

# MERCER

Human Resource Consulting

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31 July 2006

General Manager  
Superannuation, Retirement and Savings Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Subject:

## **Mercer Submission No. 3 – Portability**

Dear Sir

This is the third submission made by Mercer Human Resource Consulting in response to the Government's Plan to Simplify and Streamline Superannuation.

### **Key Government proposals covered in this submission**

- A reduction in the period allowed to process a portability transfer from 90 to 30 days;
- The removal of the retriggering provisions so that the 30 days starts when the request is made, not when any necessary information or proof of identity is obtained; and
- The introduction of a mandatory standard form to be used for portability transfers.

### **Executive Summary**

We are generally comfortable with the reduction from 90 days to 30 days. A 30 day period is considerably longer than the service standards our firm adopts for processing payments including transfers.

We do however have considerable concerns about the proposal that the period commences from the date of request and is not retriggered if all information is not supplied. We consider that such a proposal is unworkable and likely to create a conflict for trustees who may be forced to decide whether to breach the 30 day limit or to breach their applicable (and appropriate) risk management standards required by their APRA licence (which may include procedures for verification of ID etc). It may also increase the opportunities for fraud. We strongly oppose the removal of the retriggering provision.

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The need for proper identity verification should be paramount. The removal of the retriggering provisions would put this at serious risk and hence we particularly stress the importance of Recommendation 1.2.

We have also made other recommendations to streamline the process, to ensure that the Portability requirements better mesh with the Choice of Fund requirements, and to provide more effective relief for funds that provide investment options that include illiquid assets.

We also have some concerns regarding the mandated use of a standard portability transfer form. We agree that using such a form would have some advantages however, unless the form is appropriately designed and ensures that appropriate identity validation is provided, then such a form could create further difficulties for funds as well as potentially increasing the opportunities for fraud.

Any such mandated form that may be introduced should be designed after wide consultation with the industry and should be deferred until after the proposed major tax changes and potential changes in relation to anti-money laundering and counter terrorism have been implemented.

The attached report sets out more background and reasoning behind the recommendations outlined above.

Our full recommendations are set out in Appendix 1 to this letter.

In Appendix 2, we have listed the previous submissions made by Mercer on the Government's discussion paper. We intend making several more submissions by 9 August 2006.

Please contact either John Ward (03 9623 5552) or David Knox (03 9623 5464) if you wish to discuss any of these issues. They will be happy to elaborate further on our ideas.

Yours Sincerely



Peter Promnitz  
Chief Executive

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## APPENDIX 1: Mercer Recommendations In Relation To Portability

Recommendations	Discussion Paper Reference
<b>Reduction in time for portability transfers from 90 to 30 days – Refer to Section 1 of attached report</b>	
1.1	The time allowed for portability transfers could be reduced from 90 to 30 days but only if recommendations 1.2, 1.3, 1.4 and 1.5 are adopted. Adopting recommendation 1.6 would also assist in streamlining the process.
1.2	To enable funds to adopt appropriate identity verification and to ensure payments are made correctly, the retriggering provisions should not be removed. The transfer period must only commence once all correct information and proof of identity has been supplied.
1.3	To avoid problems resulting from further contributions being received after a full transfer, then either, in the case of full transfers: <ul style="list-style-type: none"> <li>A. where the trustee believes that a further contribution may be made, the transfer period should be retained at 90 days with the 30 day period only applying to partial transfers (and full transfers where further contributions are not expected); or</li> <li>B. the Portability Regulations should be amended to require members to provide evidence, in cases where a full transfer has been requested, that no further contributions will be made or details of when the last contribution will be made. The trustee should then be able to defer the transfer until after the last contribution, as advised, has been received. The trustee should be allowed a period of 30 days after the contribution has been received to process the transfer.</li> </ul>
1.4	To better cater for illiquid investments, the Portability Regulations should be amended to enable APRA to provide ongoing exemptions or extensions to funds in respect of illiquid investment strategies. In many cases, these strategies have been selected by the member under member investment choice. Where exemptions/extensions have been obtained, this should be clearly disclosed in the fund's Product Disclosure Statement.
9.2.1	9.2.1

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1.5	The Portability Regulations should be amended to enable APRA to provide temporary exemptions in a wider range of circumstances including fund wind-ups and changes of administrator.	
1.6	To streamline the process, the requirements of SIS Regulation 6.34(2) relating to ensuring that the member knows he can ask for more information and does not want such information should be removed.	

<b>Standard Form – Refer to Section 2 of attached report</b>		
2.1	Consideration of a standard form to be used for portability transfers should be deferred until the proposed tax changes have been introduced and any anti-money laundering and counter-terrorism provisions have been implemented.	9.2.1

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## **APPENDIX 2: Previous Submissions made by Mercer Human Resource Consulting**

<b>Submission</b>	<b>Date</b>
Submission Overview	13 July 2006
Submission No.1 – Undeducted Contributions	13 July 2006
Submission No.2 – Deductible Contributions	13 July 2006

31 July 2006

# **A Plan to Simplify and Streamline Superannuation**

## **Submission No 3: Portability**

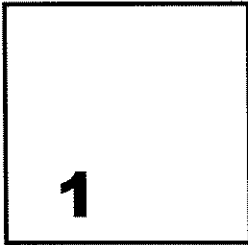
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## **Reduction in time for portability transfers from 90 days to 30 days**

### *General*

Mercer administers a number of large corporate superannuation funds. Our subsidiary company, Mercer Investment Nominees Limited acts as trustee of several of those funds.

In these roles we aim to process portability transfer requests as soon as practical and generally well within the current 90 day period and even the proposed 30 day period.

Where full and complete information and proof of identity is provided, most transfers are completed in significantly less than 30 days and in accordance with the service standards we have agreed with our clients.

However, based on our experience to date there are several reasons why we believe that the Government's proposals need to be modified.

**Recommendation 1.1: The time allowed for portability transfers could be reduced from 90 to 30 days but only if recommendations 1.2, 1.3, 1.4 and 1.5 are adopted. Adopting recommendation 1.6 would also assist in streamlining the process.**



The major concerns with reducing the time frame allowed to process the transfer are as follows:

- Incomplete or incorrect information;
- Insufficient proof of identification;
- The expectation of further contributions to be made (only a concern with total transfers);
- An unnecessary legislative barrier; and
- Difficulties in realizing some illiquid assets.

*Incomplete or incorrect information*

Whilst the member may specify the name of the proposed rollover fund, the information provided may be insufficient to properly identify the fund. For example the member may have supplied an incorrect (or out of date) address, or name.

For an SMSF, the member may not have provided sufficient evidence that the fund is a complying fund, particularly if the fund is not listed on the Register of Complying Schemes site. (We note that Regulation 6.34 appears to require the trustee to rollover to any fund nominated, however other requirements in the SIS legislation mean that rollovers can only be made to a complying fund.)

In some cases, it has proven difficult to obtain a prompt response in relation to a request for further information from the member.

We acknowledge the comments in section 9.2.1 of the Government's "Detailed Outline" that in respect of the standard form "This would also potentially reduce the need for funds to seek more information from members which can delay processing." However, the use of a standard form does not mean that members will always provide complete and correct information.

*Insufficient proof of identification*

Some problems will exist irrespective of the manner in which a fund currently manages its identification processes. For example, in some cases, the member's address or name on a portability request will not match the fund's records.

This may simply be due to the member not previously notifying the trustee of any change of name or address. In other cases, the person may be known by more than one name. For example, Edward John Smith might be commonly known as Jack or Ted Smith and his superannuation records have been established under the name Edward John whereas the portability form records the name of Jack or Ted Smith.

However, the identification issue runs much deeper than that. The practice of many superannuation funds, in particular standard employer sponsored funds, has not been to verify identification data when a member joins. Rather, the trustee has relied on information provided by the sponsoring employer to effectively provide “proof of identity”. The sponsoring employer provides the fund with the member’s details on joining the fund and subsequently advises that the member has ceased employment. Contact details for the member would be supplied at that time. Annual benefit statements may have been traditionally prepared by the trustee and “delivered” through the employer’s internal mail system.

However this approach is changing. In a Choice of Fund environment, trustees are less likely to have a close relationship with the employer or employers of the fund’s members. Many funds are now trying to establish closer relationships with members. It is therefore becoming increasingly likely that the fund will have the member’s address details (even if these may be out of date in some cases). Funds which operate websites and telephone help-lines are likely to have issued Personal Identification Numbers or individual passwords for identification and access purposes. Alternatively, or in addition, a point based identity check may occur when a member calls the help-line.

These processes are most effective for web-based and telephone interaction between the member and the trustee. They do not necessarily lend themselves to paper communication (eg the lodging of a portability transfer request). In particular, the use of PINs or passwords on paper based forms is generally inappropriate.

Trustees and superannuation administrators are fully aware of the risks of paper based transactions - it would be relatively simple for a person to fraudulently lodge a portability transfer form in respect of any member of a fund if the only information required was name and address. Clearly trustees need to ensure that appropriate proof of identity is provided with the portability transfer request (whether this is a standard industry wide form or one generated by the trustee itself).

The issues described above relating to the need to have correct information and proof of identity highlight the problems with the Government’s proposal to remove the retriggering provisions.

A reduction in the time frame from 90 to 30 days is generally acceptable to us as it fits with the service standards our firm adopts for processing payments including transfers, however this is subject to one major condition. It would **only** be acceptable if the 30 days applied from the date all necessary and correct information is provided. Thus the proposal to remove the retriggering provisions should **not** proceed.

If retriggering is removed, and full information or proof of identity has not been provided, then the requirement to rollover the benefit by day 30 may be contrary to the Trustee's RSE Licence "Risk Management Strategy" (which trustees must also comply with in accordance with their APRA licence conditions) or the Trustee's Anti-Fraud practices.

**Recommendation 1.2: To enable funds to adopt appropriate identity verification and to ensure payments are made correctly, the retriggering provisions should not be removed. The transfer period must only commence once all correct information and proof of identity has been supplied.**

*The expectation of further contributions to be made*

Under the Choice of Fund legislation, a member needs to deal with the employer to choose another fund for future contributions. As a totally separate transaction, the member needs to deal with the trustee to transfer accrued benefits to another fund.

This can lead to the situation where the member chooses another fund and lodges a Choice of Fund form with their employer and then submits a portability transfer form to the trustee requesting all benefits be transferred. The trustee processes the transfer and closes the account. A week later the employer, who effectively has up to 2 months to put in place arrangements to contribute to the new chosen fund, makes another contribution to the original fund. However the person is now no longer a member. This may mean that new membership application paperwork has to be completed, membership and account records re-established, the need for the member to lodge another portability transfer request and a further transfer by the trustee. This is a costly and time consuming process for the trustee and results in inconvenience for the member and sometimes two exit fees being charged.

In some cases, it may be necessary for the trustee to refuse to accept the contribution as the person is no longer a member and either the fund's rules or other legislation do not allow the person to rejoin the fund. This may then impact on the employer, who may not have time to meet the timing requirements of the Superannuation Guarantee legislation and will become liable for the SG Charge, associated penalties, and additional administrative work.

These outcomes are highly undesirable and greater co-ordination of the Choice of Fund and Portability legislation is required.

At present, trustees can, if they are aware that further contributions are expected, delay the portability transfer (up to the 90 day limit). This will generally be sufficient time to ensure that all contributions are received before the portability transfer occurs. If the period is reduced to 30 days, there will not be sufficient time to ensure that all contributions are received before the transfer.

We believe that there are 2 options to solve this problem.

One option would be to retain the 90 day period in cases where a full transfer is requested and the trustee believes that further contributions may be received. The 30 day period would then only apply to partial transfers and full transfers where the trustee believes that further contributions are unlikely.

Another option would be to amend the Portability Regulations to require, in the case of a member requesting a full transfer, the member to provide evidence from the employer that no further contributions will be paid.

**Recommendation 1.3: To avoid problems resulting from further contributions being received after a full transfer, then either, in the case of full transfers:**

- A. where the trustee believes that a further contribution may be made, the transfer period should be retained at 90 days with the 30 day period only applying to partial transfers (and full transfers where further contributions are not expected); or**
- B. the Portability Regulations should be amended to require members to provide evidence, in cases where a full transfer has been requested, that no further contributions will be made or details of when the last contribution will be made. The trustee should then be able to defer the transfer until after the last contribution, as advised, has been received. The trustee should be allowed a period of 30 days after the contribution has been received to process the transfer.**

These variations will better align the requirements with the Choice of Fund requirements, reduce costs for members and trustees and reduce the likelihood of employers incurring Superannuation Guarantee penalties.

*Difficulties in realising some illiquid assets*

Whilst not a significant problem for most funds, we acknowledge that some funds which offer investment strategies involving illiquid assets, may have some difficulties in meeting a 30 day (or even a 90 day) period.

Whilst the existing Portability Regulations enable a fund to apply to APRA for a suspension or variation of the requirements, the trustee must show that there would be a significant adverse effect on the financial position of the fund or the other members of the fund. In practice, such justification may be difficult to prove where there may be only a few members in a large fund who have adopted an illiquid investment strategy.

Nevertheless, the trustee needs to ensure that other members are treated equitably and should not suffer, even if only by a relatively insignificant amount. If ongoing exemptions are not allowed for illiquid investments, then trustees may need to consider removing such investment strategies or options.

We consider that APRA's powers to grant an exemption or extension should be extended to cases where the fund or other members might be adversely affected to any extent. Such exemption or extension should be restricted to the relevant illiquid investment strategies and should be disclosed to members so that they are aware of the reduced access to portability when choosing that investment strategy.

**Recommendation 1.4: To better cater for illiquid investments, the Portability Regulations should be amended to enable APRA to provide ongoing exemptions or extensions to funds in respect of illiquid investment strategies. In many cases, these strategies have been selected by the member under member investment choice. Where exemptions/extensions have been obtained, this should be clearly disclosed in the fund's Product Disclosure Statement.**

*Fund wind-ups and changes of administrator*

Where a fund is winding-up, merging with another fund, transferring to a master trust or changing administrators, it is normally necessary to "lock-down" the fund for a period. This would include:

- a "lock-down" of the original fund so that the fund's assets can be properly assessed and distributed equitably to members; and
- a "lock-down" of the new fund to ensure that administration records have been properly established.

No benefit payments or transfers would be allowed during the lock-down period.

Again it may be possible for the fund(s) to claim a temporary exemption from APRA however, as indicated above, to obtain an exemption, the Regulations require that the trustee must show that there would be a significant adverse effect on the financial position of the fund or the other members of the fund. Where only one or perhaps a few members are requesting a portability transfer, it may be difficult to justify that there might be a significant adverse effect. Nevertheless, it is important that an accurate apportionment is obtained and accurate records established in the new fund.

**Recommendation 1.5: The Portability Regulations should be amended to enable APRA to provide temporary exemptions in a wider range of circumstances including fund wind-ups and changes of administrator.**

*Existing legislation causes delays*

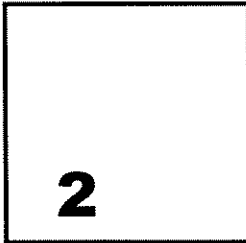
The existing SIS Regulation 6.34 (2) states “Before a trustee of a regulated superannuation fund or an approved deposit fund rolls over or transfers the amount, the trustee must be satisfied that the member:

- (a) is aware that the member may ask the trustee for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:
  - (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
  - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and
- (b) does not require such information.”

This requirement also causes delays in processing portability transfer requests. The removal of Regulation 6.34(2) would therefore assist in speeding up the transfer process.

The inclusion of appropriate words on a Standard Transfer Form may enable the trustee to satisfy itself that the requirement has been met. However, the complexity of the words in Regulation 6.34 mean that the words on the standard form will also be complex. At the very least, such words will not improve readability.

**Recommendation 1.6: To streamline the process, the requirements of SIS Regulation 6.34(2) relating to ensuring that the member knows he can ask for more information and does not want such information should be removed.**



## **Standard Form**

The adoption of a standard portability request form may, in the longer term, assist the process of speeding up the transfer process.

However, in the shorter term, we have serious reservations about its effectiveness.

At present, different funds employ a variety of methods in relation to proof of identity.

Any standard form should require the member to provide such proof. However, until an industry standard of proof is developed, the level of proof required by one fund may be different to that required by another. The level of proof may vary because of different risk tolerances of the trustees or may be due to underlying differences in the level of member information currently held by the trustees.

We do not consider it possible that funds should be expected to modify their membership data requirements to a consistent level and agree on a standard proof of identity in the short term. We see this as a longer term process.

Funds will also be making considerable changes to their systems and processes over the next 12 months to handle the proposed tax changes. This will be a very major task and should clearly take priority. Simultaneously requiring other changes that may involve funds in collecting significant additional membership data and changing proof of identity requirements may overload the resources and capabilities of many trustees.

The use of standard forms in the past has also created difficulties for many funds. Often, the standard form might be appropriate for the standard case but has proved to be unsatisfactory in less standard circumstances. This has led to misunderstandings, ineffective communication and the need for trustees to provide additional material to circumvent the deficiencies of the standard form.

In relation to portability, we can immediately envisage difficulties for defined benefit funds where special wording may be required to highlight that portability is only relevant to any accumulation component of the benefit.

Trustees may also be concerned to ensure that members are made aware of the benefits that they may be giving up by requesting a portability transfer. It is unlikely that this could be effectively included in a standard form.

It is also likely to be difficult to incorporate standardised proof of identity requirements at present due to the different needs of different funds. There would be considerable advantages if this was deferred until the finalisation of the proposed anti-money laundering and counter-terrorism provisions.

**Recommendation 2.1: Consideration of a standard form to be used for portability transfers should be deferred until the proposed tax changes have been introduced and any anti-money laundering and counter terrorism provisions have been implemented.**

Mercer would be keen to participate in any eventual discussions with the ATO, Superannuation Consultative Committee or industry bodies regarding the drafting of a suitable form.



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