

Stapled Super - Consultation Paper

Your Future Your Super

Consultation

7 October 2022

STAPLING

Summary

We support the stapling superfund concept.

We seek amendment to the law and the ATO implementation to remove unnecessary additional steps placed upon the employer.

Legal interpretation and application of the law

We reflect to Government that there is a series of issues preventing effective implementation and use of the stapled fund system, due to the interpretation and application of the current legislation. When liaising with the ATO on process and implementation improvements we are constantly referred to the law preventing such improvements.

The issues:

- Inability of the employee to nominate the stapled fund as a valid choice (the Super Choice form needs to be changed). Law needs to permit this.
- The employer (or their agent) must be able to request a stapled superfund information prior to completing any other linking step with the ATO.

Both of these issues have increased the regulatory red tape and compliance burden upon employers. The implementation process adopted by the ATO has created unnecessary and unwarranted additional steps when onboarding a new employee

Super Choice Form

[https://www.ato.gov.au/Forms/Superannuation-\(super\)-standard-choice-form/](https://www.ato.gov.au/Forms/Superannuation-(super)-standard-choice-form/)

Extract from the existing form

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| <p>1 Choice of superannuation (super) fund</p> <p>I request that all my future super contributions be paid to: (place an X in one of the boxes below)</p> <p>The APRA fund or retirement savings account (RSA) I nominate <input type="checkbox"/> Complete items 2, 3 and 5</p> <p>The self-managed super fund (SMSF) I nominate <input type="checkbox"/> Complete items 2, 4 and 5</p> <p>The super fund nominated by my employer (in section B) <input type="checkbox"/> Complete items 2 and 5</p> |
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We understand that there is a revision of this form in process. However we understand that the revised form is still inhibited by law.

We recommend that the law be amended to permit the ATO to provide an option on this form to allow an employee to select that their employer is now authorised to retrieve the “stapled fund” from the ATO.

This additional option should be the 2nd option on the list above.

To achieve the purpose of the Your Future Your Super program, to enable an overt ability for the employee to make an “easy” selection of their existing “stapled fund” by authorising the employer to retrieve the correct and current details from the ATO system would enhance the onboarding process.

Employment Relationship

The ATO have advised

- “The Employment relationship is considered to be one of the requirements that must be satisfied for an employer or their agent to make the Request under paragraph 32R(1)(b) of the Superannuation Guarantee (Administration) Act 1992 (SGAA) and it needs to be verified before the Commissioner responds to a request. “

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| <p>What law is the ATO relying on in relation to including a necessity for the employer to first establish an employer/employee link through a TFN declaration or STP payroll event?</p> | <ul style="list-style-type: none"> • The Employment relationship is considered to be one of the requirements that must be satisfied for an employer or their agent to make the Request under paragraph 32R(1)(b) of the Superannuation Guarantee (Administration) Act 1992 (SGAA) and it needs to be verified before the Commissioner responds to a request. • If an ATO officer disclosed an employee’s protected information without being satisfied that an Employment relationship exists, the disclosing officer would be in contravention of subsection 355-25(1) of Schedule 1 to the Taxation Administration Act 1953 (TAA) which makes it a criminal offence for a taxation officer to disclose protected information¹¹ to another entity, other than the entity the information relates, an entity covered by subsection 355-25(2)¹² or to a court or tribunal, unless a relevant exception applies. <p>These dot points are supported by the following:</p> <p>Subsection 32R(1) of the <i>Superannuation Guarantee (Administration) Act 1992</i> (SGAA), which is inserted under the Treasury Laws Amendment (Your Future, Your Super) Bill 2021, provides that:-</p> <p><i>(1) An employer, or the employer’s agent, may request the Commissioner to identify any stapled fund for an employee of the employer. Such a request must be: ... (b) made in accordance with any requirements prescribed by the regulations for the purposes of this paragraph.</i></p> <p>Section 17B of the draft <i>Treasury Laws Amendment (Your Future, Your Super – Single Default Account) Regulations 2021</i> provides that the Request must be made for the purposes of complying with the aspects of the choice of fund requirements that relate to stapled super funds. The draft Explanatory Statement for the <i>Treasury Laws Amendment (Your Future, Your Super – Single Default Account) Regulations 2021</i> states under the heading, ‘When can an employer request information about stapled funds to the Commissioner?’ that:</p> <p><i>‘... if the individual is not employed by the employer, a request to the Commissioner by the employer (or their agent) about whether a stapled fund for that individual exists would not satisfy section 17B.</i></p> <p><i>Making false or misleading statements to a taxation officer (such as falsely purporting to be the employer of an individual) may be an offence under the Taxation Administration Act 1953.’</i></p> <p>We have taken feedback on board from various groups and we are currently exploring an alternate approach (which if endorsed) will remove some of the administrative burden that has been outlined to us.</p> <p>¹¹ Defined in subsection 355-30(1) of Schedule 1 to the TAA.</p> <p>¹² This is a covered entity which includes a registered tax agent, BAS agent and a solicitor.</p> |
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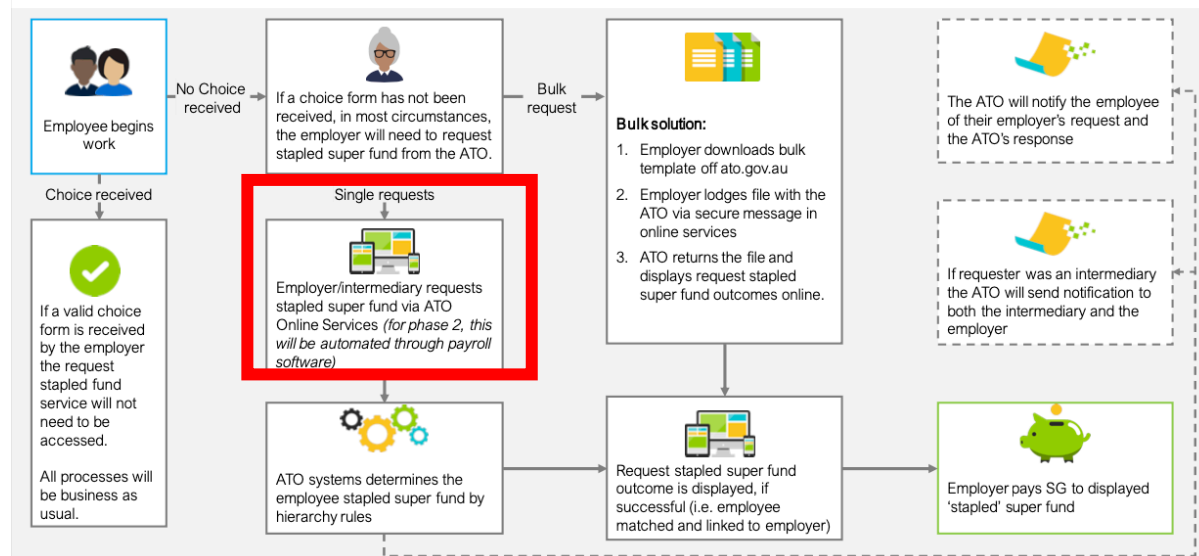
Note: *The current process is that the ATO will only be able to provide the “existing fund” details if there is a known employment relationship on the ATO systems “employer – employee relationship” with the new employer, i.e., a TFN Declaration has been lodged or a STP Payevent has been lodged for that employee.*

We refer to extract of process outline provided by the ATO

Your Future, Your Super | Request stapled super fund service



Request stapled super fund service high level overview:



The step highlighted by the red outline requires multiple steps and interactions by an employer

The current system:

With the requirement for the existing employer/employee relationship to be in place before the stapled fund information is available the process is:

1. That the employer will have established an employment relationship with the employee in its normal course of business with all onboarding information sought from the employee. This will include TFN Declaration information, personal information. The employer pays SG at this time has the necessary information to request the stapled fund information from the ATO however is NOT permitted to obtain such information.
2. The employer will onboard the employee into their system including payroll software without the super fund information.
3. The employer now needs to either
 - a. Separately lodge the TFN dec, or
 - b. Lodge the tfn dec from within their software if enabled, or
 - c. Lodge a STP payevent*
4. then the employer can login to ATO (or their Agent), enter employee information into the request screen and then retrieve the stapled fund information from ATO Online Services. Note that the employer has all the personal information available to them initially (provided by the employee) to allow them to onboard the employee and then to make the request.
5. The employer then has to complete a second onboarding process in their payroll software (not previously required) in order to complete the employee onboarding to provide the super fund information to the payroll software.

*Noting some software will require reconfiguration to allow this two stage onboarding.

Noting that some software will not permit paying an employee until the superfund information is known.

The Issue

The implemented process is that the ATO computer systems must have an established link between the employer and the employee.

The Solution

A law change that permits the ATO to rely on the declaration made by the employer at the time of utilising the request for stapled fund service that such a relationship exists and the employee is aware that the request is being made.

The system as designed and implemented, requires the employer (or their agent) to enter privileged information and make that declaration however the ATO currently do not consider that sufficient in accordance with the interpretation of the current law.

The alleged risk

That a person will be able to obtain the stapled fund information of another person whom they are not authorised to do so.

An Observation: The extra steps created by this computer system relationship connection, would not prevent a mischievous person from obtaining the stapled fund information.

Risk has been mitigated

We note: The employer will have been provided with the TFN dec of the employee, personal information (eg Date of Birth), bank account details etc. This new employee onboarding information contains all the information that is then entered into Online Services in order to request the stapled fund information.

There is no additional risk, that we can determine, to the ATO or to the individual that is solved or removed by the requirement to have an existing employer / employee relationship known to the ATO computer system before the ATO provides the stapled fund details.

We also note that due to the ATO knowing who has requested the stapled fund information, there is a risk response strategy that would be able to be initiated in tracking the source of any breach of use of the information.

Our preferred process would be

1. That the employer will have been provided the TFN dec information from the employee.
2. That they can then retrieve the stapled fund information from ATO Online Services, by entering the TFN Dec type information.
3. The employer would then continue to onboard the complete employee information into their payroll software.

Consultation Paper

Extracts

The Review

“unintended consequences and implementation issues of the YFYS legislation”

“avoiding perverse outcomes (for members)”

Stapling

Preventing “Unintended multiple accounts”

Comments in perspective on the consultation paper

1. Default fund of an employer remains a valid option

It remains a valid option for an employee to nominate the employers default fund to be used when commencing a new employment arrangement. In fact based on the way the superchoice form is constructed, this is a very valid option. We are not arguing that it is the right answer but we do note that it is both a valid option and, based on the form, one of the 3 valid options of which choosing a stapled fund is NOT.

Your comment: “Anecdotal evidence suggests that some employers have encouraged new employees to choose a fund (including the default fund) to avoid the stapling requirements.”

is a direct result of the extra complexity and extra steps that have been added to an employers process.

2. Superchoice Form

The current form available on the website does not adequately explain or deal with Stapled Funds.

As mentioned above: There is no option for the employee to indicate to the employer they would like the employer to obtain and utilise their existing stapled fund – there should be.

A feedback session has been held with the ATO about the form some months ago but no changes or modifications to incorporate stapled funds onto the form or improve its usefulness have yet been incorporated.

We have been advised by the ATO that the current law does not permit an efficient nor effective incorporation of stapled fund as an option.

Your Questions

14. To what extent are employers putting into practice processes to seek stapled fund details from the ATO? How has the implementation of stapling changed onboarding, software and payroll processes for new employees?

>>Note above comments

While the stapling service is most welcome and potentially could assist employers.

Its current implementation is an additional burden on employers.

A change in law to remove the barriers to effective use is required.

15. Are there any barriers in the current framework to achieve the intent of the stapling form?

>>Due to exclusion of Stapled Fund from the Superchoice form – this option is not known to the employee and hence not selected. When an employer receives a form back that selects default fund then they are obliged to use that option.

16. What is the actual or likely impact of stapling on insurance coverage?

>>Logic would state that an effective stapling system would remove lapse of insurance issues.

Other Matters

1 - ATO service Displays USI onscreen but does not print the USI when user requests “print friendly’ version

2 - An “authorised Use’ of the stapling service to verify fund details, would prevent significant other rework that is required by employers due to provision of incorrect or incomplete information.

3 - Stapling service could actually add integrity and remove complexity and incomplete payments of superannuation.

An example of the restriction: we have been advised:

“that the Stapling Service is not to be used to ‘check’ your own details, as it is not an authorised use of the service. By signing the request declaration, you declare that the information is needed for the purpose of complying with choice of fund rules relating to stapled funds, so we are obliged to caution against making a false declaration there.

We would recommend that an employer be permitted to utilise the service to verify or complete details.

4 - Superfunds changing USI

A further use case for an effective use of the Stapled Fund Service would be where the Superfund has changed the USI and the change notification has not been provided to the employer or the software platform.

This results in nonpayment of the super or potentially late payment. An ability to quickly utilise the stapled fund service to obtain a revised USI would be effective addition to compliance steps.

5 - Stapled Fund use and requirements contrary to Fair Work requirements

We understand that the Australian Taxation Office and the Fair Work Ombudsman have been working together to provide information for employers in the situation where no TFN declaration has been received from a new employee, the employee refuses to use myGov to complete this information and the payroll software won’t allow an employer to lodge a pay event without super details.

- If the payroll software allows the employer to leave the superannuation fund information blank for the first pay slip, they can do this and submit the pay event to the ATO.
- If the payroll software requires the employer to include superannuation fund information, they should include details in the fund name field indicating it is pending a stapled super fund request (for example “Pending stapled super request”). They should still include the amount of any superannuation contributions they have paid (or that they are liable to pay) for the period.

This will establish employer/employee link and the employer can then make a stapled super fund request for the employee.

Once the employer has the stapled super fund details, they should immediately update and reissue the employee's payslip to provide accurate information about their superannuation with details of the name (or name and number) of the super fund to which the employer will be making contributions.

>>This reissue of a payslip is again an additional burden upon the employer.
