
Chapter 1 Intra-fund consolidation of interests

Context of amendments

1.1 Many Australians have multiple superannuation interests, and are paying multiple sets of administration fees and insurance premiums, within the same superannuation fund. This can happen, for instance, when the member has had a succession of different jobs within a certain industry and has been enrolled in the same default fund on different occasions.

1.2 Lost and unnecessary superannuation interests can increase fees and reduce the savings of the individuals concerned. They can also add to fund administration costs.

1.3 Similarly, members may be paying multiple insurance premiums, even in cases where they are no longer eligible for a payout (for instance, because they are no longer employed), or where they are in any case not eligible for more than one payout. It is a common for group insurance policies to specify that they will not pay out more than once, even if the member has been paying multiple premiums.

1.4 The current situation does not serve the public interest, which is to ensure that the Australian superannuation system operates effectively and provides adequate benefits to members in their retirement.

1.5 The present measure will reduce the number of unnecessary and inactive interests in the superannuation system by requiring trustees to merge multiple interests within their fund.

1.6 The Government will also take steps separately to consolidate interests with low balances between different funds (*inter-fund* consolidation).

1.7 The measure is part of a broader package of reforms called Stronger Super, which form the Government's response to the recommendations in the Cooper Review (the review into the governance, efficiency, structure and operation of Australia's superannuation system).

Summary of new law

1.8 The amendments will place a general duty upon trustees to identify members with multiple interests within their fund, on an annual basis, and to consider whether it would be appropriate to merge them. This will apply regardless of the balances of the interests concerned.

1.9 In deciding whether it is in the member's best interests to merge interests, the trustee must take into account the possible savings in fees, charges and insurance premiums which will result if they merge interests.

1.10 Trustees in identifying members with multiple interests must do so with regard to the *Privacy Act 1988*, which regulates the handling of personal information including tax file numbers.

1.11 The measure will only apply to accumulation interests, and not to defined benefit interests. Nor does it apply to trustees of pooled superannuation trusts, or to self-managed superannuation funds.

1.12 The term 'merge' covers two kinds of case. In the first, trustees can choose to retain separate interests, but bring them under a single 'account' with a single set of membership fees and charges, and a single insurance policy. In the second, trustees can choose to close one interest, moving the member's funds into another interest (the 'retained' interest).

- If trustees choose to maintain separate interests under one account, the account should include only one fixed fee, though separate variable fees can be charged in relation to the separate interests.

1.13 The trustees must develop rules setting out how they will comply with these requirements. Subject to the obligations and duties above, trustees may develop their own procedures for dealing with multiple interests.

- It is up to the trustee to decide whether to retain separate interests under one account, or to merge the interests within one account. In the latter case, it is also up to the trustee to decide which interest to retain (the 'retained' interest), taking into account the best interests of the member. (In this respect, intra-fund consolidation is different from inter-fund consolidation, where it is likely that the ATO will nominate the retained interest and fund).
- The fact that a MySuper interest may offer less investment choice is not in itself evidence that it is in the member's interest to retain a choice interest. The trustee would also need to consider the savings in fees, charges and premiums which comes from having fewer interests, and the saving in fees which attach to MySuper interests in their own right.
- Similarly, the fact that two interests have different investment strategies is not in itself evidence that it is in the member's interest to retain separate interests. Where the interest is small, for instance, the member may save more money in fees, charges and premiums if the trustee closes it than is likely to be at risk if the interests are merged.

- Where one of the interests is an ERF, it should usually be closed and merged it into another interest within the same fund. This may not be possible if the other interest is unable to accept rollovers, being for instance a defined benefit interest with no accumulation element.
- Where the interests carry separate insurance rights, the trustee may develop rules saying where it will aggregate the insurance cover offered under the merged interest, and where it will extinguish pre-existing cover.

1.14 Trustees must not charge fees for these consolidations. In respect of existing assets, these consolidations are mostly a record keeping change.

1.15 Trustees do not require the consent of the member.

- If the separate interests are significant, trustees could consider adopting an opt-out model (that is, giving the member notice that the trustee plans to merge the interests unless the member opt out).
- The trustee will need to comply with any requirements set out by ASIC in relation to significant events.

1.16 Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Trustees will have an overarching duty to identify the fund's members with multiple interests and consider whether it is appropriate to merge the interests. This will happen annually.	There is no obligation placed on trustees to search for and/or close multiple member interests.

Terminology

1.17 While in broad terms this legislation is designed to encourage or require trustees to merge what are commonly known as accounts, the term 'account' is difficult to define in legal terms. For this reason, the legislation refers to 'superannuation interests'.

- A 'superannuation interest' is broadly a right or claim a person has against a fund as a member or other beneficiary of the fund. It may be a proprietary or contractual right or a right arising under the terms of a trust or statute. An 'account' is a record maintained by the trustee to record some or all of a member's superannuation interest in the fund.
- The terms 'superannuation interest' and 'account' are not synonymous. A trustee may maintain more than one account to record a member's only interest in a fund or could maintain one account to record separate and distinct interests in a fund.

1.18 The terms ‘consolidate’ and ‘merge’ are broadly equivalent for these purposes, though the legislation uses the term ‘merge’. Merging can take two forms: (1) retaining separate interests but bringing them under one ‘account’, or (2) reducing multiple interests into one interest. See paragraph 1.15 below for further comment.

Detailed explanation of new law

1.19 Item 1 requires RSE licensees to ensure that the trustee complies with the new requirements. *[Schedule X, item 1, new Subsection 29E(7) of the SIS Act]*

1.20 Item 2 inserts a general provision (section 108A(1)) requiring affected trustees to:

- establish rules setting out how they will find multiple interests held by one member within their fund;
- search for multiple interests at least once per financial year; and
- merge the member’s multiple interests (except in the case of defined benefit interests) where it would be in their best interests, regardless of how large their balances are.

[Schedule X, item 2, new Subsection 108A(1) of the SIS Act]

1.21 Item 2 exempts trustees from the new requirements in cases (if any) where merging the interests is not practicable. *[Schedule X, item 2, new Subsection 108A(1A) of the SIS Act]*

1.22 Item 2 also requires trustees to have regard to multiple fees and charges, including the cost of providing insurance to the member, when considering the member’s best interests. *[Schedule X, item 2, new Subsection 108A(2) of the SIS Act]*

1.23 Trustees will be guilty of a strict liability offence if they fail to establish rules setting out the procedure for intra-fund consolidation. *[Schedule X, item 2, Subsection 108A(3)SIS Act]*

Example 1.1

1.24 Jack has two superannuation interests with ABC Fund. Both interests are structured identically (they have the same rights and benefits, though their balances happen to differ).

1.25 The fund merges the two interests into one, without Jack's consent, on the basis that the rights and benefits in both interests are equivalent. Jack no longer pays two sets of fees.

Example 1.2

1.26 Poppy has \$7,000 in a standard interest in XYZ fund, and another \$1,000 in a higher risk/return interest in the same fund.

1.27 The trustee judges that the potential additional earnings expected on the higher risk interest (based on the target earning rate) are smaller than the extra fees and charges Poppy incurs by having two interests. The trustee accordingly closes the smaller account, without seeking Poppy's consent; or alternatively brings them both under a single account with a single account fee.

1.28 In an alternative case, where the expected additional earnings only marginally outweigh the additional fees and charges, the trustee may judge that the additional earnings may not outweigh the additional risk, and merge the interests.

Example 1.3

1.29 Mr Tabbles has \$500,000 in a standard interest, and \$500,000 in a higher risk/return interest. The trustee judges that Mr Tabbles is a fully engaged member, and that any potential savings in fees and charges is small compared to potential differences in the earnings rates on the two interests. Accordingly, the trustee does not merge the two interests into one, though he or she may consider bringing them both under one 'account'.

Application and transitional provisions

1.30 Trustees are required to establish rules by 1 January 2013, and act upon the, rules and procedures by 30 June 2013. This includes undertaking the consolidation process at least once by 30 June 2013.

Consequential amendments

1.31 Nil.