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Via email: superdatatransformation@apra.gov.au

14 April 2022

Subject: **Superannuation Data Transformation (SDT) Consultation - Publications and Confidentiality**

Dear Ms Bliss

Thank you for the opportunity to provide feedback on APRA's proposals for the publication and confidentiality of data reported under the new superannuation reporting standards.

We broadly support the proposals set out in the February 2022 Discussion Paper, however we do not support the proposals relating to:

- the publication of fund-level expense data reported under SRS 332.0 *Expenses*, or
- the publication of fees and returns data for custom fee arrangements provided under SRS 605, SRS 705 and SRS 706.

Publication of detailed fund expenses data will reveal service provider information

Section 3.4 of the Discussion Paper indicates that APRA's proposals accept that individual service provider information should not be made non-confidential, due to the potential for commercial and member detriment.

However the actual publication proposals set out in the consultation material will not ensure confidentiality of service provider information.

This is because APRA proposes to publish very detailed fund-level expense data, along with making even more granular details from SRS 332.0 available via data sets. Given that for many funds there will be only one relevant service provider for a particular expense group and type (for example, one administrator or one asset consultant), making this data available will effectively result in public disclosure of individual service provider information.

While APRA proposes to withhold the service provider's name, in most cases the identity of the service provider will be readily ascertainable from other sources.

There was some acknowledgment of this issue at a consultation roundtable, with the suggestion that a potential solution could be for aggregated fund-level SRF 332.0 data only to be disclosed where the expense category relates to at least two or three service providers. Whilst this would go some way to addressing the issue, we suggest that:

- This would knock out a large proportion of the data, raising questions as to the value of publishing the remaining data
- Clearly the minimum would need to be at least three, as publishing data where there were only two service providers would mean each of them would be able to work out what the other's fees were
- A simple rule such as 'at least three service providers' would not be sufficient to provide effective confidentiality, as consideration would need to be given to instances where, for example, 99% of an expense amount relates to a single provider, with two or more other providers also being used.

Therefore Mercer recommends all of the SRF 332.0 data should be treated as commercial-in-confidence and should not be publicly disclosed.

Reasons for recommendation

Confidentiality of commercial arrangements is a fundamental principle of well-functioning competitive markets (desirable since it results in lower prices for consumers and in innovation – both of which are clearly in members' best interests).

Confidentiality of terms is an essential condition under which service providers are prepared to offer a particular super fund client superior terms because it confers some strategic or commercial advantage for the service provider to do so, e.g. future growth, distribution in an attractive segment, as a trade-off for a more secure relationship. Were such a deal to be made public, it could be financially detrimental to the service provider (due to consequential demand from all other clients for re-pricing etc) and hence the deal would not be offered on such attractive terms in the first place, ultimately to the detriment of members. "Most favoured nation" arrangements with service providers are always confidential for this reason.

A requirement to disclose many of the identifiable commercial arrangements could in turn undermine a particular super fund's competitive advantage, leading to loss of scale or growth - both of which are not in members' best interests either and are contrary to APRA's own sustainability tests and the government's policy objectives.

We therefore submit that service provider fee data should not be publicly disclosed on the basis that this would result in detriment to service providers, funds and members. Accordingly, expense data that would effectively reveal service provider fee data should also not be publicly disclosed.

Alternative expense data publications

We suggest that the key benefits which might be obtained from disclosing fund-level expense data could be achieved by APRA publishing some analysis of fund expense data (which would be designed not to risk revealing service provider fee data).

For example, APRA could publish tables showing the following for various expense categories:

- \$ expenses at various percentiles
- \$/FUM expense rates at various percentiles
- \$ per member expense rates at various percentiles

for suitable groupings of funds based on size.

This would allow funds to benchmark their expense levels against similar funds and provide information for ongoing research without breaching confidentiality terms.

It would also provide flexibility for APRA to exercise judgment in deciding what expense data has sufficient consistency and reliability to be published. We make this comment because SRS 332.0 has many expense categories that do not align with commercial offerings i.e. the market does not offer that sub-set of services on a standalone basis. As a result, there is no established practice for the determination of the fees for some of the reporting categories and a notional breakdown has been determined solely for APRA reporting purposes. Such breakdowns will often be artificial and are very unlikely to have been made on a consistent basis between funds/providers. In addition funds are likely to have taken different approaches to allocation of corporate overheads/trustee office expenses, which may to varying extents be allocated into administration or investment expense categories.

Until there is consistency there will rightly be questions about the usefulness of publishing the data.

Custom fee arrangements should also be kept confidential

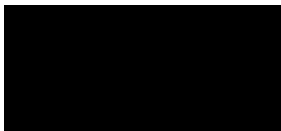
For similar reasons Mercer recommends that custom fee arrangements (such as Employer plan discounts) should be treated as commercial-in-confidence and should not be publicly disclosed.

In the Discussion Paper, APRA proposes to publish custom fee arrangements on a de-identified basis, however for larger employers the number of members on its own may be enough in some instances to enable the employer to be identified by industry insiders. This would breach confidentiality conditions in contracts. Further, even if the employers cannot be identified, publication of discounts provided along with the number of members and asset levels will reveal commercially sensitive insights into pricing strategies in the highly competitive large employer market and make providers more wary of offering reduced rates, for the reasons discussed above. Publication of net of fee returns will have similar consequences.

We therefore submit that data relating to fees and returns for custom fee arrangements provided under SRS 605, SRS 705 and SRS 706 should not be determined non-confidential on the basis that this would result in detriment to funds and members.

We would be happy to discuss this submission at your convenience.

Yours sincerely,

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