



COUNCIL OF

SMALL BUSINESS
AUSTRALIA

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4 March 2012

The Productivity Commission
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Please find attached the submission from COSBOA to the

Inquiry into Default Superannuation Funds in Modern Awards

Yours Sincerely

Peter Strong
Executive Director



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Inquiry into the Default Superannuation Funds in Modern Awards

A response from the Council of Small Business Organisations of Australia

We understand that the Australian Government has asked the Commission to undertake an inquiry into default superannuation funds in modern awards. As part of the terms of reference the Commission quotes a key finding of the Cooper Review;

As noted in the terms of reference for this inquiry, a key finding of the Cooper Review was that many consumers do not have the interest, information or expertise required to make informed choices about their superannuation.

COSBOA notes strongly that the Cooper review did not explicitly include a major stakeholder in the terminology used in the review i.e. the small business employer. Requested with the inclusion of the small business employer the Cooper Review would have correctly noted the following;

"many consumers and Small Business Owners do not have the interest, information or expertise required to make informed choices about their or their employee's superannuation."

Part of the enquiry is focused on the process an employer undertakes in choosing a default super fund for their employees. The Productivity commission has posed a series of questions regarding this process. Prior to making further remarks COSBOA provides the following answers pertinent to a small business employer which will underline the arguments in the rest of our submission.

Q. How do employers currently choose between funds when there is more than one default fund listed in an award?

A. Small business approach this generally on an ad hoc basis.

- If they are new to being in Business they often do not know there are superannuation clauses within an award. Those new to being in business or being an employer do not necessarily know if their industry is covered by an award or which award.

- When they eventually understand that they have to choose a super fund (for themselves or a new employee) they will seek advice from their accountant (when they finally choose one), a financial adviser, TV/magazine advertisements, business group mentors, their family or Google.
- When they eventually use an accountant the accountant will make them aware of their superannuation obligations if they are not already aware, however accountants are not licensed or trained to provide advice on the choice of superannuation funds. If accountants gave such advice they would at least technically be in breach of the Financial Services Reform Act. Accountants often will advise them to ring a superannuation funds based on the experience of other clients, TV ads or just on an ad hoc basis. If the accountant has other clients in the same industry it will often be suggested they use the same fund.
- They could seek advice from financial advisers who are trained and authorised under the SIS act to advise on superannuation. The cost of the adviser was previously covered by the commissions levied on members funds. With the change in that regime it is expected that advisers will charge a Small Business directly for advise on selection of a default fund. Given the cashflow focus of most small business, it is expected that many small businesses will not use professionals to make their default fund choice.
- Where there is a small number of employees it is known that some small business owners will insist the employees make a choice of super and provide a fund name rather than have a default fund.
- If the small business owner is a member of a chamber of commerce or similar organisation they will ask for advice from other business owners.

Q. How do employers currently choose a fund when there is no default fund listed in an award?

A. See above.

Q. To what extent have employers made use of the grandfathering clause as opposed to choosing a fund from those listed in the relevant modern award?

A. Most small businesses would not know what grandfathering is and why it would be pertinent to them. If they used such a process it would generally be inadvertent as it would be convenient to keep using a fund they already know.

In regard to the questions regarding enterprise agreements please find the following answers.

Q. For what proportion of the workforce do the default superannuation provisions in awards directly apply?

A. There is no easy reference for a small business to determine this question. Their ability to know this will be reliant on advice from their advisers and mentors.

Q. To what extent do default superannuation provisions in awards influence which superannuation fund (or funds) is listed in enterprise agreements?

A. Small business generally does not have the capacity or time to consider enterprise agreements.

Q. Does the superannuation fund nominated in an enterprise agreement in any way impact on the assessment of the 'better off overall' test?

A. Most small business people would not know the parameters to judge a “better off overall” test and nor do they generally have the training or experience to make such a judgement. Where a small business has the sophistication to consider enterprise agreements they generally outsource the construction of such an agreement to an outside expert. Consideration of inclusion of a super fund will be dependant on that advisers experience. However given the complexity of the whole enterprise system the choice of a super fund will probably stay close to the award provisions to avoid complications.

In regard to the questions regarding insurance please find the following answers.

Q. Should default superannuation funds be required to provide maximum or minimum levels of life and TPD insurance? How should the cost of this insurance be factored into the selection of default funds for inclusion in awards?

A. A small business person should not be put in the position of trying to choose between the different insurance options within competing default funds for their employees. The repercussions if a tragedy happens and they are accused of getting this wrong could have significant effects on their health, self esteem and personal business productivity.

Q. To what extent do workers covered by different awards have different needs for life and TPD insurance? How should any such differences be factored into the selection of default superannuation funds for inclusion in awards?

A. COSBOA is of the opinion that the approximately one million small business employers do not have the capacity, education or training to choose between the insurance options even within a limited choice award scheme and should not be forced to do so.

Q. Should income protection insurance be factored into the selection of default superannuation funds for inclusion in awards and, if so, how?

A. See previous answer

COSBOA: Further Comments

The purpose of the inquiry is to design transparent and objective criteria for the selection and ongoing assessment of superannuation funds eligible for nomination as default funds in modern awards. COSBOA welcomes this inquiry as we believe that the involvement of small business people in the superannuation system has created inefficiencies within the superannuation industry and has impacted negatively on the earnings of the funds. It is also an unreasonable task to impose on small business people who are not only not skilled in superannuation and are the only people in the superannuation system who are not paid for their contribution which is the choice, collection and distribution of funds.

The current superannuation system was set up in the early 1990s as a means to the self funding of retirement for the growing and ageing workforce. When the Super Guarantee was set up the number and nature of small business was different. The demand placed on small business people in the initial stages was less onerous as super choice was not in place. There was no GST and no Paid Parental Leave to impact on the time available for managing new compliance and red tape. As the system has evolved and the number of small businesses has increased the demands and costs to the small business sector and the economy has grown. In 2010 some 20,000 small business people were fined for failure to complete tasks to do with super collection and that number would have been substantially more except for the lack of resources available to the ATO in identifying the difference between mistakes and deliberate non compliance.

The recent initiative through the government's '*Stronger Super*' aims to decrease costs for superfunds, streamline process, ensure compliance and engage workers. The overall aim will not decrease costs for employers and may not reduce costs for superfunds given the potential requirement for more frequent contact with fund members and employers. The current approach will increase costs in time and money for individuals who are also employers and also increase a non compliance.

The Superannuation Industry is run by the private sector for its various members and is funded from the members' contributions. We find it difficult to understand a regime where a small business person is asked to do the work of the private sector for no financial return and will be fined by the government if they get it wrong. Such a mandated approach combined with punitive measures makes small 'business slaves' of the superannuation funds. We believe that private sector behaviours should be reflected in the whole process. We believe that an individual in business is being asked to do the same activity as a paymaster from a big business, which is not normally possible.

The inclusion of default funds in awards also adds a different complexity and asks a small business person to have a level of understanding of process and of the superannuation industry that is not reasonable to expect.

We offer a constructive solution that provides minimum savings of potentially \$2 billion per year for the funds.

Forced Employer involvement in Superannuation advice

The employer is forced by this legislation to choose a default fund for employees who amongst other considerations do not have the capacity or training to choose their own fund. In effect the employer is advising their employees that the default fund is suitable for their use. A superannuation fund is made up of several financial products which in any other situation are highly regulated and require advice from a Financial Adviser trained to a minimum standard and licenced under the financial services act.

Yet the employer is expected to choose a fund and assess its features and benefits for their employees who cannot choose themselves. COSBOA considers it very unproductive to foist such an obligation on a small employer who in reality is often a person with little more capability of making such a choice as their employees.

One disturbing outcome of this mandated system is forcing the small business person to choose between competing insurance offers in the funds. Given many small business people take their obligations very seriously (when they have the time) then a decision on insurance for their employees made in haste or ignorance can have significant repercussions if a tragic incident happened to their employee and another default fund had insurance that would have made a significant difference to the family.

COSBOA asks why is one person, because they run a small business, being forced to make such Financial Product choices for another person when they have no training to do so?

Inefficiency of Award Funds

Many, if not most, of the superannuation funds are inefficient in their record keeping and in their interaction with employers. The forms that are sent to employers are designed for paymasters and people with the time and understanding to complete the forms.

When a super fund loses information on a member they will often contact the current, or last, employer seeking information such as date of birth, address or member number. The funds know that we must work with them or there is a chance we will be fined (and many funds use a threat of contacting the ATO if information isn't supplied).

Due to the placement of a fund in an industrial award or instrument there is no motivation for a fund to be efficient in dealings with employers. We are forced to use choice of different suppliers and employers cannot change to a different more employer friendly fund as the choice of fund (other than those mandated in the award) is not one that we can make. We also have no room for complaint as these organisations are outside the public service and there is no capacity for APRA or ASIC to demand they become more efficient.

Remove employers from the collection process

We propose to resolve all the problems by including superannuation in a person's gross pay and in the PAYG payment to the ATO. The status of the award funds can be maintained but instead of a million small business people being responsible for

compliance and prone to inadvertent errors due to regulatory overload, a centralised⁷ and much more efficient ATO should be responsible to manage system compliance. An eCommerce solution can match the employee information to award considerations.

Example

Currently an employee who receives a salary of \$100k will also receive another payment of \$9k which their employer sends on their behalf to the nominated superfund.

The employer also sends PAYG deductions to the ATO on a regular basis. This tax may be around \$30k. So the employer sends off \$39k in two separate processes that involve potentially 24 different actions during a year for that employee.

Under our proposal the taxpayer/employee would be paid a salary of \$109k. The employer would send off \$39k in PAYG payments to the ATO in potentially 12 different actions in a year.

The ATO would then make a payment to the superfund based on award considerations and advice from the taxpayer that is included in their annual tax return. The selection of the correct award fund can be the responsibility of the ATO based on data collection of the members employment status.

NB Employers will not be required to determine or calculate superannuation. This role rests with the ATO.

Use of eCommerce

It has been suggested that the advent of ecommerce would introduce efficiency into the superannuation payment system for small business. COSBOA notes that the single small business person does not have the capacity to understand all the requirements of a complex system designed to be managed by a fully manned large corporate HR departments. As such the Choice of Super regime is not the highest priority a small business person has in achieving what is within their capability. Therefore a million small business owners doing what is not fully understood more quickly will likely speed up inadvertent non compliance rather than make the system more efficient.

However if the eCommerce principal was applied to a much smaller number of larger well resourced organisations such as between the ATO and large Superannuation funds then the eCommerce solution should have significant productivity improvements.

Given the complexity of the total system (see attachment A and B) the removal of the small business person from the system can start a simplification process, continuous improvements and increasing productivity.

Projected savings for funds under the COSBOA proposal

If superannuation is included in the PAYG process then the members of funds will receive a higher return on their investments.

The potential savings for members of superfunds is over \$1.8 billion per year.

The calculations for these savings are based on the fact that superannuation funds have to manage their contacts with employers and the interaction between their members and employers.

We have estimated an annual administrative cost for funds of \$800 per employer and \$200 per employee/member. This cost has been estimated by COSBOA as we cannot identify any fund that discloses a detailed cost breakdown of expenditure or costs. We believe our costs to be conservative.

The activity that justifies the \$800 per year for administration involved with employers involves what is required by a fund to manage the contact and processes involved with the employer. This involves:

- | | |
|---|--|
| Electronic communications with the employer | Matching employers with old and new fund members |
| Mail contact with the employer | Ledger entries |
| Maintaining a help line | Receiving and processing cheques |
| Printing of paperwork and reports required for internal reports | Receiving and processing EFT payments |
| Printing of paperwork required for employers | Maintaining up to date records |
| Assessment of reports by experts and management | Identifying errant employers |
| Updating information on new and old employers into the system | Contacting errant employers |
| | Employing debt collection agencies as needed |
| | And the list goes on |

The activity that justifies the \$200 per year for administration of the interaction between the employee/member and employer involves what extra activity is required by a fund to administer and manage the contact and processes involved with an employer. This involves:

- Matching the member with an employer
- Movement of funds from an employer payment to the members account on a monthly or quarterly basis
- Changing details of the employer as the member changes jobs

Informing the member of any payments made by the employer or any activity
 Maintaining the record and data base with correct information
 Cost of mail activity which includes stationary, stamps, use of mail house or internal employees
 If electronic contacts are made there is a cost of data base management, managing “returned email address unknown, managing “out of office replies” and ensuring the information still reaches the member.

There are at least 1m employers. The costs per year to superfunds of their dealing with employers would be \$800m per annum.

There are at least 12 million employed people in Australia who also are members of funds and many of these people have accounts in three of four different funds . There are at least 18 million fund accounts. The costs per year to superfunds of their dealing with employees is \$3.6 billion per annum.

Therefore the minimum cost of administration is \$4.4 billion per year.

Under our proposal the only cost for superfunds will then be any extra costs to government for using the PAYG system to move superfunds. This has been costed by the Australian Taxation Office at \$114m per year.

There will also be an administration cost of contacting the clearing House/ATO for the superfunds. Given that each fund will have one point of contact to maintain that cost will be low, let`s say it might be \$100 per member. This is based on:

- Contacts with the ATO
- Managing information on funds received from the tax office.

All other activity would be at the funds discretion and not a part of the role in managing funds and communicating progress.

Costs and savings

<i>Current costs to funds</i>	<i>\$Billion</i>
Cost of dealing with employers	0.800
Cost of maintaining records on employer/member interaction	3.600
Total current costs	4.400
<i>Costs under the COSBOA proposal</i>	
Costs for the Government (to be funded by the superfunds)	0.114
Costs to funds of dealing with the clearing house	1.800
Total projected costs	1.314
Net savings for funds per year	\$2.486B

This does not include the efficiency dividend for small business people who will not be forced to be part of the superannuation collection process. We conservatively

consider that saving would also be in the vicinity of \$800 per year which results in a further saving off over \$800m.

Remove us from the system or pay us for our work

The current system is complicated and inefficient due to the continued involvement of employers in the process and, in particular, the inefficiency of the industry funds. The industry funds will remain inefficient as long as we have no choice in which fund we use.

It should also be noted that, in the main, the retail funds are much easier to deal with and their payment processes, communications and information management reflects their better understanding of the business world.

The other solution is that the small business employer gets paid for collecting and distributing funds. This is extra work they will either do after hours or pay someone else to on their behalf. We should be paid for our work, the same as everyone else in the system.

Efficiency will create opportunity

It should also be noted that under our proposal that there are other issues and benefits:

- There will be a general increase in efficiency in the economy, as well as in the management of superannuation funds. This increase in efficiency will come mainly from saved time and expense for employers and for superannuation funds.
- There will be a decrease in non compliance by employers (there will be zero non compliance as they will not be involved in the system.) In 2010 some 20,000 small business people were fined for not completing the process according to law.
- There will be improved, streamlined communications and processes for super funds who will deal only with the ATO not with many employers.
- This approach creates savings for the user (taxpayer), superannuation funds and employers.
- Taxpayers outside the tax system are more likely to be re-engaged as the ATO will need information to be able to forward payments to their fund of choice. The need to engage with the ATO would be more compelling for these people as 8.25% of earnings would normally be a substantial amount of unclaimed funds.
- The superfunds and employers would have the capacity to better plan and manage cash flow.
- Employees would be aware of the full income they are receiving from their employers as their gross wages would now include the super component.

- The employee would also be more engaged at least once a year in deciding what happens to their superannuation funds. When a person fills out their tax return they will understand exactly how much money they contribute to superannuation and this will provide greater interest in how the funds are performing.
- The employee would no longer be worried about whether the employer has remitted their funds. The employer would no longer be stressed about whether he or she has got it right.
- The unions could save time and money as they no longer have to monitor employers role in superannuation and can concentrate on safety, pay and other workplace issues.
- In the case of bankruptcies and business failure the ATO normally has first call on any 'money due' and the demands of employees have a much lower priority. In this proposal the super guarantee component would have the same priority as the ATO, giving some surety in super payments.
- There are no extra costs for employers, only savings and an ability to concentrate on business issues rather than the financial affairs of its employees.
- Employers would have some increased costs. The current situation where any earnings under \$450 a month do not accrue super contributions will be dropped and overtime will obviously be included in the overall income and the super component. The issue of extra costs to some employers can be resolved during the change over from the current system to the new system and this can occur at the same time that the SG contribution is increased from 9% to a higher rate.
- There will be no losses or change for employees. The only difference would be the need to provide information on superannuation funds to the ATO rather than to each employer. Superfund management activities would become more streamlined and less complicated.

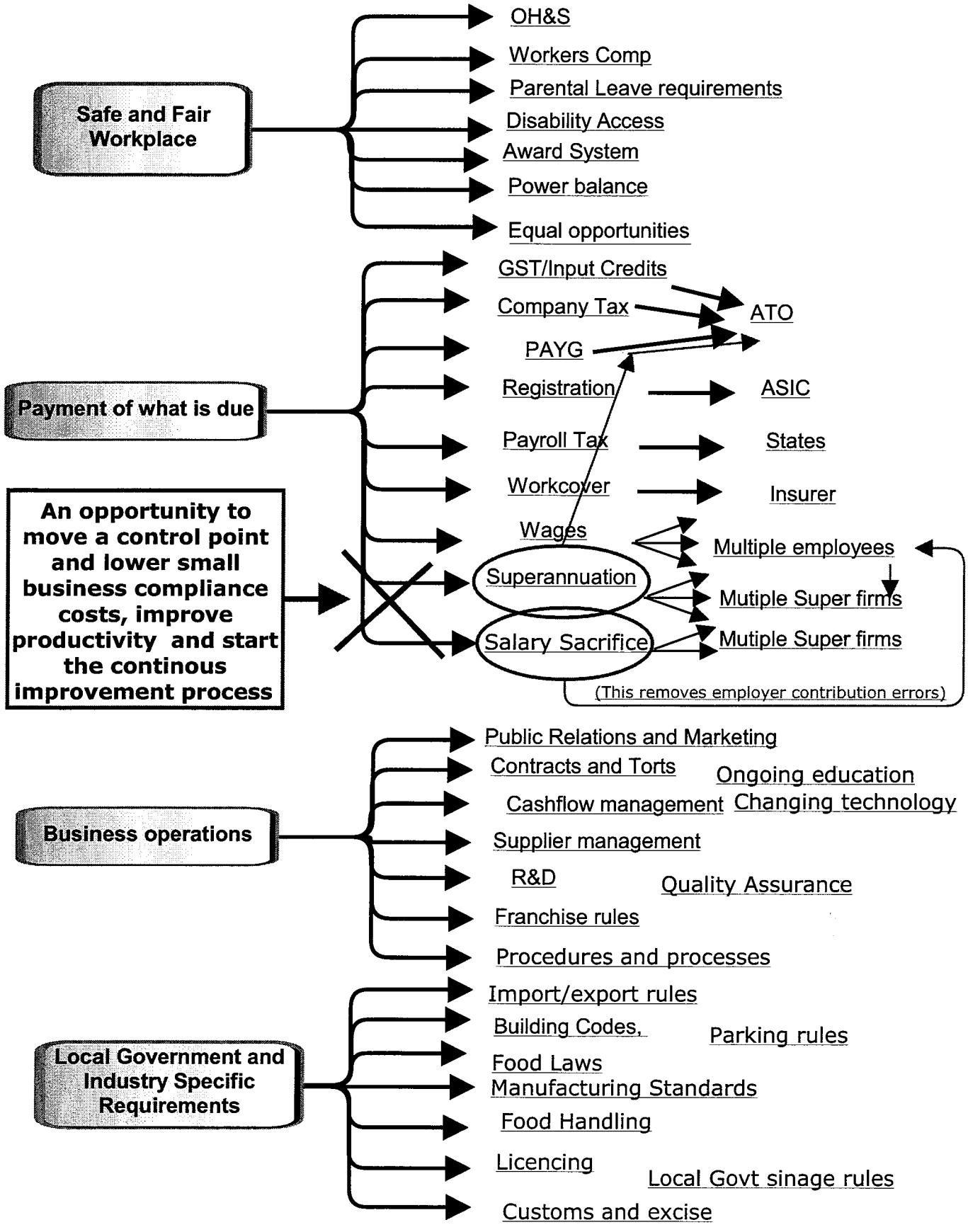
Finally the proposed increase of superannuation contributions from 9% to 12% will be much easier to handle and less costly if it is included in the PAYG system. Then employers will not have to increase super by 0.25% every 6 months and would not have to include superannuation information on pay advices.

COSBOA.

Attachment A:

Brief summary of Small Business duties with a productivity improvement opportunity

The Employer is the wellspring of nearly all monies into the system
 # Therefore everyone wants to control the Employer
 # This has created a major choke point right where the money is generated
 # Full compliance is well beyond the tipping point of a small business's capacity
 # Moving control points away from the employer will improve productivity
 # COSBOA strongly recommends this is implemented as a continuous improvement process for all pertinent regulations and legislation

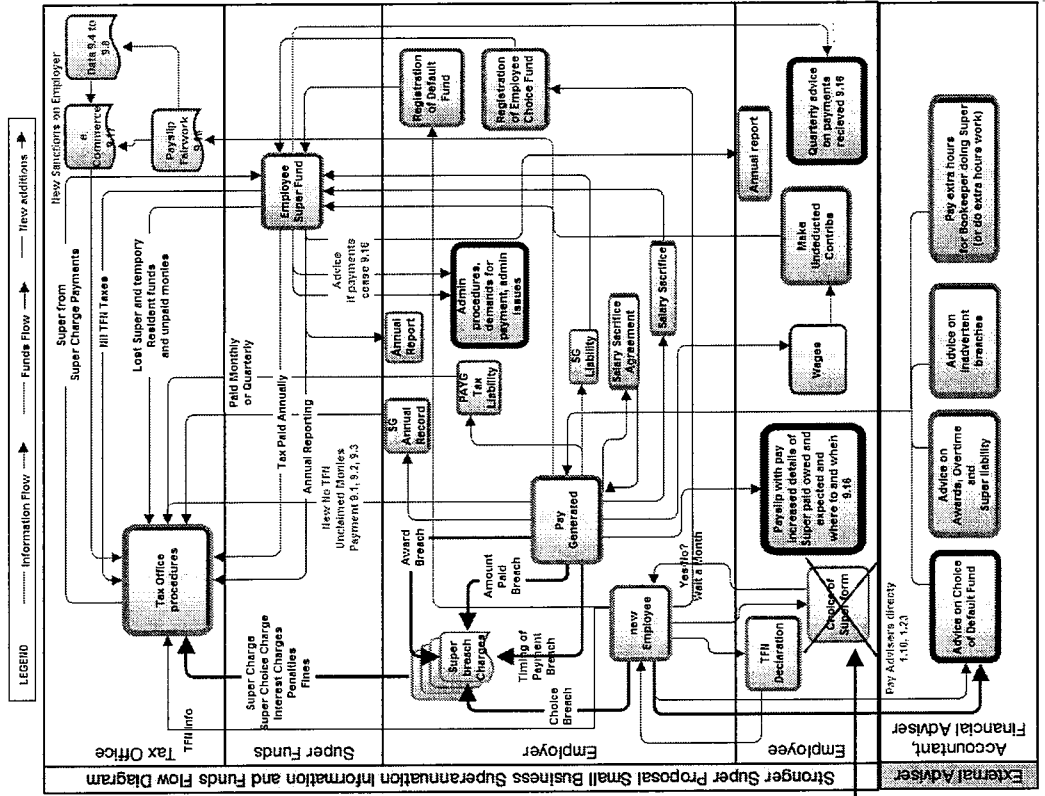


Attachment B:

Improving productivity through simpler processing and centralised control

CURRENT PROCESS WITH DRAFT PROPOSALS FOR STRONGER SUPER CHANGES

ONE process removed and at least FIVE new processes added



A Small Win for COSBOA
Choice of Super moved to TFN Declaration

COSBOA PROPOSAL

The Picture tells the story, multiple layers of red tape just disappears

