

13 April 2012



The Manager  
Contributions and Accumulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
Canberra, ACT 2600

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Dear Sir/Madam,

**Re: Exposure Draft – Intra-fund consolidation of superannuation interests**

BT Financial Group (BTFG) welcomes the opportunity to provide comments on the Superannuation Legislation Amendment (Stronger Super and Other Measures) Bill 2012: Intra-fund consolidation of superannuation interests (the Exposure Draft).

The Government's intention to reduce the number of duplicate and unnecessary accounts within the superannuation system is widely supported. The proposed intra-fund consolidation regime is an important first step towards achieving the goal of account consolidation as part of the broader SuperStream reforms.

BTFG supports the Exposure Draft legislation, in particular the introduction of the \$1,000 and the application this measure to inactive accounts only. We believe that the dollar based threshold and the inactive test will ensure that the initial focus of this measure remains on assisting low balance members who are currently disengaged with their superannuation.

However we have identified two critical drafting problems which will restrict the ability of trustees to implement the reforms as the Government intended.

**1. The current drafting will not allow inactive accounts to be consolidated into an active account**

In example 3.1 of the Explanatory Memorandum, a member's inactive account is combined with their current active account within the one fund. We believe example 3.1 correctly demonstrates the policy intent of the Government that inactive accounts could be consolidated into either another inactive or active account of the member.

Unfortunately the current drafting of Section 108A(1)(a) is not aligned with the policy intent as it only allows the consolidation of inactive accounts into another inactive account. That is, the drafting does not allow an inactive account to be consolidated into an active account within the same fund. The drafting of Section 108(A)(1)(a) needs to be amended to give trustees the flexibility to consolidate an inactive interest into any other active or inactive interest (where consolidation is in the best interest of the member).

Recommendation:

Amend Section 108A(1)(a) to remove the word “inactive” and include a new Section 108A(1)(a)(iii) that states that “one or more of the interests is an inactive superannuation interest; and”.

**2. The current drafting will not allow consolidation into an account with a lower fee**

Section 108A(1)(a)(ii) of the Exposure Draft prescribes that a trustee can only merge two superannuation interests where the interests have the “same rights and benefits”.

The legal term “same” is extremely restrictive and would not allow the trustee to merge two interests together where the member was paying lower fees in the new consolidated interest, despite a merger into a lower fee account clearly being in the members best interest.

The term “equivalent”, is used in superannuation law for determining when an account can be moved from one fund to a successor fund without the specific consent of the member. Australian Prudential Regulation Authority (APRA) guidance confirms that the term “equivalent” means that a member’s position and rights must be “effectively the same”, it allows the trustee to look at a “bundle of rights” rather than each specific change.<sup>1</sup>

We believe that the term “equivalent rights and benefits” would allow trustees (and APRA) to apply a test that the industry is already familiar with to this new legislative measure. An equivalence test would also allow a trustee to consolidate an account into one that charges the member a lower set of fees or provides an enhanced level of benefits, if the transfer was in the best interests of the member.

Recommendation:

Amend Section 108A(1)(a)(ii) to remove the word “same” and substitute it with the word “equivalent” .

Please let me know if you have any questions, or would like to discuss our submission further.

Yours sincerely



Lucas McKay  
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<sup>1</sup> APRA Superannuation Circular No I.C.4, ‘Equivalent Rights’ For Members in Successor Fund Transfers, section 9