



Submission by the Commonwealth Ombudsman

**Response to exposure draft:
Stronger Super
Using tax file numbers as an identifier and to
facilitate account consolidation**

Submission by the Commonwealth Ombudsman, Allan Asher

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INTRODUCTION

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- achieving improvement in policy, process and procedural practice arising from administrative deficiencies or systemic failure, as identified through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints and/or remedies to injury arising from government administrative action
- developing policies and principles for accountability.

The Commonwealth Ombudsman, as established through the *Ombudsman Act 1976*, is also the Taxation Ombudsman. The Taxation Ombudsman focuses on investigating complaints from taxpayers and tax professionals about the administrative actions of the Australian Taxation Office (ATO).

BACKGROUND

In the past two years this office has noted an increase in the number of complaints received relating to the compromise of taxpayers' tax file numbers (TFNs). Complaints involving the compromise of TFNs are of particular concern as a TFN is used as the primary identifier in the administration of the taxation system. Any threat to the security and integrity of TFNs has implications for individual and business tax records, collection of tax revenues, disbursement of taxation payments, and the identity and privacy of individuals.

This proposed extended use of TFNs by superannuation trustees will reinforce the need for strong oversight and effective systems to ensure the integrity and security of TFNs in the superannuation industry as well as the ATO.

The Ombudsman released an own motion report in September 2010¹ on the ATO's management of compromised TFNs. This report highlighted key areas for improvement arising from the ATO's responses to a number of TFN compromise complaints referred from this office. The significant issues of concern highlighted in the report were:

- the ATO's failure to respond appropriately to problems arising from compromised TFNs
- inadequate policy oversight and recognition of the systemic issues revealed by complaints to the Ombudsman
- inadequate communication with affected taxpayers.

Following the release of the report, the ATO has consulted with this office to develop responses to the report's five recommendations and has made some progress towards implementing changes to address the identified shortcomings.

¹ Report No.12: *Australian Taxation Office: Resolving Tax File Number Compromise*. September 2010. Commonwealth Ombudsman, Canberra.

SUBMISSION

The proposed changes to the *Superannuation Industry (Supervision) ACT 1993* (SIS Act) offer apparent practical benefits in the consolidation and management of superannuation fund members' accounts. They do this without imposing unreasonable constraints or limiting flexibility in the way members may choose to handle their superannuation accounts. However, case studies included in the Ombudsman's *own motion* report, illustrate some of the problems that can arise with management of TFNs.

While the benefits from the proposed changes will accrue to superannuation trustees and fund members, we also would expect to see consistent and appropriate administrative practices introduced for the management of the new arrangements.

The exposure draft does not directly canvass issues of governance or administrative implementation of the new arrangements. We would expect that the revised regulations will address the following requirements for trustees and other eligible superannuation entities.

1. Implement effective procedures and systems, including contact protocols with the ATO, to ensure:
 - the integrity of the identity matching process including establishment of an identity matching standard
 - safeguard against instances of TFN compromise through fraud, accidental disclosure or operator error.
2. Undertake effective communication with fund members, especially those of non-English speaking backgrounds, to explain the scope and purpose of the changes, and processes in place for the protection of their privacy and superannuation accounts.
3. Incorporate statements in their service charters about fund members' rights and obligations in the use of their TFNs in relation to their superannuation accounts, and assurance of the integrity of members' TFNs.
4. Institute appropriate mechanisms to respond to fund members' complaints or grievances in respect of a trustee's use of their TFNs. In particular, clarification of jurisdictional issues or process for complaints – initially to the Superannuation Fund or the ATO, with further recourse to the Commonwealth Ombudsman, Superannuation Complaints Tribunal or Australian Prudential Regulation Authority.

SUMMARY

The Ombudsman's *own motion* report on the ATO's management of compromised illustrates some of the problems that can arise with management of TFNs.

The ATO has had many years of experience in managing the registration and usage of TFNs, yet still faces challenges in administering the processes. The potential benefits to the superannuation industry and their clients from the extended use of TFNs should be balanced with the need for strong governance policies, process and procedures and an equally robust complaints mechanism.

Our office would welcome the opportunity to discuss our recommendations from the *own motion* report as they may relate to the circumstances proposed in the legislative changes.