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Manager
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Dear Sir/Madam

Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the exposure draft *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018* (Draft Bill).

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $2.5 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 14.8 million Australians with superannuation.

Key points

ASFA continues to be strongly committed to measures and policies that reflect and support the core role of the superannuation system in providing adequate retirement outcomes for all Australians. Compulsory superannuation plays an integral role in this and while we welcome the measures in the Draft Bill, we consider that more must be done to strengthen and broaden the Superannuation Guarantee (SG) regime.

A necessary element of compulsory contributions by employers on behalf of their employees is that contributions are actually made. Significant non-compliance with SG obligations leads to poorer retirement outcomes for many thousands of employees, resulting in higher Age Pension expenditures by the Government. It is in both the interest of individuals and the community as a whole that required superannuation contributions are made.

ASFA accordingly supports the package of proposed amendments outlined in the Draft Bill, as measures which will strengthen the options available to the Commissioner of Taxation to secure compliance with employers' SG obligations and improve the timeliness and granularity of the information received by the Australian Taxation Office (ATO) from employers and funds about the making and receipt of superannuation contributions. We do consider, however, that:

- further clarity is required around the impact of removing the current biannual reporting requirement for lost members, and its interaction with new reporting to be required under the ATO's proposed Member Account Attribute Service
- the proposed amendment enabling the ATO to provide an employer with information about an employee's superannuation interests, to facilitate the making of a superannuation choice, needs to be tightened to require the employee's express consent to each disclosure.

We also note that the proposals will do little to assist the recovery of employees' unpaid SG entitlements where their employer is or becomes insolvent. ASFA has for a number of years advocated extending the Fair Entitlements Guarantee to cover unpaid SG amounts and was pleased to note recent support for this proposal from the Senate Economics References Committee. We urge the Government to consider this important reform as a matter of priority.

Similarly, ASFA remains of the view that further amendments are required to improve the coverage of the SG regime and address issues related to the adequacy of retirement incomes for all Australians. In particular, ASFA considers it imperative that the current $450 per month earnings threshold, below which an employer is not required to make SG contributions, is removed. We are also of the view that urgent consideration must be given to extending the SG regime to the self-employed, particularly in light of the rise of the 'gig economy' and non-traditional work arrangements.

A. General Comments

The impacts of non-payment of SG on individuals' retirement incomes – and their resulting quality of life – can be devastating. Specific estimates of the extent of unpaid SG vary considerably.

Estimating levels of non-compliance involves a number of challenges, because by its very nature there is little or no documentation or like material relating to payments that should have been made but were not made. That said, all available estimates suggest a substantial number of individuals are not receiving the benefit of all or part of the SG contributions they are entitled to, with the aggregate amount likely to be in the billions of dollars a year. Notably, the ATO has reported a net SG gap for 2013-14 of $2.85 billion, that amount having increased from $1.53 billion in 2009-10[1].

Regardless of the particular estimate selected, the **impact** of SG non-compliance is widely accepted and understood. The Senate Economics References Committee recently noted that:

> *Evidence received by the committee clearly indicates that a failure to adequately detect and address SG non-compliance causes long-term financial detriment to millions of Australian employees, significant competitive disadvantage to compliant employers, and an unnecessary impost to government finances through additional reliance on the age pension.*[2]

[1] Australian Taxation Office, *Superannuation guarantee gap*, accessed on 12 February 2017
[2] Senate Economics References Committee, *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, May 2017, page ix

Addressing SG non-compliance, and ensuring that employees receive their full SG entitlements, will result in an uplift in individuals' retirement incomes and can accordingly be expected to reduce the impact on the Budget for Age Pension outlay.

The Draft Bill puts forward a package of amendments that will, in ASFA's view, improve the capacity of the Australian Taxation Office (ATO) to oversee SG compliance and to take action sooner to address it. ASFA welcomes the extension of the single touch payroll reporting regime to small employers from 1 July 2019 and the strengthening of the ATO's powers.

We were also pleased to note the Government's related announcement that $7.5 million of additional funding would be provided to enable the ATO to improve its processes for recovering unpaid SG[3] – over recent years ASFA has consistently called for a targeted increase in funding to enable the ATO to more actively pursue employer non-compliance.

However, we consider that these measures will be of little practical effect in the significant proportion of cases where the non-compliant employer entity is or becomes insolvent. Employer insolvency is recognised as one of the major contributing factors to unpaid SG, and the ATO has acknowledged that around 50 per cent of SG debts they deal with relate to insolvency[4].

For this reason, ASFA has for some time called for the inclusion of unpaid SG entitlements in the Fair Entitlements Guarantee (FEG). We have estimated that this would cost up to around $150 million per year, with up to 55,000 individuals affected. However, we note the Budget cost and numbers benefiting would both be dependent on the number of applications being made by those administering the insolvency of companies -a liquidator may not always make an application, depending on the amounts involved and the funds available for the administration of the insolvency.

The Superannuation Guarantee Cross-Agency Working Group noted that expanding FEG to include Superannuation Guarantee contributions would ensure employees' retirement savings are not improperly diminished in circumstances when their employer goes into liquidation without having met its obligations[5]. However, the Working Group argued against inclusion on the basis that it would have a Budget impact and that superannuation contributions are not immediately accessible by employees, unlike wages. We also acknowledge the view of the Department of Employment that the actual cost might be higher, particularly once increased administration costs for the FEG scheme – arising from a significant increase in the number of claims - were taken into account[6].

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[3] The Hon Scott Morrison MP, Treasurer and Senator the Hon Mathias Cormann, Minister for Finance, *Mid-Year Economic and Fiscal Outlook 2017-18*, 18 December 2017, page 118; The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, *Turnbull Government backs workers on superannuation*, 29 August 2017

[4] Australian Taxation Office, *Superannuation guarantee gap*, accessed on 12 February 2017

[5] Cross Agency Superannuation Guarantee Working Group, *Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services*, 31 March 2017, paragraph 4.125

[6] Senate Economics References Committee, *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, May 2017, recommendation 24, pages 80-81

ASFA does not consider these arguments to be compelling. The cost is, in ASFA's view manageable within the overall Budget context and other initiatives of the Government are likely to decrease the future level of SG non-compliance. Superannuation contributions in many instances have led to wages being lower than they would otherwise be and it is unfair to carve out unpaid SG contributions from worker entitlements covered by the FEG. We were pleased to note support for the proposal from the Senate Economics References Committee, which recommended that "the relevant government agencies undertake further research into the fiscal and legislative impacts of an expansion of the current Fair Entitlements Guarantee scheme to cover unpaid SG entitlements"[7].

We would also encourage the Government to proceed with measures to prevent employers taking advantage of employees' salary sacrifice contributions to reduce their SG obligations, and welcome the Minister's confirmation of the Government's commitment to that reform[8].

ASFA also remains of the view that further amendments are required to refine the coverage of the SG regime and improve the adequacy of retirement incomes for all Australians.

In particular, ASFA considers it imperative that the current $450 per month earnings threshold, below which an employer is not required to make SG contributions, is removed. In general terms, the existence of the threshold penalises low-income earners, permanent part-time workers and those with multiple jobs, who receive little or nothing in the way of SG contributions. ASFA estimates around 365,000 individuals (220,000 women and 145,000 men) would benefit from the removal of the threshold by receiving higher retirement savings. Adopting this measure would help redress the imbalance between average retirement balances of men and women.

We are also of the view that urgent consideration must be given to adjusting the superannuation policy settings in response to changes in the nature of work in Australia[9]. This should include:

- recognition of the impact of the 'gig economy' by creating a new category of worker subject to SG arrangements, that of 'dependent contractor'. The gig economy is an entrenched feature that is set to become more pervasive. While economic activity and employment facilitated through web-based platforms currently represents only a small share of the broader economy, the volume of activity is growing fast and platforms are expanding to encompass a wider variety of professions and industries. ASFA considers there is a need for greater certainty around the application of the legislative framework to gig economy workers.
- introduction of measures to discourage 'sham contracting' arrangements.
- extending coverage of the SG regime to the self-employed. Around 20 per cent of self-employed people currently have no superannuation, and the rise of the gig economy will lead to a larger proportion of workers who have work arrangements not covered by current SG arrangements. A considerable proportion of self-employed people also do not own a business with any material goodwill or value, other than their labour.

[7] Senate Economics References Committee, *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, May 2017, recommendation 24, pages 77 - 82

[8] The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, *Consultation on protection your superannuation entitlements*, 24 January 2017,

[9] For mo*re details, refer ASFA, Submission to The Treasury, ASFA Pre-Budget Submission for the 2018-19 Budget*, February 2018

ASFA is generally supportive of the proposed changes but is concerned they will do little to assist the recovery of unpaid SG entitlements in cases of employer insolvency. ASFA recommends the Government gives urgent consideration to extending the Fair Entitlements Guarantee to cover unpaid SG entitlements.

ASFA also considers that further amendments are required to refine the coverage of the SG regime and improve the adequacy of retirement incomes for all Australians – including removing the $450 per month earnings threshold for SG contributions and extending the SG regime to the self-employed.

B. Specific comments in relation to the proposed amendments

1. Directions and penalties in relation to SG charge – Schedule 1

1.1 Education directions

ASFA considers the proposed education directions power, contained in new Division 295 in Schedule 1 of the *Taxation Administration Act 1953* (TAA 1953), to be appropriately targeted at those in an executive decision-making position within an employer. It would not, in our view, be appropriate to permit a direction to be issued in relation to an individual who held mere *functional* responsibility for an employer's SG compliance, without the requisite control – one can readily envisage a situation where a payroll clerk, whose duties include payment of employees' SG entitlements, is instructed by their employer to delay making such a payment. Accordingly, it is entirely proper that the range of individuals against whom an education direction may be made is identified by reference to their role as a controller of the employer or their involvement in the making of business decisions.

We note that the Commissioner may approve courses of education for the purpose of the education direction. Such courses may be provided by the ATO, or by another entity. The Draft Bill specifies that fees may be charged for such courses, but does not stipulate any other matters in relation to educational courses. In ASFA's view, the Draft Bill should require the Commissioner to publically specify the minimum requirements for a course to be approved for the purpose of an education direction. This will enable educators to assess whether they wish to provide such courses and, if so, to formulate their course design. It will also provide a measure of transparency and reassurance to stakeholders as to the effectiveness of the directions power as an integrity measure.

1.2 Direction to pay SG charge

ASFA supports the Commissioner being provided with a directions power to address an employer's failure to pay SG charge and the creation of a criminal offence for failure to comply with a direction. However, it is unclear how effectively these address non-compliance by corporate entities.

The liability under proposed new Division 296 of Schedule 1 of the TAA 1953 is imposed on the party responsible for the payment of an amount of SG charge – that is, it is imposed on the 'employer', rather than on the individual(s) who are in effective control of the employer as is the case for proposed new Division 295. While the *Superannuation Guarantee Administration Act 1992* (SGA Act) provides that the public officer of a company "is answerable for doing all acts required to be done by the company under this Act, and in case of default is liable to the same penalties"[10], this does not have the same effect as the imposition of *personal* liability.

[10] *Superannuation Guarantee Administration Act 1992,* subsection 57(3)

It is likely that some time will elapse between the ATO's detection of the non-compliance and the imposition of the criminal liability. In cases where the non-compliance was intentional rather than inadvertent, it is likely that the SG liability will remain unpaid during this period and the company may remain in operation, potentially accruing further unpaid SG liabilities.

As a result, it is unclear how effective new Division 296 will be to address non-compliance by corporate entities, when taken in isolation. We consider it will be necessary for the Commissioner to use the new power in tandem with its enhanced director penalty notice powers to ensure personal liability in relation to the underlying non-compliance attaches to the directors. (Our comments in relation to proposed enhancements to the director penalty regime are outlined at section 5 below.)

Those concerns aside, we note that some industry participants have expressed concern that the direction power might have the ultimate effect of imposing criminal sanctions for a minor and/or inadvertent breach of the SG obligations. ASFA does not share those concerns, for these reasons:

- proposed subsection 296-10(2) provides the Commissioner with scope to determine that a direction should not be issued for a minor and/or inadvertent breach. The Commissioner is not *required* to issue a direction and in deciding whether to do so must have regard to a number of matters including the employer's history of compliance with their SG and other tax obligations.
- the intent of the power, clearly expressed in the draft Explanatory Memorandum (EM), is to "address **recalcitrant employers** who **intentionally and repeatedly** disregard their obligations and **continuously** fail to pay their superannuation liabilities" and directions would be issued "to employers with a **history of serious non-compliance**, rather than those that inadvertently breach their obligations to pay the amounts that are relevant to the direction or have minor or isolated breaches"[11] (our emphasis).
- the directions framework includes important checks and balances, including an employer's right to object to the making of a direction.
- a criminal offence will ***only*** be triggered if an employer fails, without reasonable grounds, to comply with the direction to pay SG. As such, the criminal offence will apply where the employer has failed to avail themselves of their 'last chance' to comply, not for an initial and inadvertent breach. The draft EM indicates that the directions power framework has been adopted as an alternative to applying criminal sanctions directly to the failure to pay SG liabilities, thereby narrowing the scope of employers that are potentially subject to criminal sanctions[12]. This appears to ASFA to be an appropriate and measured approach.

ASFA supports the proposed directions powers, however we consider that:

- the ATO should be required to publish the minimum requirements that must be satisfied in order for an educational course to be approved for the purpose of an education direction
- it is unclear how effective directions to pay unpaid SG will be in cases of corporate insolvency, unless paired with a director penalty notice.

[11] Draft Explanatory Memorandum to the exposure draft *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*, paragraphs 1.3, 1.76 and 1.79
[12] Ibid., paragraph 1.75

2. Disclosure of information about non-compliance – Schedule 2

ASFA welcomes proposed amendments to the TAA 1953 to enable the Commissioner to disclose information that relates to a failure or suspected failure by an individual's employer or former employer to comply with their obligations under the SGA Act or related obligations under the TAA 1953. The proposed amendments will do much to improve overall confidence in the ATO's SG investigation and enforcement activities and should assist the ATO's efforts to determine the extent of an employer's non-compliance.

It is well known that many employees feel uncomfortable approaching the ATO to directly report a potential failure by their employer to pay their SG entitlements, as they feel such action may jeopardise their ongoing employment. The ATO has reported that around 70 per cent of people who report non-compliance to the ATO are ex-employees[13] - that is, they wait until their employment is concluded before directly raising their concerns with the ATO. Proactive and timely notification by the ATO of an employer's failure or suspected failure to comply with SG obligations may, in these circumstances, encourage individuals to come forward sooner and make a specific complaint to the ATO.

It is also a consideration that the longer SG entitlements remain unpaid, the less likely they are to be fully recovered. Accordingly, it is important that the ATO is able to quickly identify all individuals affected (or likely to be affected), and the ability to disclose the non-compliance (or suspected non-compliance) to others who are potentially affected will greatly assist this process. The proposed amendment is consistent with recommendations by the Cross-Agency Working Group[14] and the Inspector-General of Taxation[15] and is supported by ASFA.

ASFA also welcomes the amendment allowing the disclosure of information relating to the Commissioner's response to an employer's failure or suspected failure to comply with SG obligations. It is currently a common source of frustration for individuals that, having made a complaint in relation to their unpaid SG entitlements, they struggle to obtain information about the ATO's actual or planned response, on the basis that such information is 'protected' and cannot be disclosed. Where it is clear - or reasonably suspected - that an individual is affected by an employer's non-compliance, the ATO should as a matter of course keep the individual appraised of efforts made to resolve the matter.

ASFA particularly supports the application of this amendment to records and disclosures made on or after 1 July 2018, regardless of whether the non-compliance or suspected non-compliance occurred prior to that date. It is, in ASFA's view, entirely appropriate to extend disclosure to individuals affected by past non-compliance.

[13] Cross Agency Superannuation Guarantee Working Group, *Interim Report*, January 2017, footnote 3
[14] Cross Agency Superannuation Guarantee Working Group, *Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services*, 31 March 2017, recommendation 3
[15] Inspector General of Taxation, *Review into the ATO's administration of the Superannuation Guarantee Charge*, March 2010, recommendation 5

Further information on the mechanism that is intended to be adopted for the disclosure would be welcomed. While MyGov would appear to be an appropriate, efficient and low-cost method to inform affected members, we consider that this would need to be supplemented with direct written communication where an individual does not have a MyGov account or their account has been inactive for more than 12 months.

It is also critical that the communication from the ATO provides the individual with clear information regarding any actions that are being or will be undertaken by the ATO as well as any actions that the individual may or should undertake themselves.

ASFA supports proposed amendments to allow the ATO to disclose information about SG non-compliance by an individual's employer or former employer. We recommend that this disclosure be achieved through messaging on individuals' MyGov accounts, supplemented with direct written communication where an affected individual does not have a MyGov account or their account has been inactive for more than 12 months.

3. Single touch payroll reporting – Schedule 3

ASFA agrees that applying Single Touch Payroll (STP) reporting rules to all employers from 1 July 2019, regardless of the number of employees, will give the Commissioner increased visibility over the payment of employee entitlements. This will enhance the ATO's ability to monitor compliance with the payment of superannuation liabilities. By including employers with less than 20 employees from this date, one year later than entities with 20 or more employees, the significant proportion of superannuation payment non-compliance that is attributable to small business will reduce.

The requirement that employers provide the Commissioner with separately identifiable information relating to any salary sacrificed contributions being made on behalf of employees will provide a further layer of protection of employee entitlements. This additional information will enable the Commissioner to more closely monitor employers' compliance with their SG obligations and will support compliance activities in relation to separately proposed amendments to prevent employers taking advantage of employees' salary sacrificed contributions to reduce their SG obligations. ASFA welcomes the recent indication by the Minister that these amendments will be progressed along with the Draft Bill[16].

ASFA supports the extension of Single Touch Payroll reporting to cover employers with less than 20 employees from 1 July 2019 and require employers to report information about employees' salary sacrificed contributions.

[16] The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, *Consultation on protection your superannuation entitlements*, 24 January 2017,

4. Fund reporting – Schedule 4

ASFA members have expressed some concern about the removal of the biannual lost member statement reporting requirement and the shift of the prescription of format and timing of lost member information reporting to the ATO.

The ATO is introducing the new Member Account Attribute Service (MAAS) as the format of event based reporting of member account information - including lost member status - under section 390-5 of schedule 1 of the TAA 1953. A draft legislative instrument released by the ATO prescribes MAAS as the approved form and the time requirement for reporting as 5 days after an event.

Taken in isolation, this would require funds to report lost members 5 days after they meet the definition of 'lost'. This is a major concern to funds as they have systems and processes built to identify and report lost members biannually. To change processes and systems for monitoring and reporting lost members at this late stage of the build for MAAS will be costly and may jeopardise funds' timely implementation of MAAS.

The ATO has assured ASFA that while they encourage and will accept more frequent reporting of lost member status updates, the actual requirement will remain as *at least biannual*. The ATO has indicated that this specification of different timeframe requirements for lost member reporting in MAAS will be included in appropriate documentation however we are yet to receive confirmation in a document or form that funds can be expected to rely on from a compliance perspective. We urge Treasury and the ATO to ensure that their messaging around these developments is consistent and is clearly reflected in the appropriate documentation accompanying both this Bill and the MAAS legislative instrument, once finalised.

We also take this opportunity to generally caution against the relocation of requirements as significant as this from legislation to a legislative instrument or regulator guidance. The latter can be more readily amended than legislation and are not always subject to the same scrutiny. This introduces genuine risk that amendments to requirements could cause substantial implementation or compliance issues for funds.

ASFA recommends that clarity as to the reporting timeframe for lost members is provided as a matter of some urgency. In particular, documentation accompanying both the Bill and the Member Account Attribute Service legislative instrument (once finalised) should clearly indicate funds' requirement in relation to reporting of lost members.

5. Compliance measures – Schedule 5

ASFA supports the proposed compliance amendments to strengthen the integrity of the DPN regime by:

- ensuring a director's obligations in relation to ensuring their company pays an estimate of SG charge commence at the same time as their obligations to ensure the company pays the underlying SG liability to which the estimate relates. It is, in ASFA's view, unacceptable that directors are able to exploit the current difference in the commencement time of these two director obligations and thereby avoid being held personally liable for unpaid SG – this is wholly inconsistent with the intent of the DPN regime.

- removing the three month period that currently applies before director penalties for unpaid SG charge become 'locked down'. Under the current lock-down provisions, director penalties can be remitted – avoided – by placing the company into voluntary administration or insolvency, even where it has failed to report its liability for SG charge to the ATO for up to three months after the due date for the SG liability. It appears some employers have taken advantage of the lock-down provisions to defer placing the company into liquidation or administration, effectively delaying efforts to recoup the unpaid SG charge. ASFA considers this to be inappropriate

  ASFA welcomes the proposed amendment, which will ensure that where a company is placed in administration or receivership with an obligation to pay an SG charge, a director penalty can *only* be remitted if the SG liability was reported to the Commissioner on or before the due date. This should encourage companies to more promptly report their non-compliance. It may also prevent directors delaying placing a company into administration or receivership, in turn allowing the process of calling in assets and settling debts – including the unpaid SG – to commence sooner and reducing the amount of unpaid SG that is irrecoverable due to corporate insolvency.

- allowing the Commissioner to seek an order from the Federal Court to compel an entity to comply with a requirement to provide a security deposit for an existing or future "tax-related liability" including a liability for SG charge. This is consistent with a recent recommendation by the Cross-Agency Working Group[17] and would appear, in ASFA's view, to be a reasonable and moderate addition to the Commissioner's toolkit for ensuring employers compliance with their SG obligations.

ASFA supports the proposed compliance amendments to strengthen the integrity of the director penalty notice regime.

6. Amendments relating to employee commencement – Schedule 6

Schedule 6 of the Draft Bill proposes an addition to the list of exemptions allowing a taxation officer to make a disclosure of 'protected information' in subsection 355-65(3) of Schedule 1 of the TAA 1953. This addition relates to the provision of an individual's superannuation information to an employer for the purposes of enhancing online superannuation choice processes.

ASFA understands that this change of law is required to facilitate the design of an integrated employer Business Management Software and ATO online employee commencement solution where employees are provided with pre-filled superannuation information within the employer's software. It is also understood these services will not be available for use until some time in 2019.

While supportive of the need for the ATO to provide the required information to employers to allow the fully integrated service to function effectively in relation to its policy objectives and efficiently for users, we have some concerns with the proposal as it stands. In particular, we strongly consider that the drafting of the proposed legislative amendment should be altered to specify that the individual's consent is a pre-requisite to the disclosure.

[17] Cross Agency Superannuation Guarantee Working Group, *Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services*, 31 March 2017, recommendation 4

The draft EM describes the proposed law as follows:

> *The Commissioner can disclose protected information to an individual's employer (including the individual's existing superannuation membership accounts) for the purpose of the individual making an informed superannuation choice.*[18]

The draft EM further notes that the purpose of the amendment is to inform an individual of their existing superannuation interests to assist with choosing a superannuation fund and giving effect to that choice. Crucially, the draft EM indicates that an individual's consent will be required before the Commissioner discloses protected information.[19]

However, the legislative amendment itself – item 4 of Schedule 6 of the Draft Bill – includes no specification as to the individual's consent. We note that in contrast, an unrelated amendment to the protected information rules, in item 3 of Schedule 6 of the Draft Bill, provides that the exemption only applies if, inter alia, the disclosure "is made as the result of a request made by the individual to the Commissioner".

ASFA recognises that the ATO has the capacity and intention to build the required protections into the design of these services, however, as this will occur in the future we consider it important that the legislative framework now under consideration expressly specifies that protected information may only be disclosed for the stated purpose once the individual's consent has been obtained.

We further note that it is important that an individual's consent is obtained in relation to each disclosure and is not taken to be ongoing.

The SGA Act provides for an employer to give a 'standard choice form' to an employee within 28 days of the commencement of employment and an employee may effectively request a standard choice form once per year thereafter[20]. That is, the SGA Act recognises that an individual's consideration of their superannuation interests is not a once-off event. The Draft Bill does not in any way alter that standard choice framework.

In ASFA's view, the proposed exception should only operate to allow disclosure in relation to events directly related to the giving of a standard choice form. Employers should not be able to retrieve or access an individual's superannuation information on an ongoing basis.

It is also important that the method for giving consent is clear and unambiguous for the individual.

ASFA would welcome the opportunity to be involved in any consultation processes related to the design of future online superannuation choice services.

[18] Draft Explanatory Memorandum to the exposure draft *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*, page 56
[19] Draft Explanatory Memorandum to the exposure draft *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*, paragraphs 6.12 – 6.15
[20] Superannuation Guarantee Administration Act 1992, section 32N

ASFA strongly recommends that the proposed exemption allowing disclosure to an individual's employer of 'protected information' relating to the individual's superannuation interests, for choice of fund purposes, is redrafted to specify that:

- any disclosure is subject to the express consent of the individual; and
- consent is not ongoing and must be provided in relation to each disclosure.

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If you have any queries or comments in relation to the content of our submission, please contact senior policy advisor Julia Stannard, on (03) 9225 4027 or by email jstannard@superannuation.asn.au.

Yours sincerely

Glen McCrea
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