under its existing reporting arrangements.

Section 1017CA the reporting requirements

The primary focus of this section is to require information about contributions to superannuation and RSA products to be provided to active members. As stated above, ASFA considers this requirement to be supplementary to the important requirement for employers to advise employees of intended or actual contribution dates and amounts. ASFA's strong view is that the requirement on funds should be to either provide a six monthly statement of contributions or more regularly advise members as to how they can electronically access information about contributions.

The contributions to be reported

The explanatory statement notes that the fund notification measure is designed to give greater protection to vulnerable workers from employers failing to pay their employees' superannuation entitlements.

Although specifically targeted at Superannuation Guarantee (SG) entitlements, section 1017CA(1) refers to reporting contributions 'made in relation to the product on behalf of the member'. The words 'on behalf of the member' appear to cover SG contributions, voluntary employer contributions, Salary sacrifice contributions, employee voluntary contributions made by the employer on the employee's behalf and also spouse contributions.

ASFA seeks confirmation that the measure is intended to extend to spouse contributions and clarification in the explanatory statement of the exact contribution types the measure covers.

Similarly, does the legislation extend to Government co-contributions, SHAR and SG transfers from the ATO, and the new low income superannuation contribution rebate, all of which are third party payments?

ASFA also seeks clarification of the requirement to report 'contributions made in relation to the product' where the contributions are from an unincorporated entity and paid out of the business account. Are those contributions to be considered to be paid 'by' or 'on behalf of' the member? Such a situation occurs with insurance-only products. Similarly with insurance-only superannuation products, it is often the case that the insurance policy is owned by the business but the insured is the member. Clarification is sought as to whether these arrangements are subject to the provisions.

The words 'have been made' may also require clarification. For example, where a contribution was received prior to the end of a period but was not credited to the member's account as the recipient member had not been identified has the contribution 'been made'? Where, post both the period end and the notification, the contribution is credited to the members account but the transaction date reflects the date the contribution was received, does this trigger a subsection 1017CA(11) re-notification requirement? These are situations which will be constantly faced by funds and are symptomatic of overly complex reporting requirements.

Exemptions

SMSFs

We note that the reporting requirement does not apply to contributions made to a self- managed superannuation fund. This exclusion would appear to presume that all such funds are self-administered by the fund's trustees. ASFA suggests that, unless an SMSF is self-administered by the fund's trustees then the need of the member for the report is no less than that of a member of an APRA regulated fund, including a SAF.

Risk only insurance products

Where an exemption is warranted is in respect of risk only superannuation funds. These are super accounts which are set up solely for holding an insurance policy. Premiums are typically paid annually, members can elect to pay the premium in a number of ways (e.g. employer initiated contribution, personal after-tax contribution, partial rollover) but it is likely that very few if any contributions would be mandated SGC. Logistically, the value of the contribution must match the value of the annual premium and members can't contribute throughout the year so

that they have accumulated sufficient balances to pay the annual premium. This further marginalises the ability for members to use SGC to fund these premiums.

The administration arrangements around these products are that the client would receive a policy renewal notice informing them of the new premium, and have a defined period to make a contribution or a rollover. Once the contribution or rollover is received, the client would receive a confirmation that the annual premium has now been paid, in essence confirmation that the contribution or rollover initiated by the member has been received by the fund. Members would also receive an annual periodic statement in the prescribed format which would provide a full transaction listing.

ASFA considers the requirement to issue quarterly or half yearly communication to members of these risk only funds is unnecessary due to the premise for establishing the account, the type of contributions typically made (generally member initiated), the frequency of these contributions and the confirmation by the fund that the 'premium' has subsequently been paid.

It is suggested that 1017CA(2) be amended by adding:

- (d) *contributions made in relation to a superannuation product that has no investment component (also known as a risk-only superannuation product).*

This suggested amendment incorporates the definition for risk-only superannuation interest that is consistent with other parts of the Corporations Act (e.g. see the recent shorter PDS regime as per regulation 7.9.11K(2)(c) of the Corporations Regulations).

Transaction confirmation arrangements

We further note that the legislation does not contemplate that a superannuation fund or RSA provider currently is reporting, or in future may decide to report, to fund members and RSA holders as and when contributions are received on their behalf.

Noting that the Corporations Act requires a confirmation to issue with respect to non-superannuation transactions, ASFA requests that the proposed notification requirement be amended to recognise that a superannuation provider may wish to introduce a process of electronic or other notification to a member of the receipt of a contribution for or by them at the time of receipt.

To cover this situation it is suggested that section 1017CA(2) include a provision that the requirements of subsection 1017CA(1) do not apply where the member or RSA holder is separately advised of the receipt of each contribution before the end of the period specified in subsection 117CA(3).

Content of the statement

For a quarterly statement, which must be issued electronically, the requirement is that the member must be advised whether contributions have been made on behalf of the member. Concerns have been raised with ASFA about the complexity of the task of personalising the email with information about whether or not contributions have been received.

Given that the aim of the electronic message path is two fold, to confirm whether or not contributions have been received and to refer members to a web portal to access details of the contributions, ASFA requests that consideration be given to amending the requirement in

subsection 1017CA(1)(a) to a requirement to send a quarterly **reminder** to active fund members to go to the funds website and check that expected contributions have been received.

ASFA considers that such a requirement is more consistent with the fundamental objective of improving member engagement with superannuation.

When Statement must be issued

Amongst other things, this section sets out the requirement for when a notice must be issued with respect to a quarter or 6 month period.

Subsection 1017CA(3) requires the statement to be provided within 42 days of the last day of the preceding period (Quarter or 6 months as relevant).

We note that the period of 42 days does not align with any existing reporting requirement.

ASFA has two principle concerns with the 42 day requirement: for quarterly reporting the poor alignment with the SG quarterly compliance dates and for six monthly reporting the lack of alignment with existing statutory requirements. These issues are separately addressed below.

The first concerns quarterly reporting. Many trustees, being aware of the contributions pattern of their contributing employers, may wish to wait until the end of the relevant SG payment period prior to issuing their statements so as to provide a more accurate picture to their members and thus reduce unnecessary calls to their call centres and the number of unwarranted complaints to the ATO. The 'within 42 days requirement' may provide insufficient time for funds to process to member accounts contributions received at the end of the payment period (28 days after the end of the quarter) and generate and issue the relevant advice. This is particularly the case prior to implementation of the new data standards for contributions (1 July 2014 for large and medium employers and 1 July 2015 for small employers). ASFA suggests that, for quarterly notification by electronic means, 56 days following the end of the quarter may be a more appropriate timeframe to meet the needs of both funds and members where employers habitually contribute close to the quarterly contribution deadline.

In setting the electronic reporting timeframe ASFA requests that it be recognised that:

- The actual reporting time frame will vary from fund to fund depending on considerations by trustees of the specific contributions patterns and behaviours of fund contributors
- Trustees will generally establish a consistent quarterly reporting process. That is, once the initial reporting process and period has been established, subsequent reporting would occur at 90 day intervals.

ASFA draws attention to our comments below on subsection 1017CA(1)(a) and the nature of the message to fund members. If accepted, it would resolve this timing issue.

The second concern is with the 6 monthly reporting requirement. Six monthly reporting is to be done on paper by post. In early statements on the proposal and in discussions with government, it was acknowledged that for funds which issue a six monthly (mid financial year) report to members the reporting requirement would be met by this report (subject to it containing the relevant information). ASFA understands that this was to enable funds already providing more regular contributions information to leverage off this existing process and avoid unnecessary costs.

At issue for funds is that, for many, the annual member statement would not normally issue with the new 42 day reporting time frame requirement. Where this is the situation these funds would be required to issue an additional written report to members containing just the mandated information. This would come at a cost of approximately \$1.25 per member plus additional contact centre costs, plus development costs.

ASFA has sought advice from fund administrators on the possibility of issuing the annual report in an earlier timeframe. Funds have advised that, over recent years, there has been a considerable reduction in the timeframe in which annual reports are issued with the vast majority issuing well within the six month legislated requirement. Despite this, due to the number of members, large funds and their administrators would face a number of logistical challenges in using the annual member report to meet the proposed 42 day requirement. The first of these would be finalising the annual report information including signing of on the fund's accounts and crediting rates. The second issue is mailing house capacity. That is, the capacity to issue the required number of mail items over a shorter period of time. The third is contact centre staffing. The higher the number of mail items issued within a given period the greater the number of calls to contact centres and therefore the greater the number of contact centre staff required during the mail out period. Each of these will add costs to the system – an outcome that is counter to the desired outcome of the Government's SuperStream proposals to reduce superannuation administration costs.

Noting that once the initial notification has been made communication with members will then proceed on a six-monthly basis, ASFA requests that the notification provisions be redrafted in consideration of the above. ASFA considers that the proposed time frame be aligned with the existing statutory requirement for annual member statements. That is, for six monthly reports, the statement to the member must be issued within six months of the end of the reporting period.

The format of the statement

Subsections 1017CA(5) and (6) indicate that, depending on the frequency of communication chosen, the method of communication will be either by email, SMS or by paper. While the structure of the provisions suggests that the fund has the capacity to choose the method of communication, in reality the actual method used will primarily be dictated by the availability to funds of members' emails addresses and mobile phone numbers.

ASFA has a view that, on cost grounds, the majority of funds would like to use electronic notification methods, while noting that for high value members a fund may see merit in providing the six-monthly advice of transactions.

However, and of concern, there is nothing in the relevant legislation that requires a member to provide electronic contact details. That is, no matter how efficiently a fund may wish to operate funds are beholden to member behaviour. We fear that the result will be that the majority of funds will be required to prepare paper notifications for a significant number of their members for some considerable period of time to come.

ASFA requests that, consistent with practices in other industries such as share registries and banks, consideration be given to permitting a fund to select a reporting method, members being advised of this, and the member then having the option to choose an alternative reporting method.

The second issue with the mode of communication is that, for six monthly reports, section 1017CA(6) specifies that the statement must be sent to the member by post. Currently many funds have an established process with respect to members who have given consent to receive communications electronically. For these members, statements are either distributed by email, or the member is sent an email advising that the statement is available for download through an electronic portal.

It is requested that this legislation acknowledge the existing Corporations Act provisions regarding electronic delivery of notices.

Notices to be sent to active members

The requirement only applies to active members and a definition of active member is to be included in the Corporations Act at subsection 1017CA(7). ASFA is concerned at the increasing use of the term 'active member' in various contexts and the variation in the definitions.

It is strongly recommended that:

- There be a single definition of who is an active member of a superannuation funds.
- That the single definition be used for all superannuation purposes.
- That the definition be only in the Superannuation Industry (Supervision) Act 1993 (SIS Act), and
- That, where relevant, the Corporations Act refers to the SIS Act definition.

Active member may request statement of contributions

Subsection 1017CA(8) permits a member to request that a fund send the six monthly statement by post. This appears to be superfluous as the current requirement is that these only be issued by post (subsection 1017CA((6)).

The capacity of a member to request that a statement be posted to them having been advised electronically that the information is available electronically seems to be at odds with the spirit of the Government's SuperStream objective of electronic engagement by all players in the superannuation industry.

Web based portal information

Subsection 1017CA(10) sets out the information that must be available to the member where the advice to the member is issued under paragraph 1017CA(1)(a). It includes a requirement to provide 'the date of the transaction'. ASFA is of the view that this date should be the date that would appear on the member's annual statement which is the date from which the member commences to receive the benefit of the contribution. Clarification is sought in the EM that this is the required date and not some other date such as 'the date the payment was received' or 'the date the transaction was processed' or, as an alternative, that the fund can choose to select the date it reports but must do so on a consistent basis for all members.

Correcting of information

Subsection 1017CA(11) requires the fund to advise the member by post and within 14 days of becoming aware that information provided under section 1017CA is incorrect. ASFA is concerned at the short time frame for this action and that the advice must be by post, even where the original advice was electronic.

We request that this provision be revised such and that time allowed is increased and the fund be able to nominate the method of delivery unless the member has specifically requested for all communications to be in writing.

Consent to use electronic notification method

Further to the issue of electronic notification, it appears that the capacity to use electronic notification is dependent on the Corporations Act requirement to first obtain the members consent to receive electronic communications.

ASFA requests that should this be the case then, for the purpose of providing the quarterly advice electronically, the law with respect to this proposed requirement be amended such that the requirement is based only on the availability of the electronic contact details and not on the consent of the member to use the electronic contact details for this purpose. To require otherwise would be counter to the SuperStream objective of moving all parts of the superannuation industry to more efficient electronic processes.

Requirement to retain records

Subsection 1017CA(12) records relating to the issuing of a notice under subsection (1) to be retained for a period of 7 years. This appears to be an inordinately long period of time given that the fundamental the purpose of the report is to encourage the member to more active in relation to their account and to check on the behaviour of their employer, a task which is also possible by using the annual member statement which funds are required to provide to each of their members.

Comments on the Explanatory Statement

Paragraph 22

Item 7 Application, states that the provisions commence on 1 July 2013 and, Item 1 states that six monthly reporting periods commence on 1 January or 1 July and item 4 states that the quarterly reporting periods commence on 1 January, 1 April, 1 July and 1 October.

The effect of this is that the first six-monthly report is due 42 days after 31 December 2014 and the first quarterly report is due 42 days after 30 September 2013.

It would assist the reader if this paragraph was expanded to explicitly state the expected date by which the first six monthly and quarterly reports were to be provided to members.

* * * *

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