

Submission Reference: 2015/28

20 October 2015

## **Superannuation Laws Amendment (unclaimed Superannuation Money) Regulation 2015**

The draft *Superannuation Laws Amendment (unclaimed Superannuation Money) Regulation 2015* seeks to implement three measures designed to reduce red tape for superannuation funds and individuals by streamlining lost and unclaimed superannuation administrative arrangements.

**Measure 1** 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').

We expressed support this measure but argued 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.

**Measure 2** 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 were very supportive of this measure but expressed concern that there could be serious unintended adverse consequences from the resulting construction of the relevant regulation. Our concern relates to the fact that under the current drafting 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) of the *Superannuation Industry (Supervision) Regulations 1994*). If this is the case it could result in members being deemed uncontactable prematurely.

We suggested that the receipt of two 'bounce back' emails, in and of itself, should not deem a member uncontactable and that, 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 also argued that 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** removes the "employer-sponsored" requirement from subparagraph 1.03A(1)(b) of the *Superannuation Industry (Supervision) Regulations 1994* 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.

We did not support this measure as, for the reasons set out in the submission, we do not believe the 'inactivity' test contained in subparagraph 1.03A(1)(b) (and the potential deeming of 'lost') should be extended to apply to 'public offer' (choice) members.