

3 November 2023

Mr Adam Hawkins  
Assistant Secretary  
Tax and Transfers Branch  
The Treasury  
Langton Cres  
Parkes ACT 2600  
Via email: [paydaysuper@treasury.gov.au](mailto:paydaysuper@treasury.gov.au)

Dear Mr Hawkins

## **RE: Securing Australians' Superannuation: Budget 2023-24**

The Financial Services Council (FSC) thanks Treasury for the opportunity to respond to the consultation on the implementation of payday superannuation for Australians.

FSC members believe that the better model for payday superannuation is the proposed “employer pays” model, whereby payday is taken to mean the date that an employee’s wages are also sent. The FSC submits that the alternative model (the “due date” model) places an emphasis on the funds arriving at the superannuation fund, which is a process that requires many intermediaries. The employer pays model would be administratively simpler and is therefore more desirable. Further, FSC members are also concerned that the due date model may ultimately place liability on superannuation funds for the administration of the payday superannuation scheme, even though they have minimal ability to influence how quickly money is allocated.

### **About the Financial Services Council**

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia’s largest industry sectors, financial services. Our Full Members represent Australia’s retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

### **Summary of Recommendations**

1. Treasury consider high-level principles in its approach to payday superannuation. At the forefront of this should be the focus on employees receiving their contributions as quickly as possible whilst balancing the need for a cost-effective system that is sufficiently flexible enough that it doesn’t prioritise speed over accuracy and security.
2. Treasury give preference to the employer payment model as it places the correct emphasis on the employer to pay superannuation on payday and does not place undue liability on the rest of the operatives within the superannuation payment ecosystem.

3. Treasury provide clarity about the meaning of 'received' in the context of the due date model.
4. Treasury consider how the compliance model might be impacted where a superannuation fund must hold onto a payment for several days while waiting for the appropriate data package or vice versa before allocating funds.
5. Treasury and the ATO provide clarity around the liability of superannuation funds under the due date model.
6. Treasury consider that the due date model may have legal implications and expose superannuation funds and intermediaries to civil proceedings from an employer for any delays that would make them liable for an SG charge.
7. Government explore ways employers can better validate an employee's superannuation fund and contact information data to ensure quicker processing.
8. Treasury explore ways to make it easier for employees to make minor changes to their superannuation details such as when a change of product results in a change in unique superannuation identifier (USI).
9. Government consider ways to ensure that payments and contributions are easily matched by the fund once received. The design of this should consider the cost to benefit ratio and be done in further consultation with superannuation funds.
10. Treasury consider the impact that the potential removal of batch payments may have on the processing of superannuation payments in a timely manner.
11. Treasury consider the balance between a considerably shorter timeframe with the increased potential for errors and omissions being made under time pressure as well as the ability to better detect fraud that comes with a more generous processing timeframe.
12. Treasury investigate ways that consistency of service level expectations could be implemented amongst the intermediaries within the superannuation payments system.
13. Treasury consider the financial implications of building out capabilities to enact payday super on the existing SuperStream enabled data build and whether future uses of the NPP may result in a double spend from superannuation funds.
14. Treasury maintain its commitment to upholding the SG charge for employers that do not pay their employees superannuation.
15. Treasury remove the requirement for superannuation funds to contact an employer when they cannot allocate a member's funds. This should remain at the discretion of the superannuation fund, but they should no longer be required to complete this before making the decision to return the funds.
16. Treasury and the ATO consider ways to improve the communication pathway from superannuation fund to employer following further appropriate consultation.
17. The ATO consider ways that it can facilitate better data validation at the employer end to ensure quicker matching of contributions and consult further once this has been more thoroughly considered.
18. Treasury consider funding that has already been allocated to increase the capability and integration of stapling and look at ways to mandate the rollout of Phase 2 of the stapling reforms to provide better options to employees at the onboarding stage.

19. Treasury clarify what exactly would be captured by a ban on advertising in the onboarding process and further consult on this matter once the clarity has been provided.
20. Maximum contribution base calculations for defined benefit schemes should remain on a quarterly basis.
21. Payday super changes should not require any changes to regulatory requirements relating to the frequency or amount of actual DB employer contributions.
22. That the SGA Act be amended to make it the default position that the SG treatment of accumulation members of DB schemes is the same as applies to members of accumulation schemes.
23. Government consider how best to provide as much time as possible to industry to implement the changes required to implement the payday superannuation measure including consulting more regularly with industry.

## Payday Super

### *A Principles Based Approach to Superannuation Payment Timings*

The FSC is supportive of the overarching policy objective in introducing the payday superannuation measure. That is, that Australians benefit from the increased compounding of earnings from receiving their contributions more frequently. The FSC is also supportive of maintaining the existing compliance regime in the form of the superannuation guarantee charge (**SG charge**) and increasing the capability of the ATO to combat superannuation under- and non-payments, by uplifting its monitoring and compliance functions.

While the FSC and its members favour the employer pays approach, as outlined below, the FSC submits that in considering either approach, Treasury should be guided by some high-level principles. This includes that:

- the ultimate objective of payday superannuation is to have contributions correctly allocated into a member account as quickly and efficiently as possible.
- the systems that superannuation funds will use to administer payday superannuation are ultimately funded by their members and therefore any resourcing required should have a strong cost to benefit ratio.
- the payday superannuation measure should not add unnecessary complexity to the already complex superannuation system.
- the resources invested in creating the payday superannuation system should ultimately increase the efficiency of the system, and
- there should be a balance between timely payments and ensuring accuracy and protections from consumer harms like fraud.

### **Recommendation 1**

Treasury consider high-level principles in its approach to payday superannuation. At the forefront of this should be the focus on employees receiving their contributions as quickly as possible whilst balancing the need for a cost-effective system that is sufficiently flexible enough that it doesn't prioritise speed over accuracy and security.

*Question 3: Are there any advantages or disadvantages with the requirements of payday super being fulfilled if employers make the payment of SG contributions on 'payday' (i.e. the employer payment model)?*

While there are pros and cons to both potential models, as outlined throughout this submission, the FSC is ultimately more supportive of a model where the date superannuation is paid is linked to the date that the employer pays wages i.e. the employer pays model. This is because it is administratively simpler and fairer to both the employer, intermediaries, and the superannuation funds.

As highlighted below, the FSC has concerns about the liability of superannuation funds under a due date model. Employers are now, and should always, ultimately be responsible for the payment of superannuation and the appropriate SG charge when a payment is not made. The FSC holds concerns that liability will switch to a superannuation fund and the intermediaries under a due date model.

Further, it would seem that it is not appropriate for employers to be ultimately liable for a SG charge because the payment was not received by the superannuation fund on time under the due date model, because the payment had been held up along the way.

Notwithstanding this, it is important to note that an employer payment model does not provide any incentive nor imperative for intermediaries to process payments in a quick and efficient manner. If the payday superannuation system is based on the principles outlined above, it is important that the goal of payments reaching superannuation accounts as quickly as possible is front of mind in whatever model is chosen.

The FSC recommends legislative and regulatory measures that would have the effect of ensuring this could happen under the employer pays model. These are outlined in recommendation 12, below.

## **Recommendation 2**

Treasury give preference to the employer payment model as it places the correct emphasis on the employer to pay superannuation on payday and does not place undue liability on the rest of the operatives within the superannuation payment ecosystem.

*Question 4: Are there any advantages or disadvantages with the requirements of payday super being fulfilled if the employee's superannuation fund has received employer contributions a certain number of days after payday (i.e. the due date model)?*

As noted above, the FSC is more supportive of a model that defines payday superannuation as being paid on the day that wages are paid. This is because this model is much simpler from both an employer and superannuation fund perspective. That said, the FSC believes further clarity is warranted in relation to the operation of the due date model, particularly in relation to the liability of superannuation funds, as well as the operational meaning of 'receiving' in this context.

### Meaning of Receiving Funds

After leaving an employer's account, a superannuation payment usually goes through several processes including being unbatched and then rebatched before finally being sent to the superannuation fund. The payment and data often also run through one or more intermediaries such as a payroll software provider, and/or a clearing house.

Once the contribution is received, most FSC members employ straight through processing which means that where the superannuation fund can successfully allocate the contributions to member accounts, it will. However, where the fund is unable to allocate the payment, there is a regulatory requirement that funds must first try to contact the employer and are then ultimately given 20 business days to send the money back.

The FSC notes that under the due date model, the due date is said to be the day contributions are “received” by the superannuation fund. As noted above, funds receive contributions, typically in a batch payment, which they can usually then use straight through processing to allocate to individual member accounts. There are effectively three stages to this process:

1. The fund receives a bulk payment comprising many different employees’ contributions.
2. The funds are allocated to individual member accounts.
3. The funds are allocated to the appropriate products/assets as per the members’ instructions.

Clarity is sought as to the meaning of ‘received’ in the context of the due date model. Does this mean when the fund receives the batch payment, or does it mean when the funds are finally used to purchase the assets that form part of the members’ superannuation product.

The FSC understands that currently the ATO is able to measure when a payment is received into a superannuation funds bank account, however, clarity is still warranted to provide certainty to the entire ecosystem.

### **Recommendation 3**

Treasury provide clarity about the meaning of ‘received’ in the context of the due date model.

If the meaning of ‘received’ were to be with reference to the actual allocation of superannuation contributions, there may be instances where funds receive the payment or the data portion of the superannuation contribution separately, which would ultimately hold up the process of allocation.

Currently, the superannuation data and the actual payment are sent to the fund separately and then matched. Both are required to begin the allocation process. There may be days between receiving these two pieces of information. Clarity is also sought in relation to these scenarios where the payment to a superannuation fund arrives in the absence of the relevant data package to allocate said payment.

The FSC recommends that Treasury consider how the compliance model might be impacted where a superannuation fund must hold onto a payment for several days while waiting for the appropriate data package or vice versa, before allocating funds.

### **Recommendation 4**

Treasury consider how the compliance model might be impacted where a superannuation fund must hold onto a payment for several days while waiting for the appropriate data package or vice versa before allocating funds.

### Liability of Superannuation Funds in a Due Date Model

The main concern with the proposed due date model, is that it places unreasonable emphasis on funds to receive and process contributions. This is because superannuation funds have limited ability to influence the speed at which contributions are received.

Although the discussion paper does place the onus of the payment on the employer through the proposed changes to the Superannuation Guarantee Charge (**SG charge**) the FSC would like further clarity about how Treasury and the ATO see the liability of superannuation funds under a due date model.

#### **Recommendation 5**

Treasury and the ATO provide clarity around the liability of superannuation funds under the due date model.

As noted above, under a due date model, the liability of an employer to pay the SG charge would be tied to when the contribution was received by the fund, much of which becomes out of their control once a payment has been sent. This may open both funds and intermediaries to civil action from employers where they have been required to pay the SG charge because of a hold up in the system.

This could mean that the onus of the SG charge effectively shifts from the employer onto another party, by virtue of damages awarded.

#### **Recommendation 6**

Treasury consider that the due date model may have legal implications and expose superannuation funds and intermediaries to civil proceedings from an employer for any delays that would make them liable for an SG charge.

#### Verifying Employee Superannuation Data

One of the keys to making payday superannuation work is the ability to quickly and efficiently match contribution data with the payment itself.

Many superannuation funds, especially larger operators, utilise sophisticated technology that means contributions that can be matched are done so quickly and funds are allocated almost immediately. The issue lies where the contributions cannot be matched or where there is a delay in the processing of the payment between the employer and the fund.

To match contributions, funds utilise information provided by the employer (via the employee) including the unique superannuation identifier (**USI**), the unique member number for the employee, as well as personal details such as name and contact information.

When making a choice about a superannuation fund, it is up to employees to provide the appropriate information to their employer. This may be when they initially commence employment with the employer, or when they have made a change to their superannuation account during the course of their employment. The quality of the data supplied is of the utmost importance in the quick allocation of superannuation payments/contributions to a member's account.

Where a payment cannot be allocated, the payment goes through a more rigorous and sometimes manual process to try to allocate the funds.

Under the current model, superannuation funds have 20 business days to return a payment that cannot be allocated. If an employer pays superannuation only on the minimum required quarterly cycle, this means that any issues with an employee's supplied details can be fixed within 12 weeks.

However, under the payday superannuation scheme, whether it is a due date or payday model, these errors may compound until the matter can be rectified. This can be resolved partially through the elimination of the requirement for funds to contact employers when they cannot allocate funds

(discussed below) but would ultimately be most helped by investment from Government in a way to better validate the data. The data in this instance is both the superannuation specific information as well as the name that is registered with the fund and the appropriate contact details.

The FSC therefore recommends that the Government explore ways that an employer can verify the data supplied by an employee relating to their superannuation fund, before sending a contribution.

### **Recommendation 7**

Government explore ways employers can better validate an employee's superannuation fund and contact information data to ensure quicker processing.

As noted above, there is a need for an employee to provide the correct information about their superannuation fund to the employer. One issue that should be explored further is the instance where an employee needs to notify their employer of a change of details for their chosen superannuation fund.

Specifically, some superannuation funds have different USIs for different products. Where the USI for an employee's chosen fund has changed, due to an intra-fund transfer for example, a change of details needs to be recorded in the employer's records so that superannuation payments can continue to be matched and allocated by the super fund.

Consideration should be given to ways Government can help employees to make minor changes to their superannuation details such as when a change of product results in a change in USI.

### **Recommendation 8**

Treasury explore ways to make it easier for employees to make minor changes to their superannuation details such as when a change of product results in a change in unique superannuation identifier (USI).

*Question 8: Given reduced payment processing times facilitated by modern payment platforms, is a due date of 3 days after payday for superannuation contributions under a due date model feasible?*

As noted above, one of the key barriers to improving the speed at which employees receive their superannuation contributions is in the matching of data. This is in two ways, the issue of actually determining which member the contribution belongs to, which is outlined above. In addition, the matching of the actual payment with the contribution data itself presents a barrier.

Currently, superannuation funds usually receive payments as a large batch, for example, a clearing house may send the fund \$1,000 containing 10 different employees' contributions. Separately funds will also receive a data file that outlines the contribution data for each of those 10 employees. These two elements come separately but they may be received on the same day, or they may be received on different days. A delay in receiving one part of the contribution data may cause a hold up in allocating the funds, affecting the amount of time it takes to match.

Further, the two packages are not always easy to match. The contribution data may sometimes contain a payment reference number, which can be used to pair the payment with the data, but this is not always the case.

Even if a real time payments solution were to be implemented, it would still be held up by the ability of the fund to process the payment with the data that has been supplied to it. Consideration should be given to how to assist funds to better match payments with the associated data.

Any solution may require significant investment by superannuation funds and the cost to benefit ratio, and design of this uplift should be carefully considered in consultation with funds.

#### **Recommendation 9**

Government consider ways to ensure that payments and contributions are easily matched by the fund once received. The design of this should consider the cost to benefit ratio and be done in further consultation with superannuation funds.

#### Faster Payments

Processing times may also be affected by any model that removes the process of batching payments. The FSC understands this may be the case when payments (and associated data) move to the New Payments Platform (**NPP**). As noted above, currently funds receive batched payments. The batching process is usually undertaken by a clearing house. Were payments to be received as single individual payments, this may make the processing of contributions more time consuming as it increases the number of transactions that superannuation funds must search through to match data.

#### **Recommendation 10**

Treasury consider the impact that the potential removal of batch payments may have on the processing of superannuation payments in a timely manner.

While a three-day due date may, in fact, be feasible with payments processed through the NPP, it should also be noted that there are consumer protection benefits to having some time buffers built into the system.

For example, a due date of three days post payday assumes that everything is processed straight through each of the intermediaries, into the superannuation fund. However, this timing also provides little room for scrutiny or error.

A due date of three days effectively means employers, as well as clearing houses and other intermediaries will have about one day each to handle their part of the transaction. This may lead to all parties rushing to complete their part, potentially leading to mis-entered or incomplete information and ultimately resulting in delays in matching and allocating payments to employees' superannuation accounts. This could have the effect of imposing an unnecessary and costly administrative burden on all parties due to increased error-handling and re-work.

Further, the limited time frame may also make it harder to detect fraud being committed, leading to adverse outcomes for consumers.

#### **Recommendation 11**

Treasury consider the balance between a considerably shorter timeframe with the increased potential for errors and omissions being made under time pressure as well as the ability to better detect fraud that comes with a more generous processing timeframe.

*Question 10: Would shorter payment timeframes require regulation of these financial intermediaries to ensure payment timeframes are met?*

Whether Treasury implements a due date model or a payday model, the interaction of payroll providers and clearing houses with the superannuation system will become even more important in ensuring that Australian's get their superannuation payments as quickly as possible.

The FSC is supportive of Treasury investigating ways that service levels can be standardised so that there are clear expectations set for these providers, to ensure consistency across the industry. These standards could include minimum service levels as well as response times for payments that are returned because they cannot be allocated.

### **Recommendation 12**

Treasury investigate ways that consistency of service level expectations could be implemented amongst the intermediaries within the superannuation payments system.

*Question 11: How can the payday super model be designed to ensure it can adapt to changes and innovations in payment and data platforms?*

In the coming years there will be significant updates to the payment rails on which superannuation payments are made. As part of the Government's review of the Australian payments system, there is a commitment to closing the existing Bulk Electronic Clearing System (**BECS**) in favour of the NPP in the coming years. The NPP has the theoretical benefit of being able to process both the payment and the data component of a superannuation contribution simultaneously, relieving the industry of the need for a separate data processing system.

The FSC acknowledges the benefits of switching to a real time payments platform in increasing the speed at which employees are allocated their superannuation payments. However, FSC members are concerned that the data capability of the NPP will not be ready at the same time that the BECS system is switched off. Once the data capability of the NPP does become available, were the government to mandate its use over SuperStream, this could mean a double outlay of expenses for superannuation funds.

In this scenario, members will have to spend significant resources updating their SuperStream enabled systems in time for the transition to payday super and then later will have to spend more resources updating their systems to enable NPP data capabilities. FSC Members, like much of the superannuation industry, expended a significant amount of time and financial resources to build the SuperStream system and do not believe that having to undergo two large IT builds in relatively quick succession is a good use of member money.

Treasury should carefully consider the timeline for the rollout of the NPP and ensure that any move to use its data capabilities, whenever they may become available, does not result in significant technical builds and resource outlays for funds in a short- or medium-term period.

### **Recommendation 13**

Treasury consider the financial implications of building out capabilities to enact payday super on the existing SuperStream enabled data build and whether future uses of the NPP may result in a double spend from superannuation funds.

## **Compliance Mechanisms**

The FSC does not wish to make comment in relation to the proposed changes to the SG charge except to say that it supports the continuation of the compliance mechanism and recognises the importance of the SG charge in ensuring people are paid superannuation for their retirement.

## Recommendation 14

Treasury maintain its commitment to upholding the SG charge for employers that do not pay their employees superannuation.

## Corrections and Errors for Superannuation Funds

*Question 34: Is the 20-business daytime period for superannuation fund to resolve errors appropriate in a payday super model?*

Under Regulation 7.07G of the Superannuation industry (Supervision) Regulation (**SIS Regulation**), if a superannuation fund receives a contribution it cannot match, it must, within five business days, attempt to contact the employer to seek the appropriate details in order to allocate the funds. The employer is then given 10 business days to respond to the request. If the appropriate information is not received in this timeframe, the fund has up to 20 business days in which to return the money.

The FSC submits that superannuation funds are not always well placed to contact employers. Funds do not always have the contact information of the employer and there are barriers to sending messages back through SuperStream to the employer (see below).

Therefore, the FSC submits that under the payday superannuation scheme, it would be more appropriate for superannuation funds to have the discretion to immediately reject a payment if it was unable to be matched. This would require removing Regulation 7/07G (2) and (3).

Superannuation funds would still be able to keep the payment and attempt to rectify the issue, with the requirement to send the funds back within 20 business days remaining, however, there would be no obligation to make contact with the employer. This means that funds that have no chance of resolution through the employer contact method could be resolved at least 10 business days sooner.

## Recommendation 15

Treasury remove the requirement for superannuation funds to contact an employer when they cannot allocate a member's funds. This should remain at the discretion of the superannuation fund, but they should no longer be required to complete this before making the decision to return the funds.

Even if funds were no longer required to contact an employer, consideration should be given to improving the communication between a fund and the employer when funds are having difficulty with the allocation of a contribution. This could be done in two ways: improving the consistency of error messaging; and uplifting the ability of the ecosystem to handle error messaging.

There is currently an inconsistent use of error codes within the SuperStream system. One error code may mean one thing to a fund, but another fund may use the same code in a different way. Moving to standardise the use of error codes amongst funds would assist in cleaning up the messages that go through the system.

Further, SuperStream currently has the capability to send error messages, but these are often either not received by the employer's payroll software or, if they are received, employers haven't noticed or actioned them. Uplifting employer awareness of this feature would assist funds in contacting employers to help allocate funds.

The FSC is not necessarily supportive of changes to the system that would facilitate successful allocation messaging, given that it would seem to be of little benefit to the overall implementation of

payday superannuation. As noted above, many error messages don't make it through the system, so it would make little sense for successful allocations to create even more traffic. Further, the Network charges on a per message basis, making the cost to benefit ratio hard to justify.

FSC members are open to changes to SuperStream that would further uplift the fund to employer messaging capability given reasonable consultation with industry to ensure it is economically viable.

### **Recommendation 16**

Treasury and the ATO consider ways to improve the communication pathway from superannuation fund to employer following further appropriate consultation.

### **Choice of Fund, Stapling, and Employee Onboarding**

*Question 36: Would a digital ATO service simplify the choice of fund process and assist employees and employers to confirm the right super details? What functionality would be required? Would this address issues with data integrity under a payday super model? Should such a service be mandated?*

As noted above, one of the key concerns FSC members hold about the proposed payday superannuation scheme is the compounding of unallocated superannuation contributions due to incorrect or incomplete details. Under the current processing schedule, if a newly onboarded employee had made an error in their choice of fund form, there would be up to three months to rectify the issue before another payment is received. If, however, that employee now receives contributions every fortnight, an error compounds across several payments. Each payment would also be subject to Regulation 7.07G of the SIS Regulations, meaning each has a 20-business day clock to either rectify or return.

Therefore, the FSC is supportive of any measures which will increase the likelihood that payments will be matched to the data package in the first instance. This includes a data validation service through the ATO at the employer end of the superannuation payment. It is envisioned that such a service could allow the employer to confirm an employee's details, through the MAAS system, to ensure that the correct details have been provided.

The FSC is not supportive of an ATO mandated onboarding process however and submits that further and more fulsome consultation should be conducted before any significant work is done in relation to this segment of work.

### **Recommendation 17**

The ATO consider ways that it can facilitate better data validation at the employer end to ensure quicker matching of contributions and consult further once this has been more thoroughly considered.

*Question 37: What are the costs and benefits of requiring employers to offer stapling to employees? Are there other changes that could be made to the choice of fund process? Could a digital ATO service reduce the administrative burden associated with stapling?*

The FSC submits that employers are already required to complete the stapling process for any employee who does not submit a choice of superannuation fund.

As Treasury would be aware, stapling was supposed to be enacted in two phases. The first being the ability of employers to manually request stapled fund details through ATO Online Services and

the second being the creation of an integrated solution that would allow for employee led stapling during onboarding.

The FSC acknowledges that stapling has been hindered by issues of consent and the burden of proof of the employer relationship, however, it should be noted that the ATO has received significant funding, including over \$159M in 2020/21 in order to enact the stapling reforms. Further, and as noted by the Your Future Your Super Review, the Government is currently unsure the extent to which Phase 2 has been adopted.<sup>1</sup>

The FSC submits that the Government and ATO should continue with the rollout of phase 2 of the stapling reforms and resolve the issues hindering its uptake, given this funding has already been allocated to the ATO. The FSC also submits that Phase 2 could then be made mandatory to ensure that employees have the opportunity to access the integrated stapling solution if they wish.

### **Recommendation 18**

Treasury consider funding that has already been allocated to increase the capability and integration of stapling and look at ways to mandate the rollout of Phase 2 of the stapling reforms to provide better options to employees at the onboarding stage.

*Question 38: What are the costs and benefits of a ban on advertising super products during onboarding?*

The FSC is supportive of the consumer benefits that the stapling regime affords employees. The FSC also advocates for the strong role that choice of superannuation fund has on the outcomes of the superannuation member in the long term. This means that employees must also be encouraged to choose a superannuation fund that is right for them, and it should not be assumed that because a person chooses to exercise their right to choose, that this will ultimately be a detriment to them in the long run.

There are legitimate benefits to an employee choosing to go with a new fund when they start up with an employer, for example an employer sponsored product, a specific insurance offering, or a product that better suits their risk appetite.

The FSC notes that advertising is not defined in the consultation paper. Without further clarity, advertising through an employer may mean anything from flyers in the break room, to providing information about the employer's default superannuation plan, to superannuation funds visiting employees at work. The FSC submits that in many circumstances, these are all legitimate forms of providing employees with information to assist them to make an informed decision about their superannuation.

For example, an organisation might offer a corporate sponsored superannuation plan with favourable fees, insurance, and administration benefits that is specific to that employer. It could be in the employees' best interest to select this fund and there would be legitimate reasons for an employer to highlight the potential benefits of this to an employee during the onboarding process.

Further clarity is warranted from Treasury in relation to the meaning of advertising in this context. Without context, the FSC is unable to fully form a view as to whether advertising should be banned. Treasury should further consult on this specific matter after providing the clarity.

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<sup>1</sup> Australian Government: The Treasury. (2023). *Your Future, Your Super Review* ([Link](#)) p. 14

Notwithstanding the above comments, the FSC notes comments made in relation to the advertising of superannuation funds during the onboarding process, including in the April 2023 *Your Future, Your Super Summary of Issues*.<sup>2</sup> Specifically, the concerns that this process circumvents stapling.

Data provided by a major digital onboarding platform suggests that around 16 per cent of employees who use an onboarding service, open an account in the fund that is advertised to them on that platform. This is in comparison to 77 per cent of users of those platforms who input their existing details into a choice form and have therefore effectively 'stapled' themselves. Of the 16 per cent, 95 per cent will go on to request a SuperMatch search to identify any lost or forgotten funds, avoiding unintended duplicate accounts.

Not only does this mean that employees are not operating multiple super accounts but has the net benefit of encouraging people to actively engage with their superannuation.

### **Recommendation 19**

Treasury clarify what exactly would be captured by a ban on advertising in the onboarding process and further consult on this matter once the clarity has been provided.

### **Maximum Contribution Base Calculations**

*Question 44: On what period should the maximum superannuation contribution base be calculated in a payday super model? Would there be issues if it remained a quarterly calculation? Are there any other mechanisms that could help prevent employers paying over the concessional contributions cap for employees?*

The FSC is supportive of the maximum contribution base calculation remaining on a quarterly basis.

In some funds, the quarterly maximum contributions base is used in the minimum requisite benefit (**MRB**) calculation to cap estimated super guarantee for each quarter. Depending on the defined benefit (**DB**) fund's governing rules, aligning the max contribution base with payday would have a number of impacts including necessitating actuarial review of established calculations used by funds to determine the MRB and potentially disadvantaging members who have fluctuating income. It would also potentially introduce unnecessarily complex record keeping requirements for funds, new reporting requirements for employers, and inequity into a DB fund as benefits for members retiring before payday super commences would be calculated differently to members retiring after.

### **Recommendation 20**

Maximum contribution base calculations for defined benefit schemes should remain on a quarterly basis.

### **Defined Benefit Members**

*Question 45: Are there any other changes that will be required for defined benefit members?*

Defined benefits are generally determined by reference to membership period and salary rather than based on actual contributions paid. To accommodate this, the employer's compliance under Superannuation Guarantee (Administration) Act 1992 (**SGA Act**) for a DB scheme is determined by

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<sup>2</sup> Ibid p. 15

reference to the notional contribution rate applicable as specified in the Benefit Certificate for the scheme as prepared by an actuary, not by the employer contributions actually paid.

The payday super changes should therefore not require any changes to regulatory requirements relating to the frequency or amount of actual DB employer contributions.

Similarly (and subject to Recommendation 20 below), we do not expect significant changes will be required to the preparation of Benefit Certificates, which we understand already provide for continuous accrual of minimum DBs based on completed service. Some changes may be required where accumulation-style SG minimum benefits are provided and/or where the current quarterly SG measurement periods are utilised.

### **Recommendation 21**

Payday super changes should not require any changes to regulatory requirements relating to the frequency or amount of actual DB employer contributions.

Further, FSC recommends consideration be given to changing the SG treatment of employees who are accumulation members of DB schemes, which is members who only have an accumulation interest (not a DB interest) in a DB scheme. These types of members are becoming increasingly more common as the DB membership sections of most DBs schemes have now closed.

Under the current provisions of the SGA Act, an employer's SG compliance for an accumulation member of a DB scheme is not determined based on the employer contributions actually paid for the employee, as would apply if they were a member of an accumulation scheme. Instead, the employer's SG compliance for an accumulation member of a DB scheme is determined in the same way as for a DB member of the DB scheme, by reference to the notional contribution rate applicable to the member as specified in the Benefit Certificate.

This has led to an outcome that, in practice, the DB SG requirements (via Benefit Certificates) now apply to much higher numbers of accumulation members than DB members. This potential for this different treatment to lead to member disadvantage is illustrated by SGA Act amendments in 2019 which were directed at ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's SG contributions.

The problem is that these amendments did not amend the SG requirements relating to support provided by employers in respect of their employees in DB schemes i.e. they only addressed employer SG obligations met by contributions made to accumulation funds (and Retirement Savings Accounts). As a result, hundreds of thousands of employees who are accumulation members of DB schemes are not covered by the 2019 salary sacrifice amendments to the SGA Act.

The FSC submits that the SGA Act should be amended with a view to putting the SG treatment of accumulation members of DB schemes on the same footing as members of accumulation schemes, with the test based on the employer contributions actually paid rather than on a notional contribution rate specified in a Benefit Certificate.

This will be even more important with the move to payday super, so that non-standard rules only apply to the shrinking number of DB members. It should be noted that some provisions would be needed to cater for the situation where surplus in a DB scheme is used to meet SG contributions for accumulation members e.g. the Benefit Certificate provisions could apply to accumulation members of DB schemes in these circumstances.

### **Recommendation 22**

That the SGA Act be amended to make it the default position that the SG treatment of accumulation members of DB schemes is the same as applies to members of accumulation schemes.

### **Implementation Timeframe**

FSC members are concerned that the timeframe for the implementation of the payday superannuation measure may be too ambitious, with little opportunity to consult on such a significant piece of superannuation policy.

As was noted in the Treasury Roundtable of 19 October, this is the only formal consultation expected to take place before exposure draft legislation is introduced in late 2024. Should this legislation be passed without delay, this would give superannuation funds just 18 months to implement the required changes to their systems.

The FSC submits that 18 months is not a considerable amount of time to build systems in any context however, the Government and regulators such as APRA have, in the last several years enacted a significant reform agenda which has required funds to invest resources across their organisations to implement. This includes changes to reporting for the purposes of the Performance Test and the Superannuation Data Transformation Project and the implementation of the prudential standard CPS230: Operational Resilience.

For this reason and acknowledging that the Government has made a commitment to have this measure implemented by July 2026, the FSC recommends that Treasury consider how it can effectively consult with and provide certainty to industry prior to the end of 2024.

### **Recommendation 23**

Government consider how best to provide as much time as possible to industry to implement the changes required to implement the payday superannuation measure including consulting more regularly with industry.

If you have any questions about this submission, please do not hesitate to contact me.

Yours sincerely,

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