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Manager  
Benefits and Regulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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

Dear Manager,

### **SUPERANNUATION DATA AND PAYMENT REGULATIONS (ROLLOVERS AND CONTRIBUTIONS)**

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission with respect to the call for comments on the above exposure draft regulations to support the operation of the superannuation data and payment standards and the accompanying explanatory material.

#### **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.

#### **GENERAL COMMENTS ON THE PROVISIONS AS DRAFTED**

ASFA is strongly supportive of the legislative change to give support to the adoption of electronic transactions in the superannuation industry.

Of concern is the lack of consistency in usage of the terms between the regulations, the message Implementation Guides (MIGs) and the schedules. Some examples include transferring and receiving funds as compared to source and target funds, the interchangeable use of the terms rollovers and transfers, and varying requirements between providing residential address and postal address. While some of these inconsistencies are highlighted in the comments below, ASFA requests that attention be given to ensuring consistent use of terminology throughout and between the various documents.

It would also assist if, in each case where there is a required action for a party, there was a note referencing the penalty provisions that apply where the party fails to undertake the action within the required timeframe.

The comments below are aimed at improving the operation of the provisions.

## **SPECIFIC COMMENTS ON THE PROVISIONS**

### **Regulation 3B.03 Information to be given for register**

The provision appears to allow one only internet protocol address per unique superannuation identifier.

In discussions with the ATO on the design of the register the industry has strongly argued that a fund be permitted to have, for each unique superannuation identifier, a separate internet protocol address for contributions and rollovers. Such an arrangement would support separate arrangements for dealing with contributions and rollovers. This may be particularly relevant should the use of gateways be prescribed for employer contributions

ASFA Strongly recommends that the regulations contemplate and permit such an arrangement and that the design of the register support such an arrangement.

While the focus of this section is the unique superannuation identifier and its associated internet protocol address there is more information that will be required to be on the register. This includes fund name, product name, contact details, commencement date etc. Is there a mechanism contemplated by which this additional information will be mandated by the ATO or is it intended that further regulations will be made?

### **6.33A Request made to receiving fund**

We note, and question, the absence of a timeframe in which the receiving fund must act on a members request and advise the transferring fund of the member's request that their benefit be transferred.

#### **6.33A(2)(d)**

This paragraph requires the member's postal address to be provided whereas Form 2A requires the member's residential address. The terminology needs to be consistent.

#### **6.33A(4)**

This provision states that if the member has quoted their TFN to the receiving fund then the trustee must disclose it to the transferring fund.

However the instruction sheet to Schedule 2A states that the member may write to a trustee requesting in writing that the TFN is not to be disclosed to any other trustee.

ASFA requests that this apparent inconsistency be resolved and that if necessary the relevant part of the Superannuation Industry Supervision Act be reviewed so as to facilitate the movement of TFNs between superannuation entities.

#### **6.33A(5)**

This provision requires the trustee of the receiving fund to be satisfied that the member is aware of their rights to certain information and that the member 'does not require such information'.

Clarification is sought as to whether this wording adequately provides for the situation where the member did require the information but has already received the information.

### **6.33C Trustee may request information or documentation in certain circumstances**

#### *6.33C(1)(c)*

The word 'and' should be removed from the commencement of the provision.

#### *6.33C(d)*

This provision restricts a trustee from only seeking additional information from the member where such information is mandatory information on Schedule 2A or 2B.

ASFA is concerned that this is overly prescriptive and does not provide for the following situations:

- The transaction requested by the member is in progress (e.g. a benefit claim, an insurance claim, a request to switch investment options)
- The fund is the default fund for the member's employer and the employer has not advised that no further contributions will be made with respect to the employee.
- The trustee suspects that the person making the request is not the member nor acting on behalf of the member

ASFA considers that it is necessary for the trustee to seek further information where the trustee has reasonable belief that it is necessary to do so.

### **6.33D Validation of member's details by transferring fund - general**

#### *6.33D(3)*

This provision states that the transferring fund does not need to seek a 299TD(2) notice from the Commissioner where such a notice has previously been provided with respect to the transferring.

ASFA notes that until such time as trustees see merit in modifying their registry systems to capture the necessary level of detail, trustees will seek the 299TD(2) notice with respect to each transfer request.

#### *6.33D(6)*

Further clarification is required as to the meaning of 'make reasonable further enquiries' and specifically at what point in time, and after what effort, it is acceptable for a trustee to 'close' the transfer request.

### **6.33E Validation of member's details – transfer to self managed superannuation fund**

This provision deals with the special requirements where the transfer is to a self managed superannuation fund.

ASFA notes that there is no timeframe imposed on the trustee for compliance with this requirement and suggests that this matter be addressed.

### **6.34 Rollover or transfer of withdrawal benefits**

This regulation deals with the minimum information that a member must provide when requesting a rollover.

#### *6.34(4)*

Part of that information is (see 6.34(4)) 'a unique payment reference number'. ASFA notes that the Message Implementation Guide permits a trustee to 'bundle' several rollovers for a specific fund together and to make a single payment with respect to those rollovers. In that context the

payment reference number is not unique to a specific rollover. ASFA requests that consideration be given to the need for a change in the wording or for a more expansive explanation of the operation of this provision in the explanatory statement.

#### 6.34(6)

This provision requires the trustee of the receiving fund to be satisfied that the member is aware of their rights to certain information and that the member 'does not require such information'.

Clarification is sought as to whether this wording adequately provides for the situation where the member did require the information and has already received it.

The note to this subregulation refers to regulation 7.9.83 of the *Corporations Regulations 2001*. It is our understanding that the regulation has been repealed.

#### 6.34(7)

Regulation 6.34 also states that the information must be complete and that where it is complete the rollover must be completed no later than 3 business days after the trustee received the request (see 6.34(7)).

ASFA is concerned that the provision deals only with receiving the information and not with the accuracy of the information, or any concerns around the identity of the person making the request. That is, the rules operate on the presumption that, having passed the ATO's identification validation process the assumption is that the person who is making the request is the person who owns the benefit. That is, there is no risk of fraud.

ASFA is further concerned that the '3 business day' requirement provision primarily targets members in existing default options and, going forward, in MySuper products. This arises because subregulation 6.34(9) treats an investment in a 'choice' option as an illiquid investment and subject to an 'as soon as is practicable but in no more than 30 days' rollover requirement. As such the 3 day processing requirement:

- Does not recognise existing and long standing arrangements for forward unit pricing,
- Will drive the industry towards the costly introduction of daily unit pricing process and further entrench short-termism in investment decisions (which is counter to the notion of superannuation being a long term savings vehicle)
- Will limit the scope of investment arrangements that trustees will be able to consider for MySuper products to the detriment of members invested through those products.

It also does not contemplate that other member initiated actions may be in process. ASFA's strong preference is that:

- The time frame for default and MySuper members be the same as applies to members who make an investment choice under regulation 4.02. (That is, the provision should be the same as 6.34(9)(a) 'the rollover or transfer is made as soon as practicable, and, in any event, not late that 30 days after:') and
- The regulations define the term 'as soon as practicable' to provide clear guidance to trustees of:
  - An expectation that the rollover be completed in 3 business days, and
  - The range of matters that may reasonably cause a trustee to delay rolling over the benefit beyond the 3 business days expectation.

ASFA further suggests that the exemption for choice investments made under regulation 4.02 be removed from subregulation 6.34(9) which sits under the heading *Timeframe – illiquid investment on or after 1 July 2007* and be included under the heading *Timeframe – general*. The current location has the potential to mislead members as to the true liquidity of these investments.

ASFA further recommends that the behaviour of the industry be monitored with a view to amending the provision should the Government consider that the objectives of SuperStream are being defeated by unwarranted behaviour by trustees.

As an alternative to the current design, perhaps consideration could be given to having a single rule such that once the trustee is satisfied with the bona fides of the applicant, the members benefit entitlement amount has been identified and the members benefit has been converted to cash (where necessary), the benefit must be rolled over or transferred within 3 business days. Separate provisions would continue to apply with regards to the notification of members about the liquidity of investments.

#### **6.34A Member details for rollover or transfer**

This provision sets out the member details that must be provided by the transferring fund to the receiving fund. One of those requirements is ‘the member’s postal address’. Form 2A and 2B require the provision of the member’s residential address.

ASFA requests that his inconsistency be resolved.

#### **6.34C Receiving fund must allocate amount to member**

Subregulation 6.34C(2) requires the receiving fund to allocate the money to the member’s account within three days of receiving both the specified data and the payment.

In interpreting this provision is the expectation that the three days commences once:

- the money has been credited to the account specified on the register, and
- data has been received that specifies an active account for the member?

If this is not the expectation then ASFA requests that the regulation be amended such that that is the requirement.

#### **7.07A Initial registration of employee**

##### *7.07A2(c)*

The employer is required to provide ‘the employee’s address’. As mentioned elsewhere it is critical that either the terminology be consistent or, in the case of employers, they be required to specify whether they are providing the employee’s residential or postal address.

##### *7.07A(3)*

Sub regulation (3) reads “However, the employer is not required to give the information to the fund if the employee has not given the information to the employer”.

ASFA recommends that, in keeping with the Stronger Super objective to improve data quality within the Superannuation industry, employers should be required to make all reasonable efforts to obtain this information from the employee.

That is, it should not be acceptable for an employer to not ask for the information and then use the non-provision as an excuse for not providing the information to the fund.

### **7.07B Validation of initial registration information**

ASFA notes that the new member's gender is not validated by the ATO service.

Given that insurance is a basic feature of default insurance arrangements and that variation in insurance premiums occurs between genders, ASFA is unclear as to why the ATO does not validate this information.

Verification of gender would assist in the creation and administration of member accounts.

### **7.07C Invalid initial registration information**

ASFA notes that there is the potential for a significant number of initial registrations to be subject to this provision as members, employers and funds come to understand the significance of accurate information and as information is aligned. Where accurate information is not initially provided, and the employer fails to respond, the outcome may be multiple and or lost accounts for the member. Is it anticipated that in the absence of the information being provided by the employer the fund will establish the account and that account will be subject to transfer to the ATO as unclaimed money? ASFA considers that this matter should be dealt with in the explanatory memorandum.

As per the comment above on regulation 7.07B, ASFA notes the inability of a trustee to confirm the sex of the member where that has not been provided.

### **7.07D Employee details for contribution**

*7.07(5) and (6)*

These provisions require the employer to assign 'a unique payment reference number' to a contribution. ASFA notes that the Message Implementation Guide permits an employer to 'bundle' several individual contributions for a specific fund together and to make a single payment with respect to those contributions. In that context the payment reference number is not unique to a specific contributions. ASFA requests that consideration be given to the need for a change in the wording or for a more expansive explanation of the operation of this provision in the explanatory statement.

### **7.07E Superannuation funds must electronically receive contributions and information**

Subparagraph (1)(a)(iii) refers to subregulation 7.07D(1). Should this reference be to subregulation 7.07D(2)?

### **7.07F Incomplete contribution information**

Subparagraph (1)(b)(ii) refers to subregulation 7.07D(1). Should this reference be to subregulation 7.07D(2)?

ASFA is concerned that the only circumstances where a contribution may be returned is where the contribution is not accompanied by the employee's full name. Whilst recognising the additional impost on the employer, ASFA would support the extension of the obligation to include the employee's date of birth as this is required to determine such matters as contribution eligibility, insurance eligibility and the application of the preservation and taxation rules.

### **7.07G Contribution to be allocated to member**

Subparagraph (1)(a)(iv) refers to subregulation 7.07D(1). Should this reference be to subregulation 7.07D(2)?

Subregulation 7.07(2) requires the fund to allocate the contribution to the member's account within three days of receiving both the specified data and the payment.

In interpreting this provision is the expectation that the three days commences once:

- the money has been credited to the account specified on the register, and
- data has been received that specifies an active account for the member?

If this is not the expectation then ASFA requests that the regulation be amended such that that is the requirement.

### **Schedule 2A Rollover initiation request to transfer whole balance of superannuation benefits between funds**

ASFA requests that, in the interests of ensuring that funds are able to comply with the timeframes prescribed by the regulation, the following information about the From Fund be mandatory:

- Fund Name,
- Membership or account number,
- Australian Business Number and
- Unique Superannuation Identifier

ASFA requests that the inconsistencies in terminology between Schedule 2B, the regulations and the current message implementation guide be addressed and resolved.

### **Schedule 2B Rollover initiation request to transfer whole balance of superannuation benefits to your self managed super fund**

ASFA requests that, in the interests of ensuring that funds are able to comply with the timeframes prescribed by the regulation, the following information about the From Fund be mandatory:

- Fund Name,
- Membership or account number,
- Australian Business Number and
- Unique Superannuation Identifier

ASFA requests that the inconsistencies in terminology between Schedule 2B, the regulations and the current message implementation guide be addressed and resolved.

The notes to the schedule dealing with certification of personal documents refers to persons 'with 5 or more years of continuous service'. The *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (No 1)* (AML/CTF Rules) state that this should now be read as '2 or more years of continuous service'. It is requested that. For consistency, the requirement on Schedule 2B be amended to reflect the AML/CTF requirement.

## **SPECIFIC COMMENTS ON THE EXPLANATORY STATEMENT**

### **3B.03 Information to be given for register**

#### *Paragraph 7*

ASFA recommends that the explanatory statement make clear that the unique superannuation identifier is typically a self-allocated number but that 3B.03(1)(b)(ii) also provides for such an identifier being allocated by a commercial provider.

### **6.33 Superannuation data and payment matters**

It would assist the reader if the term 'in writing' were defined. For example, does the term extend to email communications and completing an on-line form?

### **6.33A Request made to receiving fund**

#### *Paragraph 29*

This paragraph should make clear that Form 2A does not apply to a rollover to an SMSF.

#### *Paragraph 31*

This paragraph (and several others) uses the term 'full name'. Clarification is required as to the precise requirement to be met. Is it just given name and last name or does it also include 'middle' names where they exist?

#### *Paragraph 35*

The second sentence in this paragraph is incomplete and its meaning is not clear. has the word 'are' been omitted from between 'amounts' and 'held'?

### **6.34A Member details for rollover or transfer**

#### *Paragraph 78*

The word 'not' is missing before 'be provided'. That is, the paragraph should end with the words 'not be provided'.

### **6.34C Receiving fund must allocate amount to member**

#### *Paragraphs 84 and 85*

Should these two paragraphs be rolled together?

### **7.07A Initial registration of employee**

Should the first reference to 'employee' in this paragraph be 'employer'?

### **7.07H Application**

It would assist the reader if this section began with a paragraph that explained that as there may be different regulations in force for various entities at specific points in time the purpose of 2.07H is to establish which version of the regulations applied to which entities and from which dates.

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

Yours sincerely  
Margaret Stewart



General Manager, Policy and Industry Practice