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LAWYERS

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The Manager  
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The Treasury

By email: [strongersuper@treasury.gov.au](mailto:strongersuper@treasury.gov.au)

Dear Sir/Madam

Henry Davis York is grateful for the opportunity to comment on the Exposure Draft of Tax Laws Amendment (2011 Measures No. 2) Bill 2011. Please find our submission attached.

We would be happy to elaborate on our comments if that would be of further assistance.

Your sincerely

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## Submission on the Exposure Draft of Tax Laws Amendment (2011 Measures No. 2) Bill 2011: Use of TFNs for superannuation purposes

### Introduction

The Exposure Draft represents an important element in recent reforms proposed to improve the efficiency of superannuation fund administration. In this regard, the Cooper Report's recommendation 9.11 proposed the extended use of tax file numbers to permit superannuation trustees, and their agents, to:

- (a) *"Use TFNs as a primary search key to link contributions and rollovers with member accounts;*
- (b) *Seek confirmation from the ATO in relation to each new member that the quoted TFN is correct;*
- (c) *Seek confirmation from the ATO in relation to each requested rollover to a SMSF that the member holding the quoted TFN is a member of that SMSF;*
- (d) *Exchange the TFN with other trustees to identify accounts in multiple funds held by the same individual, and hence permit the trustee of the fund to which contributions are currently being made to invite the member to initiate consolidation of the accounts."*

The recommendation addressed the lack of a unique member identifier which could be used to verify a person's identity as a superannuation fund member, link their superannuation accounts with contributions made for them, or identify multiple accounts held by the same person.

The deficiency is a significant cost to, and administrative inefficiency in, the super industry. This is because multiple accounts may be established for the same person, in the same fund and in different superannuation funds. Members themselves may be unaware that this has occurred. Eventually, if a fund loses contact with a member the member's account will become "lost". There is one lost super account for every two working Australians, according to the Minister for Financial Services and Superannuation.

The Government responded to the Cooper recommendations in December 2010, announcing in particular that it would introduce legislation to permit the use of TFNs as a primary search key (paragraph (a) of the recommendation above<sup>2</sup>) with effect from 1 July 2011.<sup>3</sup>

<sup>1</sup> *Super System Review: Final Report - Part Two: Recommendation packages*, at p 292.

<sup>2</sup> Although recommendations 9.11(d) and 9.12 of the *Super System Review: Final Report* appear also to be relevant.

<sup>3</sup> *Stronger Super*, at page 56.





The key provision of the exposure draft addresses this commitment by proposing an amendment to the Superannuation Industry (Supervision) Act ("SIS") as follows:

**"299LA Use of tax file number as primary identifier etc.**

1. *This section applies if:*
  - (a) *a beneficiary of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme; or*
  - (b) *an applicant to become such a beneficiary;*

*quotes his or her tax file number to a trustee of the entity or scheme in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.*
2. *A trustee of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme, may, subject to any conditions contained in the regulations, use tax file numbers quoted as mentioned in subsection (1):*
  - (a) *In order to locate in the records of the entity or scheme, amounts held for the benefit of persons; or*
  - (b) *To facilitate the consolidation of interests in eligible superannuation entities or regulated public sector superannuation schemes, if the interests are all interests of the same person."*

In what follows we set out some comments on the wording of the draft provision in relation to the policy objectives it is intended to meet.

### **Deemed quotation**

A condition for the application of the section is that the member has quoted his TFN to the trustee. Since 2007 employers have been required to provide each new employee's TFN to the employee's superannuation fund (s 299C of SIS) and the employee is deemed to have quoted the TFN to the trustee (s 299Q of SIS). Like provisions apply in respect of transferor trustees (ss 299M and 299R of SIS), and where the Commission of Taxation supplies the TFN by notice to the trustee (s 299SA of SIS).

Presumably, proposed section 299LA should apply if a TFN is provided to a super trustee by an employer, transferor trustee or the Commissioner. However, the explanatory memorandum should make this clear, to avoid any confusion.

### **Fund administrators**

The Cooper recommendation was that the superannuation trustee **or its agent** could use the TFN for the requisite purpose.

Unfortunately, proposed section 299LA only refers to the trustee. Significantly, the most likely user of this information, the fund administrator, is not referred to. It will be necessary for the draft to be amended to allow this to occur.





## Consolidation of multiple accounts

Proposed paragraph 299LA(2)(b) is intended to permit the use of TFNs to achieve consolidation of multiple accounts of a beneficiary. This is intended to apply not only in relation to accounts held in the same fund, but to those in different superannuation funds.

The wording of the provision is odd, however, in that it stipulates that a condition of the use of a TFN to facilitate consolidation of superannuation interests is that the interests be interests of the same person.

This clearly ought not to be a condition of the use of TFNs to locate interests in other superannuation funds. Lack of certainty about the existence of other interests of the member is precisely why use of the TFN is desirable and necessary. However paragraph 299LA(2)(a), which does refer to the activity of locating interests, appears not to apply to the location of interests in other superannuation entities or regulated public sector superannuation schemes - only to locating those within the same fund.

To address this inconsistency between the ability to locate and consolidate a person's interests within the same fund and in different superannuation funds, and to address other inconsistencies,<sup>4</sup> subsection 299LA(2) ought to be redrafted as follows:

- 2 *A trustee of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme, may, subject to any conditions contained in the regulations, use tax file numbers quoted as mentioned in subsection (1):*
- (a) *In order to locate in the records of the entity or scheme, and in those of other eligible superannuation entities or regulated public sector superannuation schemes, amounts held for the benefit of a person; and*
- (b) *To facilitate the consolidation of amounts held in the entity or scheme, and in other eligible superannuation entities or regulated public sector superannuation schemes, if the amounts are all held for the benefit of the same person."*

## Provision for regulations

As noted above, the wording refers to a trustee's power "to facilitate the consolidation" rather than empowering the trustee "to consolidate". The consolidation process needs to be implemented in a way that recognises the potential for loss of insurance cover or other services and protection from consolidation into high-fee superannuation products. Accordingly, safeguards on the arrangements for consolidation of accounts need to be carefully considered, to ensure that a member is not disadvantaged where, for example, a member may have made a conscious decision to retain a second superannuation account in another fund, in order to retain certain insurance, investment option, or other services.

<sup>4</sup> Such as the jarring use of the plural "persons" in paragraph (a), and the inconsistent references to "amounts" in paragraph (a) and "interests" in paragraph (b), to refer to benefits in superannuation funds.





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The draft legislation is subject to conditions contained in regulations (yet to be made), and presumably the regulations will take care to address these issues of member disadvantage and the requirement for member consent, as envisaged in the draft Explanatory Memorandum.

