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Securing Australians' Superannuation Budget 2023-2024

Consultation Paper

Submission on behalf of

Royal Flying Doctor Service Australia Council
ABN 74 004 213 067

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Abbreviations

Abbreviations used in this submission match those shown on page 4 of the Treasury paper.

Background

Royal Flying Doctor Service ("RFDS")

The RFDS is a federated not-for-profit health service organisation which continues to provide a Mantle of Safety across regional, rural and remote Australia through a range of services including:

- emergency aeromedical evacuation services supporting rural and remote communities;
- primary health care clinics in communities that would otherwise not have any medical service or a very limited service;
- inter-hospital patient transfer services in most states (all other than New South Wales and Victoria) and Northern Territory;
- medical chests supported by 24/7 telephone / radio/ internet access to doctors;
- dental services in Bass Strait islands;
- truck based dental services to regional and remote communities that would not otherwise have a dentist;
- well-being services to regional and remote communities including mental health support services.

The RFDS includes six Operating Sections and the Australian Council, which is the national representative body. The Australian Council holds the funding agreement with the Commonwealth, to support primary evacuation, primary health care, dental and medical chest services in conjunction with each of the Operating Sections. It coordinates and delivers national strategies, national procurement arrangements and national fundraising.

The Operating Sections are the operational bodies which deliver the health services, own the assets used to deliver the health services, and employ the majority of the staff to deliver these services.

The Operating Sections also hold funding support agreements with the various State and Territory governments for the delivery of interhospital transfer services and other state based health services.

Each of the RFDS entities is a registered charity. Each is endorsed by the ATO as income tax exempt ("ITE"), as a Public Benevolent Institution ("PBI") and as a Deductible Gift Recipient ("DGR").

The RFDS is also mindful of the many RFDS auxiliaries and smaller NFPs that are separate legal entities and which undertake fundraising activities to support the work of the RFDS.

Further information about the RFDS is available on our website: <https://www.flyingdoctor.org.au>.

Submission responses

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

The payment of superannuation is subject to significant legislative requirements that have been added since the initial requirement for minimum levels of superannuation contributions to avoid a superannuation guarantee charge liability. These changes impact on the administration and payment of superannuation by the employer, including:

- Employers must pay superannuation on all amounts of OTE.
- Under Choice of Fund rules, employers must pay superannuation contributions to the superannuation fund nominated by the employee; failure to pay to the nominated fund will result in the employer not extinguishing their SG liability.
- If the absence of details of a nominated superannuation fund an employer is required to submit a Stapled Fund request to the ATO – the employer needs the ATO system to be informed of an employment relationship for this service to be available.

These steps incur time delays to be processed and responses from employees and the ATO.

NFPs whose activities involve employees with shorter terms of employment have a higher number of employees than employers in sectors which have fairly constant employment.

The RFDS may engage casuals for events and short term service delivery requirements.

As the number of employees with shorter terms of employment increases, so too does the volume of new superannuation fund details being required. This leads to a higher risk of incomplete or incorrect superannuation fund details being available to the employer in sufficient time to allow successful payment of a superannuation contribution on payday. As a consequence there is a higher risk of the employer being penalised by SG charges applying.

RFDS submits that employers who have made all efforts to comply with the legislation should not be penalised in the same manner as an employer who disregards their superannuation commitments.

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

ATO search for stapled funds

If an employee does not provide details of their super fund of choice, the employer is required to request details of the stapled fund from the ATO.

To do the search, the ATO system requires there to be a link between the employer and the employee at the time of the search.

RFDS submits that the ATO will need to allow the employer to search for a stapled fund before there is evidence in the ATO system of an employment relationship. The ATO system records all searches undertaken by employers so the ATO will be able to monitor and quickly identify if a search is unjustified.

3. Are there any advantages or disadvantages with the requirements of payday super being fulfilled if employers make the payment of SG contributions on 'payday' (i.e. the employer payment model)?
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)?

Employer's responsibilities

Employers should only be held responsible for those aspects of the superannuation contribution process that are within the control of the employer.

Employers cannot control the time taken by a superannuation clearing house to process the payment and the associated fund details nor can the employer influence the time taken for a superannuation fund's internal processes to allocate the contributions to the employee's individual account.

From time to time an employee will make an error when providing the details of their superannuation fund; such an error will only be apparent to the employer after the first payment of superannuation is made by the employer and it is rejected.

Mergers of superannuation funds and other changes to superannuation funds periodically result in changes to the payment details for an individual employee contribution. Whilst these changes may have been notified to the employee, these changes do not always get passed on to the employer, becoming apparent when a payment to a superannuation fund payee that has previously been successfully processed is unexpectedly rejected.

The employer's link to an employee's superannuation account balance is limited to that of contributing employer.

The contractual relationship is between the employee member and their chosen superannuation fund.

An employer is required to contribute the applicable minimum superannuation contributions for employees and those contractors to whom the entity pays amounts within the extended definition of salary and wages. If the employer fails to meet all of their superannuation obligations on time, the employer is liable to pay SGC as a penalty.

If a payday contribution requirement is adopted, the employer will potentially be unjustly penalised for these two categories of error, both of which are not errors caused by the actions or failings of the employer.

RFDS submits that the employer's responsibilities should be limited to steps within the employer's control; recognising that:

- The employee selects of which superannuation fund they will be a member;
- The trustees / administrators of each superannuation fund are responsible their internal processing systems;
- The directors / management of the superannuation clearing house are responsible for their internal processing systems.

RFDS submits that the due date model leaves the employer responsible for the total process from the employer's payment to the employee's superannuation fund account including systems and processes that are beyond the control of the employer.

An assessment of SG is a penalty.

RFDS submits that an employer has no control over the selection of the employee's superannuation fund nor that fund's internal processes but will be penalised for delays caused by that superannuation fund as if it were the employer's fault. RFDS submits that this is inequitable.

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?

Currently the due date for SG contributions is the 28th day after the quarter. This applies to employers of all sizes and level of administration sophistication.

Payroll cycles include monthly, fortnightly and weekly with some organisations having a combination.

RFDS Qld Section pays their contributions fortnightly. All members of RFDS pay their contributions more regularly than quarterly.

RFDS submits that a regular SG contribution reconciliation date is appropriate; the SG date is currently quarterly and should not reduce below monthly.

RFDS submits that the timing for meeting SG compliance should be monthly – all superannuation contributions to be paid to the superannuation funds by the 28th of the month following the month in which the payroll was made. By way of example, contributions based on salary and wages and on payments to contractors during the month of October would need to be paid by a date in November,

RFDS submits that this date could coincide with the due date of the monthly Instalment Activity statement cycle so the 21st of the month.

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

RFDS submits that it is appropriate to reduce the frequency of SG measurement from quarterly but only to monthly.

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

The RFDS employers use payroll software providers to manage the payroll process and many of these payroll software packages are linked to super stream processors.

RFDS submits that for an employer to change payroll providers is a major cost and administrative exercise.

RFDS submits that in general terms employers lack any real power to incentivise the super stream processors and the superannuation funds.

Treasury should consider regulation of the super stream processors and the superannuation funds as it is beyond the power of the employer to incentivise.

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?
9. What impact would shorter payment timeframes have on clearing houses and other financial intermediaries that facilitate the payment of superannuation contributions to funds?
10. Would shorter payment timeframes require regulation of these financial intermediaries to ensure payment timeframes are met?

This question can only be determined by the super stream processors and the superannuation funds – employers provide the data electronically and payment by EFT.

There needs to be adequate allowance for weekends and public holidays.

If a due date model with only 3 days tolerance, this will mean that all the super stream processors and the superannuation funds will need to have their systems available with no downtime.

If a super stream processor or a superannuation fund suffers a cyber attack and is offline for a period of time, the employer is potentially penalised for something outside their control.

RFDS submits that the due date model is flawed due to the inappropriate allocation of penalties to be against the employer in the event that factors outside the control of the employer delay the funds reaching the employee's account in the superannuation fund.

11. How can the payday super model be designed to ensure it can adapt to changes and innovations in payment and data platforms?
12. What are the benefits or risks associated with allowing multiple payment methods and how might this affect payments processing for clearing houses and superannuation funds? Would there be benefit or risks in only allowing one payment platform (such as the NPP)?

Innovations in payment and data platforms will result in allocation of funds in a more timely manner.

If government wishes to mandate a single payment platform, employer responsibilities should be met once details of contributions are lodged and payment made.

The payment platform such as the proposed NPP needs to be able to manage employer contributions data from payroll software and also contributions data for superannuation contributions on payments to contractors. These payments are not processed through payroll software.

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

There is a multitude of paydays in many businesses.

From time to time, an employee may be slow in providing essential details such as a TFN or their bank details, necessary to allow their payroll to be processed. They are excluded from the regular fortnightly payroll run and once the information is received a supplementary payroll run is processed, incurring additional costs to the employer.

The adoption of a payday superannuation payment requirement will result in additional administration time and therefore cost to process separate superannuation payment runs.

If a payday superannuation requirement is introduced, in instances where the employee has not provided all the required superannuation information, the employer will need to defer paying the wage to the employee in order to not incur a SG charge.

A SG charge is double penalty

- The superannuation payment becomes a non deductible outgoing to the employer; and
- The SG is calculated on the total salary and wages paid to the employee for that period rather than the OTE.

For employers who make all efforts to comply with the SG legislation but are thwarted by factors beyond their control such as errors in information provided by employees, there is a double penalty.

RFDS submits that the SG payment should be deductible and should only apply to OTE where the payment is made on a voluntary basis within a reasonable time frame such as for minor corrections.

RFDS submits that there is an argument that the SG payment made on a voluntary basis within a reasonable time frame such as for minor corrections should be deductible so that the outcome for a tax paying entity is the same as for a charity which is income tax exempt.

Employers who are making all endeavours to comply with the law should not be penalised for minor mistakes and adjustments.

The penalties of losing the deduction for income tax paying entities and a broader employment base for SG calculation should only apply to those employers who disregard the law.

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?
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?
17. What kind of prompts or nudges could be provided to employers to be aware of and meet their SG obligations on time?
18. Are there more appropriate incentives outside of the LPO to encourage employers to pay SG in a timely manner?

RFDS submits that the LPO and carry forward system should be retained.

RFDS submits that the and the SG payment should be deductible should only apply to OTE where the payment is made on a voluntary basis within a reasonable time frame and for minor corrections.

Employers who are making all endeavours to comply with the law should not be penalised for minor mistakes and adjustments.

The most appropriate incentive to encourage the employers to pay more regularly include

- Changing the SG matching period from a quarterly cycle to a monthly cycle;

- Allowing employers to correct minor mistakes and adjustments (including relodging superannuation payments rejected due to incorrect information supplied to the employer) without the multi penalties that apply at present on having to lodge the SG charge forms and the expanded base for SG calculation (in lieu of OTE)

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

The penalties of losing the income tax deduction and a broader employment wage base (in lieu of OTE) for SG calculation should only apply to those employers who blatantly disregard the law.

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?

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?

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?

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

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?

Re Q24, RFDS submits that the SG payment should be deductible should only apply to OTE where the payment is made on a voluntary basis within a reasonable time frame and for minor corrections and if paid to the employee's superannuation fund no administration fee should apply.

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)?

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

RFDS submits that employers should be allowed to correct minor mistakes and adjustments (including relodging superannuation payments rejected due to incorrect information supplied to the employer) without the multi penalties that apply at present on losing the tax deduction, having to lodge the SG charge forms and to pay additional superannuation on the expanded base for SG calculation (in lieu of OTE)

This will also see the funds reach the employee's superannuation account on a more timely basis than the delayed process at present having to prepare SGC forms and lodge with the ATO.

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?
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?
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.
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?

RFDS submits that the ATO should have the power to allow employers to fix SG matters particularly where the non compliance is due to matters beyond the employer's control, and to waive the administration fees (which may be greater than the amount of superannuation involved)

31. Should employers be allowed to make 'catch-up' contributions due to errors?
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?
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?
34. Is the 20 business day time period for superannuation funds to resolve errors appropriate in a payday super model?

RFDS submits that the employers should be allowed to make corrections and catch up payments without the dual penalties of superannuation being calculation other than on OTE and tax deductibility.

If a monthly SG reconciliation cycle is adopted this could be the one additional month.