



AIST submission

**Response to Treasury: Exposure Draft –
Disclosure of superannuation information**

20 February 2012



Australian Institute of Superannuation Trustees

Background

The Government has released numerous pieces of legislation to give effect to its Stronger Super package of reforms to the superannuation industry. One element of the package involves measures designed to enhance the “back office” of superannuation collectively known as SuperStream.

The current status of the legislative framework for SuperStream is as follows:

- Schedule 3 of the *Tax Laws Amendment (2011 Measures No.2) Act 2011* commenced on 1 July 2011 and allows the use of Tax File Numbers as the primary superannuation account identifier, and to facilitate the consolidation of multiple member accounts [“TFN legislation”].
- Regulations pursuant to this legislation have been developed to support the use of TFNs to facilitate the account consolidation process.
- From July 2012, funds which operate more than one account for the same individual will be encouraged to consolidate those accounts where possible.
- Treasury has released an Exposure Draft and Explanatory Memorandum for legislation providing a system of superannuation data and payment standards [“SuperStream legislation”]. This legislation will (inter alia) give the ATO administrative responsibility in this area. Consultation on this draft legislation is closing on 23 February, and AIST is making a submission on this related matter.
- Treasury has released an Exposure Draft and Explanatory Memorandum for legislation requiring payslip reporting of superannuation contributions [“payslip legislation”]. This legislation will (inter alia) give the Fair Work Ombudsman administrative responsibility in this area. Consultation on this draft legislation is closing on 20 February, and AIST is making a submission on this related matter.
- Subsequent tranches of legislation (eg, account consolidation) will address further SuperStream measures.

On 14 February 2012, the Government released the Exposure Draft and Explanatory Memorandum for the legislation that is the subject of this submission. It provides an exemption from existing secrecy provisions to allow the ATO to disclose superannuation information to various bodies including superannuation funds and their administrators.

This legislation supports other SuperStream legislative instruments in that it will enable funds to assist their members to find and consolidate their superannuation interests.

AIST had been represented throughout the industry consultations on Stronger Super, including the streams considering SuperStream.

AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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1 Executive summary

AIST supports this legislation as an element in the implementation of SuperStream measures to encourage superannuation account consolidation.

AIST recommends the following amendments to this legislation:

- The list of prescribed entities authorised to receive superannuation information from the ATO should be limited to regulated superannuation funds, public sector superannuation schemes, ADFs and RSA providers;
- Other entities (such as administrators) should be authorised to receive this information when they are acting as agents of a prescribed recipient;
- Providing information to a beneficiary about their superannuation interests should be the primary purpose for the disclosure of superannuation information;
- Tax file numbers should be explicitly excluded from the list of permitted superannuation information that can be disclosed;
- “Superannuation information” should be consistently defined at a regulatory, as well as a process level; and
- There should be controls on the use of disclosed information to ensure that it is used in the best interests of members, and is in the public interest. Implementation of this measure should be monitored to ensure the prohibition of predatory behaviour inconsistent with the legislative intent.
- Where superannuation funds approach members to encourage consolidation, this should be in the form of directed disclosure requirements on such matters as fees and insurance.

AIST supports all other measures proposed in this Exposure Draft.

2 Recommendations

This legislation will permit an eligible tax officer to disclose superannuation information to prescribed entities for prescribed purposes in permitted circumstances.

2.1 Prescribed entity

The list of prescribed entities authorised to receive superannuation information from the ATO should be limited to regulated superannuation funds, public sector superannuation schemes, ADFs and RSA providers.

It is AIST's view that this legislation is not consistent with the SuperStream legislation in its treatment of entities that provide administration services for superannuation entities. In the SuperStream legislation, superannuation entities and employers are required to comply with superannuation data and payment matter obligations. Administrators and other entities involved in the superannuation system are not subject to these obligations *per se*, as their involvement is limited to circumstances where they are acting as agents for superannuation entities.

The approach taken by the Government in its response to the report of the Super System Review (the Cooper Review) was to reject the Review's recommendation for the registration of administrators by APRA on the grounds that it would diminish the ultimate responsibility of superannuation trustees for the operation of their fund.

It is submitted that this approach should be followed in this legislation. That is, administrators (in their own right) should be deleted from the list of approved recipients. This will ensure that the ultimate responsibility for compliance with this measure rests with the ATO and superannuation entities, and not with an unregulated third party.

If this recommendation is accepted, administrators and other entities acting as agents for superannuation entities will be able to receive disclosed superannuation information when they are acting as agents. Superannuation entities may also contract other third party entities for the purposes of assisting beneficiaries in a manner consistent with the prescribed purposes, and they would also be able to receive information from an eligible tax officer when they acting as agents for a superannuation entity.

2.2 Eligible purpose

In the first instance, a beneficiary may simply want to know about some or all of the superannuation interests to which they are entitled. Making and acting on a choice are decisions made once they have been informed.

Therefore, it is submitted that purpose (c) of the proposed addition to schedule 1 of subsection 365-65(3) in of this legislation be renumbered as purpose (a), and that the other purposes be renumbered accordingly.

2.3 Superannuation information

Neither this legislation nor the *Superannuation Industry (Supervision) Act 1993* (“the SIS Act”) defines superannuation information. Therefore, on the face of it, all protected information held by the ATO in relation to the superannuation interests of a beneficiary may be released pursuant to this legislation.

Unless tax file numbers are excluded from eligible superannuation information, this appears to be in conflict with TFN law and the National Privacy Principles. To avoid any doubt about this, this legislation should explicitly identify that the tax file number of a beneficiary is not superannuation information to be released pursuant to this legislation.

It is noted that while TFN is identified as an abbreviation “used throughout this explanatory memorandum”, in fact, it is not used at all.

The legislation should define superannuation information, or alternately provide an exhaustive list of the protected information that may be disclosed. Various prescribed processes prescribe superannuation information required for those processes (e.g., MCS reporting), but for some processes (e.g., rollover requests) additional information is, not necessarily correctly, required.

Throughout the Stronger Super implementation process, the standardisation of requirements should be a key consideration. In this case, this recommendation is made in the light of activities being undertaken by the SuperStream Working Group and the ATO to introduce consistent data formats, streamline transactions by removing unnecessary data items, and likely changes in the reporting responsibility in the MCS. There should be consistency between “superannuation information” provided by the ATO, and “superannuation information” provided to the ATO.

The superannuation information provided by the ATO should include information obtained through the Member Identity Validation Service.

2.4 Use of disclosed information

This legislation will allow superannuation funds to use SuperMatch “to obtain information about all their members’ superannuation interests that are known to the ATO”, that is, a major extension to the existing scope of SuperMatch.

This is supported by AIST as one of a package of measures announced by the Government to encourage superannuation account consolidation. However, the extension of SuperMatch beyond lost accounts and amounts held by the ATO qualitatively changes the nature of the exercise. Where the exercise is limited to lost accounts and ATO monies, the primary impact of consolidation in most cases is to reduce account-keeping fees paid by a member, or to transfer monies to an account where it can earn interest.

The extension of SuperMatch to cover all superannuation interests means that there are additional risks faced by a member to be considered together with the undoubted benefits of consolidation. In being asked to transfer their superannuation interests to another fund, a member should be made aware of the net returns, level of risk and insurance provided by the fund they are transferring to.

Even though they are already a member of the receiving fund, they may not have previously compared the respective benefits of the superannuation funds they belong to. These require appropriate levels of additional consumer protection.

AIST recommends that this legislation require directed disclosure of prescribed information in a prescribed format. The absence of such requirements may allow some predatory behaviour that is not in the best interests of members.

Paragraph 1.9 states that the ATO will “proactively” provide information to superannuation funds about their members superannuation interests to support auto-consolidation of low account balances. This may also trigger some predatory behaviour unless receipt of this information is subject to confirmation that it will only be used in a way that is in a member’s best interest.

Further, the regulations should state that the interrogation of information received from the ATO (including aggregated data) beyond reporting on activity and the efficacy of the measure to achieve consolidations should be prohibited.

At the very least, the disclosure of information under this exemption must, in every instance, ensure that the disclosure fits the threshold requirement of being used solely to enable members to find and consolidate their superannuation interests.

The regulations should also provide for reports to Government on the efficacy of the measure to achieve consolidations, and whether the circumstances and use of disclosed information was appropriate, and operating in the public interest.

2.5 Implementation of legislation

This legislation is one of a number of measures proposed by the Government to encourage account consolidation. The regulations and consequent processes associated with this measure will need to ensure that it is implemented in a way that facilitates, rather than negatively impacts, on other account consolidation measures. For example, the operation of these measures around the time of scheduled large scale auto-consolidation will have to be carefully managed to ensure member confusion is minimised.