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**Comments on the Exposure Draft of the *Superannuation Industry (Supervision) Amendment (Pass Through of Employee Details) Regulation 2014***

The FSC is supportive of the objectives of SuperStream. The FSC is committed to continuing to work closely with the Government, the ATO and our members to assist in bringing the SuperStream project to fruition.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.4 trillion on behalf of 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC welcomes the opportunity to make this submission in relation to the Exposure Draft of the *Superannuation Industry (Supervision) Amendment (Pass Through of Employee Details) Regulation 2014* (the Draft Regulations).

If you wish to discuss these matters further, please contact me on 02 8235 2566.

Yours sincerely



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## General comments

Currently the majority of superannuation funds, and their administrators where relevant, have available a variety of solutions to employer clients that manage choice contributions for those clients, in many cases at no cost to employers.

In addition, there is a range of commercial models available to employers to assist them to meet their choice obligations that are SuperStream compliant, for example through payroll payment bureaux, payroll software solutions, clearing houses and data gateway solutions. For small employers, the Small Business Clearing House remains a free service, managing payment and data to all funds.

The FSC supports pass through as a method for all employers to access SuperStream, however notes that pass through should not be at the exclusion of other commercial models.

## Intent of the Obligations on Funds

In forums run by the ATO, we have understood that many super funds were led to believe that if a default fund met the obligations of the pass-through regulations, so-called 'bridging solutions' currently provided to the employer by the fund would be deemed to meet the SuperStream conditions for employer contributions under Section 8 of Schedule 4(a) of the Legislative Instrument (Contributions Message Implementation Guide version 1.2).

We are of the view that the Exposure Draft does not establish this. Moreover, the obligations imposed by these regulations are not supported in the MIG, and vice versa, and there is significant risk of misunderstanding by all parties as to their required behaviour.

To provide clarity, the Contributions Message Implementation Guide, Section 8 on Alternate Arrangements, 8.2.1 needs to be amended to include that if a fund meets the obligations of Regulation 7.08A, alternate arrangements apply:

### **8.2.1 Consenting employer-nominated superannuation fund relationship**

(a) The conditions are as follows:

- (i) a contributing employer has an employer-nominated relationship with a superannuation fund (or defined relationship determined by award or legislation),
  - (a) with less than 2% of employees exercising choice of superannuation fund outside that relationship in any one year; or
  - (b) has a contributions solution that meets the conditions of Superannuation Industry (Supervision) Regulation 7.08A; and
- (ii) both the employer and the superannuation fund mutually agree to continue using an alternate electronic transmission format for the transmission and processing of contributions.

The removal of the existing 8.2.1(a)(i) requirement on "minimal choice" may have the same effect.

Moreover, from an industry impact perspective, it is important to note that expiry of 'bridging solutions' will result in serious data quality issues due to the loss of important validations at source that generic SuperStream solutions will not be able to do. The impact of this, of course, will be to adversely impact members in a way that contradicts the core objectives of SuperStream – there will be delays or errors in the crediting of contributions to member accounts.

### Services are not provided by agreement

The FSC supports the principle of universal access to SuperStream for employers. The FSC recognises that pass through is the best mechanism for this to occur.

The Draft Regulations would currently allow an employer to decide it will use a service from a Fund without the need to seek a Fund's agreement. Funds that currently provide clearing service for eligible employers are provide this service by agreement.

The regulation as it stands leaves open the possibility that an employer selects a Fund to perform pass-through when that Fund might have only a very small minority of the membership. It is unclear whether this may become a disproportionate burden for any individual fund, but the FSC notes that should experience demonstrate that this is the case, making the provision of such a service subject to agreement would satisfactorily deal with this issue.

### Specific Comments on Drafting:

The Draft Regulation refers only to "employee details", and no reference is made to the contributions information that would enable any contribution monies sent by the employer to be applied to a member account in the receiving choice fund.

The regulation states that "a trustee of a default fund that receives information from an employer under subregulation 7.07E(2) of the SISR must pass on that information to each chosen fund (if any) of the employee".

The information required in Regulation 7.07E(2) is as follows:

The employer must give the following information to the fund in relation to the contribution:

- (a) The employee's full name;
- (b) The employee's residential address;
- (c) The employee's tax file number;
- (d) The employee's telephone number.

The listed information would not enable a receiving (choice) fund to apply a contribution to a member account, where the employer has directly paid the contribution amount to that receiving fund, as there is no information that reconciles the money paid to the information on-forwarded.

Furthermore, the Draft Regulation refers only to the obligation of the default fund to pass through the minimum data elements in 7.07E(2), which does not connect to any obligation to on-forward the data in the standard established in the various legislative instruments.

The FSC recommends that the any proposed pass through regulations should impose an obligation on the trustee to on-forward the data as per the mandated data standards, and therefore regulation 7.08A should refer to either:

- 7.07E(2), (4), (5) and (6), or
- the whole of regulation 7.07E.

It is our opinion that the current drafting of the regulation renders it largely ineffective, and will cause conflicts within the industry as to the requirements to pass on useful and useable information.

### Employer sponsor fund

We have concerns that the current drafting leaves it open to any employer who contributes for a member in a default fund can require the fund to pass through. The problem arises as an “employer” is undefined and the reference to subregulation 7.07E applies to all employers.

We recommend that a simple drafting amendment for explicit mention of a standard employer-sponsor is required to give effect to the policy intent as given in the Explanatory Statement:

“The effect of this is that each fund that offers a MySuper product must provide a service so that an employer who has chosen the fund as their default can deliver all contributions data to a single location and be certain that all data will be routed to the right destination, whether that is the default or any other superannuation fund (pass-through).”

### Processing obligations

We note that the drafting does not include any minimum service standard to on-forward data. As any service to on-forward contributions data will be assisting employees to meet their superannuation guarantee obligations, it would seem appropriate that if the obligation includes that it must be completed within a certain time.

The current requirement to allocate contributions to members in Regulation 7.07H(2) relate only to contributions to be allocated by the receiving fund, and not to on-forwarding of information to another fund. The Explanatory Statement notes that funds should “be certain that all data will be routed to the right destination, whether that is the default of any other superannuation fund (pass-through)”, from which we may infer that the choice contributions are intended to be treated the same as default contributions and hence the timeframe requirement should be the same. However, there is not sufficient clarity or certainty to ensure common interpretation and understanding.

It is also implicit that as ‘sender’, the intermediated fund would field error messages and other inquiries relating to the choice funds’ difficulties in allocating contributions. Clearly this should be an interaction directly between the choice fund and the employer.

### Summary

The FSC has a number of concerns in relation to the drafting and workability of the Draft Regulations and proposes the following solutions:

1. Regulation 7.08A should refer to either 7.07E(2), (4), (5) and (6), or the whole of regulation 7.07E;
2. The Contributions Message Implementation Guide, Section 8 on Alternate Arrangements, 8.2.1 needs to be amended to include that if a fund meets the obligations of Regulation 7.08A, alternate arrangements apply;
3. A pass-through service should be either clearing house (money and data) or a “data only” service – i.e. it should not be mandatory to provide both types of service;
4. The service level expectation for pass-through should be stated (e.g. immediately upon ‘cleared funds’ or in the case of “data only” within 3 working days of receipt);
5. Choice fund errors and queries should be directed to the employer, not the intermediated fund – i.e. no obligation to receive or pass back error messages and response messages.