Additional Information received from Financial Services Council, 5 June 2012

SuperStream penalties

Our view has been the strict liability offences applicable to employers under the Bill were inflexible and may deliver onerous penalties. We have made this point in our submissions on the exposure draft and to the PJC.

However we believe that employer penalties are necessary to drive good behaviour, but that penalties should neither be overly stringent nor applied without administrative consideration (ATO discretion).

Accordingly, we believe the penalties in the Bill should remain intact providing the ATO is provided with interpretative flexibility. This recognises situations where an employer endeavours to comply with the law but has not done so.

If the following suggestion is incorporated in the Bill, the ATO could waive or limit penalties for employers who are attempting to comply with the data standards. This would not reward poor behaviour but recognise that compliance may not always be simple.

An example exists in the Taxation Administration Act 1953 Schedule 1 Section 298-20. This should be incorporated in the Bill for compliance flexibility with payment and data standards:

298-20 Remission of penalty
(1) The Commissioner may remit all or a part of the penalty.
(2) If the Commissioner decides:
(a) not to remit the penalty; or
(b) to remit only part of the penalty; the Commissioner must give written notice of the decision and the reasons for the decision to the entity.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

(3) If:
(a) the Commissioner refuses to any extent to remit an amount of penalty; and
(b) the amount of penalty payable after the refusal is more than 2 penalty units; and
Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.
(c) the entity is dissatisfied with the decision; the entity may object against the decision in the manner set out in Part IVC.