SUPER MEMBERS
COUNCIL OF AUSTRALIA

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The Treasury
Langton Crescent
PARKES ACT 2600

By email: paydaysuper@treasury.gov.au

Securing Australians' Superannuation

Executive Summary

The Super Members Council of Australia (the Super Members Council) is the new collective body created by profit-to-member superannuation funds as a strong voice for 10 million Australians who have more than $1.4 trillion in super.

Our primary purpose is to protect and advance the interests of super fund members throughout their lives, while earning superannuation and benefitting from it in retirement. The Super Members Council advocates on their behalf to ensure superannuation policy is stable, effective, and equitable.

The Super Members Council welcomes the opportunity to provide input to Treasury's consultation on the policy and legislative design of the Securing Australians' Superannuation package. We are highly supportive of the Government's commitment to implementing measures to address the structural drivers of unpaid superannuation. Many of our member funds have workers in industries where non-payment and underpayment of super is a widespread issue, which has a direct negative impact on final retirement balances.

The Super Members Council welcomes the reforms as a means to achieve greater effectiveness and equity in the system by introducing measures to ensure all working Australians are paid their superannuation guarantee (SG) entitlements on time and in full. This will directly benefit individual workers, particularly those in lower paid work, young people and women, while also helping to build and strengthen trust and confidence in the system.

Recommendations

- **Recommendation 1**: The payday super reforms will improve compliance with superannuation obligations and improve the equity and inclusiveness of the superannuation system, and should be implemented in accordance with the implementation timeline set out in Appendix B to the consultation paper.

- **Recommendation 2**: The legislation should provide for a payment model which facilitates super being received by funds as quickly as practicable after payday to maximise the invested returns for members on their super contributions. However, commencement should not be conditional upon new payment technologies being developed.
- **Recommendation 3:** The Australian Taxation Office (ATO) should make full use of the existing data available via Member Account Transaction Service and Single Touch Payroll to undertake more active compliance in the short term.
- **Recommendation 4:** The legislation should provide for strong penalties for non-compliance with SG obligations.
- **Recommendation 5:** The legislative framework should set out the specific circumstances in which the ATO has the discretion to remit penalties or extend the due date for the SG charge.
- **Recommendation 6:** Any changes to rules regarding advertising should not prevent industrial parties and the funds from referencing the employer's default fund and providing relevant default fund information and educational materials to employees.
- **Recommendation 7:** The outcome of any changes to the SG base should be to ensure there is a reduction in errors and simple alignment between what is reported on the pay-slip and what is paid to a super fund.

About Super Members Council of Australia

Our primary purpose is to protect and advance the interests of super fund members throughout their lives, while earning superannuation at work and benefitting from it in retirement. The Super Members Council advocates on their behalf to ensure superannuation policy is stable, effective, and equitable.

Jointly created by the super funds who were members of the Australian Institute of Superannuation Trustees and Industry Super Australia, the new body builds on their legacies to provide member-centric advocacy. It will work with all political parties to deliver the best possible retirement outcomes for members.

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1. Payday Super – a more equitable super system

Compulsory superannuation has become central to the long-term welfare of Australian workers in retirement. The superannuation system also plays a vital role in the Australian economy more broadly. It is therefore important for all Australians to have confidence in the long-term effectiveness and stability of the system and for workers to trust that superannuation contributions made of their behalf will provide for an enhanced retirement.

Recent Super Members Council modelling shows that in 2020-21, 2.9 million Australians were underpaid an average of $1,650[1]. This represents 27 per cent of individuals entitled to the SG. In total $4.8 billion in SG entitlements were not paid. It is therefore clear that nonpayment and underpayment of workers' SG entitlements is a significant and longstanding issue that needs to be addressed.

To build trust in the superannuation system, it is also important for Australians to believe that the system is fair. Due to systemic inequities both inside and outside the super system, the consequences of being underpaid super can be more acute for women, who continue to retire with a third less super than men.

Furthermore, younger women and lower income earners are more likely to be underpaid their SG entitlements. In 2020-21, over one quarter of women aged between 20 and 39 did not receive their full super entitlement. The average underpayment for this cohort was $1,070. In the same year, half of women on lower incomes (between $5,400 and $24,999 per annum) were underpaid super compared with 28 per cent of women earning between $25,000 and $49,999 per annum.

For women who are both younger and on lower incomes, the likelihood of not being paid or being underpaid super increases significantly. In 2020-21, 56 per cent of young women (aged 20 to 29) who earned less than $25,000 per annum were underpaid super. The average underpayment for this cohort was $570, or around 40 per cent of their correct super entitlements.

It is clear from these statistics that improving compliance with superannuation obligations will also improve the equity and inclusiveness of the superannuation system. For these reasons, we strongly support the payday super reforms, which will not only reduce the incidence of unpaid or underpaid superannuation but will also ensure more Australians will benefit from higher retirement savings from receiving their SG contributions earlier and more frequently throughout their working life.

[1] Super Members Council analysis using the ATO 2 per cent sample file for 2020-21.

2. State of Play

The consultation paper outlines the existing SG payment frequency by count of employer which suggests more than one-third of employers pay super more frequently than the current minimum quarterly payment obligation. However, this is not reflective of the proportion of employees or dollar value of total SG contributions that are paid more frequently using the status quo payroll software and payment systems.

The payment frequency of salary payment and super by employers, employees, SG dollars and distribution of businesses by size is shown in tables 1 -3 below:

Table 1: Frequency of salary and wages payments

	Weekly	Fortnightly	Monthly
By Employers	48%	29%	14%
By Jobs	43%	50%	5%

Table 2: Frequency of SG contributions

	Weekly	Fortnightly	Monthly	Quarterly
By Employers	2%	2%	33%	62%
By Employees	1%	15%	50%	25%
By Dollars	1%	25%	52%	16%

Table 3: Distribution of firm size

	Small business	Medium Private ($10-$250M)	Large+ Multinationals	Not for profit + Government
By Employers	79%	15%	3%	3%
By Employees	26%	24%	25%	25%

Source: ATO consultation workshop

It is important to recognise that although the payment systems and processes are not necessarily optimised for frequent timely superannuation payments by employers, it would appear current systems are capable of more frequent payment without major system reforms. This has important implications for the scope and pace of reforms to deliver on the Government's policy objectives and proactive steps employers have taken already to pay their employees super in a timely manner.

3. Proposed payday super models

Treasury has proposed two alternative models for when super contributions must be paid (and from when, if not paid, the employer would be liable to pay the SG charge): the 'employer payment model' and the 'due date model'.

Treasury notes that the employer payment model would require a new reporting and data mechanism to be established to provide a verifiable payment date data point that could be used for real-time compliance monitoring. It would also likely require robust real time payment detail verification to ensure payment details are correct and correspond to the member's active super account at the time of processing and streamlined processes to correct errors. While the Super Members Council supports faster reporting and data mechanisms to better support and complement a more effective super system and effective compliance monitoring, we do not consider a real-time penalty regime necessary in order to meet the payday super policy objective of reducing unpaid and underpaid superannuation.

The due date model condenses the timeframe of the existing model. This may be simpler to implement, however it is still important to ensure that any changes to the payment model do not disadvantage or burden the many employers who already pay SG contributions with wages.

The Super Members Council supports a payment model which facilitates super being received by funds as quickly as practicable after payday to maximise the invested returns for members on their super contributions. Existing processes and systems can, at scale, facilitate payment to member accounts in 5-7 business days. However, some inefficiencies in the current system, including the transmission of incorrect data can lead to delays of up to 3 weeks from the date the employer pays the SG contributions. Resolving such delays through better processes and systems should be the focus of implementation. Although payment technologies will enable near real time payment to member accounts in the future this is not necessary to achieve the Government's policy objective of more frequent payment and dramatically improved compliance. Pursuing such an outcome at commencement is likely to increase the complexity of system changes, increase costs and potentially lead to delays in implementation.

4. Penalties

4.1. ATO compliance systems

We are encouraged by the ATO's recent focus on SG integrity and in particular, its enhanced use of data to improve SG compliance. However, the ATO's ability to do this is limited by poor data quality at source. We commend the Government and the ATO's commitment to investing in a more proactive and timely ATO SG compliance framework and support frequent and regular reconciliation periods to give effect to the policy intent of payday super.

The consultation paper states that the ATO will invest in a new unified database to enhance its data matching capabilities. The ATO currently receives detailed data on the receipt of superannuation contributions by funds via Member Account Transaction Service (MATS), and data from employers on payments they state they have made via Single Touch Payroll (STP). As the regulator responsible for SG compliance, the ATO should make full use of this rich data set to undertake more active compliance now, as this will benefit members in the short term and form a strong base for compliance action under the proposed payday super changes.

4.2. Staged penalties to accommodate more frequent payments

The consultation paper raises a number of proposals to change or reduce penalties for non-compliance (for example, the loss of tax deductibility and the penalty components of the SG charge) and to provide the ATO with more flexibility to remit penalties, including the SG charge. The paper suggests that a more flexible approach is necessary where, as a result of the payday super reforms, SG payment obligations arise more quickly and regularly for employers and where the ATO will be undertaking regular reconciliations. The premise of these proposals seems to be that more frequent SG contributions will result in more inadvertent non-payments or underpayments.

However, as the paper repeatedly states, non-payment of super is equivalent to wage theft. The Super Members Council's position is that the SG compliance regime should reflect this. Penalties for unpaid or underpaid superannuation, including the calculation of the SG charge, should not be weakened and should be broadly consistent with the penalties for unpaid wages. Given that the Government has recently introduced industrial relations legislation which includes significantly more robust penalties for wage theft, it is contradictory to dilute or limit penalties for non-payment of SG contributions.

Notwithstanding the above, strong penalties may be applied in a graduated manner with penalties increasing by reference to the level of non-compliance (for example, on a scale of administrative errors to intentional failure to pay SG contributions). However, it is important for there to be certainty about the circumstances in which penalties will apply, so that employers know and can clearly understand the consequences of non-compliance, and can alter their behaviour, systems and processes accordingly. Discretion without such clarity can potentially lead to compliance issues, including increased costs. It can also lead to inequitable outcomes between different employers and an expectation, or a practice, of remitting penalties as a matter of course, which undermines the deterrent effect of penalties and ultimately, the credibility and the effectiveness of the superannuation system.

For these reasons, we support strong penalties for non-compliance with SG obligations to reinforce an effective superannuation system and to meet the policy intent of reducing unpaid and underpaid superannuation. We also support providing the ATO with the discretion to remit penalties or extend the due date for the SG charge only in specific circumstances which may be set out in the legislation or the regulations.

5. Choice of Fund and Onboarding

Consistent with our primary purpose, which is to protect and advance the interests of super fund members, the Super Members Council supports measures to reduce duplicate accounts and to ensure members are connected with quality funds that have been tested, have passed the performance test and are appropriate to their needs. However, any changes to rules regarding advertising should not prevent industrial parties and the funds from referencing the employer's default fund and providing relevant default fund information and educational materials to employees.

6. Calculating the SG base

There are challenges in the calculation of the SG base which can lead to delays in individuals receiving their correct SG Payments due to errors. Payday super is intended to assist employees in identifying whether they have received the correct contributions by matching the SG contribution on their pay slip with contributions information from their super fund. It is also intended to assist with compliance monitoring by the ATO. As a principle, the outcome of any changes should be to ensure there is a reduction in errors and simple alignment between what is reported on the pay-slip and what is paid to a super fund.

7. Implementation

There are a range of questions in the consultation regarding implementation of the proposed changes. Our member funds hold a range of views on these and will engage on these topics directly with Treasury.