

File Name: 2015/28

20 October 2015

Senior Adviser
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Senior Adviser

RE: Superannuation Laws Amendment (unclaimed Superannuation Money) Regulation 2015

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in relation to the exposure draft *Superannuation Law Amendment (Unclaimed Superannuation Money) Regulation 2015* (draft Regulation).

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 system. 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 per cent of the 14 million Australians with superannuation.

General comments

ASFA is supportive of measures designed to reduce red tape for superannuation funds and individuals by streamlining lost and unclaimed superannuation administrative arrangements. We are also very supportive of measures that will, where there is no detriment to members, consolidate their superannuation. This being said we are of the opinion that elements of the draft Regulation are likely to result in unintended adverse consequences for members including the arbitrary loss of investment returns and insurance arrangements. There will also be an increase in administrative expense and complexity and red tape for superannuation funds to identify members as lost inactive, contrary to the direction provided by the member.

On a separate matter we have written to the Assistant Treasurer expressing our deep concern with the potential adverse impacts of the proposed increase in the small account balance thresholds – in particular the likely loss of insurance coverage that this is likely to cause.

Specific Comments

We will separately address each of the three measures contained in the draft Regulation.

Measure 1

The first proposed measure allows eligible rollover funds to proactively consolidate accounts they hold into the active superannuation accounts of members without their consent and without a requirement to provide members with a notice under section 1017B of the *Corporations Act 2001* (a 'significant event notice').

While we support this measure, we are of the view that the Australian Taxation Office (ATO) should have a similar obligation to proactively consolidate lost superannuation moneys held by them into active accounts of members.

Further opportunities exist to enable the ATO to more proactively reunite members with their unclaimed super. For example (as outlined in ASFA's February 2014 submission in response to the draft legislation to increase the small lost member account threshold), currently the ATO is only able to repatriate unclaimed super back into the super system when directed to do so by the individual for whom the amount is held. In ASFA's view, the ATO should be given the ability to proactively initiate the repatriation of unclaimed super where it has been able to identify an active account for an individual.

Measure 2

The second proposed measure is designed to ensure that members who interact with their superannuation fund through contemporary means of communication, such as email and online interactions, are not inadvertently deemed to be lost members.

We are very supportive of this measure and believe the alteration to the definition of "uncontactable" members in subparagraph 1.03A(1)(a) of the *Superannuation Industry (Supervision) Regulations 1994* by the addition of the proposed subparagraphs (ia) and (ib) is appropriate to achieve this objective.

We are also generally comfortable with the clarification provided by the proposed subregulation 1.03A(1A) – being that "a written communication includes a written communication by non-electronic means or by electronic means".

This being said, we have concerns that there could be serious unintended adverse consequences from the resulting construction of Regulation 1.03A. We are concerned that a 'bounce back' email received by the superannuation fund from the member could potentially constitute a written communication having "been sent by the fund to the member's last known address and returned unclaimed" (being the test in subparagraph 1.03A(1)(a)(i)(B)). If this is the case it could result in members being deemed uncontactable prematurely.

'Bounce back' emails can occur for a range of reasons – for example because of a failure of the delivery system or an outage or server problem, or because the recipient's email inbox is temporarily full. As a result, a 'bounce-back' is not necessarily conclusive evidence that the member is no longer receiving emails at that address. 'Bounce back' emails are, arguably, less substantive in and of themselves for the purposes of determining that a member is uncontactable.

The current test of determining a member as being uncontactable is that two mailings have been returned to the superannuation fund. As funds typically stagger their written (mailed) communications across the year the current test allows a trustee a reasonable period, following the receipt of an initial piece of returned mail, to use other means to attempt to confirm the member's address before a second piece of mail is returned and the member is deemed uncontactable. In contrast, electronic correspondence might be sent more frequently, and since 'bounce back' emails are virtually immediate, the time available for the trustee to contact members by other means will effectively be reduced.

Our concerns regarding the potential treatment of 'bounce backs' as a 'returned' communication may perhaps best be demonstrated via examples:

- Bounce backs may be received in response to two email communications sent within a short period of time, not because the email address is no longer valid for the member but because issues impacting the recipient's email have not been addressed (for example, the member's in box remains full).
- A bounce back may be received from an email communication due to temporary issues with the recipient's email and while the trustee promptly follows up with a written (mailed) communication, this is returned – whether because the communication was mis-delivered, or because the member has genuinely changed address.

In both scenarios, subparagraph 1.03A(1)(a) would be triggered. Depending on how close that occurs to an unclaimed money day (30 June or 31 December), there may be little time for the trustee to attempt an alternative means of communication, or other means to locate the member, before the member must be reported as 'lost'. Assuming the amount held for the member would also otherwise qualify as either a 'small lost member account' or an 'inactive account of an unidentifiable member' under section 24B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the time available to the trustee to locate the member before their account must be transferred to the ATO will also be limited.

We believe that the receipt of two 'bounce back' emails, in and of itself, should not deem a member uncontactable. At the very least after receiving two 'bounce back' emails the trustee should have the time and opportunity to undertake alternate methods of communication to contact the member prior to the member being deemed uncontactable.

We believe there needs to be further industry consultation on the use of emails, the impact of bounce backs and the timeframes involved in the deeming of uncontactable members.

Measure 3

Measure 3 removes the "employer-sponsored" requirement from subparagraph 1.03A(1)(b) meaning that 'public offer' (choice) members, who have made an active choice with respect to their superannuation arrangements, can be deemed inactive and therefore become lost members.

For a number of reasons we strongly oppose this measure.

'Public offer' members have made an active decision to become members of a fund and will have been required to complete an 'eligible application' (attached to or accompanying a Product Disclosure Statement) to do so. The fact that they have not made a contribution or rollover in a five year period does not necessarily indicate that they are 'lost' according to the common usage of that term, as there may be good reasons why no contributions or rollovers have been made in that period. For example: the member may wish to maintain a balance in an 'inactive' fund to retain

insurance cover or a particular investment allocation, or in preparation for transition to retirement. In addition, it is important to recognise that not all members will receive or make contributions on a regular basis – for example, contributions may be irregular for the self-employed or for people who have irregular patterns of work.

Reporting these accounts as lost is of no benefit to the members and could actually adversely affect them due to inappropriate classification as “lost” resulting in transfer to the ATO. Such detriment may include loss of investment returns and insurance arrangements. It is foreseeable that members may seek recourse from trustees or the government to ‘make good’ this loss.

Extending the inactive member provisions to ‘public offer’ members will require such funds to make further changes to systems and processes – which will add expense, operational risk and red-tape to their operations. Such changes are unlikely to be beneficial to members.

Further, SuperStream has expanded ATO reporting so that the agency has visibility of all accounts and transactions, and account consolidation activity is very much higher. The objectives of SuperStream are therefore being met, and the industry should be supported to continue this activity and not distracted with further changes which are unlikely to benefit members.

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If you have any queries or comments in relation to the content of our submission, please contact Policy Adviser, David Graus, on (02) 8079 0837 or by email dgraus@superannuation.asn.au.

Yours sincerely



Glen McCrea
Chief Policy Officer