

Submission to the Senate Economics Legislation Committee Inquiry into the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012

8 November 2012

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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

While the Bill addresses the scope and payment of money which is recognised as being lost or unclaimed under a range of Commonwealth laws, this submission only considers Schedule 4 – Superannuation, which amends the *Superannuation(Unclaimed Money and Lost Members) Act 1999* (SUMLA).

Our understanding of the current operation of the relevant provisions and how the proposed changes will operate is set out in the following paragraphs.

1. Current operation of SUMLA

In general terms, currently, under SUMLA, money held by superannuation funds must be paid to the Commissioner of Taxation (for placement in consolidated revenue) where:

1. the account has been reported to the Lost Members Register as “lost” (as defined in regulation 1.03A the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regs) and the account balance is less than \$200 (“unclaimed small account”);
2. the account has been reported to the Lost Members Register as “lost”, the account has been inactive for five years and the member is considered to be unidentifiable (“unidentifiable members”);
3. the account belongs to a departed temporary resident; or
4. the account belongs to a person who has attained the age of 65, there have been no contributions or rollovers to the account in the last two years, it is five years since the member last had contact with the fund and, since meeting these conditions, the fund has been unable to contact the member after making reasonable efforts.

Regulation 1.03A of the SIS regs contains the definition of when a member is considered to be lost. Regulation 1.03A can be found at Annexure A.

Monies paid to the Commissioner are claimable by the owner. Depending on the circumstances under which the money was paid, claimed monies are paid either directly to the member or to a superannuation fund for the benefit of the member.

Currently interest is only paid in respect of amounts paid to the Commissioner under the departed temporary resident provision and then only in very limited circumstances such as where the person was a former temporary resident but has been granted permanent residency or becomes a citizen of Australia or New Zealand.

2. Proposed operation of SUMLA

This bill proposes to make changes to the first two of the above categories and to the rules around payment of interest.

Specifically:

- the “unclaimed small account balance” test amount of \$200 is to be increased to \$2,000;
- the period of inactivity with respect to the accounts of “unidentifiable members” is to be reduced from 5 years to 12 months; and
- from 1 July 2013, interest will accrue on amounts held by the Commonwealth and will be payable when the amount held is claimed.

ASFA considers that Schedule 4 of the Bill should not be considered in isolation, or in the context of the other changes in the Bill, but rather it should be considered in the context of:

1. the consequences for members when their account is transferred to the ATO;
2. what will happen to the superannuation accounts transferred to the ATO;
3. current proposals for the auto consolidation of accounts; and
4. the significant changes being made to the superannuation industry under the Stronger Super reforms.

2.1 The consequences for members when their account is transferred

2.1.1 Insurance

Currently, the majority of superannuation account balances transferred to the ATO involve only “unclaimed small balance accounts” (those under \$200) and the accounts of departed temporary residents.

Where the “unclaimed small account balances” under \$200 had insurance cover, the cover would generally immediately cease on the transfer of the account to the ATO. Having said this, though, this loss of insurance cover would also occur once the account balance became zero.

Once the small balance threshold is lifted from \$200 to \$2,000 this changes materially.

Where insurance cover is present, that cover is generally able to be funded for many years. (For example, a 25 year old member in an industry fund may have \$300,000 of life insurance cover (death only) for about \$150 per annum.)

ASFA is concerned about the implications of this loss of insurance for members who subsequently die or become disabled when they would otherwise have had insurance cover.

2.1.2 Definition of “uncontactable”

A particular, and separate, issue is with respect to the treatment of “lost” members who are “uncontactable”. The threshold for this status is two pieces of correspondence (or if the trustee chooses, one) returned unclaimed.

Where a member meets these requirements and the fund is unable to find a different address the member must be reported to the ATO as lost. This is the case even where contributions continue to be received by the fund.

It is possible under regulation 1.03A of the SIS Regs for a trustee to “permanently exclude a member from being lost”. It should be noted in this context that the term “permanently exclude” is a misnomer as the trustee is free to determine that a member, or a class of members, who are permanently excluded are not to continue being permanently excluded (in reality the members are simply “excluded” from being lost).

There is, however, a considerable degree of confusion about the scope of the “permanent exclusion” provision, especially with respect to the criteria which can be applied to “uncontactable members” – where the member has contacted the fund after they joined and indicated that they wish to continue being a member of the fund (paragraph 1.03A(2)(b)). Given this uncertainty this provision is not utilised as widely as it could be used.

The SIS regs treat members with returned mail as “uncontactable members” and automatically “lost” (unless permanently excluded) without any reference to activity such as the receipt of contributions. Given that the consequence of being “lost” now may be that the account balance is transferred to the ATO, and that it is nearly 20 years since the SIS regs were enacted, it is worth revisiting the definition.

The initial rationale for the definition of an “uncontactable lost” member was that – if there were returned mail for the member – the member may have lost contact with the fund or even be unaware of the fund in which they were a member. As such, it was decided that they should be reported to the ATO’s Lost Member Register to enable them to be reunited with their fund (should they be lost) and, accordingly, the definition “erred on the side of caution” and was deliberately broad. No consequences flowed for the member from being reported to the ATO as a lost member.

Now that uncontactable lost members could have their accounts transferred to the ATO the definition should be re-examined. Members with returned mail being treated as “uncontactable members” without any reference to activity reveals two main issues in the context of transferring amounts to the ATO

1. it does not make sense to transfer accounts which are still receiving contributions; and
2. in an era where engagement with members is much broader than mailed communications – trustees should be able to recognise that where a member is engaging with the fund, say by accessing their account on-line or dealing with the fund's call centre, they can be considered not to be uncontactable for the purposes of the SUMLA.

2.1.2.1 – Active accounts

The process of being reported to the ATO as uncontactable could happen in as little as 12 months. Under the current \$200 “unclaimed small account balance” rules, it is unlikely that an “active” uncontactable account (i.e. receiving contributions) would be transferred to the ATO. Transfer of these active accounts, however, this may become reasonably common once the threshold is raised to \$2,000.

Where such cases are reported and the account is active the implications are that, when the next employer contributions are received for a member, the fund may need to set up a new account for the member (where this will only happen again).

In a worst case scenario:

- the account will be closed and transferred to the ATO
- a default employer contribution will be made to the fund leading to the creation of a new account the account will be reported to the ATO on the Member Contribution Statement for the year, and
- the ATO will transfer the unclaimed money to the new account in the old fund.

Such a merry-go-round of money would provide no benefit to the member and would create unnecessary costs for funds and for the ATO.

2.1.2.2 Where member engaging with fund

ASFA submits that, for the purposes of the SUMLA, the trustee should be able to determine that an “uncontactable” member, who has had contact with the fund within a specified period (say 2 years), does not need to be transferred to the ATO.

The likely number of accounts affected

Preliminary estimates prepared by ASFA suggest that over 1.5 million accounts on the LMR might be subject to the changed unclaimed super provisions. Reflecting that many of the accounts are in the \$200 to \$1,000 range the average balance is likely to be just under \$400. These figures are consistent with the aggregate revenue figures from the measure that were released in the MYEFO statement.

One major industry fund administrator has indicated that of the 600,000 accounts across a range of funds that have been reported to the LMR, around 370,000 accounts would be closed and paid to the ATO. The administrator has also estimated that around 80% of the accounts that would be closed are associated with the \$2,000 rule change with the remaining 20% of accounts associated with the shorter time of inactivity change.

In terms of insurance coverage, of the 370,000 accounts over one third (around 130,000 accounts) have active insurance. Once such accounts were closed the members concerned would lose their insurance.

In 2010-11 in the superannuation sector as a whole there were approximately 60,000 exits due to potentially insurable events. Based on these numbers of exits and the number of accounts that would be affected by the proposed measure, there could be in excess of 2,000 account holders a year who would otherwise have had insurance cover.

2.2 The process with accounts transferred to the ATO as unclaimed money

ASFA understands that where money is transferred to the ATO as unclaimed, it is proposed that the Commissioner will undertake a process to identify the account holder and a current active account for the member. Where they are successful, the money will be transferred to the member's active account.

It is anticipated that these additional transferred accounts will be subject to a similar process. That is, it is conceivable that the money paid to the ATO by 30 April 2013 will commence to be paid back to funds from 1 July 2013 as funds lodge their annual Member Contribution Statements and the ATO identifies a current active account to which to pay the unclaimed money.

2.3 Current proposed account-consolidation proposals

2.3.1 Intra fund auto consolidation of accounts

Under the Stronger Super reform proposals, from 1 January 2013 through to 30 June 2013 each APRA regulated superannuation entity with five or more members must identify situations where a member has more than one account with the entity. In each of these cases it must then determine whether the member should retain each of those accounts and, if not, consolidate the unnecessary accounts to another account held by the member within the entity.

2.3.2 Inter fund auto consolidation of accounts

Under legislation currently before the Parliament, by 28 October 2013 every superannuation entity must provide to the Commissioner of Taxation a report in respect of the 12 month period ending 30 June 2012 setting out all superannuation contributions received by the entity and listing every account held by the entity on 30 June 2013. Using this information it is proposed that, from 1 January 2014, the Commissioner of Taxation will, under yet to be made legislation, commence an auto-consolidation of accounts process. Under this process it is proposed that:

- the Commissioner will:
 - identify members with active accounts with an account balance of less than \$1,000;
 - identify a target active account to receive the inactive accounts; and
 - notify the trustee holding the target active accounts of the identified inactive accounts.
- On receipt of the notification from the Commissioner, the trustee will:
 - write to the member advising of the inactive accounts and advising the member that, should they not respond within a set period, the trustee will arrange the auto-consolidation of the identified accounts; and
 - after waiting the prescribed time, arrange for the transfer of those accounts which the member has not advised should be excluded from the process.

ASFA considers that for many of the inactive lost accounts with a balance of less than \$1,000 the auto consolidation process will generate the same outcome as the unclaimed money process, but in an approximately eight month longer timeframe.

2.4 Implications of the proposed change to the SUMLA on the superannuation industry

At present, amongst other things, superannuation funds are grappling with:

- the implementation of the Future of Financial Advice (FOFA) reforms;
- the design, creation and implementation of MySuper products;
- the implementation of the superannuation data and payment standards;
- designing appropriate processes for the intra-fund auto-consolidation of member accounts;
- determining the implications of the proposed expanded APRA data collection arrangements; and
- assessing the implications for funds and trustees of the introduction of APRA Prudential Standards.

In the context of the overall changes being faced by the industry the changes to the SUMLA may appear minor. The exercise, however, is not without cost, particularly so when consideration is given to the number of accounts that may be subject to compulsory transfer.

Unresolved in the auto-consolidation process is what should happen to targeted accounts which currently have insurance attached. Under the proposed change to the SUMLA, accounts transferred to the ATO as unclaimed monies will automatically lose any attached insurance cover. ASFA requests that responsibility for advising members of this loss of insurance cover and the associated consequences be taken on by the Government.

Given this unresolved issue with respect to insurance in the auto-consolidation process, ideally account balances with insurance should not be transferred to the ATO.

If, however, account balances with insurance are to be transferred to the ATO, ASFA further requests that consideration be given to the need to provide statutory protection for trustees to ensure that they are not liable where members lose insurance cover due to the compulsory transfer of an account to the ATO.

Separately, it should be noted that, under the proposed Rollover Standard, a fund receiving a rollover from another fund will also be provided with information about any current insurance held by the member. In the context of auto consolidation of accounts, this would enable the receiving fund to contact the member with a view to the member reviewing their existing insurance arrangements.

RECOMMENDATION

The analysis above indicates that as currently drafted provisions in the Bill would lead to transfers to unclaimed superannuation of a substantial number of accounts which are active in terms of receiving contributions and/or where the member is actively engaged with the fund.

Accordingly, ASFA recommends that if the “unclaimed small account balance” threshold is to be increased from \$200 to \$2,000 then:

- the *Superannuation (Unclaimed Money and Lost Members) Act* should be amended so as to allow a trustee to consider (i.e. permit but not require) , with respect to “uncontactable members”, that - if there is evidence that the member is otherwise engaged with their fund (e.g. email or call centre contact or accessing the account on-line) - other than by receiving mail - the member’s account does not have to be transferred to the ATO; and
- Subsection 24B(1) (small accounts) of the *Superannuation (Unclaimed Money and Lost Members) Act* should be amended such that it does not apply to a lost member account which has received a contribution or rollover in the preceding 12 months.

ANNEXURE A

(1) A member of a fund is taken to be a lost member at a particular time if:

- (a) the member is “uncontactable”, that is, if and only if:
 - (i) the fund has never had an address for him or her; or
 - (ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member’s last known address and returned unclaimed; or
- (b) the member is an “inactive member”, that is, if and only if:
 - (i) he or she has been a member of the fund for longer than 2 years; and
 - (ia) he or she was, at the time he or she joined the fund, a person in respect of whom there was in effect a contribution arrangement of the kind referred to in subsection 16 (5) of the Act (which deals with the definition of standard employer-sponsored member); and
 - (ii) the fund has not received a contribution or rollover in respect of him or her within the last 5 years of his or her membership of the fund; or
- (c) the member joined the fund from another fund or an EPSSS as a lost member; or
- (ca) the member joined the fund from an RSA provider as a lost RSA holder; unless:
 - (d) within the last 2 years of the member’s membership, the trustee of the fund has verified that the member’s address is correct and has no reason to believe that that address is now incorrect; or
- (e) the member is permanently excluded from being a lost member.

(2) For the purposes of subregulation (1), and subject to subregulation (3), a member of a fund is permanently excluded from being a lost member if:

- (a) the member is an inactive member who has indicated by a positive act (for example, deferring a benefit in the fund) that he or she wishes to continue to be a member of the fund; or
- (b) the member has contacted the fund at any time after the time at which he or she joined the fund and indicated that he or she wishes to continue being a member of the fund; or
- (c) the member is a member of a self-managed superannuation fund.

(3) The trustee of a fund may decide that:

(a) a member, a class of members, or all members of the fund cannot be permanently excluded from becoming lost members; or

(b) a member who is, a class of members who are, or all members of the fund who are permanently excluded from being lost is or are not to continue being permanently excluded from being lost.