



Attention: Wendy Hau
Director, Superannuation Access and Compliance Unit
Retirement, Advice and Investment Division
The Treasury
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PARKES ACT 2600

Sent via email: paydaysuper@treasury.gov.au

3 November 2023

Dear Wendy

PricewaterhouseCoopers (**PwC** or **we**) welcomes the opportunity to make a submission to the Treasury (**Treasury** or **you**) in relation to the Securing Australians' Superannuation Budget 2023-24 Consultation Paper (**consultation paper**) associated with the Superannuation Guarantee Payday Super (**payday super**) guidelines.

PwC has significant experience engaging with employers of all sizes across a number of industries, and is familiar with the administrative, resourcing and other challenges faced by payroll teams with respect to Superannuation Guarantee (**SG**) and Single Touch Payroll (**STP**) reporting.

We have considered the proposed scheme in the consultation paper, and have provided our responses to the 49 questions in **Appendix A**, enclosed with this document.

General Observations/Comments

We consider payday super to be an important initiative that will improve SG compliance across Australian employers. The payday super scheme will also enable both employers and the Australian Taxation Office (**ATO**) to report and monitor SG compliance in real time, and ensure that employees receive the correct benefit support from their superannuation funds in retirement.

Of the two models presented (being either the 'employer payment' model or the 'due date' model) we consider the implementation of the 'employer payment' model to be the favourable model applied for payday super, as this closely aligns with the purpose of payday super to ensure employees are paid SG at the same time as they are paid salary or wages.

In developing our response to the consultation paper, we sought feedback from several of our employer clients, who universally agreed that, conceptually, the 'employer payment' model will have the most positive outcome on workers' retirement savings. However, they have voiced significant concerns with aspects of the proposed 'employer payment' model as, under the current remittance system, the ability to

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align the payment of SG with the salary or wages payment date may, in some instances, be unachievable. This is primarily due to two factors:

- *Strain on payroll resources:* the administration of preparing and submitting validation and remittance files with the clearing houses will be exponentially increased, which will produce significant strain on payroll resources.
- *Minor errors or bouncebacks:* this is a common occurrence and often due to reasons outside of the employer's control - e.g. incorrect super fund details being provided by employees, change of super funds by employees with no notification to the payroll team, retiring employees, merger of funds, etc.

Together, these factors will impact an employer's ability to pay SG entitlements to an employee's fund on time, which could result in a continuous cycle of employers requiring to lodge SG Charge Statements with the ATO (under current SG Charge legislative provisions).

To address the practical concerns from employers of applying an 'employer payment' model (as expanded in our responses), we propose the implementation of an ATO-led, digital platform for processing SG payments. **The ATO could function as the centralised clearing house to distribute to each employee's superannuation fund according to an employer's instructions (for example, superannuation fund details noted within STP filings). We consider this to be an important consideration, providing a solution under which many of the practical restraints of the 'employer payment' model are mitigated.**

This centralised platform could apply the mechanisms from the current Pay-As-You-Go Withholding (**PAYG**) process for large withholders and/or the services of the Small Business Superannuation Clearing House (**SBSCH**) provided by the ATO, where an employer could pay SG contributions through a single payment to the ATO (either through an online portal or by using a designated Payment Reference Number (**PRN**)). Further, the ATO could leverage SuperChoice details through other reporting mechanisms (for example, through inclusion within STP). Additionally, the ATO would have singular visibility of payments and also inadvertent bounce-backs, enabling a streamlined overview of compliance.

While we acknowledge this will likely create a greater resourcing and administrative burden for the ATO, and the potential obsolescence of financial intermediaries and clearing houses, a centralised SG processing system would better enable payday super under an 'employer payment' model and facilitate better oversight and transparency for achieving payday super's core objective.

In addition to the questions raised in the consultation paper, we draw your attention to matters which may require further consideration from the Treasury, including, but not limited to:

- Re-think aspects of current *Superannuation Guarantee (Administration) Act 1992 (SGAA)* legislation to align with payday super principles. For instance, simplification of penal nature of SG



Charge (including amendment scenarios), and annualising the Maximum Contribution Base (MCB).

- SG payments made to contractors (who meet the criteria of an “employee” under the extended definitions of that term in the SG legislation) and directors who are paid outside of payroll. Guidance must be given as to whether the due date aligns to the day the invoice is paid or, as is our preference, for an extended due date to be aligned to the closest payrun date;
- Salary sacrificed and post-tax superannuation contributions (noting that these do not constitute SG contributions and, hence, are not prima facie covered by the payday super regime);
- Out-of cycle payments (such as termination payments, which can be ad-hoc and frequent, resulting in significant administrative burden to create multiple remittances in between payment cycles); and
- The lodgement of SG opt-out forms for high income earners.

We view payday super as an important step forward in strengthening Australia’s superannuation system, and an appropriate complement to the granular reporting of STP - Phase 2, with the potential to allow for SG shortfalls to be identified in real time and, in turn, deliver accurate entitlements to employees and SG compliance by employers. In addition to our recommendations provided in Appendix A, we support the changes proposed by the Treasury and agree that, if enacted properly, they will greatly reduce the non-payment and underpayment of SG contributions, and improve compliance by employers.

Again, we thank you for the opportunity to make a submission in response to the consultation paper on payday super. If you have any questions related to this document, please do not hesitate to contact either Shane Pinto on 0423 679 958 or me on 0412 957 101.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Kent'.

Greg Kent
Partner
Employment Taxes

Encl.



Appendix A

We have outlined our responses to the 49 discussion points raised in the consultation paper below. In addition to this, we would be pleased to participate in any opportunity to discuss our submission with you in further detail.

Payday Super

- 1. What implementation issues could arise if ‘payday’ is defined as being each time a payment is made to an employee with an Ordinary Time Earnings (OTE) component?**

Under the proposed definition of payday, an employer would be required to ensure that SG is paid at the same time as a scheduled pay run, but also when out-of-cycle payments of OTE are made to an employee (for example, certain termination payments). The inclusion of out-of-cycle OTE payments under the definition of ‘payday’ would result in an increased administrative burden to employers, who would be required to remit SG on both scheduled and non-scheduled pay runs (noting the latter could vary in frequency, depending on the number of out-of-cycle payments).

To mitigate the compliance burden, we recommend that the reporting and payment of SG for out-of-cycle OTE payments follow similar treatment of out-of-cycle payments under current STP2 requirements. That is, an employer can disclose out-of-cycle payments in the next regular pay event, and the date of such a pay event would form the ‘payday’ for payday super purposes. By allowing this process, employers could fit payday super into existing processes in place for out-of-cycle payments, reducing the administrative burden of remitting SG each time an OTE payment is made.

Further, many employers ‘prepay’ their wages. As an example, if operating a monthly pay run, salary and wages may be paid on the 15th of the month, of which two weeks are paid in advance. Where an employee terminates during those final two weeks, it may be that the employee is overpaid, requiring an appropriate adjustment to the SG calculation with respect to the 15th payday. As such, consideration will need to be made as to how SG should be determined for out-of-cycle payments, given that, historically, this has been paid post the termination on a cumulative basis.

In addition, we recommend further clarification be provided regarding the definition of ‘payday’. In our consultations with employers, a number have expressed that ‘payday’ could be construed as either the day that wages are paid into an employee’s bank account, or the official payday from which wages are calculated in payroll, which may be two separate days. We consider that ‘payday’ likely refers to the latter option, being the payday as agreed with the employee, however clarification is required on this point.

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

More regular SG payments would likely result in increased administration and a resourcing commitment for employers whose existing payroll processes do not account for paying SG at the same time as processing employee pay runs (for example, where an employer process pay runs on a fortnightly basis and remits SG on a quarterly basis). Furthermore, employers may have multiple pay cycles for different employee sub-populations (weekly, fortnightly, monthly) and would be required to make SG payments for each pay run, causing concerns from employers as to how the employer would resource the additional administrative activities, as well as ensuring the employer's cash flow can meet the needs of more frequent SG payments. As an example, one of our clients currently submits 9 files a month to their clearing house, and will now need to submit 120 separate payment files per month as a result of different pay run frequencies and pay dates for their separate EBAs.

Applying a standard timeframe within which SG must be paid, which references the date of the payment (rather than the current set calendar date by which SG must be received), may lead to confusion from employers with multiple pay runs in monitoring multiple due dates for SG.

In addition, more regular SG payments would also create greater compliance pressure on employers as an employer has less time to review SG obligations before SG contributions are paid to intermediaries or clearing houses, or perform validation of the payment files prior to submission. This could result in employers submitting rushed calculations, increasing the likelihood of errors in SG payments, or underpaid and unpaid SG.

As a disadvantage to employees, payday super may influence employers to reduce the frequency with which they pay employees, to allow additional time to remit SG. For example, an employer may change their payroll cycle from weekly pay runs to monthly, to reduce administrative burdens associated with paying employees frequent SG payments under payday super.

Updating the SG Charge

3. Are there 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)?

An advantage of the employer payment model is that it aligns to the intent of payday super (in our view, in a greater respect than the due date model), by requiring employers to pay SG contributions on the same day as payment of OTE to an employee. An employee would, presumably, benefit from maximised retirement income if paid super by the earliest date (i.e. pay date), due to increased investment returns.

In addition, the alignment of OTE payments and SG will make it simpler for the ATO to perform data analysis to assist with compliance activities.

From a practical perspective, and without a centralised clearing house such as the ATO, the 'employer payment' model presents significant challenges for employers. As mentioned earlier, this primarily stems from the following two constraints:

- *Strain on payroll resources:* The administration of preparing and submitting files with the clearing houses (non-ATO) will be exponentially increased, which will produce significant strain on payroll resources.
- *Minor errors or bouncebacks:* This is a common occurrence and often due to reasons outside of the employer's control - examples provided by our clients include the wrong super fund details being provided by employees, change of super funds by employees with no notification to the payroll team, retiring employees closing accounts prior to final pay, merger of funds with no instruction as to revised banking/EFT details, not providing super choice form details in a timely manner and ABN/USI/ESA changes.

If the ATO was to administer funds distribution, potentially utilising super fund details provided through STP, the payroll resourcing strain is likely simplified (for example, for large withholders, PAYG and SG can be remitted singularly to the ATO ensuring alignment to the amount disclosed within STP). Further the ATO has an overarching view of bouncebacks etc., which will likely streamline timely correction of the same. Some of these solutions are further elaborated upon under question 6.

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)?

An advantage of the due date model is that it would allow employers additional time following a pay run to review their SG processing and rectify any potential errors before administering payment to the appropriate clearing house or fund. This could mitigate the risk of underpayments or non-payments of SG, which may otherwise have been identified and investigated by the ATO. In turn, affording employees more time to review their SG could reduce the administrative burden of the ATO in applying resources to identify and target incidents of SG non-compliance.

A disadvantage of the 'due date' model is that it may be difficult to determine a consistent due date which could be standardised and applied to all employers, which considers the varying processing times by employers, financial intermediaries and superannuation funds. For example, across our client base, we have seen clearing house T&Cs vary from 2 days processing time, up to 14 days processing time.

A potential solution may be the imposing of regulated, consistent time frames on clearing houses and financial intermediaries under a due date model (as discussed in further responses in this submission).

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?

If adopting a 'due date' model, we agree that there should be a standardised due date for SG contributions, being a set number of days after the designated pay date where SG contributions are required to be received by an employee's fund. However, our view is that the number of days employers have to pay SG should be independent of the length of the pay cycle - that is, the same due date period would apply to all pay cycles, whether monthly, fortnightly or weekly. This would mitigate any confusion caused by varying due dates where the same employer has different pay cycles, and also ensures that employees in different pay cycles are not advantaged or disadvantaged by receiving SG contributions at a different time than their counterparts within alternate pay cycles.

To address cash flow constraints that may differ between micro versus small versus large organisations, the standardised due dates for SG contributions could potentially align to the payment due dates currently in place for Pay-As-You-Go tax (**PAYG**). For example, where a large withholder makes a payment on a Monday, the PAYG tax is required to be paid to the ATO by the following Monday. The same principles could be applied to payday super.

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

If administered appropriately, a new reporting mechanism for employers would not be expected to increase compliance burden. In our view, the simplest solution is a coupling of the ATO taking carriage of remittance and utilising STP reporting, whereby employers could report their SG payments through STP and remit SG at the same time using a real-time payment platform (such as the New Payments Platform (**NPP**)).

The ATO currently provides a clearing house service through the SBSCH for small employers. Under payday super, a clearing house service could be expanded to apply to all employers as a mandatory method of reporting and paying superannuation. This would involve leveraging the existing STP2 regime for reporting of SG payments, and creating a separate, centralised SG remittance process (similar to that of PAYG withholding). Employers could have a 'Superannuation Guarantee Account' within the ATO's Business Portal to track and make payments. The ATO could leverage how they currently locate employees' super fund details for SG Charge amounts (i.e. using TFNs) to help locate employees' super fund accounts.

We note that a similar model is currently applied in New Zealand, where we understand superannuation is paid every time an employee is paid their salary and wages by employers making payments directly to Inland Revenue (as New Zealand's central revenue office), which then distributes the superannuation to employees.

We consider there to be a number of benefits of moving this process to the ATO, including:

- Removal of inconsistencies with current clearing house payment terms. Instead of needing to rely on a 'due date' model, payday super can instead rely on the more financially advantageous 'employer payment' date.
- Removal of bounce back issues. The ATO already has access to employee's super fund details (through other mechanisms, including stapling and super fund reporting), and would be able to locate and make payment accurately on the first attempt.
- By extension, the presumed increase in investment interest for employees due to the removal of the financial intermediary and bounceback errors.
- Potential removal of super choice form requirement. Through migrating the SG remittance to the ATO, the administration requirement for super choice fund forms may become obsolete, as the ATO already has access to the employee's super fund details per their MyGov account (as is currently utilised in super stapling). This would shift the accountability on the employee to ensure their super fund details are correct.

The ATO would then have far greater insights of when and how much SG has been paid, which would greatly assist with its data analytics compliance activities. We acknowledge such a scheme would expend considerable resources from the ATO, and potentially result in the removal of intermediaries and clearing houses from the SG payment process, however, the ATO could charge a set fee to employers for the use of the clearing house services, which employers may currently pay to external clearing houses. This set fee could be adjusted based on being a small, medium or large employer.

Additionally, there may be some conjecture as to whether the ATO is allowed to function as a clearing house if the remission of SG is not considered a valid tax, unless the SG takes the form of an SG charge¹. However, we note that the ATO already provides clearing house services under the SBSCH and our proposition is to expand such services to all employers.

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

If intermediaries were to remain (noting this is not our recommended approach), strict time frames requiring payments from an employer to be received and paid to a super fund by a regulated due date could be implemented.

To incentivise shorter processing times, penalties could potentially be applied where an intermediary has exceeded a prescribed due date. Such penalties could be agreed to and administered under either the intermediaries' agreement with an employer or superannuation fund, the amendment of current SG legislation (for example, the *Superannuation Industry (Supervision) Act 1993* or *Superannuation Industry (Supervision) Regulations 1994*) or through a Law Administration Practice Statement (**LAPS** or **PSLA**).

¹Roy Morgan Research 2011 ATC ¶20-282; [2011] HCA 35, 28 September 2011.

Furthermore, intermediaries could be required to use one standardised payment platform to ensure that payment processing times are consistent across employers and clearing houses. This could include the use of the NPP, as suggested in the consultation paper, to process payments of employer contributions in real-time.

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?

The consultation paper suggests three days on the assumption that employers would process SuperStream transactions using the NPP and that the current payments platform would be streamlined.

Whilst 3 days may be achievable under a centralised platform, there is a practical concern from employers that current time frames for SG to reach an employee's superannuation fund following payment from the employer can be as long as 10 days when using existing clearing houses, thus making the proposed 3 day timeframe unfeasible. Furthermore, three days is significantly shorter than the 8 to 13 days suggested in the consultation paper as being a feasible due date, therefore further consultation with clearing houses and financial intermediaries is required to determine whether the infrastructure of such entities can be adapted to allow for a due date of three days.

To facilitate a short due date, we recommend enforcing standard timeframes for clearing houses to facilitate the payment of superannuation, as discussed in further responses. While three days may be too short in some circumstances, implementing a due date longer than this may be against the purpose of a payday super regime.

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

We are unable to comment on the current procedures in place by clearing houses and financial intermediaries to ascertain the impact shorter time frames would have on these payments.

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

Should the Treasury decide against using the ATO as a centralised clearing house, we agree that the implementation of shorter payment timeframes would require regulation of financial intermediaries. Currently, financial intermediaries (including clearing houses) have payment processing timeframes of varying lengths, which may depend on the intermediaries' agreement with the employer or the superannuation fund, or the payment method by which an employer pays the intermediary.

While we suggest adopting an approach by which there are consistent terms between the clearing houses and intermediaries, this may necessitate introducing additional regulation for financial intermediaries and the potential redrafting of existing agreements between employers and clearing houses.

It may be prudent to implement a function under the proposed new reporting mechanism for payday super, where employers could record how many days their payment terms are with clearing houses and submit this information to the ATO, thereby notifying the ATO of the expected timeframe for an employee's superannuation fund to receive the employee's SG contributions. This reporting feature may be better suited to the employer payment model, as a due date model is expected to implement a standardised due date, irrespective of the payment terms between an employer and a clearing house.

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

Similar to STP reporting, payday super could be administered in a series of phases to ensure that changes in the practical aspects of processing SG payments to an employee's superannuation fund are reflected in payday super obligations. For STP reporting, we understand that the administration and subsequent updates to STP were enacted under Federal legislation, where the Commissioner of Taxation if then given power to further enhance reporting through instruments released (for example, <https://www.ato.gov.au/law/view/document?src=rs&pit=99991231235958&arc=false&start=1&pageSize=10&total=5&num=1&docid=OPS%2FSTP20211C1%2F00001&dc=false&stype=find&df=868&tm=phrase-basic-stp>), and payroll providers updated their software and reporting capabilities to facilitate the additional requirements. Updates to payday super could be legislated under a similar mechanism, which could include provisions to delegate powers to the ATO, so that the ATO may make laws in the form of regulations or other instruments to respond to technological or practical developments.

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 benefits or risks in only allowing one payment platform (such as the NPP)?

We consider a centralised payment method (via the ATO) to be most appropriate, as it will standardise payment terms across all employers. However, we acknowledge this will likely result in the obsolescence of existing clearing houses.

Compliance Mechanisms

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?

Our view is that there should be a standard timeframe for ATO reconciliations, being two weeks after the due date (or a separate prescribed date as discussed below). Two weeks would allow for employers to review their SG processing and correct potential errors prior to the ATO performing a reconciliation. Furthermore, a shorter time frame of two weeks (as opposed to monthly or quarterly) would ensure employers are made aware of any errors in their SG processing in a timely manner by the ATO before the same error is included in multiple pay runs. Following this, a standard 'nudge' should be sent in instances where non-compliance is detected.

The prescribed time frame for ATO reconciliations could be adapted depending on the chosen payday model. For a due date model, it may be preferable to have a shorter ATO reconciliation timeframe than the employer payment model, as there may have already been a delay between the employer's payment of SG and the payday occurring. For the payday model, two weeks would allow for employers to identify and voluntarily disclose any errors or underpayments of SG before an ATO review or reconciliation is commenced.

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?

In our experience working with clients who are required to submit SG Charge Statements, the process of paying an SG charge to the ATO can be burdensome (for example, an employer has to request a Payment Reference Number (**PRN**) from the ATO, the ATO must create an SG account on the ATO portal, and an employer has to calculate and prepare an SG charge statement using an excel template from the ATO).

There should be a more modern system developed to facilitate the payment of SG Charge, such as directly through payroll software potentially as a separate reporting item within current STP reporting. The form itself should also be modernised from a basic excel form, which carries the risk of input or human error, to a form that uses pre-filled payroll data.

A number of employers pre-pay an SG charge before an assessment is issued by the ATO, as part of a voluntary disclosure. This ability should remain. However, for amended SG Charge Statements, which attract GIC which is calculated and paid out by the ATO to impacted employees, the total liability is often unknown until assessments are issued. Given the likely increase in errors from implementing the payday model, we recommend that the amended SG Charge Statements process and legislative intent is revisited, to allow for a more simplified (but still punitive) calculation of interest for employers.



Further clarification should be provided on whether separate SG Charge Statements are required for each pay run frequency (i.e. for each pay run date for employers who have weekly, fortnightly and monthly payruns) within a quarter.

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?

From a practical perspective, we are of the view that LPO and carry forward payments can assist employers with complex payrolls, minor administrative errors and instances where there was a time delay outside their control to reach the employee's super fund account.

Notably, the current law only requires SG Charge Statements to be lodged for LPOs, rather than carry forward of late payments. Given the ATO will have greater insight on an employee's OTE and SG contribution in real time, it may be prudent to require employers to lodge SG Charge Statements when using carry forward of late payments (though this should be limited to advising the ATO of utility, as against calculating a charge penalty), to increase the ATO's visibility of contributions being applied outside of the payrun. If not, the ATO may view that SG obligations have not been met and commence audit investigation incorrectly.

Furthermore, it is paramount that the new legislation clearly outline how SG payments made before the due date are treated, especially with the proposed 'carrying forward' of late payments to a future pay period, and how this difference could be tracked. For instance, the current 12 month period commences at the start of a quarter. Would this now commence 12 months after the 'pay date' or the 'due date'? This may be complex to track within a payroll system.

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?

Our view is that the treatment of late SG contributions should remain the same as the current income tax treatment for late SG contributions (that is, late super payments offset against the SG Charge and the SG Charge are both not tax deductible), for simplicity and to incentivise employers to continue to pay SG by the due date and review their SG processing in real time, at the risk of forgoing a tax deduction by not paying SG contributions on time. An alternate suggestion would be to permit a tax deduction where the payment is late, but within a reasonable period eg. 2 weeks from the due date. The current quarterly deadlines seem unfit for the intent of the payday super regime and should be abandoned.

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

We suggest that nudges or prompts should take the form of letters from the ATO (including practice mail messages) sent to employers, their tax agents or directors of the employing business. Communication from



the ATO should be timely, if nudges or ATO reconciliations are intended to occur within a short timeframe of the payment due date (for example, the two-week timeframe as previously suggested).

In addition to this, we suggest that the ATO include as much information as possible in these notices, if the prompt or nudge is to advise of suspected SG shortfalls. In our experience, a number of employers who receive letters from the ATO regarding SG audits or reviews have suggested they would benefit from the ATO providing further details on the review such as confirmation on which employees are affected, what pay period the review refers to, or the specific cause for the review. If the ATO was to be the central touchpoint for paying SG, it is expected that the ATO could also collect and disperse this information as necessary, thus allowing employers to target their own review and checks to a specific time period or employee population.

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

The ATO could implement a program or concept similar to the “Justified trust” concept currently in place for large businesses, where the ATO reviews an employer’s tax governance framework to conclude whether an employer is paying the appropriate amount of income tax or Goods and Services Tax (**GST**). A similar approach could be applied to employers where an employer could achieve justified trust by evidencing a compliant SG framework and consistently paying SG contributions on time.

The employer may benefit from concessional treatment for rare instances of non-compliance, a reduction in nudges or planned reconciliations from the ATO, and, in turn, the ATO would benefit from directing its resources from trusted employers to other employers where there may be a greater potential for SG non-compliance.

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

We believe that, to encourage compliance, the ATO should adopt a tiered approach to the SG Charge applied to non-compliance. For example, there may be scaled behavioural penalties applicable, with the amount depending on whether the employer paid an employee’s SG late compared to the employer not paying SG altogether, or the penalty could be calculated as a proportion of the total SG shortfall, instead of a flat penalty amount.

This tiered approach for penalties could be adopted in a refreshed approach for remission of the 200% Part 7 penalty, which could allow for remission of penalties for late contributions if made within 3 days of the pay run or due date. The quarterly deadline (28 days after the quarter end) needs to be adjusted to better suit a payday super environment (eg. 2 week deadline from the due date).

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?

Under the current model, we do not believe that 10% p.a. adequately compensates for lost interest as a flat rate, given this rate has remained the same since 1995-96 financial year (as outlined in Regulation 7A of the *Superannuation Guarantee (Administration) Regulations 1993*). Since that time, top super funds have achieved growth in certain years in excess of 10% p.a., not to mention the compounding effect.

There are several options available to adjust the current interest rate:

- Establishment of a floating interest rate that is able to fluctuate in line with the market and properly compensate employees for lost interest (which could be calculated in the same manner as the ATO General Interest Charge (GIC)).
- Alternatively, the interest rate could be based on the average returns of superannuation funds over a certain period (each financial year, for example), which would ensure the interest component of the SG charge accurately reflects the interest an employee would have received on their superannuation contributions, had the contributions been paid on time.

We acknowledge that this may result in practical difficulties in calculating the SG Charge for multiple periods, or for calculating the appropriate interest where SG Charge Statements are amended. Given many employers pay the SG Charge amount (including interest) upon lodgement to avoid the accrual of GIC, these two options will also present a problem with the SG Charge payment remittal process.

To that end, it may be simpler for the ATO to simply increase the nominal interest rate (to say 15% or 20%) to adequately compensate employees, whilst acting as a deterrent for non-compliance.

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?

Refer above response to Q.20.

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?

We recommend that the administrative component of the SG Charge continues to be payable by an employer to compensate for the cost of ATO compliance, but need not be a flat rate per employee. Instead, given the likely increase in SG Charge Statements being lodged (due to more frequency late payments), it could be applied based on the number of employees, for example, a penalty of \$10 per employee where there are less than 20 employees in a pay period with short falls, \$15 per employee where there are 20-100

employees and so forth. While this increases complexity in calculating and administering the total SG Charge, it would encourage employers to remain compliant so as not to experience a significant SG Charge.

Another approach could be to have a standard fee per pay period based on the size of the employer (per an employer's turnover) and not with reference to the number of affected employees. For example, small to medium sized employers may be charged \$500 per non-compliant pay run, or \$1,500 per non-compliant pay run for large employers.

Further, if 'the ATO as the centralised clearing house' approach is adopted, they will already be responsible (and likely receiving compensation) for locating an employee's superannuation fund. Consideration should be given as to whether this administrative component should be passed on the employee, rather than the regulator.

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

Per our responses above, we recommend that the administrative component of the SG Charge should be changed based on either the number of employees for which an employer is calculating an SG Charge or the size of the employer.

The administrative fee has remained \$20 since 2003, suggesting an uplift to the fee from 2026-27 onwards, however, an updated fee would need to consider that the \$20 is charged per quarter, and under payday super, employers may be subject to the SG Charge multiple times (and therefore incur the administrative fee multiple times) within a quarter.

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?

Per our response to Q.16, our recommendation is that the SG Charge should remain not tax-deductible under payday super. However, if a non-compliant employer was able to receive a tax deduction for the SG Charge, this could be in the circumstance where the error is not on the part of the employer (for example, where a bounceback of SG occurs where the employee provides incorrect fund details, where the employer was not aware of a change in the employee's superannuation fund, or where there is an error on the part of the clearing house or financial intermediary). In these scenarios, or where the employer has a strong compliance history, we suggest a tax deduction be made available for any SG Charge - although, in these situations, a revised framework could permit the ATO to determine that the employer is not required to pay an SG Charge altogether, for example, should *Practice Statement Law Administration (General Administration) 2007/1 (PS LA 2007/1)* continue to apply.



We also recommend implementing a PSLA to cover in which circumstances the SG Charge may be tax deductible, if this applies.

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 we have discussed under Q.22, there could be a tiered approach to administration fees and penalties. For example, the SG Charge could be calculated depending on the number of employees with a shortfall or the size of the employer.

Similarly, the penalties could be calculated as a percentage of the shortfall or debt, which could increase as the size of the debt increases e.g., 5% of the total SG Charge for debts \$0-\$100k, 8% for \$100k-\$1m, 10% for \$1m+ etc. This would further encourage employers to comply with their SG obligations whilst penalising non-compliance as a proportion of the employer's SG shortfall.

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

An additional behavioural penalty that could be implemented is a multiplier applied to an employer's existing penalty where the employer is considered a 'repeat offender' or if a certain threshold of impacted employees is reached. This is similar to the suggestion under Q.19, where an additional SG Charge is suggested where consistent non-compliance is detected, which could increase as the number of non-compliant periods by the employer increases. This type of punitive charge could further act as a deterrent for consistent underpayment or non-payment of SG by employers.

For example, as discussed in Q.25, a punitive penalty could be imposed that is proportional to the size of the debt, and the proportion increases with the amount of shortfall.

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?

We agree that the remission of an SG Charge would be appropriate in some scenarios where the late payment of super is due to circumstances beyond the control of the employer, as this would be consistent with the current guidance as outlined in PS LA 2007/1. We recommend that a PSLA be drafted containing discrete and limited examples where such remissions would apply. If the circumstances are too general or could be applied to numerous cases of non-compliance, we agree this may risk the integrity of the SG Charge by facilitating or encouraging non-compliance by employers by safeguarding employers from incurring an SG Charge, and defeat the purpose of payday super.

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?

We consider that a scenario where the employer has shown due diligence in rectifying the situation, but where the shortfall was ultimately out of their control would be a sufficient reason for the SG Charge to be remitted. For example, for reasons as currently outlined in PS LA 2007/1 and noted under Q.27, as well as where an employer may not have paid SG on time because the employer was pending details of an employee's stapled super fund from the ATO, or where the employee did not complete a SuperChoice form appropriately. Although noting both scenarios would likely become obsolete if transitioning to the ATO as the centralised house.

As mentioned above, we believe that this should be done in discrete and limited situations so as to maintain the integrity of payday super.

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.

For administrative ease, the remission should apply to the entire amount. However, if to ensure fairness that the employee is receiving their SG contributions and is compensated for the loss of earnings in their superannuation fund, the remission should only apply to the administration component of the SG Charge.

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?

We suggest that there should be a process for employers to request an extension (similar to other tax obligations), but this would only be available in discrete or unforeseen circumstances which impact an employer's ability to calculate and lodge an SG Charge statement on time. These circumstances could be set out under a PSLA and follow the exceptional circumstances currently outlined in *PS LA 2011/15 Lodgment obligations, due dates and deferrals (PS LA 2011/15)*. For example, the ATO could extend the due date in the event of a natural disaster that has a significant impact on employers, if an employer has impeded access to records, where a critical staff member is seriously ill, or if there are system issues with the ATO or the employer's business system.

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

Yes, we agree that employers should be allowed to make 'catch-up' contributions due to inadvertent errors, which could be identified by employers during the time period after a pay run and before the ATO commence a reconciliation (as discussed in Q.13). This would ensure that SG contributions are corrected in a timely manner.

However, our view is that more guidance should be given as to how to discern between a catch-up payment and an LPO, given the consultation paper suggests they are distinct from each other. For example, would a catch-up contribution be considered a late payment of super if the catch-up payment is made after the prescribed due date, and if so, is the employer then required to pay an SG Charge? Or does the 'grace period' as noted in the consultation paper operate to relieve an employer of paying an SG Charge if the catch-up contribution is paid within the grace period? As such, we believe that guidance should be given as to the acceptable time period within which catch-up payments are able to be made before ATO penalties or additional interest is applied.

We also note that while allowing catch-up payments may be necessary to ensure employers can correct errors, catch-up contributions could go against the purpose of the PayDay super scheme by allowing employers to pay super and make corrections to their super payments at a time after an employee is paid an OTE component.

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?

As discussed in Q.31, our view is that allowing catch-up contributions may not align with the intent of payday super. If catch-up contributions were allowed to be made by employers, we suggest a standardised time period (for example, a week after the pay run is processed) across paydays of all frequencies, as having multiple time periods may lead to a greater administrative burden on payroll systems and employers with multiple pay cycles.

Alternatively, catch-up SG contributions could be processed and treated in the same manner as out of cycle payments under current STP guidance (as discussed in question 1), in that a catch-up contribution could be considered an out-of-cycle SG payment (instead a late payment or underpayment) which an employer would have to report with the next regular pay event. The time period for employers to make catch-up payments could then be the date from which the contribution is identified by the employer to the employer's next regular pay cycle.

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?

The consultation paper proposes that corrections of inadvertent errors by employers could be allowable during a grace period and would be distinct from the LPO or a catch-up payment. The challenges in administering this include determining how a correction would be different to an LPO or catch-up payment for an employer (as the three different types of payments are suggested to have different SG Charge treatments), and trying to create an equitable grace period that would uphold the intent of payday super and not disadvantage employers who remit SG correctly and on time.

Having a standard timeframe for corrections could enable employers to not lodge SG until this corrections period has elapsed, which defeats the purpose of implementing a payday model. To combat this, we recommend the grace period for corrections only being made available to employers with legitimate reasons beyond the control of the employer for late or unpaid SG (for example bounce-backs or other exceptional circumstances discussed in this submission). The payday due date would still be enforced, but there could be a period of a set number of days after payday where employers could make an SG correction through their payroll software provider and would not be required to pay an SG Charge, based on a discrete list of accepted reasons (which could be outlined by the ATO). As suggested by the consultation paper, an efficient method of correcting SG payments would be to enable SG corrections to fall alongside wage corrections made by an employer.

Under a payday model, it may be necessary to implement a standard timeframe within which corrections can be made. Once this timeframe has elapsed, a standard error message or nudge should be sent to employers where the ATO has detected non-compliance. The timing and content of error messages should be standardised across superannuation funds to provide consistent information to employers and financial intermediaries. It would be reasonable to assume that an employer's pay run would include SG contributions to multiple superannuation funds, therefore standardisation would ensure an employer is receiving messages and can address multiple errors in a timely manner.

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

We would consider different time periods to be appropriate for different errors, e.g., clearing house errors, employer errors. We cannot comment on the practical requirements of superannuation funds for resolving errors to determine whether 20 business days is an achievable time period to resolve errors and return funds to an employer. However, we recommend that the timeframe should be minimised as much as possible, to ensure that superannuation funds can make employers aware of any errors in an employee's superannuation fund details and can correct these as soon as possible. If the time period remains as 20 business days under current SG regulations, an employer may have made as many as four weekly SG contributions to an employee using incorrect fund details before the issue is identified and corrected by a superannuation fund.

Furthermore, if superannuation funds are using real-time platforms such as the NPP, we expect that SG payments can be returned to employers in a timely manner.

We believe that further consultation is required with superannuation funds to ascertain what would be an appropriate period of time.

35. Under a 'due date' model, would it be appropriate for a period of grace to apply after the due date for SG contributions? If so, should the grace period apply automatically? Or should it be applied at the ATO's discretion in certain limited circumstances?



We believe that an automatic grace period goes against the purpose of payday super, by effectively increasing the due date for an employer to pay SG. If a grace period were to apply, we propose that the grace period or extension of the due date would be granted in discrete and limited circumstances, and perhaps only available to employers on application to the ATO (as discussed under Q.30).

Given that the due date model already provides a set time for employees to calculate correct SG obligations before the SG payment is due, unlike the employer payment model, any additional time between a pay run and SG payment due date may erode the effectiveness of the scheme, as the employee would not be paid super at the time as payday, and forgo fund earnings for the grace period.

Our view is that a grace period may only be appropriate during a set transitional period following the implementation of payday super, to allow stakeholders to familiarise themselves with the requirements of payday super in practice.

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?

From our experience, a number of employers have described the stapling process as burdensome, particularly for large employers where bulk submissions can be time-consuming and difficult to process efficiently. We agree that a digital ATO service would streamline the choice of fund process, and aid employers in obtaining an employee's correct superannuation details in a timely manner. The digital service could take the form of an additional 'Choice of fund' obligation in MyGov, where an employee could choose a superannuation fund and this information could then be provided to the employer in a report accessible through the proposed digital service (or the ATO's online services portal). An online service allowing employers to extract the super fund information of their employees would reduce the number of SG payment errors or late payments made due to SuperChoice form non-completion.

As discussed previously, we believe that a comprehensive online ATO service that collects and distributes SG would streamline the payday super process, and choice of super fund and stapling information could fall under this service. However, the onus of providing such details would then be shifted to the employee via MyGov, rather than the employer.

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?

As outlined above, requiring employers to offer stapling to employees can be costly by adding to an employer's administrative burden when onboarding employees. Furthermore, there may be delays in



receiving information on an employee's stapled superannuation fund from the ATO, which may cause processing complexities for an employer where having to remit SG on the employee's first pay day.

We believe that a digital ATO service or online portal would reduce the administrative burden on employers when onboarding new employees. As the ATO would be intended to already have the details of all employees' super funds, a central database could bypass the need for SuperChoice forms by allowing employers to search or immediately request from the ATO the fund details of any new employees. This would have the added benefit of reducing instances of SG bouncebacks where employers have incorrect fund details, and delays in employers remitting SG where details of an employee's preferred super fund have not yet been disclosed by the employee.

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

We have limited experience with the advertising component of super products, and as such have no comment.

Other Payday Super Issues

39. How could a smooth transition be managed to aligning STP, SuperStream, Member Account Attribution Service (MAAS) and Member Account Transaction Service (MATS) reporting, either through changing the reporting requirements to year-to-date values or transaction-based reports?

As outlined above, we have proposed a creation of an online ATO service that centralises the reporting and payment of SG contributions for employers. Based on our experience with clients and discussions with an accredited gateway operator, this could be similar to the current SuperStream reporting through a standardised format (referred to as **SuperStream Alternative File Format** or **SAFF**) where employers will be required to prepare such files when using SG clearing house or certain superannuation funds.

Process simplification

For ATO reporting with payday super, we recommend that employers should only be required to input the mandatory details including the employer's name and Australia Business Number (**ABN**), employee name, employee's Tax File Number (**TFN**), a breakdown of SG contributions, and contribution periods on a transactional level, and would no longer need to submit the same information again to an SG clearing house or superannuation funds for the purpose of MAAS and MATS reporting.

As part of a smooth transition to payday and different to the current SAFF requirements, if the proposed centralised portal has employees' superannuation fund details, the employer's compliance burden with

SuperStream reporting should be mitigated by not requiring the employer to submit employees' super fund details again when reporting SG payments through SuperStream.

We expect that this SuperStream reporting through a centralised portal will enable greater transparency in reporting SG payments at employee level by employers in a timely manner, which could be supported by an employer's current payroll system settings and a gateway operators' ability of generating reporting documents based on payroll reports.

Furthermore, regulatory data-matching activities can be undertaken between the STP reporting and SuperStream reporting, where aggregated superannuation amounts in STP can be matched with transactional SG contributions reported in multiple SuperStream files.

From a superannuation provider perspective, the provider could use a standardised reporting from the proposed ATO's payday super portal for member contributions with the ability of identifying employees, contributions details, based on an employee's TFN, member ID and another unique identifier (as discussed below in Q.41). Therefore, this structure paves the way for a more streamlined alignment of SuperStream reporting lodged by employers with MAAS and MATS reporting by superannuation providers.

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

From our discussion with employers and the gateway operators, the challenges faced by the employers and superannuation fund or SG Clearing House can be broken down into the following two folds:

- Multiple gateways are required to streamline the reporting processing across various SG clearing houses or superannuation funds;
- There are currently no common connection/identifiers between STP data and SuperStream reporting to validate employees, which creates issues in individual identifications between employers and superannuation providers.

To facilitate a smooth transition, introduction of a unique identifier (similar to the IRD number used in NewZealand Electronic Data Interchange (**EDI**) filing, which could be separate to a TFN), is essential for unifying one employee under one employer from STP, SuperStream and MATS reporting, to pinpoint SG transactions at an individual employee level.

Furthermore, we believe a mandatory field for payment ID or payment reference will be required in the SuperStream reporting to ensure the alignment of SuperStream reporting and the actual SG remittance processed by an employer to the ATO. Whilst the ATO currently uses payment reference numbers in payments to the online services for agents, we believe it is imperative to auto-create payment ID in the report for employers to use, given the frequency of payments (i.e. 52 payments for weekly pay employers and 26 payments for fortnightly employees) and payment process for multiple paying entities (if any).

As mentioned above (in Q.39), if employees' superannuation details are to be centralised in a proposed payday super portal, employers should not be required to report fields in relation to superannuation fund, fund member ID and unique superannuation identifier (USI) for their employees.

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

As mentioned above, it is essential to create a new unique identifier as a mandatory field in all superannuation reporting from stakeholders including STP, SuperStream and MATS reporting which would be created per employee and per employer (in case one employee had multiplier employers), which will be different to an employee's TFN and beneficial for data-matching activities among those reporting from a regulatory perspective.

The primary reasons in support of a unique identifier include:

- Superannuation providers will be able to identify employees where an employee's TFN is not provided/or not valid in the SuperStream filing, reducing the administrative burden of identifying and reconciling SG payments in a superannuation fund's internal processing (e.g. end-of-financial-year process);
- Where superannuation contributions are rejected, employers will be able to identify individual employees, without performing further checks on payroll data which could be inaccurate (for example, invalid TFN or incorrect super fund member ID);
- Employers with one or more employing entities will be able to identify employees between STP and SuperStream reporting, along with their actual SG payments; and
- Superannuation providers will be able to locate individual employees with SuperStream reporting submitted by employers and centralised employees' superannuation fund details.

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?

Under current STP reporting, employers have the choice of reporting either:

- your YTD employer super liability for each employee in the STP report (super type L)
- the YTD ordinary time earnings (OTE) for each employee in the STP report (super type O).

Going forward, we recommend this choice be removed and instead require employer's to only report their YTD super liability under super type L. Based on current disaggregation of gross categories, the ATO has the ability to re-calculate OTE fields, so the requirement to also report OTE is redundant.



Instead, reporting YTD super liability is vital for the ATO's data matching activities, as the ATO could reconcile SuperStream data at a transaction level with both the super liability and the recalculated OTE for each employee.

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?

We would suggest implementing a higher concessional contributions cap for all employees in 2026-27 as transitional treatment, to account for employees who may reach the concessional contributions cap due to the increased frequency of SG payments from 1 July 2026.

Regardless of the payday super scheme, we note that there is merit in revisiting and increasing the cap from the current \$27,500, which has been in place since 1 July 2021, to more closely align with year-on-year changes to the Average Weekly Ordinary Time Earnings (AWOTE) of taxpayers.

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?

We believe that a quarterly calculation of the Maximum Contributions Base (MCB) would not be appropriate under the payday super model, as the principals of payday super deviate from the quarterly-based SG obligations currently in place for employers.

As such, the quarterly cap should be annualised, and employees paid SG at the statutory rate as a minimum until the employee reaches the MCB, if the employer does not have a separate arrangement with the employee to pay SG contributions above the MCB. This could be configured as a warning or automatic stop of SG calculations in payroll systems, or a practice mail message or other communication could be provided from the ATO through their online portal once an employee's OTE has reached or exceeded their MCB for the year.

While an annual calculation may be a simpler solution than a quarterly cap, we note that this may cause some cash flow issues for employers, where they are required to pay out all SG obligations for high earning employees at the start of the year. However, this is a broader consideration for payday super previously explored in this submission, as employers would be required to pay super at the same time as employees are paid OTE, regardless of when the employer exceeds the MCB.

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

Apart from our suggestion to review SG Charges for defined benefit holders, we have limited experience with the administration of SG obligations for defined benefit members, and as such have no comment.

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

We have limited experience with the reporting frameworks for SMSFs and Defined Benefit funds to the ATO, and as such have no comment.

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

We have limited experience with the administration of SG obligations for self-managed superannuation fund members, and as such have no comment.

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

Notwithstanding the impacts on stakeholders previously discussed in this submission, we outline the following considerations which may not have been specifically addressed in the consultation paper:

Rethink SGAA to align with payday super

The proposed models pose several challenges with the current SGC structure in the existing SGAA legislation. Each of these shortcomings should be addressed as part of the anticipated payday super legislation:

1. The penalty system within the SG Charge and Part 7 components is too severe, particularly as employers transition to the new payday super environment.
2. The 28 days after quarter end cutoff is not aligned to payday super purpose (too long a delay). 2 weeks is more appropriate and would encourage employers to invest in good governance to limit unintentional errors. The ATO should consider supporting good governance through a similar framework as justified trust (currently for income tax and GST).
3. The overall operation of the SGAA - in terms of its penal nature - is too complex and, apart from the Part 7 penalty which has Commissioner discretion to remit, it does not distinguish between unintentional mistakes and deliberate non-payment behaviour. In a real-time environment such as payday super, this scaled penalty structure is appropriate. It also recognises the complex nature of payroll and the ability for unintentional mistakes to occur.
4. In terms of simplification of the SG Charge, Part 7 could be retained as the employer penalty aspect, whilst the notional interest rate could be upward adjusted, or tied to average annual superannuation returns, to more fairly compensate employees for the lost timing difference. Consideration of a compounding calculation, as opposed to the current 'straight line' method, is also appropriate.
5. Take the opportunity to remove the inequitable SG Charge calculation in amendment scenarios. It is administratively complex for both the ATO and employers, and delivers different outcomes for

employees remediated in different tranches, where the shortfall occurs in the same quarter (that is, the notional interest is replaced with GIC for subsequent amendments, even where the amendments relate to different employees). This must be an intended consequence of the original drafting of the law.

6. The maximum contribution base - a quarterly calculation base does not align with payday super. Move to an annual calculation base, to easily permit employers / employees to agree to cease contributions when the annual cap is reached. The ATO would also be able to account for this in its data led analytics (so as not to unnecessarily nudge employers on missing contributions once the employee has received contributions on salary up to the MCB). Also, consider expressing the MCB as a superannuation value rather than a wages value and, ideally, align it to the concessional contributions limit (they are not that far apart already and just creates unnecessary misalignment from a practical perspective).

To the extent possible, automate as many aspects of the SG and SG Charge process, ideally ATO system supported and integrated with the Single Touch Payroll framework.

Contractors

We recommend that guidance is provided on whether payday super will apply to persons engaged by an employer who are deemed employees under 12(3) and 12(8) of the SGAA (referred to as the extended tests) or more specifically, to contractors engaged by an employer under an arrangement where SG is deemed to apply. If so, clarification on what the definition of 'pay date' is with respect to a contractor payment.

Currently, there is no mandatory obligation for employers to report contractors through STP and, therefore, an employer may likely manage contractor payments outside of payroll and through accounts payable. As a result, an employer may not have a set payrun date, and instead invoices are paid as they are received - potentially resulting in multiple invoice pay dates across a week. If payday super provisions were to apply in this scenario, clarification should be provided on whether the pay date is the invoice date or the date on which the employer makes the payment to the contractor.

Furthermore, we suggest greater time be afforded to employers to review their contractor obligations before being required to remit SG contributions. This could be in the form of a separate payday model which applies solely to employees under the extended tests of s12A of the SGAA, or a greater number of days under the grace period (for example, an employer may have one month from pay date before SG is due for a contractor).

We suggest that mechanisms be included in our proposed ATO-centralised clearing house to store superannuation fund details for contractors, and facilitate the onboarding and payment of SG contributions for contractors in a process consistent with common law employees. For example, payments to contractors could be mandated under future phases of STP which align with payday super, assisting both employers and the ATO with monitoring SG payments to contractors in real-time.

Directors fees

From our experience, we understand that employers may pay directors fees through accounts payable instead of through payroll, therefore, our considerations are consistent with those previously outlined for contractors. The introduction of a centralised clearing house administered by the ATO may work to align payroll with accounts payable for payments where SG is required to be remitted (that is, certain contractor payments and directors fees). We propose that more guidance be provided on the implication of payday super on directors' SG payments, including whether directors fees will be subject to separate time frames or reporting obligations.

Salary-sacrificed SG contributions

We recommend that more guidance be provided as to whether timing and frequency requirements under payday super requirements will extend to salary sacrificed SG contributions or SG contributions paid in excess of the statutory rate. Currently, the frequency of these types of SG contributions are not subject to legislative requirements under the SGAA (unless where expressly indicated in an Enterprise Agreement or contract with the employee).

An equitable system for employees under payday super would ensure that salary sacrificed contributions are subject to the same frequency and due date requirements of legislated SG contributions, given an employee is forgoing take-home pay to receive additional SG contributions which they cannot access until a set point in time.

International workers

Several overseas employers utilise a shadow payroll for their expat population in Australia. There are several carve outs from STP from inbound assignees, however SG obligations may still arise. Given inbound employees can often experience a delay in setting up a TFN or super fund, we recommend that a grace period, or a similar exclusion be available for inbound arrangements that meet certain criteria.

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

In addition to the recommendations included in this submission, we recommend changes be implemented under payday super to create a digital process for currently manual tasks. For example, the current process for high-income earners requires employees to complete a 'Super guarantee opt out for high income earners with multiple employers' (super opt-out) form and lodge this with the ATO at least 60 days before the first quarter for which an employer shortfall exemption certificate is sought. Such a lengthy time frame is not appropriate under payday super, therefore, we recommend the ATO introduce a digital method for lodging and processing super opt-out forms as an electronic application through an online portal. The application for opt-outs would have to occur before the due date for super fund details to be submitted.



In a similar vein, an online portal could be used to notify the ATO of any employees who are exempt from SG (such as the senior executive exemption, or employees covered by a bilateral super agreement). This is to avoid any adverse compliance action initiated by the ATO in instances of there being legitimate reasons for not making SG contributions.