

9 November 2012

Secretary
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Bryant,

Re: Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012

The Australian Institute of Superannuation Trustees makes this submission to the Senate Economics Legislation Committee in relation to the inquiry into the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012* (“the Bill”).

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.

As an industry association in the superannuation sector, AIST’s comments are made solely in relation to Schedule 4 (Superannuation) of the Bill.

Schedule 4: Superannuation

AIST supports the policy intention behind the Bill, but recommends a technical suggestion to improve practical implementation around the treatment of “*uncontactable*” superannuation members who have been recently active and reduce the unintended consequences of the current draft.

Background and context

AIST has consistently supported measures to help Australians being reunited with lost super during the Stronger Super consultations. These measures include procedures for member and ATO initiated account consolidation, auto-consolidation, and new employee registration procedures encouraging consolidation.

These measures are necessary to address the high levels of unnecessarily duplicated accounts and higher than necessary account proliferation. There have been up to 30 million accounts for an Australian working population of around 12 million and around 1.2 million new accounts created each year for net workplace growth of around 250,000 people.

In addition, there were 3.6 million lost superannuation member accounts with a total value of \$17.1 billion reported to the ATO as at 31 December 2011 (it was previously 5 million accounts and \$20.2 billion as at 31 December 2010).

The Government's Mid-Year Economic Financial Outlook statement of 22 October 2012 announced the measures to be given effect by the Bill. In addition, it was stated that: *"The ATO will use its data matching resources to match these accounts with members assist those members to be reunited with their lost superannuation."* The Bill will also provide CPI indexation of accounts transferred to the ATO.

It is important that the Committee appreciate the context of the Bill as a measure not only consistent with other measures to help Australians being reunited with lost super, but which also accelerates the implementation of account consolidation.

AIST will be working with the Government to ensure that most of the benefits transferred to the ATO are subsequently transferred back to the active superannuation account of its rightful owner.

AIST recommends a change to the *Superannuation Industry (Supervision) Regulations 1993* ("the SIS Regulations") to ensure the best interests of members are protected and the Government's policy intentions are fully reflected in the operation of the subsequent legislation.

This submission refers specifically to the SIS Regulations in recommending changes, however, unless otherwise indicated, these changes should also refer to equivalent *Retirement Savings Accounts Regulations 1997* ("the RSA Regulations").

The issue: Uncontactable members

In the second reading speech introducing this Bill, The Hon Bernie Ripoll MP stated that: *"These are good and sensible changes that help reunite consumers with their lost bank accounts and superannuation accounts."*

Unfortunately, the legislation will also result in *uncontactable* members with account balances of less than \$2,000 who are still employed and receiving contributions being transferred to the ATO.

AIST does not believe that members who are still employed and receiving contributions are generally lost, and does not believe it is the intention of the Bill, or good public policy for members in this category to be transferred to the ATO.

Whilst this is a technical problem, it is most likely to impact new employees, young people, and low-income earners, and also upon the insurance coverage of these members. AIST is aware of a super fund that will be required to transfer over 15,000 members to the ATO consisting of many from these cohorts.

Another (unrelated) superannuation administrator has calculated that its client super funds have a total of 200,000 members' accounts in this category, with 130,000 of these accounts having active insurance. Accounts transferred to the ATO automatically lose insurance cover.

Existing provisions and guidance about unclaimed money and lost members is complicated, and not always consistent. The change to the financial and temporal criteria in the Bill amplifies rather than creates this problem.

The ATO's protocol document for *reporting* to the Lost Members Register (see <http://tinyurl.com/b5p9o4v>) allows a practical rather than a strict application of the uncontactable rules. After identifying the definition of uncontactable members "*technically*", the document comments:

"However, this also needs to be considered in light of the other circumstances relating to the account - for instance, when the super provider may not have an address for the member but is receiving regular contributions. It would not be reasonable in these circumstances to consider the member as lost, and it is expected that the super provider would attempt to gain the member's address from the person making the contributions (whether this is the employer or the member themselves)."

In contrast, the guidance to super funds about *transferring* of lost super monies in the ATO's "Unclaimed superannuation provider – frequently asked questions" requires a strict application of the rules. This relates to the transfer of unclaimed monies, including less than \$200 balances, and will thus be the approach take for the transfer of less than \$2,000 balances.

In the ATO FAQs, there is the following Question and Answer (see <http://tinyurl.com/bjnvzfo>)

"Can a lost member with an account balance of less than \$200 be excluded from reporting if, as at the unclaimed money day, the member is still employed and contributions may be payable in the future?"

The definition of small lost member accounts does not exclude accounts that have received a contribution. Any account that meets the definition in subsection 24B(1) of the Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMLMA) as at the end of the unclaimed money day must be reported and paid to us. Providing you have determined that the member is lost at that point in time, the account will be a lost member account.

Insoluble lost member accounts (inactive accounts of unidentifiable lost members) must not have received any amounts for five years.”

While AIST believes this approach is not in the best interests of members (as it would not be reasonable in these circumstances to consider a member as lost), it is less important when the account balance threshold was \$200. However, it becomes a significant problem when the balance threshold is increased to \$2,000.

There is nothing in the Bill that will allow the ATO to take a practical rather than a strict application of the uncontactable rules in relation to the transferring of lost super monies to the ATO.

Legislative background

The remedy proposed by AIST firstly requires an understanding of the relationship between the relevant legislation and regulation.

The meaning of *lost member* in the section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (“SUMLMA”) – an Act that is proposed to be amended by this Bill – is that within the meaning of the SIS (and RSA) Regulations.

A *lost member* is defined in SIS Regulation 1.03A with the separate categories of lost members being identified as uncontactable (subsection (1)(a)), inactive (subsection (1)(b)) or joined the fund as a lost member (subsection (1)(c)), with the criteria for each separate category also defined in the Regulations.

Section 24B of SUMLMA prescribes the circumstances in which an account of a lost member is to be paid to the ATO, with the separate categories of lost member accounts identified as small accounts (subsection (1)) and inactive accounts of unidentifiable members (subsection (2)).

AIST’s concerns relate solely to the definition of lost members identified as *uncontactable* in SIS Regulation 1.03A(1)(a).

- (1) A member of a fund is taken to be a lost member at a particular time if:*
- (a) the member is uncontactable, that is, if and only if:*
 - (i) the fund has never had an address for him or her; or*
 - (ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member's last known address and returned unclaimed; or...”*

There is no activity or other test associated with the contactability criteria.

Practical implications

With the current \$200 account balance criteria, the possibility of active members being unnecessarily transferred to the ATO was minimal. Anyone earning over \$2,222 in a six month period would have received contributions of at least \$200 in that period.

In contrast, under the Bill, a member will need to earn over \$22,222 in a six month period to receive contributions of at least \$2,000 in that period, assuming contributions of 9% in line with the superannuation guarantee. This equates to an annual income of \$44,444. Given that the 2011 Australian Census reported a median personal annual income of \$30,119 (\$577 per week), it can be seen that most Australians would fall below the \$2,000 threshold. Obviously, lower income individuals are most likely to fall beneath the threshold.

Members are uncontactable for many reasons that are outside the initial control of a super fund:

- They may not have supplied their address to their super fund;
- Their employer may not have provided their address to their super fund;
- The details provided to the super fund may have been incorrect; or
- The member changed address and may not have notified their super fund.

These issues are most likely to occur when a member commences employment with a new employer or when a member changes address.

Super funds have routine procedures for obtaining up to date address information for their members but these procedures may only commence when the super fund becomes aware that the member has become uncontactable. If these processes have not commenced or are underway, it is possible and in many cases likely, that a semi-annual “unclaimed money day” may occur. The two annual dates are 30th June and 31st December.

Super funds are required to determine their unclaimed super (including small and/or insoluble lost member accounts) at the end of the unclaimed money day, with their statement and payment required to be lodged with the ATO by the end of the next “scheduled statement day”. The two scheduled statement days each year are the 31st October and 30th April. Former temporary resident unclaimed super must also be reported and paid by the scheduled statement day.

As a consequence of the higher \$2,000 threshold and the reasonable time that it can take for a super fund to take appropriate steps once they become aware that a member is not contactable, the fund may be required to transfer active accounts. Where members work intermittently or are on a low income, and have a pattern of regular changes of address, this could become a recurring problem unless it is addressed.

We draw the Committee's attention to the resulting duplication of accounts at the superannuation fund receiving the contributions, the duplication of lost member records at the ATO and the increasing number of active members who are being transferred in each pass. Such an outcome would be frustrating and confusing for the member concerned, inefficient for the super fund, and would be an inappropriate use of ATO resources. We also question if the ATO will be sufficiently resourced to merge these duplicate records in the future.

Additional concern

An additional concern with the definition of uncontactable is that it only considers postal addresses as a valid means for a superannuation fund to contact a member. This definition increasingly less relevance as consumers choose by their actions (if not by direct instruction) to be communicated with in other ways. For example, one of Australia's largest superannuation funds holds a significant proportion of younger members where their mobile phone number is a more reliable contact point than their postal address as they deliberately retain this number, even though they move around.

If a trustee of a superannuation fund holds a mobile phone number for a member, and an outbound call is made to that number which results in confirmation that it is the contact number for the member, then the member can still be considered 'uncontactable' under this definition and would be transferred to unclaimed monies. This should be remedied.

AIST recommends that SIS Regulation 1.03A(2)(b) be amended by the deletion of the words "has contacted" and the insertion of the words "been in contact with".

Our proposed solution

AIST recommends that the practical problems with implementation of the contactability part of the measure be addressed by a change to the SIS Regulation 1.03A(1)(a). AIST proposes introducing a minimum period of fund membership (in the terms used in SIS Regulation 1.03A(1)(b)(i) for inactive members) and an activity test (similar to the terms used in SIS Regulation 1.03A(1)(b)(ii) – but with a 2, rather than 5, year test).

AIST proposes that SIS Regulation 1.03A(1)(a) be amended to read as follows (our amendments in bold):

- (1) A member of a fund is taken to be a lost member at a particular time if:
- (a) the member is uncontactable, that is, if and only if **the fund has not received a contribution or rollover in respect of a member within the last 2 full years of his or her membership of the fund and**
 - (i) the fund has never had an address for him or her; or

(ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member's last known address and returned unclaimed; or...

If you have any further questions regarding this submission, please contact David Haynes, Project Director on [redacted] or at [redacted].

Yours sincerely,

Fiona Reynolds
Chief Executive Officer