

28 September 2015

General Manager
Deregulation Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via Email

Email: deregulation@treasury.gov.au

Dear Sir/Madam,

Re: Treasury Legislation Amendment (Spring Repeal Day) Bill 2015

In brief:

AIST supports the ATO being able to pay superannuation directly to persons with a terminal medical condition, and the eventual removal of the Lost Member Statement, but submits the LMS removal should be delayed by one year in order to avoid a gap in lost member reporting and improve the quality of reporting. AIST also calls on the Government to simplify and streamline lost, uncontactable and unclaimed legislation.

AIST welcomes the opportunity to comment on the Exposure Draft of the *Treasury Legislation Amendment (Spring Repeal Day) Bill 2015*. Our comments in respect of this Exposure Draft are limited to Schedule 2.

Terminal medical condition

AIST supports the ATO being able to pay amounts in superannuation funds under the *Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMLMA)*, *Small Superannuation Accounts Act 1995 (SSAA)* and *Superannuation Guarantee (Administration) Act 1993 (SGAA)* directly to persons with a terminal medical condition for the reasons given in the Explanatory Memorandum.

Removal of the Lost Member Statement (LMS)

AIST supports the removal of the requirement to report lost superannuation members to the ATO on a twice-yearly basis, subject:

- To other reporting and consumer protections being put in place;
- To some improvements being made to the LMS in the interim; and
- Delaying the removal by one year.

Superannuation funds are currently required to lodge a separate semi-annual LMS to the ATO.

This change proposes to repeal this separate reporting obligation as on the grounds that it overlaps with other existing superannuation fund reporting obligations to the ATO. AIST supports this repeal but disputes some of the reasons given in the Explanatory Memorandum.

The Explanatory Memorandum asserts that this will remove a duplicated reporting burden for super funds, significantly reducing compliance costs. Both elements of this assertion are disputed.

A reporting obligation is only duplicated if the information being reported is also being reported through another channel. While ATO initiatives currently in development will result in the LMS being unnecessary, these changes are only estimated to come into effect from late 2017. Ideally, the removal of the LMS should be more closely aligned with the new reporting obligations.

Secondly, reporting compliance costs will only be reduced by this measure if there is an efficient transition to the new arrangements, involving appropriate consultation with industry.

Superannuation fund reporting to the ATO is one of the last SuperStream deliverables to be designed and implemented. Under the Member information eXchange (MiX) project the following existing reporting requirements will be standardised:

- Unclaimed Super Money Statements (USMS);
- Member Contribution Statements (MCS);
- Section 299 TA/TC and please resolve notices; and
- Release Authorities (RA) and subsequent RA Statements (RAS).

These changes are scheduled to be delivered at various dates in 2017. However, the ATO has also indicated that these dates may be scheduled to further re-scheduling.

These changes are also being designed from a perspective that considers other ATO initiatives (e.g., Single Touch Payroll).

This will remove the need to create unique reports for LMS, USMS and MCS, with the last lost member reporting to be a complete re-report in April 2016.

The gap between the removal of the LMS and the completion of the MiX project is concerning and should be bridged by delaying the removal of the LMS by one year.

AIST has concerns about the accuracy and utility of the LMS as it currently stands, and notes that these will be resolved in large part by the MiX project. However – and this comment is aimed more at the ATO than Treasury – a useful stepping off point for the LMS would be for LMSs to be hereafter provided as a complete snapshot of lost members rather than as an on/off report.

In August 2015, ATO has released¹ the results of its large super fund risk differentiation framework, which is intended to assist large funds assess how well they are meeting their superannuation reporting obligations to the ATO.

While the report revealed high levels of SuperStream and reporting compliance and improving TFN quality, two of the top three areas for reporting improvement related to lost superannuation:

1. Lost members over 65 years of age - 24% of funds are not meeting the expected standard.
2. Lost accounts under \$2,000 - 56% of funds are not meeting the expected standard.

AIST understands that super funds are paying particular attention to several aspects of reporting lost accounts and potentially unclaimed superannuation money, including consistency with the information reported on the Member Contributions Statements.

Ensuring greater consistency and a smoother transition to the new reporting regime will be aided by the last LMSs proving a snapshot of lost members, and there being a specific and detailed alignment between the last LMS (April 2016), the MCS after that (October 2016) and the incoming MiX regime.

Observation on complexity of lost superannuation legislation

Superannuation legislation as a whole is not known for its accessibility and easy intelligibility. However, its complexity pales in comparison with legislation governing lost and unclaimed superannuation. This is a function of both varied criteria for lost members but also the complicated interrelationship between legislation and regulation.

For example, sub-section 22(b) of SURLMA defines lost member by reference to the definition in the *Superannuation Industry (Supervision) Regulations 1994* (at Regulation 1.03A). This is further complicated by the vague and inconsistently applied 'permanent exclusion' provision, the choice of one or two pieces of returned communications uncontactable test, and the exclusion of members of funds that are not standard employer-sponsored plans.

In the 2015-16 Federal Budget the Government announced² that it will implement a package of measures that will reduce red tape for superannuation funds and individuals by removing redundant reporting obligations and by streamlining lost and unclaimed superannuation administrative arrangements.

¹ <https://www.ato.gov.au/Super/APRA-regulated-funds/In-detail/APRA-resources/Large-fund-industry-report/>

² http://www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-21.htm

The removal of the LMS and the direct payment of Unclaimed Superannuation Monies on terminal medical grounds are two elements in this package, but the legislation is still to be drafted in relation to:

- Updating the 'un-contactable' definition for lost member accounts
- Removal of 'employer-sponsored' element of the "Lost-inactive" definition
- Allow proactive Eligible Rollover Fund (ERF) consolidation
- Enabling payment Unclaimed Superannuation Monies (USM) claims to trans-Tasman KiwiSaver Accounts.

Rather than just further complicate already complicated legislation, AIST calls on the Government to simplify and streamline lost, uncontactable and unclaimed legislation. It should do this through a thorough review of this legislation and its practical implementation by the ATO and super funds, including the additional measures proposed in the Federal Budget.

AIST submits that this proposal is also consistent with the overall objective of repeal day legislation – to cut red-tape.

If you have any further questions regarding this submission, please contact David Haynes, Executive Manager Policy & Research on 03 8677 3800 or at dhaynes@aist.asn.au.

Yours sincerely,



Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.