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Securing Australians' Superannuation: Submission by Super Consumers Australia

7 November 2023

Super Consumers Australia is the people's advocate in the superannuation sector.
Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

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Introduction

It’s time for the super system to be brought into the 21st century, by paying super on payday.

The Federal Government’s proposal to pay super at the same time as wages – and close the $3.4 billion gap between super earned and super paid – will deliver extraordinary benefits for Australians and the superannuation system as a whole.

The Securing Australians’ Superannuation package provides a much-needed incentive to employers, super funds and others to modernise their payment systems, limit costly multiple accounts, simplify stapling, and deliver the benefits of super to Australians sooner. The package proposes logical changes to employee onboarding that will make it easier for people to nominate and stay in a single, high-performing super fund.

Our submission will address consultation questions on a definition of ‘payday’ and improvements to employee onboarding. We call for:

- Super to be paid on payday via the due date model, to bring everyone in the super payment chain into the 21st century.
- Giving employees straightforward onboarding via an ATO-delivered digital service, and a requirement for employers to offer stapling.
- An end to exploitative super fund advertising via employee onboarding software. This practice has already seen 100,000 funnelled into a poor performing super fund and needs to end now.

Summary of Recommendations

Recommendation 1: That super is paid at the same time as wages via the due date model.

Recommendation 2: That the due date is days after members' payday.

Recommendation 3: That super funds are required to process and pay super contributions within a set timeframe under the due date model, and that payment error notifications are clear and standardised.

Recommendation 4: That the ATO provides a simplified digital employee onboarding solution to make it easier for employees to nominate an existing super fund.

Recommendation 5: That it is mandatory for employers to direct new employees to the ATO's new online onboarding service.

Recommendation 6: That employers are required to offer stapling now.

Recommendation 7: Prior to the introduction of a universal ATO onboarding service, the ATO standard choice should be the only way an employee can indicate their choice of fund 'on paper'.

Recommendation 8: Where an employee nominates their existing fund via the ATO standard choice form, rather than providing their fund details, an employer stapling request should be initiated.

Recommendation 9: That the Federal Government bans super fund advertising through employee onboarding software via a Treasury Laws Amendment.

Recommendation 10: That employee onboarders must refer users to the ATO's YourSuper Comparison Tool.

Pay super on payday

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)?

Two in three Australians agree that super should be paid at the same time as wages.[1] Payday super brings the super system in line with what the community expects. It makes it easier for the ATO to identify instances of unpaid super early and take corrective action. When combined with compounding returns, payday super will see the average person 1.5% better off at retirement.[2] We commend the Federal Government for progressing this important system fix.

Barriers to payday super are caused by employers, super funds and intermediaries refusing to modernise their systems in line with technological advancements and growing community expectations of service quality. All parties in the super payment chain need to be incentivised to improve their systems and processes to deliver on the important objective of payday super.

It is for this reason that we support the 'due date' payment model. The due date model requires super contributions to be received by a super fund within a certain number of days following an employee's payday. Under this approach, all parties in the super payment chain – including employers, super funds, clearing houses, and administrators – will need to work together to make sure a member's super lands in their account by a particular day.

The risk of the proposed 'employment payment' model is that, while employers will be required to process super contributions on a particular day, super funds and other payment intermediaries will not face the same incentives to lift their game. Under the employment payment model, the only obligation is for the super contribution to depart the employer at a particular point in time. By contrast, the due date model will incentivise every party in the super payment chain to process payments as efficiently as possible, encouraging the adoption of modernised payment systems like the New Payments Platform.

Concerns that employers will be penalised under the due date model are easily addressed. Liability for late payments out of an employer's control under this model can easily be covered through service level agreements between employers and the intermediaries they employ. As the consultation paper indicates, the ATO also has sufficient discretion to waive the Super Guarantee (SG) charge where there are genuine or unavoidable super payment delays.

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[1] Super Consumers Australia 2023, *Super Consumer Pulse Wave 0*, https://www.superconsumers.com.au/super-consumer-pulse-blog
[2] Assistant Treasurer and Treasurer, 2023, *Introducing payday super*, https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/introducing-payday-super

The 8-13 day due date window proposed by some stakeholders is designed to avoid lifting their payment processing capabilities, and undermines the entire policy intent of payday super.[3] Should the Federal Government adopt the due date model, it is fundamental that the chosen due date provides a proper incentive for employers, super funds and intermediaries to process payments efficiently. The super system already uses the due date model, but that due date is quarterly. We consider a maximum of 2 days after payday a sufficient due date given the availability of real-time payment options.

Australians cannot continue to bear the brunt of employers', super funds', and other intermediaries' failure to innovate. The $3.4 billion SG gap must be closed, and this inevitably requires investment in higher quality systems and processes. To support this, the ATO must be resourced to enforce whichever payment model is adopted, so that all parties are incentivised to comply with payday super rules.

Recommendation 1: That super is paid at the same time as wages via the due date model.

Recommendation 2: That the due date is days after members' payday.

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?

It is clear from industry feedback that current arrangements do not always provide an incentive for funds to develop and implement efficient procedures for payment processing. For example, we are aware that employers do not always receive explanations for payment bouncebacks from super funds, and there can be lengthy delays in alerting an employer that a super contribution cannot be deposited. To ensure that payment problems can be rectified earlier, there should be mandatory timeframes placed on super funds to process and pay contributions into members' accounts. To support employers to quickly address issues where a super contribution is unable to be deposited, funds should be required to issue timely and clear notifications that explain why this payment was unsuccessful.

Recommendation 3: That super funds are required to process and pay super contributions within a set timeframe under the due date model, and that payment error notifications are clear and standardised.

[3] Treasury 2023, *Securing Australians' Superannuation*, p. 13
https://treasury.gov.au/sites/default/files/2023-10/c2023-436950cp.pdf

Make employee onboarding easier

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?

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?

Simplifying onboarding

Employee onboarding policy settings should achieve two objectives:

1. Reduce the administrative burden of nominating a super fund on all parties, as measured by fewer unintended multiple accounts.
2. Ensure people can find and stay in a high-performing fund, as measured by the number of members in high performers.

For these objectives to be achieved, it needs to be easier for people to nominate an existing super fund when joining a new employer.

The current employee onboarding settings allow too many options, many of them poorly designed, which has contributed to people accumulating multiple unintended accounts. For example, to nominate their existing super fund, a person faces one of the following options:

- Providing eight personal data points via the ATO’s standard choice form and attaching a letter of compliance from their super fund.
- Filling in a similar form produced by the employer, where the employer’s default fund details are often pre-filled.
- Manually sharing their fund details via an email, letter, or form generated by their super fund, which may or may not include the required compliance letter.
- Generating a digital form via myGov, which provides the same information as the standard choice form, and manually sending this to their employer.

This array of poorly designed options means that too often it is easier for a person to set up a new account, with a costly new set of fees, than it is to save money and keep an existing one. This is a perverse outcome and out of step with the policy intent of stapling.

We support the consultation paper’s proposal requiring the ATO to establish a new digital onboarding service. This would remove the administrative burden of the current options and make it easier for employees and employers to confirm current super fund details. It could also support the policy intent of stapling by requiring employers to complete a stapling request if no choice is made. It is imperative that provision of this onboarding service is mandatory, so that everyone can enjoy the time saving of reduced administrative burden and the financial benefits that will flow from minimising unintended multiple accounts.

A future ATO onboarding system should achieve the following:

- Make it easier for people to nominate their existing fund, for example, by presenting a member with their existing fund's details and requiring them to opt-in to nominate a different fund.
- Support engaged people by allowing them to compare their fund with others, by linking to the ATO's super comparison tool.
- Provide an option for people to consolidate any duplicate accounts.

There are 25 million active myGov users as of September 2022, indicating that a digital onboarding service will be a suitable solution for the majority of people.[4] By lowering the administrative burden for nominating a fund during onboarding, the creation of costly duplicate accounts will be further curtailed and employers would not be able to circumvent stapling.

It will take time for the ATO to develop a universal onboarding solution, so in the following section we propose simple changes that could be made to stapling to limit the creation of duplicate accounts in the meantime.

Recommendation 4: That the ATO provides a simplified digital employee onboarding solution to make it easier for employees to nominate an existing super fund.

Recommendation 5: That it is mandatory for employers to direct new employees to the ATO's new online onboarding service.

Improving stapling

Stapling has been essential for minimising costly duplicate accounts in the super system. However, 23% of Australian workers still hold more than one super fund.[5] System design means that it is often easier for employers if their employees join the default fund rather than keep an existing fund. As the Your Future, Your Super review found, there are incentives for employers to actively avoid stapling by encouraging employees to make an active choice of fund – often the employer's default – during onboarding.[6] This regulatory gap undermines the overall intent of stapling. To address this gap, there must be a requirement that employers offer stapling.

[4] Some users have multiple accounts, but this figure is indicative of how broadly myGov is used. 2023, *myGov User Audit January 2023*, https://my.gov.au/content/dam/mygov/documents/audit/mygov-useraudit-jan2023-volume1.docx#:~:text=The%20number%20of%20active%20myGov,25%20million%20in%20September%202022.

[5] ATO 2022, *Trend towards single accounts*, https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Super-statistics/Super-accounts-data/Super-data--lost,-unclaimed,-multiple-accounts-and-consolidations/?page=5

[6] Treasury 2023, *Your Future Your Super Review: Summary of issues*, https://treasury.gov.au/sites/default/files/2023-04/c2022-313936-yfys-review.pdf

Prior to the introduction of ATO-administered online onboarding, we propose the following:

- The ATO standard choice form is the only type of ‘paper’ super fund nomination an employer can accept. Employer- and super fund-produced forms should be phased out as they risk contributing to the creation of duplicate accounts.
- To remove administrative burden on people, employees who nominate their existing fund via the ATO’s standard choice form are not required to provide their funds’ details (e.g. fund USI and ABN, member account numbers, etc.), and this information is instead gathered via a stapling request.

These changes will eliminate inconsistencies in how employees initiate a choice of fund, and make it significantly easier for them to nominate their existing fund. By requiring employers to undertake a stapling request where indicated on the ATO’s standard choice form, duplicate account creation will be significantly reduced, and employee expectations around onboarding will be standardised.

A common complaint about stapling by employers is that some employee onboarders require a person’s super details before formalising employment – but to complete a stapling request the ATO requires confirmation of employment. There is a straightforward solution to this problem: the adoption of the ATO’s EmployerTick. EmployerTick permits employers to validate employee details prior to making the first contribution to a super fund and can be used before establishing an employment relationship with the employee.

Recommendation 6: That employers are required to offer stapling now.

Recommendation 7: Prior to the introduction of a universal ATO onboarding service, the ATO standard choice should be the only way an employee can indicate their choice of fund ‘on paper’.

Recommendation 8: Where an employee nominates their existing fund via the ATO standard choice form, rather than providing their fund details, an employer stapling request should be initiated.

Paid super fund advertising leads to people joining poor performers

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

Super funds and employee onboarders should not be permitted to monetise and exploit the complexity of super by advertising through onboarding software. We support the proposed ban on advertising super products during onboarding.

A 2023 Super Consumers investigation uncovered that major employee onboarder, MYOB, used dark patterns, choice architecture, and fine print disclosures to steer people towards advertised funds.[7] These advertised funds included Slate Super, a high-fee fund owned by MYOB via

[7] Super Consumers Australia 2023, *MYOB's new HR platform is funnelling people into a high-fee super fund*,

subsidiaries.[8] Our investigation found that users of MYOB's onboarding software, Flare HR, were pointed towards prominent and colourful options to pick one of three "featured funds", with options to stick with their current fund buried below.[9] Stapling was circumvented all together, with users prompted to either select an advertised option, or provide their current fund's details.

At the time of our investigation, Slate Super reported having over 100,000 members, despite apparently spending $0 on marketing, promotion and sponsorship in 2021-22.[10] By comparison, other recent market entrants had significantly lower membership, like Spaceship Super who reports only 18,000 members but spent $3.5 million on marketing, promotion and sponsorship in 2021-22.[11]

This suggests that use of dark patterns and manipulative choice architecture during employee onboarding works, to consumers' detriment. The scale of this consumer harm over a lifetime of saving is catastrophic. While APRA performance test is making inroads to remove the very worst performers in the market, consumers will experience very different financial outcomes even amongst the funds that pass the test. For example, a person could be $288,000 better off in retirement by selecting a top performer compared to a 'middle of the road' super product.[12] When someone starts a new job, there is a valuable opportunity to prompt them to consolidate and seek out a more appropriate product using helpful information sources, like the ATO YourSuper Comparison Tool.

Onboarding platforms like MYOB have no incentive to connect people with the most appropriate products on the market. Their incentives are driven by maximising the revenue they can gain from super funds paying to feature on their platform. MYOB claims to "serv[e] over a million employees – including a quarter of Australian workers starting jobs each year" through its onboarding platform.[13] This scale, combined with its bundled product offering for employers, gives it significant market power. The prevalence of this channel also creates a strong incentive for super funds to advertise in order to capture market share. This is particularly so in the light of increased pressure on funds to show they are sustainable or merge. APRA's review of super fund decision making in relation to marketing expenditure found that many funds failed to measure or assess the anticipated benefits of their marketing spend. Poor trustee decision making, combined with sustainability questions and access to powerful marketing channels creates a potent mix to spend big on marketing.

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https://www.choice.com.au/money/financial-planning-and-investing/superannuation/articles/myob-flare-hr-and-super

[8] APRA 2023, *Choice heatmap August 2023*, https://www.apra.gov.au/sites/default/files/2023-04/Choice%20Heatmap.xlsx

[9] See Appendix 1 for an excerpt.

[10] Slate Super 2023, *Notice of 2022 Annual Member Meeting*, https://slate.co/forms-and-documents/annual-member-meeting/

[11] Spaceship Super 2023, *Notice of 2022 Annual Member Meeting*, https://www.spaceship.com.au/documents/spaceship_super_notice_of_annual_member_meeting_2022.pdf

[12] Cameo modelling for a full-time 30-year-old worker earning a median wage of $81,000 p.a., paying $340 p.a. in insurance until age 67. Assumes 3.5% p.a. wage inflation, 2.5% p.a. CPI inflation, and the legislated SG rate and contributions tax. Assumes 9-year net returns and annual fee levels using APRA Quarterly Superannuation Product Statistics June 2023. Compares performance of the 50th percentile (AMP Signature Super Balanced) and the 90th percentile (EquipSuper Growth Plus). Figure is shown in today's dollars.

[13] MYOB, 2022, 'MYOB and Flare Joint submission on Consumer Data Right (Open Finance) April, 2022'

For example, a review of the total marketing expenditure of one fund that we know uses these platforms, Spirit Super, showed its total marketing spend was more than $5 million in 2021/22 or $18,142.48 per net member gained.[14] APRA heatmaps indicate that this fund has gone backwards in membership over the last three years.[15] Due to the lack of itemised expenditure we don't know what was spent on promoting the fund via employee onboaders, but the headline figures suggest the fund is spending a significant amount of members' money on marketing to just tread water.

The reach of these employee onboarders is likely to grow as revenue from product advertising, like super fund marketing, will continue to cross subsidise product features that employers need, like accounting software. Super fund marketing has a direct impact on the fees a fund charges, so in effect employers are able to reduce business costs on the backs of people's retirement savings. Superannuation is too important to allow this to continue, this practice needs to be banned to protect people's retirement savings.

Super fund advertising during employee onboarding will only become more common as this process is increasingly digitised. In July 2023 ASIC highlighted that multiple employee onboarders permit super fund advertising via their service, and raised concerns that this practice potentially undermines consumer protections.[16] The Federal Government must intervene now to stop employee onboarders using dark patterns and manipulative choice architecture to funnel people towards duplicate accounts with high-fee, lower-than-average performing super funds. The Federal Government should also require that employee onboarders link to the ATO YourSuper Comparison Tool, to encourage consumers to shop around.

Recommendation 9: That the Federal Government bans super fund advertising through employee onboarding software via a Treasury Laws Amendment.

Recommendation 10: That employee onboarders must refer users to the ATO's YourSuper Comparison Tool.

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[14] Spirit Super 2022, *Annual member meeting notice*, https://www.spiritsuper.com.au/-/media/project/shared/files/compliance/AMM/SummaryImportantInformation_A4.pdf and APRA 2022, *Annual fund-level superannuation statistics*, https://www.apra.gov.au/sites/default/files/2022-12/Annual%20fund-level%20superannuation%20statistics%20June%202022.xlsx
[15] APRA, 2022, Superannuation heatmaps - Spirit Super sustainability metrics
[16] Financial Newswire 2023, *ASIC admits it has super worries about employee on-boarding*, https://financialnewswire.com.au/superannuation/asic-admits-worries-about-employee-on-boarding/

Appendix

Nominate a super fund

You can choose any super fund, including your current fund/SMSF, your employer's default fund, or alternatively, you can select from one of the featured funds.

Featured super funds | Choose another fund

Not ready to join a new fund, or want to nominate another super fund?

Skip Featured Funds →

Featured

Aware Super

- Acting on climate change
- All profits go to members
- One of Australia's largest funds

Choose this fund

You should consider the Product Disclosure Statement before deciding to invest in or apply to become a member of this fund.

Issued by Aware Super Pty Ltd.
ABN: 53 226 460 365

Featured

Slate

Slate Super

- A lifestage investment strategy that evolves with you
- Advanced mobile app with retirement forecast and smart features
- Member advocates at Slate to assist with your account

Choose this fund

You should consider the Product Disclosure Statement and Target Market Determination before deciding to invest in or apply to become a member of the fund.

Issued by Diversa Trustees Limited.
ABN: 49 006 421 638

Featured

Australian Ethical

Australian Ethical

- Fastest growing super fund in Australia[1]
- Nil investments in fossil fuel companies[2]
- Competitive returns

1. Source: KPMG Super Insights Report 2022.
2. All our options go through positive and negative ethical screening in accordance with the Australian Ethical Charter (in place since 1986).

Choose this fund

Issued by Australian Ethical Superannuation Pty Ltd (ABN 43 079 259 733, RSE L0001441, AFSL 526055). Please consider the Financial Services Guide, the Product Disclosure Statement and Target Market Determination available on our website.

Or, choose another super fund:

- Select this option if you'd like to use your current account with another super fund, your self-managed super fund, or your employer's default fund.
- If you are unsure of your current super fund details, you can find out at www.my.gov.au
- A full list of super funds can be viewed at www.apra.gov.au

Choose another super fund

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