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Superannuation - a system in transition

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Superannuation – a system in transition

Presentation to the 2019 ASFA National Policy Roadshow

Session: Regulators Panel

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(Check against delivery)

Introduction

The ASFA policy roadshow is a great opportunity to engage directly with ASFA members across Australia.

On behalf of the ATO I want to thank ASFA and the venue hosts for the opportunity to join you today as part of this now annual regulators' panel session.

We all know we need to operate within our respective policy, legal, trustee, corporate, and ethical frameworks. But we must also keep in mind that many of these frameworks intersect and we need to work together to ensure a respected and trusted superannuation industry.

We also have common responsibilities in terms of how super is seen and valued by others.

We're increasingly able to share insights into behaviours across the super system and this will increasingly guide our future approach to employers. By working with industry our goal is to build a framework around visibility and functionality to help members meet their super obligations and monitor their entitlements.

Recent super reforms strongly support our drive towards a digital and evidence-based future.

Super is about people

The super) landscape is partly influenced by polices that balance people's need for future financial security with the lawful ability to access their super at certain times in their life.

I'd like to share some real-life examples of people interacting with their super in 2018–19 and how this made a difference to their lives:

- The Compassionate release of super scheme has seen us process over 53,000 applications and release $456 million to members who require the money for critical purposes such as medical care and treatment.
- Aboriginal and Torres Strait Islander assistance to locate super – like many of you, we work to ensure Aboriginal and Torres Strait Islander people are getting value from the super system. In one of our recent remote community visits, we helped a woman approaching retirement discover she had over $120,000 in super. In another case, a man found he'd accumulated over $170,000 in super; he used it to purchase his first home. In July, we participated in Big Super Day Out events in Sydney and Melbourne. Most recently, with the First Nations Foundation we visited Darwin, Kununurra and Broome; helping members of those communities find $4.37 million in lost super.
- The Downsizer measure has resulted in super contributions to the value of $1.1 billion being made by some 4,900 individuals. People from every state and territory have made downsizer contributions.
- The First home super saver (FHSS) scheme started on 1 July 2018 and allows people to use part of their voluntary super contributions to boost their savings for a first home. In this first year of operation 3,300 people obtained a release of super, to the value of $39.4 million, enabling individuals who may not otherwise have been able, to purchase their first home.

Super and visibility

At the ATO we make policy happen ‘on the ground’, while also ensuring it works within the law - and is implemented as efficiently and effectively as possible.

For this reason we seek to 'design and deliver' systems in ways that allow adequate lead time for planning and risk assessment across a complex operating environment.

Naturally, there are always legal and timing constraints we need to recognise and operate within. But with the ongoing cooperation and goodwill of industry, we've been able to work together to implement the many changes and new measures and work through practical transitional issues as they arise. Of course, we've all learnt some lessons along the way as to how we can improve and thereby better respond to some of the challenges ahead.

With this in mind, I'd once again like to acknowledge the hard work of trustees and super funds that've been involved in the many reporting changes and maintained momentum across so many fronts simultaneously. Thank you to industry and to ASFA.

During 2018–19, many new measures and reporting changes have become operational, and of course we've all had some of our assumptions tested. On balance however, I think we've landed well in our first full year of implementation and I look forward to a year of consolidation.

For some time now I've been talking about the ATO's desire to 'shine a light' on and improve visibility of the super system. We believe individuals and fund members can't and won't fully engage unless their super information is accessible and they see it as valuable.

Our goal is to build a framework around visibility and functionality to help members meet their super obligations and receive their entitlements. I'm sure your own experiences would support the belief that when people have confidence in the tax and super system, they're more likely to participate, meet their obligations, and make informed decisions.

This is not a new concept, but I think we're now all better placed, through the use of data, to further promote the value of active participation in super. This will never be easy and requires constant effort to meet members' needs, encourage engagement, and ensure it's self-sustaining.

A key to the ATO achieving this vision is ensuring members have transparency of their super accounts and related information.

Our intent isn't to hold information for the sake of it but to share it with your members. For example, we're progressing opportunities with the new data we're receiving to advise clients when they're approaching a contribution cap. In doing this we want to provide members with timely data to help them make better decisions. This remains our focus for 2019–20.

We'll continue to provide fund members with access to more timely information about their total super portfolio. This is increasingly supported with your client-level information, employer data and other ATO-held information.

An immediate focus for us is to use this information to reduce non-payment of super guarantee (SG) by employers - through early detection, on a quarterly basis.

With all APRA-regulated funds now required to be reporting member account details and contributions to the ATO within five to 10 days of the transaction, we're well on the way to far more transparency.

Indeed, as soon as it becomes available, we share this account and transactional information with fund members though ATO Online via myGov. As at 15 August, nine million people have linked the ATO to their myGov account.

To give some sense of the volume of transactions now reported to us, in 2018-19 we had over 32 million reports of member accounts opening, closing or changing attributes and around 183 million reports of account contributions or transactions. Within those reports, were 162 million employer contributions, representing $71 billion paid in respect of 11.3 million employees and with these transactions generally being displayed in the individual’s ATO Online account within 48 hours.

We can now see patterns, volumes, and contribution flows which, for the most part, confirm what we expect but also allow us to identify potential discrepancies or issues and to follow these up in a timely way.

We can now also see information greater than just what's in the ATO’s remit. For example, recent changes requiring insurance to be opt-in meant from 1 July a number of accounts no longer had insurance; this is an event reportable through the Member Account Attribute Service (MAAS).

We've received just over two million member account reports changing the insurance indicator on an account from 'yes' to 'no', indicating the number of accounts impacted by this new policy measure.

Funds have told us that in addition to streamlining and automating reporting, the benefits of the move to event-based reporting have been considerable, particularly in relation to the quality of member data.

For us, the other major benefit of this changed reporting is our ability to tangibly support your members. Over the past few years, people have increasingly wanted, and required, greater visibility and understanding of their super portfolio and balances. At the same time we can now see what's happening operationally rather than wait for the annual reporting cycle.

What's also becoming clearer is how some of this information may assist other regulators to understand how the sector is working ‘on the ground’.

In considering the needs of all parties though, we're mindful of the need for balance in seeking to ensure the most cost efficient and effective use of data while also sharing associated insights. Naturally, we're also aware mindful of ensure the data is assured and fit for release. After all, we want to add value for you in your role and for your members' financial future where we can

In support of funds re-engaging with lost members, during 2018–19 we responded to about 1.1 million requests, through our provision of details service (ie ATO PODS service), to obtain current details we hold about members.

In responding to requests for updated information we have also helped improve funds' experience dealing with deceased accounts as we only provide dates of death obtained from verified sources. We've issued some 261 reports to funds containing 60,125 dates of death from verified sources.

Over the past year we've improved ATO Online for individuals - and now tax agents - by adding further functionality to better support the needs of your members in dealing with the recent super reforms.

New functionality for individuals through ATO Online includes visibility of:

- all their active and closed accounts (since 1 July 2018)
- whether they've triggered a bring-forward arrangement
- employer contributions
- their total super balance and transfer balance cap.

Fund members can use ATO Online via myGov to consolidate super accounts, apply for release of super under the FHSS scheme, apply for release of super on compassionate grounds, and make a Division 293 excess contribution election.

Importantly for your members, we've enhanced the super functionality of online services for agents; they can now view a client's fund details across a wide range of key transactions.[1]

Looking ahead to 2019–20, the visibility of a person’s total super interests and our ability to share that information will be essential for individuals to manage their super affairs.

Through the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO), the government announced proposals for the early release of super to victims of family or domestic violence and sharing super information with family and criminal courts for victims of crime. Subject to the role the ATO may have in these arrangements, such readily available client information will continue to be valuable.

Emerging focus areas: 2019–20

Compensation received by super funds

Recent events have underlined the need to confirm the Commissioner’s view on compensation. In October 2018, we published advice on the tax consequences for compensation paid directly to individuals.[2] However, we were conscious of the need for certainty about the Commissioner’s view on compensation payments made to funds and the impact on fund members. In particular, we were aware that the question of whether those payments would be contributions was a notable concern given the potential for members to unintentionally exceed their contribution caps.

Recognising there would be a number of scenarios under which compensation might become payable, we consulted with key stakeholders including industry representatives such as ASFA, industry advisers, funds and the Australian Financial Complaints Authority (AFCA) to gain a practical appreciation of the nature of proposed remediation programs and the types of compensation payments likely to be paid.

As is standard practice, we work closely with the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA), in this case to ensure the scenarios covered in our guidance took into account the regulatory requirements of financial service providers and fund trustees so that we could provide consistent advice to the industry.

On 19 July 2019, we published guidance on the income tax, GST and super consequences for compensation payments by financial service providers to super funds.[3]

We acknowledge the guidance won't cover all possible situations but expect it will cover the majority. We cover off scenarios including where the financial service or advice was not provided, where it was deficient, and where the insurance premiums for death or disability insurance cover were overcharged.

Our published advice confirms we expect any compensation, subject to any specific regulatory guidance by ASIC and APRA, which is paid to the fund that holds the right to the compensation and that we don't view these amounts as contributions.

Conversely, where a fund has no right to compensation, any compensation paid will generally be regarded as a contribution; for example, where the right to compensation belongs to the member personally rather than to the fund.

Our guidance recognises the policy thinking underlying the principles that compensation be awarded in a way that returns the member to the position they would have been in but for the misconduct, and that super money should remain in the super system.

However, we do recognise that the law regarding what is a contribution is complex and its characterisation will depend on:

- the nature of the payment
- who may have the legal right to the compensation – the trustee of the super fund or an individual member
- whether the payment made to a super fund increases or augments the capital of the fund
- whether special rules concerning payments made out of reserves held by the super fund apply.

Where members haven't had the choice or ability to influence the payment of compensation into their funds, and the payment is a contribution which causes them to exceed their contributions caps, they may apply to the ATO for the exercise of the Commissioner's discretion to either reallocate or disregard the contribution. But I do want to remind you that the Commissioner’s ability to exercise discretion is limited and only triggered on application by an individual member.

We recognise it's not the ATO’s place to comment on the suitability or appropriateness of compensation agreed between parties; these are matters more appropriate for ASIC and APRA. It's important to consider all the potential tax and super consequences of the remediation that may take place, including whether fund members will need to take further action to achieve appropriate member outcomes.

I thank ASFA members in particular for their assistance and support as we developed this product.

Pension tax bonuses

We recently published a *Practical compliance guideline* (PCG 2019/D2) seeking feedback on our compliance approach for large APRA-regulated super funds in respect of pension tax bonuses. Consultation ran from 17 July to 14 August.

The PCG outlines our compliance approach to pension tax bonuses that aren't included in members' opening account balances on starting a retirement phase income stream. It provides our transitional compliance approach for large super funds experiencing difficulty complying with certain legislative requirements, specifically where IT systems may not correctly reflect the pension tax bonus in members' opening account balances.

Importantly, the PCG outlines conditions where we wouldn't allocate compliance resources to review the calculation of exempt current pension income (ECPI) when a fund doesn't incorporate the value of the pension tax bonus to calculate required minimum pension payment amounts.

We recommend you speak to us before implementing a pension tax bonus arrangement to ensure it falls within the guidelines.

Transfer balance cap indexation

We're looking ahead to when the general transfer balance cap (TBC) may be indexed. As a reminder the requirement for indexation is contained in the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* with a date of effect of 1 January 2017.

Therefore, a matter to be aware of is that indexation could occur on 1 July 2020 or 1 July 2021. However, it is important to note that this will depend on the December 2019 indexation rate and if it reaches 116.9 Index Points.

The legislation provides that the general TBC is indexed in increments of $100,000 if the indexation rate reaches a prescribed figure (ie this is calculated using a formula set out in the law).

While it may be more likely that indexation will occur on 1 July 2021, you should start considering what this may mean for funds and members.

Once indexation of the general transfer balance occurs, there will be no single personal TBC which applies to all your members with a retirement phase income stream, as potentially each member will have their own personal TBC.

We will advise you if indexation will apply on 1 July 2020 as soon as possible after the indexation figure is released.

ATO approach to indexation

I wanted to take some time to outline how indexation would impact you and your members in the future.

An individual who starts their first retirement phase income stream on or after indexation will have a TBC of $1.7 million.

An individual who already had a TBC account and had equalled or exceeded the $1.6 million TBC at any stage won't be entitled to indexation and their personal TBC will remain at $1.6 million.

For everyone else, we'll identify the highest ever balance in their transfer balance account and use this to calculate the proportional increase in their TBC and apply the new personal TBC to their affairs going forward.

These individuals will have a personal TBC somewhere between $1.6 million and $1.7 million.

You and your members can already see what we consider their highest ever transfer balance was and if we consider that they will be entitled to indexation.

This information is based on information reported to and processed by us. Late reporting or retrospective re-reporting by funds, even after indexation has occurred, will mean we'll reconsider whether the individual was entitled to proportional indexation and apply this new information to their affairs.

Of course, we will keep you informed as this develops.

Successor fund transfers

It's likely this coming year that we'll see an increase in successor fund transfers as part of this. It's critical for affected members, and the broader industry, that the process is undertaken correctly.

Last financial year we supported funds through 16 successor fund transfers. Although member reporting is only one administrative element in the process, it should not be overlooked. The impact it can have on the individual member if not completed correctly can be significant.

The 16 funds supported by the ATO covered approximately 1.2 million members, all or some of whom had the potential to be affected in some way; for example, confusion due to accounts being displayed incorrectly or potentially incorrect contribution or TBC assessments.

To circumvent issues as much as possible, we've begun to improve existing successor fund transfer protocol information as well as our support model.

Protecting Your Super measures

Immediately on the horizon for us all is the implementation of the Protecting Your Super measures under the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*.

The Commissioner can now proactively reunite people with unclaimed super money (USM) to an active account.

Our broader involvement, and where we're working closely with funds, relates to the administration of changes introduced through the Protecting Your Super package, which requires funds to identify and transfer inactive low-balance accounts under the USM reporting and payment framework.

We've been working closely with industry, the other regulators and Treasury on the application of the new law, and a number of key issues were raised and addressed in the lead up to 30 June 2019.

Consistent with the law, we took the position that identification of an inactive low balance account was at a 'product' level. However, as this raised some transition issues for funds, we advised we wouldn't apply compliance resources to review whether a fund had applied the necessary tests at a 'product' level until the law is amended in line with government’s intent. In late June 2019, the government indicated it would be changing the law so the tests would apply at an 'account' level. On this basis, our practical approach in managing this will continue as previously advised in our communications with funds.

In terms of implementation, funds have met the requirement of reporting accounts to us that meet the definition of ‘inactive low-balance accounts’ by the ‘unclaimed money day’ of 30 June 2019.

The next step for funds is to report and pay the amounts to us by the ‘scheduled statement day’ of 31 October 2019. This work is on track and we're ready to receive the information and payments.

From early November 2019, we'll start the reuniting process back to fund members' active super accounts. We'll do our best to ensure this is done within 28 days of the 31 October transfer date from funds.

Reuniting super beyond the 'Protecting Your Super' measures

Where multiple accounts exist, we'll look to use the Commissioner's new powers to reunite people with their lost or unclaimed super to other accounts; thereby protecting members' account balances because they won't be paying multiple fees and insurance.

At 2 July 2019, we held 5.39 million accounts worth $3.98 billion, consisting of:

- 5.07 million USM accounts worth $3.86 billion
- 324,232 Superannuation Holding Accounts special account (SHAsa) worth $112.86 million.

The value of super held by us is expected to increase due to the changes under the Protecting Your Super package.

However, of this ATO held super, we estimate we'll now be able to reunite $473 million in super to 485,000 fund members. This was not possible previously as we could only rely on fund members initiating this.

We will continue to engage with and encourage fund members to reunite with their lost and unclaimed super through ATO Online via myGov.

In 2018–19, fund members consolidated or transferred over 537,000 accounts worth $4.38 billion using ATO Online via myGov. But as we can see from the amount of ATO-held super, there's still more for us all to do.

Electronic release authorities and SMSF rollovers

The work started as part of the 2019–20 Budget measures to bring electronic release authorities into SuperStream will continue. We aim to further reduce fund administrative costs by allowing our systems to send electronic requests to funds for the release of super.

What this means for funds is further streamlining transactions or interactions by replacing a manual process (receiving and actioning the authorities via mail or the portal) and leveraging off a system already in use.

With industry support, to reduce implementation costs for funds redesigning systems, we've deferred the ability for self-managed super funds (SMSFs) to receive rollovers from APRA-regulated funds from November 2019 to March 2021.

This will reduce administrative costs and allow for a more integrated design of SuperStream as only one system update will be needed for both sets of changes.

Between SMSF rollovers and electronic release authorities, hundreds of thousands more transactions and interactions will be capable of a 'straight-through' process, increasing efficiency.

In June, the Minister confirmed the relevant regulations will be amended to effect the deferral as soon as practicable.

Implementation of Single Touch Payroll

Single Touch Payroll (STP) is a large reform to payroll management and reporting, for all businesses in Australia. In many ways, the scale of reform is similar to SuperStream.

The implementation of STP is already streamlining business reporting obligations and making it easier for employers to report to the ATO. Importantly for super, it is also about protecting employee entitlements through being able to check whether what was reported as owed by the employer has actually been paid as a superannuation guarantee contribution into the superannuation fund of an employee.

With the strong and ongoing support of funds, we can also see who the employer is, their compliance history and how compliant they are with quarterly SG payments.

STP enables employees to see their payroll information and to reconcile their accrued super (from their payroll information) with their paid super (from the Member Account TS information) throughout the year in ATO online. This will help them act quickly if they identify unpaid super.

Extending STP to all employers helps ensure all Australians get their full super entitlements, gives greater transparency and ensures a level playing field. With 95% of businesses with over 19 employees now complying with their STP obligations, we're gaining increasing visibility of pay as you go withholding (PAYGW) amounts. We've already identified examples, in near-real time, where employers have incorrectly reported or paid PAYGW liabilities; this wasn't possible before.

We're focused on using STP data to make it easier for employers to comply, and harder not to comply, with their PAYGW obligations. STP gives employers visibility around their cash flow, enabling them to make decisions that can help drive their business forward.

And finally, but also importantly for you - this is about streamlining an employer's reporting obligations. STP is changing how employers report tax and super information to the ATO.

Where functionality exists, employers may also be able to use their software to complete a new employee's tax file number (TFN) declaration and super choice form – removing the clunky paper process used today.

The benefits of streamlining for employers will be delivered in the short term: they no longer need to report payment summary information to us at the end of the financial year or provide payment summaries to their staff, there'll also be less room for salary payment errors.

We currently have over 314,000 employers (including over 243,000 small businesses) reporting through STP. They're now routinely reporting each pay day to the ATO on behalf of over 9.4 million employees. This is approximately 78% of the estimated 12 million employees in Australia.

At the same time, and largely as a result of the STP changes regarding payment summaries, the number of people with myGov accounts linked to the ATO has grown from 6.7 million last year to 9 million.

Super guarantee compliance

We now have an unprecedented level of visibility of super information at the account and transaction level.

As we gain increased assurance in the data and the conclusions we can draw from it, we'll use it to move sensibly into proactive 'nudges' and warnings to clients; for example, directly notifying or nudging employers we've identified as not having paid Superannuation Guarantee (SG) to their employees per quarter as required.

In fact, we recently piloted this approach with a small sample of 85 employers who we contacted regarding their late payment of SG. After our contact, some 50% of these employers then lodged and paid the outstanding SG to the ATO for their employees.

We intend to expand this approach to those employers who haven't paid SG to their employees within 30 days after the end of the reporting quarter.

Progressive quarterly reporting of SG payments to employees is now routine. Until this year, we only received an annual report from APRA-regulated funds.

Between 1 and 12 July 2019, funds reported to the ATO that 637,000 employers paid 11.3 million fund members $71 billion in SG contributions in 2018–19.

Pleasingly, 95% of employees' quarterly SG payment details have been reported with their employer's ABN. As our confidence in reported data grows, we'll do more work to identify patterns of late- and non-payment of SG. Our next steps will be to incrementally integrate data analytics tools into our engagement and treatment strategies to address SG non-payment.

The timely nature of the data will enable us to invest in early intervention and preventative treatments. For example, our 'health check' conducted at every payroll event submitted through STP will help detect where an employer may not be correctly calculating their employees' SG, allowing us to intervene and assist before the amount is even due for payment. Where a payment is late or underpaid, we'll be able to identify it and engage the employer quickly to recover any SG charge and address the underlying behaviour.

We'll target preventative messaging at those employers or groups previously identified as having issues, providing timely reminders ahead of due dates or to address common problems.

Of course this is the first step in focusing on SG and PAYGW underpayment and identifying early signs of insolvency. Such approaches will have flow-on benefits and reduce employer notifications to the ATO.

Coupled with other initiatives, we'll be able to bring both active oversight and effective intervention to enforce SG payment and protect employees.

While the immediate benefit to individuals who are being underpaid their super entitlements is apparent, this visibility and our ability to proactively engage with employers who don't meet their obligations means we can also better ensure a level playing field for business, particularly small business.

We recognise most employers do the right thing, but we need to ensure they're not disadvantaged by those who don't comply.

Conclusion

Recent super reforms strongly support the ATO's drive towards a digital and evidence-based future. The unprecedented volume and timeliness of data gives us an ability to prevent breaches and provide insights into behaviours across the super system and increasingly guide our future approach to employers.

Together, Single Touch Payroll and event-based reporting for APRA-regulated funds provide the foundation for our administration of super, and are central to enhancing community confidence in the tax and super systems.

1 *This includes total super balances, bring-forward arrangements, concessional cap elections, Division 293 elections, transfer balance cap and transfer balance elections, transfer balance account report (TBAR) lodgment, Single Touch Payroll reporting; Small Business Superannuation Clearing House (SBSCH) functions and SG contributions by employers to an employee's super fund.*

2 Compensation paid to individuals for advice from financial institutions (https://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Compensation-paid-from-financial-institutions/)

3 Compensation received by super funds from financial institutions and insurance providers (https://www.ato.gov.au/Super/APRA-regulated-funds/In-detail/APRA-resources/Fact-sheets/Compensation-received-by-super-funds-from-financial-institutions-and-insurance-providers/)

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