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Securing Australians' Superannuation, Budget 2023-24, Consultation Paper Response

Consultation Question 1 – What implementation issues could arise if 'payday' is defined as being each time a payment is made to an employee with an OTE component?

Payroll systems are typically configured to transact all employee payments on a periodic basis that equates to the defined pay periods of weekly, fortnightly, monthly etc. Employees constantly receive, what is known within the payroll industry as 'manual' or 'out of cycle' payments, in between each pay run process. These payments are paid to employees on any given day, in between pay run cycles and then are transacted through the next available pay run cycle in payroll systems, such as:

a. Termination payments
b. Correction of underpayments
c. One Off Payments upon Special Request (bonus, deed of release payment, etc)
d. Other reasons

Issues that could arise by defining 'pay day' as each time a payment is made include:

1. Incapability by employers to transact employee payments and/or superannuation within their payroll systems for 'manual' or 'out of cycle' payments, until the next pay run
2. Payslips can't always be issued to employees for 'manual' or 'out of cycle' payments until after the transactions have been processed in the payroll systems in the next available pay run
3. Incapability by employers to create SuperStream files outside of the weekly, fortnightly, monthly, etc pay run process. Most payroll systems have the SuperStream file creation process built in to produce the file at the end of each pay run. Technology is not available to all employers to achieve SuperStream upload files for 'manual' or 'out of cycle' payments.
4. Currently many large employers allow overpayment of superannuation contributions to employees, or are forced to manually request recovery directly from Super Funds, because the SuperStream files do not allow negative transactions. Overpayments to employees is a common occurrence for many reasons, which results in overpayment of superannuation. If superannuation was payable to funds each time an employee payment is made, employers would face greater disadvantage in recovery of overpaid superannuation. Some primary reasons overpayments occur:
    a. Late submission by employee of timesheets or unpaid leave applications, where they have been previously auto paid their standard ordinary wages
    b. Late submission of termination advices, where employee was auto paid ordinary wages and actually ceased employment on an earlier date than they were paid up to
5. The current Super Stapling process will create SG Charges for employers for employees who have failed to submit a Superannuation Choice form. The process requires a payment to be

made to the employee and for the employee to have an STP event, prior to employers being able to retrieve the stapled fund details. This is an existing administrative burden for employers who have to transact superannuation for employees and direct it off to a holding account and then work to retrieve it and submit it to super funds later. Either the capability of employers to identify stapled funds at the time of payment is required to be addressed, or there needs to be a time allowance for new hires to prevent SG Charge from being applied to employers for failure to submit superannuation, where no superannuation fund can be identified.

6. Single Touch Payroll files are produced at the completion of each pay period. There is currently no ability to report 'manual' or 'out of cycle' employee payments one STP files in most payroll systems.

Consultation Question 2. What implementation issues could arise when more regular SG payments are mandated?

Noted in response to question 1 plus:

1. If more regular SG Payments are combined with a reduced Maximum Contributions Base period, employees themselves will be disadvantaged. For example:

Current State (Minimum National Wage Employee)	Weekly	Fortnightly	Quarterly
Employee Earnings ($882.80 per week)	$ 882.80	$ 1,765.60	$ 11,476.40
One Off Bonus Payment to Employee	$ 5,000.00	$ 5,000.00	$ 5,000.00
Total OTE	$ 5,882.80	$ 6,765.60	$ 16,476.40
Superannuation Payable @ 11%	$ 647.11	$ 744.22	$ 1,812.40

Potential Future State (National Minimum Wage Employee)	Weekly	Fortnightly	Quarterly
Employee Earnings ($882.80 per week)	$ 882.80	$ 1,765.60	$ 11,476.40
One Off Bonus Payment to Employee	$ 5,000.00	$ 5,000.00	$ 5,000.00
Total OTE	$ 5,882.80	$ 6,765.60	$ 16,476.40
Assume current annual MCB is realigned to a 'per pay' basis:			
Maximum Contributions Cap	$ 4,790.00	$ 9,580.00	$ 62,270.00
Superannuation Payable to Employee (11%)	$ 526.90	$ 744.22	$ 1,812.40
Potential Loss of Superannuation to Employee (This Pay)	$ 120.21	$ -	$ -

Current State ($100,000 per annum Employee)	Weekly	Fortnightly	Quarterly
Employee Earnings ($100,000 annual gross income)	$ 1,923.08	$ 3,846.15	$25,000.00
One Off Bonus Payment to Employee	$ 5,000.00	$ 5,000.00	$ 5,000.00
Total OTE	$ 6,923.08	$ 8,846.15	$30,000.00
Superannuation Payable @ 11%	$ 761.54	$ 973.08	$ 3,300.00

Potential Future State	Weekly	Fortnightly	Quarterly
Employee Earnings ($100,000 annual gross income)	$ 1,923.08	$ 3,846.15	$25,000.00
One Off Bonus Payment to Employee	$ 5,000.00	$ 5,000.00	$ 5,000.00
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Maximum Contributions Cap	$ 4,790.00	$ 9,580.00	$62,270.00
Superannuation Payable to Employee (11%)	$ 526.90	$ 973.08	$ 3,300.00
Potential Loss of Superannuation to Employee (This Pay)	$ 234.64	$ -	$ -

2. There will be an additional manual administrative burden of employers to recover overpayment of superannuation contributions from super funds. Currently, overpayments are realigned in the following pay period, which allows overpaid superannuation to be adjusted throughout the quarter. Full submission per pay day will disable this capability for employers.
3. Many payroll system vendors would have to reprogram their systems to allow all 'out of cycle' payments to employees to be transacted immediately within their systems, rather than in the usual weekly, fortnight, etc cycles. Vendors will require sufficient time to reprogram such a major change and many employers will need to completely review their pay run and down stream processes.
4. If vendors are able to reprogram, many large employers will be processing pay runs and SuperStream files on an almost daily basis, causing further administrative burden for employers in the areas of payroll reconciliations, good governance and general ledger transactions for example.

Consultation 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)?

As provided in response to previous questions.

I believe there should be general consent by employers to contribute superannuation contributions on pay day (being the pay period in which the contributions were transacted, not physically paid), but that the consternation from the payroll industry will be mostly:

- in any proposed adjustment of the MCB period
- in the legislated obligations for employers to fulfil all administrative requirements each pay day rather than on a quarterly basis
- in how Super Stapling prevents employers from being able to assign a stapled superannuation fund to employees until after their first pay period

Consultation 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 provided in response to previous questions plus:

Many large employers already submit payment on a per pay run basis. In addition to this, they perform quarterly compliance reviews to ensure all employees have met the minimum contributions. If the SG Shortfall is changed from quarterly to a per pay day basis, the governance burden on large employers would be significantly increased. The quarterly SGC compliance review checks should simultaneously perform a review of all pay codes/pay elements utilised, with a recalculation of OTE and super payable -v- super paid.

The resourcing required by employers to perform this type of compliance review on a per basis would be onerous and costly, as many large employers have multiple pay run cycles in place across their businesses at once. For example, instead of collating all pay transactions for the quarter, large employers may be required to reconcile each weekly, fortnightly and monthly pay run individually… within the allowable time frame before "payday + x" occurs and an SG charge is applied to any shortfalls.

Consultation Question 5. Should there be a standardised due date for SG contributions depending on different pay cycles, independent of the frequency to when salary and wages are paid?

Most payroll systems allow for creation and submission of SuperStream files upon the production of each pay run. The main issue in this area is whether 'pay day' is physical date of each payment to employee or the date that transactions are processed through each system 'pay run'.

Consultation Question 6. Would requiring a new reporting mechanism for employers under an employer payment model to the ATO on payday increase compliance burden?

Any new reporting requirements will place further administrative burdens on employers and additional operating cost. Employers would need to assess if the proposed reporting requirements reduce existing reporting requirements or are in addition to existing reporting requirements. Additionally, any reporting requirements would have to be configured by vendors in the payroll systems employers utilise.

Consultation Question 7. How would intermediaries continue to be incentivised to expedite the processing of employer contributions under an employment payment model?

Intermediaries should be incentivised in the same way employers are, by potential non-compliance to legislation and to financial penalties. The payroll industry has long suffered from delays in processing and following through of rejected superannuation contributions. Employers have no control once the SuperStream file has been processed and should not be penalised or face SG Charges for intermediary failures to process contributions in a timely manner.

Consultation 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? What would prevent this timeframe?

There should be no issue generally with being able to accommodate this timeframe, if the employers cashflow allows for it. This would be an issue for smaller employers, more than large employers. Again, the major concern for large employers is how SG Charge is linked to payment by employers and subsequent processing by superannuation funds.

Consultation Question 9. What impact would shorter payment timeframes have on clearing houses and other financial intermediaries that facilitate the payment of superannuation contributions to funds?

I can’t speak to this, as it is not my field of expertise.

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

Absolutely, yes. The burden appears to be focussed on employers, when employers have no control after submission of the SuperStream files.

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

I can’t speak to this, as it is not my field of expertise.

Consultation Question 12. What are the benefits or risks associated with allowing multiple payment methods and how might this affect payments processing for clearing houses and superannuation funds? Would there be benefit or risks in only allowing one payment platform (such as the NPP)?

I can’t speak to this, as it is not my field of expertise.

Consultation Question 13. What is the appropriate timeframe for ATO reconciliations? For example, fortnightly or monthly? Should the timeframe differ depending on the frequency of payday or would a standard timeframe be more appropriate?

As provided in my previous responses, employers will have cause for concern on what the potential MCB period may be adjusted to. The reconciliation period for both ATO and employers should be the same, but should also allow for sufficient time to reconcile and adjust superannuation contributions, including rejected super.

Consultation Question 14. Should there be a mechanism whereby employers can pay SG charge they know they have accrued, prior to the reconciliations and assessments being issued? How should this occur?

There should be no reason not to accept advance payments from employers and then account for these on the ATO assessments.

Consultation Question 15. Should the LPO and carry forward of late payments remain a feature of the SG compliance system in a payday super model? Could an alternate system be adopted whereby late payments apply retrospectively to the earliest period outstanding?

Consultation Question 16. Should late SG contributions be tax deductible under certain circumstances, for example when an employer amends the SG charge before it is assessed by the ATO?

Yes, under all circumstances, as it is a consequence of business operations. For small employers especially, the juggling act of financing may be the cause of late payments. For large employers, the findings of Fair Work Enforceable Undertakings has been that superannuation was payable on payments that were incorrectly deemed as non-superable or where a misunderstanding of the interpretation or system configuration resulted in back payment of employee entitlements, which also incur superannuation.

Consultation Question 17. What kind of prompts or nudges could be provided to employers to be aware of and meet their SG obligations on time?

Prompts and nudges will not be visible to most of the people performing the processes. Small employers who utilise accounting firms may not see these prompts and nudges. Large employers will usually have senior or specialist staff who would see prompts and nudges.

Education programs to small, medium and large employers would be more beneficial and employers can calendarise internally based on the ATO published calendar.

Consultation Question 18. Are there more appropriate incentives outside of the LPO to encourage employers to pay SG in a timely manner?

I can’t speak to this, as it is not my field of expertise.

Consultation Question 19. Would changes to the SG charge be required to ensure the charge remains adequately punitive for non-compliant employers?

Consultation Question 20. Does the current nominal interest rate of 10 per cent per annum adequately compensate employees for the foregone interest that would have accrued in the fund had their super been paid on time?

I can't speak to this, as it is not my field of expertise.

Consultation Question 21. Does a nominal interest charge of 10 per cent per annum remain appropriate in a payday super model? Or are there alternative models that could address different degrees or severity of lateness?

I can't speak to this, as it is not my field of expertise, except to state that where employers are remediating for historical underpayments, standard practice is to apply a nominal interest value to outstanding wages and superannuation payments. This would need to be considered by employers, ATO and Fair Work to ensure employers are over compensating employees where genuine errors are identified and remediated appropriately.

Consultation Question 22. How should the administrative component of the charge apply? Is per employee, per ATO reconciliation period appropriate, considering your responses above to the appropriate timeframes for ATO reconciliations?

I can't speak to this, as it is not my field of expertise, except as noted to factor into these considerations where employers are remediating underpayments.

Consultation Question 23. Should the amount of the administrative component of the charge be changed? If so, what is the appropriate amount, and why?

I can't speak to this, as it is not my field of expertise, except as noted to factor into these considerations where employers are remediating underpayments.

Consultation Question 24. Given that the current SG charge is not tax deductible, are there any circumstances where a non-compliant employer should be able to make a tax deduction for the SG charge paid?

Yes, under all circumstances, as it is a consequence of business operations and therefore a legitimate business expense. For small employers especially, the juggling act of financing may be the cause of late payments. For large employers, the findings of Fair Work Enforceable Undertakings has been that superannuation was payable on payments that were incorrectly deemed as non-superable or where a misunderstanding of the interpretation or system configuration resulted in back payment of employee entitlements, which also incur superannuation.

Consultation Question 25. Are there any other changes to the components of the SG charge that should be considered in the move to a payday super model, in the context of the purpose of the charge? For example, should the punitive aspects of the charge be more proportionate to the size of the non-compliance (that is, the size of the debt)?

As provided in previous questions on SG Charge.

Consultation Question 26. What should 'additional behavioural penalties' look like in a payday super model?

Consideration should be given to applying a contrition payment model instead of purely SG Charge focussed. Taking into consideration the contributing factors for the late payment, rather than applying a one size fits all approach and penalising employers with intent to comply in the same manner as employers with no intent to comply.

Consultation Question 27. Would granting the ATO flexibility to remit the SG charge in certain circumstances on the part of the employer risk the integrity of the SG charge?

As noted in above responses, there should be some flexibility based on contributing factors.

Consultation Question 28. If you consider that the ATO should have some discretion to remit the charge, under what discrete circumstances should this be able to occur?

As noted in above responses.

Consultation Question 29. Should any discretion to remit the SG charge apply to the entire amount due or only to certain components? For example, scope could be given to the ATO to remit the nominal interest and administrative components of the SG charge but not the SG shortfall.

As noted in above responses

Consultation Question 30. Would it be appropriate for the ATO to have discretion to extend the due date for the SG charge? If so, in what circumstances would this be appropriate? Further, what would be an appropriate time period for any extension? Should there be a limit on this?

There should be discretion and for smaller businesses, this discretion could mean the difference between a difficult financial period and going out of business entirely.

Consultation Question 31. Should employers be allowed to make 'catch-up' contributions due to errors?

Yes, as called out above.

Consultation Question 32. What would be a reasonable time period to allow employers to make 'catch up' contributions that aligns with the intent to pay superannuation alongside wages? Should this time period differ depending on payday frequency?

There is no reasonable timeframe that would suffice in all circumstances for all employer sizes. As noted above many employers are reviewing their employee payments and are remediating up to seven years historically. This should be factored in to SG Charges, time to pay and catch up payments.

Consultation Question 33. What are the challenges in correcting SG payments under a payday model? Is this an efficient way for employers to make corrections? Should error messages be standardised across funds?

Here -

Consultation Question 34. Is the 20 business day time period for superannuation funds to resolve errors appropriate in a payday super model?

Speaking as a payroll industry professional, in my experience, not all errors are resolved within this time period.

Consultation 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?

A digital system that provided visibility and evidencing for employees, employers and superannuation funds simultaneously would assist. This is something that further industry discussion with employers and superannuation funds should draw out, as each outlines the pain points of the current separated or siloed operating models.

Super Stapling already called out as an issue for Pay Day Super.
Rejections are an ongoing administrative concern for employers.

Consultation 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?

There are no benefits to employers of Super Stapling. Employers were previously able to automatically assign employer default funds where employees failed to provide Superannuation Choice advice. Now employers are forced to pay the employee and hold off SGC contribution, then manually request stapled fund details and redivert the held off SGC contributions.

The costs to employers are realised through the increased administrative burdens. I'm not sure that many employers would have measured the additional costs at this stage with the onslaught the payroll industry has faced with COVID, IR Reforms, wage theft, STP 2 and the other legislative change and programs of work the majority have been facing.

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

If 'advertising' includes disallowing employers to provide their default fund information packages, this could be detrimental to the cost of operating the default fund or the limiting of available benefits to the employees who choose to participate in the default fund. This is not my area of expertise though.

Consultation Question 39. How could a smooth transition be managed to aligning STP, SuperStream, MAAS and MATS reporting, either through changing the reporting requirements to year-to-date values or transaction-based reports?

A really well thought through and interrogated pilot program is the only way to ensure a smooth transition for all employers.

Consultation Question 40. How could a smooth transition be managed if additional fields in reporting are made mandatory?

As above

Consultation Question 41. Should a new unique identifier be included as a mandatory field in STP, SuperStream, and MATS which links employers, employees, and transactions?

This is a good idea, however, could it be the result of an algebraic calculation held in payroll systems, so employers can create this identifier as soon as the employment relationship is established (and not have to await the results of the first STP pay event).

Super Stapling will impede this as we won't be able to link the super fund for employees awaiting stapled fund confirmation.

Consultation Question 42. Are there any issues or consequences with including an employer's SG liability and OTE as a mandatory, rather than optional field in STP reporting?

This is a vendor issue. Payroll Industry should have no issue, except for ensuring they factor in the MCB when reporting liability.

Consultation Question 43. What is the best mechanism to avoid disadvantaging employees who would reach the concessional contributions cap in 2026-27 due to the accounting of SG contributions in the year the policy commences?

Further analysis and consultation is required.

Consultation 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?

As noted in my response to Question 2, there could be a disadvantage to employees where they receive a bonus or other significant OTE payment if the MCB period was reduced from quarterly:

Current State (Minimum National Wage Employee)	Weekly	Fortnightly	Quarterly
Employee Earnings ($882.80 per week)	$ 882.80	$ 1,765.60	$ 11,476.40
One Off Bonus Payment to Employee	$ 5,000.00	$ 5,000.00	$ 5,000.00
Total OTE	$ 5,882.80	$ 6,765.60	$ 16,476.40
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Potential Future State (National Minimum Wage Employee)	Weekly	Fortnightly	Quarterly
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Potential Loss of Superannuation to Employee (This Pay)	$ 234.64	$ -	$ -

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

This is not my area of expertise.

Consultation Question 46. Should there be any changes to the reporting frameworks for SMSFs and/or Defined Benefit funds to the ATO?

This is not my area of expertise.

Consultation Question 47. Are there any other changes that will be required for self-managed superannuation fund members?

This is not my area of expertise.

Consultation Question 48. Are there any other impacts on stakeholders or considerations Government should consider in policy design?

Consideration should also be given to the identification of incorrect configuration within payroll systems, reviews and remediation activity where employers are in the process of self-reporting to Fair Work Ombudsman or similar. Given many employers are currently undertaking reviews to ensure they are not underpaying employees, there should be an amnesty period, or an exemption from the SG Charge for employers for this kind of activity.

The process of rejected superannuation or for recovery of super from funds for overpayments needs to be duly considered. These are administrative pain points for employers currently.

SG Charge should apply from timestamp of employer submission through SuperStream, not by receipt into funds. Employers should not be penalised for inefficiency or ineffectiveness of individual super funds administrative processes.

Superfunds should separately have penalties imposed on them for their failure to comply.

Consultation Question 49. What further changes would be required under the current rules to allow employers to meet payday super requirements?

Employers currently risk broader audit by submitting SGC Statements multiple times to the ATO. Will there be a relaxed threshold around how many times you can submit SGC Statements under the new method? By operating on a per pay day basis, the quantity of SGC Statements will be exponentially increased, placing further administrative burden not only on employers but also on ATO.