



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

Telephone: (02) 8239 2111
Facsimile: (02) 8239 2100

Level 6, 321 Kent Street
Sydney NSW 2000
GPO Box 551
Sydney NSW 2001

16 March 2021

Senator Slade Brockman
Chair
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Chair

Inquiry into Treasury Laws Amendment (Your Future, Your Super) Bill 2021 [Provisions]

The Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) welcomes the opportunity to make this submission to the Senate Economics Legislation Committee's (**Committee**) inquiry into the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021 [Provisions]* (**the Bill**).

The IGTO is an independent, Commonwealth statutory agency that investigates taxation administration systems and laws, as well as the actions and decisions made by Tax Officials - of the Australian Taxation Office (**ATO**) or the Tax Practitioners Board (**TPB**). The IGTO seeks 'to assure and ensure that there is fair, equitable, and transparent administration of the tax system consistent with community expectations.'¹ We also undertake tax investigations for the purpose of providing independent advice and assurance to Government on the taxation administration laws and systems.

The IGTO is not empowered to investigate or advise on tax policy matters but does have a statutory function and purpose to advise on improvements in the administration of taxations laws. The IGTO also has no jurisdiction in relation to superannuation funds administered by the Australian Prudential Regulation Authority (**APRA**). Accordingly, this submission does not make (or intend to make) comment on the appropriateness of the reforms set out in the Bill nor comment on any of the matters raised in Schedule 2 to the Bill as we expect these relate to APRA administered funds. Rather, we have reviewed the Bill (principally Schedule 1) and the associated explanatory memorandum to provide some comments on any potential tax administration concerns that may warrant the Committee's attention.

We understand that the proposed reforms in Schedule 1 of the Bill primarily amend the choice of fund rules in Part 3A of the *Superannuation Guarantee (Administration) Act 1992 (SGAA)* and require employers to make superannuation contributions to new employees' existing funds.

By way of background, since 1 July 2017, the IGTO has received 346 complaints which raise matters concerning the SGAA, notably employee notifications of unpaid superannuation guarantee. We also received 128 other complaints in relation to a taxpayers' ability to access lost or unclaimed superannuation moneys (which is more aligned with the intent and purpose of the provisions in the Bill – namely, giving employees greater control over their superannuation). Further details on these complaint statistics is set out in the Table below.

	FY18	FY19	FY20	FY21 (YTD)
Employee Notifications	98	119	84	45
Lost or unclaimed superannuation	20	35	53	20

We note that the requirements of a stapled fund as set out in section 32Q of the Bill are matters to be prescribed in regulations, which are not presently available and accordingly we make no comment on the stapled fund requirements.

We note that in accordance with section 32R of the Bill, an employer (or their agent) may request the Commissioner identify any stapled fund for an employee. However, it is not clear what process an employee should follow to identify their own stapled fund.

When an employee commences at a new place of employment, they are requested to provide to the employer their choice of fund, or have their super paid into their stapled fund. In some situations, the employee may not necessarily recollect any funds of which they may be a member (arising from past employment) or any stapled funds relevant to them, which renders the making of informed decisions difficult. We therefore believe it would be beneficial for informational accuracy and improved tax administration if there was an easy and accessible way for employees to identify their own stapled fund – whether in the regulations, legislative instrument or other tax administration processes. We consider that the existence of such a process would:

- reduce the asymmetry of information between employer and employee;
- minimise the potential for any complaints and disputes in relation to the correctness of the information advised and the relevant choice of fund requirements;
- minimise the potential for any misinformation or miscommunication; and
- provide an opportunity for early detection of any misinformation and correction to same.

One possibility would be to include a requirement for the Commissioner to also notify the relevant employee whenever the Commissioner responds to a request from an employer under section 32R of the Bill. For completeness, we note that because the IGTO may investigate complaints about the decisions and actions of Tax Officials, this could include a complaint about the notification of a stapled fund by a Tax Official to an employer. We understand the Bill, as drafted does not include any requirement for the Commissioner to notify the employee – that is, as well as the employer. Such a requirement would be arguably consistent with the overriding objectives of *Your Future, Your Super*, the choice of fund rules and an intention to protect the superannuation interests of employees.

Notwithstanding the suggestion above, the IGTO does not consider that the process of notifying the employee about their stapled fund necessarily needs to be linked with the process of notifying the employer. Any process for identifying the stapled fund that is easy and accessible for the employee will be sufficient. In much the same vein, the process for notifying the employee does not need to occur by way of formal written communication. A requirement to present up-to-date information on the employee's individual MyGov account that identifies their stapled fund may be one of the more practical options.

We note that such a requirement may be included in the relevant regulations but, at present, nothing in the Bill or the Explanatory Memorandum suggests a requirement to communicate information to the employee that would assist them to identify their stapled fund. The Committee may therefore wish to explore whether:

- the exclusion of employee notifications is intended and the underlying reasons for same; or
- any employee notifications will be required as part of the regulations or legislative instrument and guidelines and indeed the general administration of these measures.

We trust this submission is of assistance to the Committee in its consideration of the Bill. Please do not hesitate to contact me by email [REDACTED] or by phone [REDACTED] if our office may be of any further assistance.

Kind regards,



Karen Payne
Inspector-General of Taxation and Taxation Ombudsman