

# COSBOA Discussion paper

## Super paid via PAYG tax collection

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A goal of COSBOA is to simplify or eliminate superannuation administration for small business employers by incorporating them into the PAYG tax payment in the Business Activity Statement (BAS). With the payment of super via the tax office now a policy of the new Government it is timely to re-visit the COSBOA proposal with potential and detailed solutions.

The following document shows a process that can achieve that goal by including the required adjustments as part of the current Superstream e-Commerce project. This achieves the required outcome without significant interruption or variations to the change process already being embraced by the Superannuation stakeholders.

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# EXECUTIVE SUMMARY

## Incorporation of SG payments in PAYG Tax achieves the following outcomes:

### Regulations and Administration processes removed.

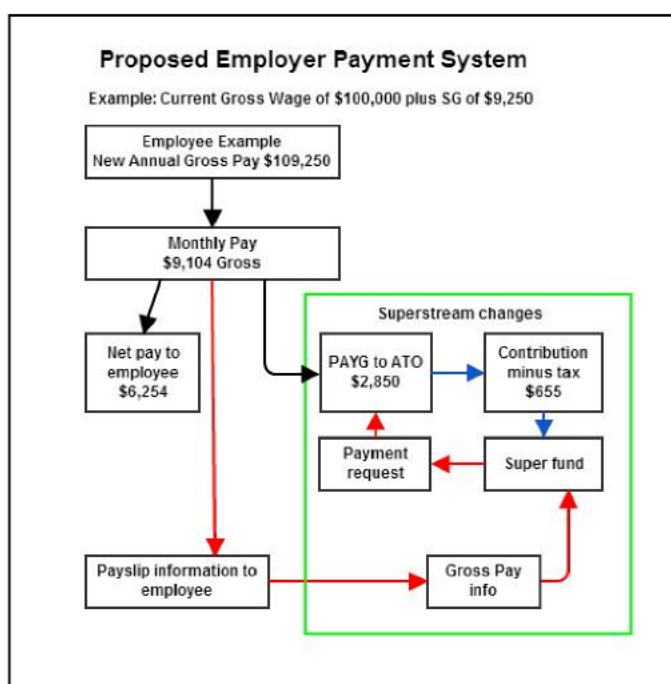
- Separate Administration for the payment of Super to multiple funds removed.
- Choice of Super administration and multiple penalties removed.
- Employer "Default" Super Fund requirement and associated penalties removed.
- Separate reference to Superannuation Guarantee in awards not required.
- Separate late payment penalty system on employers removed.
- The "No TFN" payment system not required.
- Superannuation "failure to keep records" penalties removed
- Files and communications with multiple Super Funds (beyond payment system) not required.

### Efficiencies achieved

- Communications (monthly quarterly and annually) between ~800,000 employers and ~5000 super funds regarding ~5,000,000 employees eliminated.
- Immediate capture of Lost Super by ATO
- Immediate accumulation of SG tax by ATO
- Quicker identification of non-payment of super by ATO
- Greater connection of employees with their super from their first employment event.
- Potentially two billion dollars in administration costs removed from the industry

### Issues to be addressed

- Current SG calculations currently based on AWOTE would need to be based on Gross Wages.
- Extra Super from overtime adjusted in SG move from 9% to 12%
- Super would be payable on all wages including payments below \$450 per month. This also removes Superannuation threshold anomalies in the award system
- Adjustment of the Superstream/payslip project to allow employees to authorise the transfer of gross pay information to their super fund.



# DETAILED PROPOSAL

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The COSBOA proposition is for employer SG (Superannuation Guarantee) payments to be incorporated into the employee's PAYG tax payments by adjusting the personal tax rate so that only one payment is required. The tax office would then distribute these to the appropriate Super fund.

This would eliminate a significant amount of administrative burden from the small business employer's obligations. To provide concrete proposals to back this case a systems analysis of the SG Super system (Attachment 2) was undertaken and a draft proposal (Attachment 3) developed along with an adjusted TFN declaration so the ATO immediately captures employee superannuation details (Attachment 4). The proposed system gives significant reduction in regulation and administration for small business employers.

## **Basic System for SG Payments.**

As both PAYG and the basic system for paying SG payments are calculated as a percentage of Gross Wages, both can be incorporated by raising the PAYG rate by an equivalent percentage to include the SG rate, for example:

- a 9.25 % SG rate would be achieved by raising the PAYG rate by 8.4668%. (Note: the actual increase in PAYG can be suitably rounded to a manageable number during the SG increase from 9% to 12 %.)

The Tax office identifies the amount of Superannuation included in these tax payments by applying the set SG percentage to the gross wages declared at W1 on the BAS return.

In line with current requirements the employer provides a payslip to the employee. This payslip now only has to show tax withheld and is significantly simplified by removing nominations of superannuation payments. An example of this process is attached (Attachment 1)

## **Employee takes responsibility using the Superstream changes.**

### **Identification of Individual Superannuation payments**

A modified Employee Tax File declaration was developed and accepted by the "Stronger Super" committees that linked an employee's TFN directly to their superannuation fund. The form (Attachment 4) incorporates a "Superannuation File Number" with the TFN declaration.

This gives a firm connection between the TFN and the superfund member.

### **Move to electronic payslips by 2016 gives employees control of their Super Payments**

- The current Superstream project aims to have all participants using the new data and e-commerce standards by 2016. This includes electronic payslips to each employee.
- This process only requires minor adjustment to allow employees to authorise the forwarding of the gross tax data to their super fund.
- Employers only need forward that data to where the employee stipulates and they will have fulfilled their duties in this regard.
- The Superannuation industry can set up the protocols for arranging the employee authorisation to forward their gross tax information

## The Timing of transfer of funds from the Tax Office to individual Funds.

### 1. **Annual:**

- Employee puts in their tax return and the accumulated Superannuation is determined from the tax paid on Gross Income. The Tax Office matches the accumulated Super with the Super Fund nominated on the TFN. The net funds (minus SG tax) are transferred to the appropriate Super fund.
- This is an adaption of the current the Tax Office system where “Superannuation Guarantee Charge” from late super payments are paid by business to the ATO and then passed onto the appropriate Super Fund.
- The annual system is appropriate where employees are in their first year of employment and have not chosen their fund as yet or they are itinerant with very patchy employment history and do not have consistent habits in consolidating their super.

### 2. **Quarterly:** Employees provide details of their payslips to their Superannuation funds who make a claim against payments held by the tax office. Once the quarterly payments from the employer are received then the Tax Office transfers the funds (net of tax) to the Super Fund.

### 3. **Monthly:** (where employers do BAS payments monthly): Employees provide details of their payslips to their Superannuation funds who make a claim against payments held by the tax office. Once the monthly payments from the employer are received the Tax Office transfers the funds (net of tax) to the Super Fund.

## Application of Controls for Non Compliance

1. **Employer late payments:** A general interest charge is applied as per the current tax payment systems.
2. **Employer non-payment:** Normal Tax office protocols apply for non-payment of taxes.
3. **Mismatch of Payslips and BAS PAYG:** With the timely provision of both PAYG tax payments via BAS and Superfund contribution requests via employee payslips, a mismatch of data can very quickly identify employers who may be having difficulties matching both payments. Communication issues can very quickly be resolved and those employers having other problems with the matching of payments can be more quickly identified than the current complex system.

# PAYMENTS NOT PART OF SUPER GUARANTEE

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## **Personal Contributions.**

Personal Contributions are not the responsibility of an employer. Where an employer wishes to provide this service (through an employee service culture or an enterprise agreement) they can do so through their own administrative choice. This option is much easier for large employers and does not need to be universally applied to all employers.

## **Salary Sacrifice.**

Salary sacrifice is the choice of the employee. Currently an agreement needs to be arranged between the employer and the employee for this to occur. This process is clumsy and subject to possible mistakes by employers e.g. overpayment and excess contribution taxes or claiming salary sacrifice as SG liability amounts. To allow salary sacrifice to occur without having to involve employers the following procedure is proposed;

- The employee forwards the post-tax portion of a Salary Sacrifice payment to their super fund and nominates it as salary sacrifice.
- The calculation of these amounts can be carried out with the help of financial advisers associated with their super fund or their suitably qualified accountants.
- The current pay and tax rate is identifiable from their payslip.
- The Super Fund then draws the taxed amount from the Tax Office (net of SG tax).
- With electronic payslip notification this process can be automated.

## **Self Employed**

The self-employed (non corporatised) are not part of the SG system currently. Where they choose to contribute to Super, the current system is to make a claim for a personal deductible contribution after they have contributed. To keep the "Super in Tax" process simple the tax scales need to be consistent. To do this the proposed process can either now include the self-employed in the compulsory superannuation system or a tax rebate can be made available to the self-employed who choose not to contribute to super.

## **Corporatised Self-employed.**

There appears no impediment to this category of employee using the overall system.

## **SMSFs**

The Superstream e-commerce standards are being extended to SMSFs and they should be able to fit in with the new SG Super payments via PAYG as applicable.

## **Defined Benefit/Payment and Actuarial Based Schemes**

Given the complications and variations within this sector of the superannuation system it is beyond the author's capability to provide individual options to all Defined benefit and unfunded super schemes.

However the majority of employers who run these schemes have the administrative capacity to handle complexity well beyond that of a Small Business. To maintain simplicity in principle the new Tax rate needs to be applied to all employees. Therefore companies/funds that run these schemes can claim back the extra tax paid each month (minus the SG 15% tax). They can then allocate the funds back to the appropriate account in their system. This would give only a one month drag on their accounts.

Alternately an extra line can be added to the BAS for these companies (if it is employer based) to immediately claim the net SG component back (similar to the GST/Input tax). The SFN on the TFN declaration can identify employees who are members of these funds.

## ISSUES TO BE ADDRESSED

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### **Extension of AWOTE coverage to include overtime payments.**

To allow the simple application of this process to all employer payments the superannuation guarantee payments would need to cover wages beyond AWOTE. Given there is a rise in the SG rate currently being implemented it is proposed that the final rate is adjusted to balance out the added costs to business.

### **Casual employees under \$450 per month**

Remove the lower limit on superannuation payments so that the proposed system is universal. The cost to a business per employee of approximately \$50 per month is more than offset by the removal of the cost of administration of superannuation for all employees.

### **Tax return thresholds and deduction adjustment**

The application of this “Super” tax increasing the tax rate will not change the thresholds for when an employee needs to put in a tax return if a tax deduction is not applicable to the superannuation portion of their gross wages.

### **Tax rates and deductible contributions caps.**

For SG payments the deductible contribution cap is never breached by adding even 12% SG rates to the tax rates for incomes up to \$180,000. By then removing the extra Super percentage from the tax scales from \$180,000 of income onwards there will never be a “Cap” breach issue. For any breach of the caps in the Salary Sacrifice option (see above) a simple tax refund removes the need for excess deductible contribution regulation.

### **SBR requirements to allow “Straight Through Processing” of Payslips**

The current Superstream programme aims at standardising the e-commerce systems for transferring superannuation payments between all participants within the industry. COSBOA is of the opinion that once an employee payment (including PAYG tax) has been made and payslip information provided, the employer should no longer be part of the administration system associated with those payments. It is then the responsibility of the employee how that money is handled.

Given the whole administration system is currently being changed to an e-commerce platform the opportunity should be taken to allow the employee to forward their Gross Wages information to their chosen Super Fund. By adjusting the Superstream process this can be incorporated into the project. As part of normal employment practice the employee can nominate to the employer where they want their payslip information sent. The Superfunds arrange directly with the employee for the forwarding of their information and this process should be incorporated into the SBR project currently underway for Superstream.

## **Matching Insurance Premium Payments in Superannuation Contributions:**

A concern of the Superannuation industry is the provision of mandated insurance without the receipt of SG contributions to cover the cost. In this proposal a new account will not commence until the ATO receives a nomination of a fund from the new member so no mismatch of funds will occur.

Once a fund has been set up it is then the responsibility of the employee and the superfund to manage how the fund operates not the employer. The proposed system is not expected to increase the current situation of a low level of contributions causing insurances to lapse, indeed the improved communication between fund and member should lower such instances.

# BREACHES AND REGULATIONS REMOVED

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Removal of:

- Employer Requirement to choose a Default Super Fund.
- Employer requirement to provide new employees details of the default fund.
- Employer requirement to choose insurance for an employee in the default super fund.
- Employer requirement to provide a “Choice of Super” form to a new employee.
- Employer Requirement to wait up to 30 days for a Choice form to be returned (if at all) before finalising the new employee start up process.
- Requirement for separate administration of “No TFN provided” situations for Super and wages.
- Requirement for extra Employer admin each time an employee changed funds.
- Employer Uncertainty as to what Super Fund an employee will choose or change to.
- Employer “Choice Liability” breach and associated fines.
- Employer superannuation liability charge statement.
- All Employer correspondence with potentially multiple Superannuation funds.
- Various Super funds demands for a signed contract with the Employer to provide a default fund
- Various Super funds demands for a signed contract with the Employer to provide a “Choice” fund for employees who choose their fund.
- “administrative penalties” on Employers around superannuation breaches
- “failure to keep Superannuation records” fines.
- Employer “Late payment” breaches
- Employer “Incorrect amount paid” breach
- Employer requirement to lodge a superannuation guarantee charge statement
- “Not providing a Superannuation guarantee charge statement” fines
- Lodgement of “Superannuation Guarantee late payment offset election” form
- Employer Requirement to provide employee TFN details to Super Funds
- The need to advise Super Funds when employees are not paid super or face legal demands.
- Employer Reporting Superannuation on annual Tax Office employee payment summary
- Employer Providing Confusing and complicated superannuation details on pay slips.
- Employer Breaches for providing incorrect superannuation details on a pay slip
- Separate administration of superannuation liabilities
- Separate calculations of super liabilities
- Deductible contribution caps.
- Excess deductible contributions fines and charges



## ADMINISTRATIVE IMPROVEMENTS:

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- Simple collection of Superannuation obligation rather than a separate and potentially confusing employer obligation
- Immediate Tax Office collection of SG tax.
- Immediate Tax Office collection of Lost Super where casual employees ignore small amounts of Super as they move to other jobs and don't register their payslips with their super fund.
- Immediate Tax Office collection of "No TFN provided" amounts
- Direct and timely Tax Office involvement in unpaid Super situations
- Hundreds of millions of unnecessary repetitive transactions eliminated realising extensive administrative cost savings.
- Government publication costs and time saved by not explaining SG Super to employers and employees

## IMPROVED CONNECTION OF SUPER MEMBERS:

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One of the major failures of the superannuation system is the lack of ownership employees have for their Super. Despite the "Choice of Super" regime and extensive advertising very few Australians have a sense of significant ownership of their superannuation. When they do gain a sense of ownership many then move their super into their own SMSF.

COSBOA believes this is primarily due to the complete disconnect that employees have with their super from their very first day of employment because;

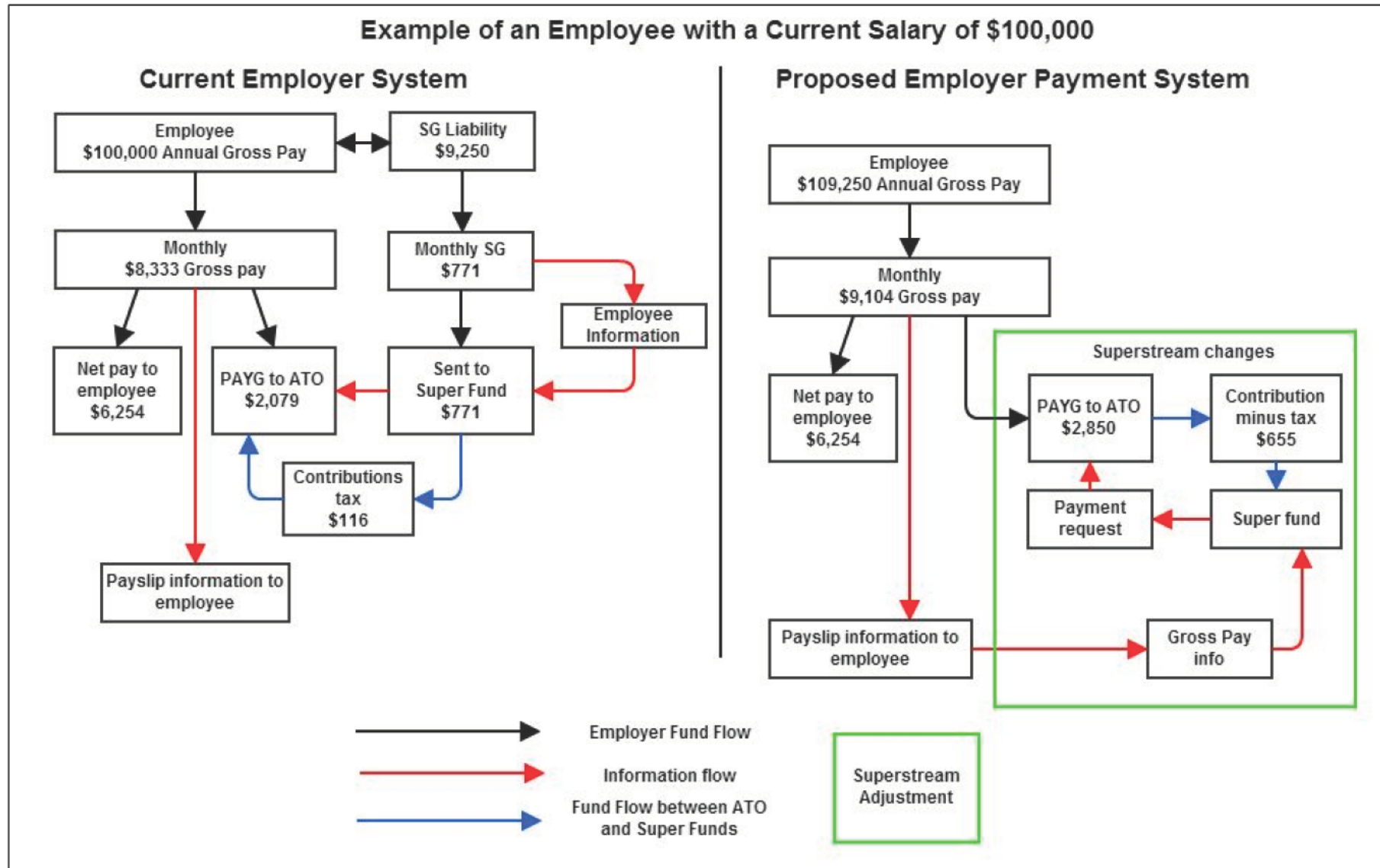
- The concept of an "Employer" Default Super fund immediately divorces the employee from this payment.
- In many cases making a Choice of their Super fund is taken away from them because they think an Award directs where their Super should go. This further distances them from involvement.
- They are rarely if ever involved in directing where the payment of their Super should go. This gives them no immediate or continuing connection with their funds.

The recommended process of, in the first instance, sending employee super to the ATO and having the ATO directly contact the employee immediately and starkly brings this choice to the Employee. By the ATO asking to make a choice or it will be held by the tax office the Ownership of their Super becomes real. No one wants to willingly leave extra funds with the ATO.

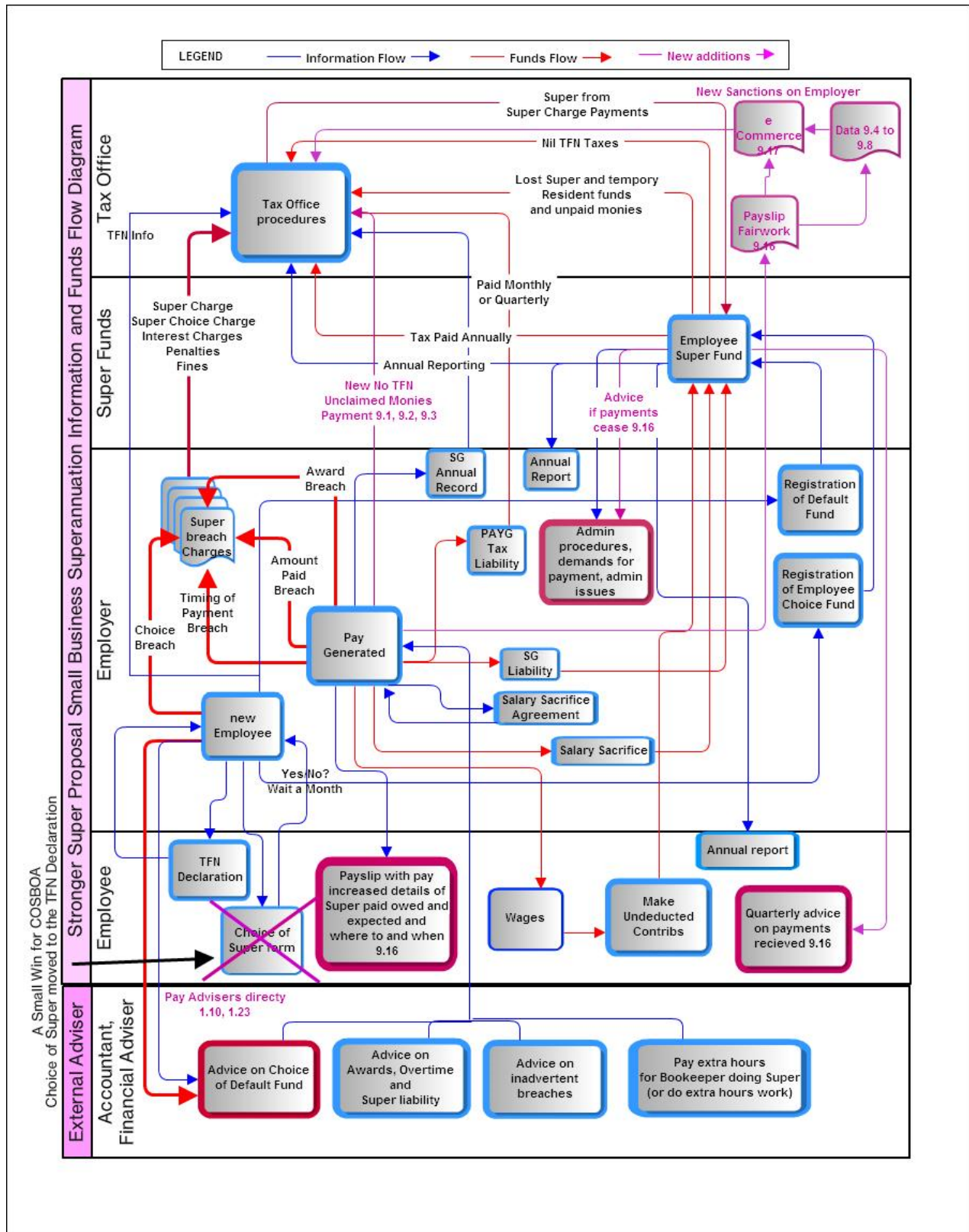
This process also introduces real competition into the Super Industry with each fund needing to vie with others to educate and attract employees to consider nominating their fund as their Choice.

A win win situation, employers are removed from the process and employees much more firmly connected to their Super.

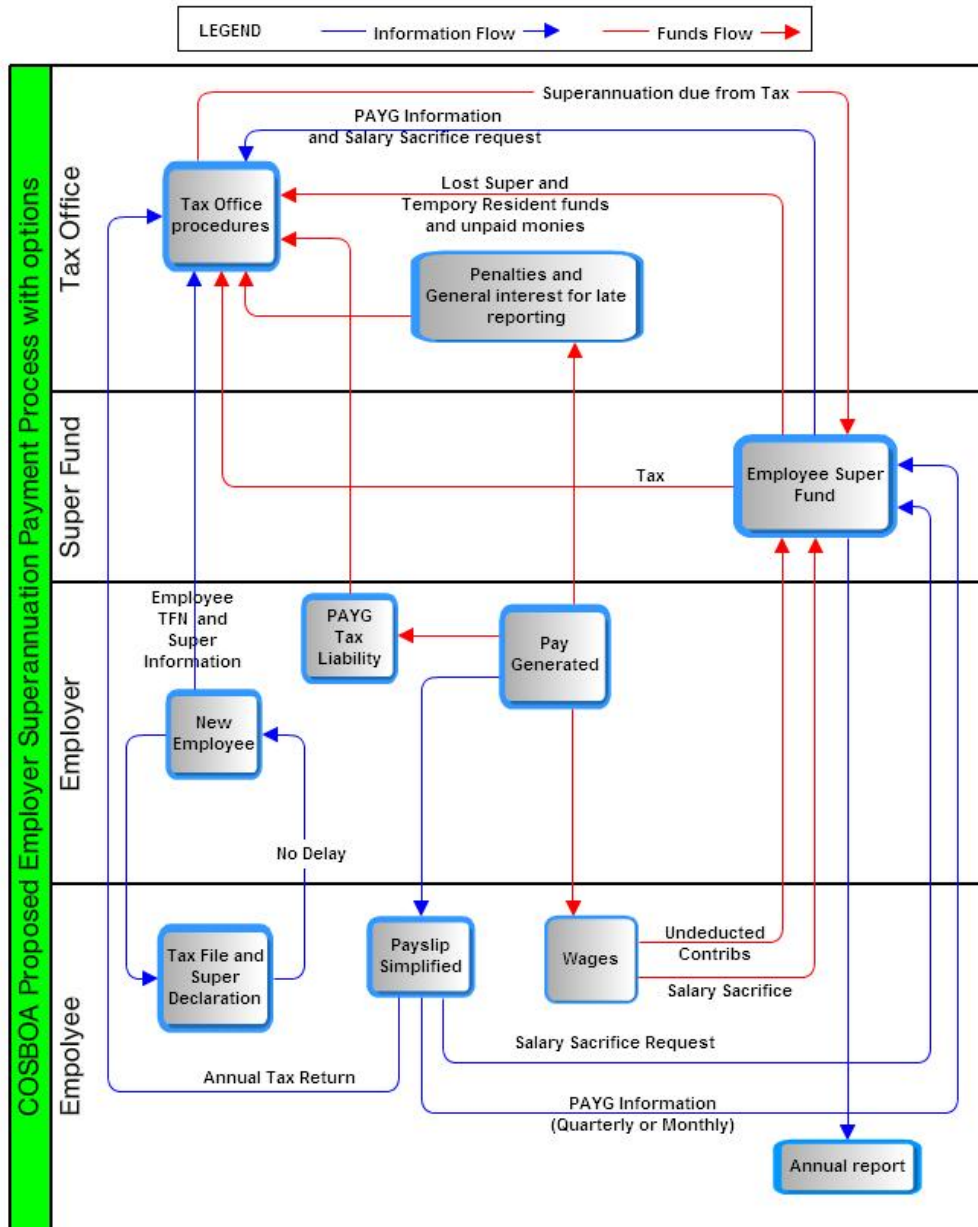
## Attachment 1: Employer Superannuation Guarantee Payments via PAYG Tax



## Attachment 2. Current Super System (with Stronger Super Adjustments)



### Attachment 3: Proposed Streamlined Super Process Using PAYG System



## Tax file number declaration

This declaration is NOT an application for a tax file number.

- Use a black or blue pen and print clearly in BLOCK LETTERS.
- Print X in the appropriate boxes.
- Read all the Instructions before you complete this declaration.

## Section A: To be completed by the PAYEE

1 What is your tax file number (TFN)?

See Privacy of information on page 4 of the Instructions.

OR I have made a separate application/enquiry to the ATO for a new or existing TFN.

OR I am claiming an exemption because I am under 18 years of age and do not earn enough to pay tax.

OR I am claiming an exemption because I am in receipt of a pension, benefit or allowance.

2 What is your name?

Title: Mr  Mrs  Miss  Ms 

Surname or family name

First given name

Other given names

3 If you have changed your name since your last contact with the ATO, show your previous family name

4 What is your date of birth

Day  / Month  / Year 

5 What is your residential address in Australia?

Suburb or town

State/territory

Postcode

6 What is your Choice of Super Fund Number?

Default Fund

Tick this box to use the Tax Office default fund

Once Section A is completed and signed, give it to your payer.

## Section B: To be completed by the PAYER (if you are not lodging)

1 What is your Australian business number (ABN) or your withholding payer number?

Branch number (if applicable)

2 If you don't have an ABN or withholding payer number, have you applied for one?

Yes  No  See 'More information' on page 4 of the Instructions.

3 What is your registered business name or trading name (or your individual name if not in business)?

DECLARATION by payer: I declare that the information I have given is true and correct.

Signature of payer

Date  
Day  / Month  / Year 

There are penalties for deliberately making a false or misleading statement.

7 On what basis are you paid? (Select only one.)

Full-time employment  Part-time employment  Labour hire  Superannuation income stream  Casual employment 

8 Are you an Australian resident for tax purposes?

Yes  No  You must answer No at question 8.

9 Do you want to claim the tax-free threshold from this payer?

Only claim the tax-free threshold from one payer.

If you have more than one source of income and currently claim the tax-free threshold from another payer, do not claim it now.

Yes  No  Answer No at questions 9 and 10 unless you are a non-resident claiming a senior Australians, zone or overseas forces tax offset.

10 Do you want to claim the senior Australians tax offset by reducing the amount withheld from payments made to you?

Yes  Complete a Withholding declaration (NAT 3093), but only if you are claiming the tax-free threshold from this payer. If you have more than one payer, see page 3 of the Instructions.No 

11 Do you want to claim a zone, overseas forces, dependent spouse or special tax offset by reducing the amount withheld from payments made to you?

Yes  Complete a Withholding declaration (NAT 3093).No 

12 (a) Do you have an accumulated Higher Education Loan Program (HELP) debt?

Yes  Your payer will withhold additional amounts to cover any compulsory repayments.No 

(b) Do you have an accumulated Financial Supplement debt?

Yes  Your payer will withhold additional amounts to cover any compulsory repayments.No 

DECLARATION by payee: I declare that the information I have given is true and correct.

Signature

You MUST SIGN here

Date  
Day  / Month  / Year 

There are penalties for deliberately making a false or misleading statement.

IMPORTANT  
See reverse side of PAYER's copy for:  
■ payer obligations  
■ lodging online.