



Securing Australians' Superannuation Budget 2023-24

Consultation paper

October 2023

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Abbreviations

Acronym or term	Meaning
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
EN	Employee Notification
FEG	Fair Entitlement Guarantee
MAAS	Member Account Attribute Service
MATS	Member Account Transaction Service
OTE	Ordinary Time Earnings
SG	Superannuation Guarantee
SGA Act	<i>Superannuation Guarantee (Administration) Act 1992</i>
SGC Act	<i>Superannuation Guarantee Charge Act 1992</i>
SME	Small and Medium-Sized Enterprise
STP	Single Touch Payroll
TA Act	<i>Tax Administration Act 1953</i>

Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this paper by 3 November 2023. Any comments received will feed into the development of future policy.

Submissions may be lodged electronically or by post; however, electronic lodgement is preferred via email to: paydaysuper@treasury.gov.au. For accessibility reasons, please submit responses via email in a Word, RTF, or PDF format. Submissions will be shared with other Commonwealth agencies where necessary for the purposes of this review.

All information (including name and address details) contained in submissions may be made publicly available on the Australian Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Closing date for submissions: 3 November 2023

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

Introduction

A major feature of Australia's world-class superannuation system is compulsory contributions by employers to their employees' superannuation funds – known as the Superannuation Guarantee (SG). The SG prescribes a minimum level of superannuation to be provided by employers to employees. The SG rate is set at a percentage of an employee's ordinary time earnings (OTE), as set out in the *Superannuation Guarantee (Administration) Act 1992*.

The SG rate is currently 11 per cent of OTE and is legislated to rise in increments of 0.5 percentage points each year until it reaches 12 per cent on 1 July 2025. Broadly, OTE is defined in the SGA Act as amounts earned for 'ordinary hours of work'. OTE may differ from salary and wages. For example, where overtime is included in someone's salary and wages payment.

However, the non-payment and underpayment of SG contributions by employers risks the retirement income of millions of employees. Non-payment and underpayment of SG contributions is equivalent to wage theft and has significant impacts on retirement outcomes – delaying retirement, reducing the retirement savings of individuals due to the loss of compounding returns in the fund and results in a loss of insurance coverage for some members. Further, employers who are consistently complying with their SG obligations don't have a level playing field with non-compliant employers.

If an employer does not pay the correct SG entitlements to an employee's nominated fund by the quarterly payment due date, they may be liable for the SG charge, payable to the ATO. The Australian Taxation Office (ATO) is responsible for administering the SG scheme, including following up with employers where SG obligations go unpaid and administering the SG charge.

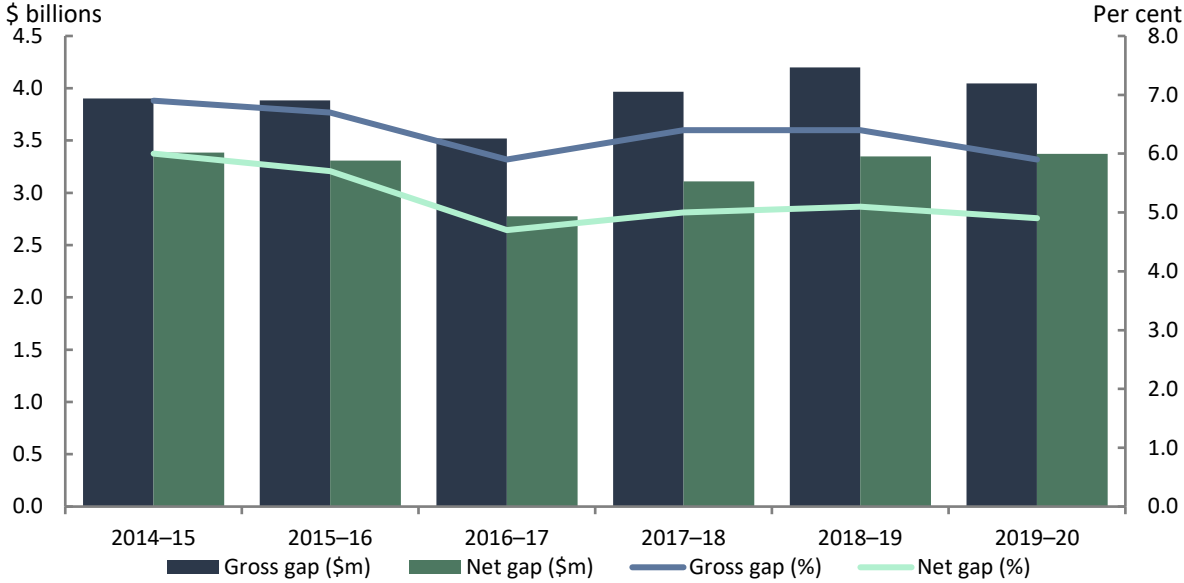
Due to the current design of the SG system (including the frequency with which employers are required to pay SG, the operation of the SG charge, and limitations with the ATO's IT capabilities to identify unpaid SG), many SG obligations remain unpaid for extended periods of time. This causes significant issues when employers enter liquidation without having paid their SG obligations.

Further, the ATO has noted that businesses often enter liquidation or bankruptcy before the underpayment is identified, limiting its ability to conduct effective compliance activities and recover unpaid superannuation. As at 28 February 2022, \$1.1 billion of SG charge debt was subject to insolvency, which is unlikely to ever be recovered.

An employer who does not contribute the minimum level of required superannuation contributions when due is liable to pay an SG charge on the shortfall. Alongside the Age Pension, other government support and private voluntary savings, SG contributions are crucial in ensuring a dignified retirement for all Australians.

In 2019-20, the net SG gap after Australian Taxation Office (ATO) compliance activities was \$3.4 billion equivalent to a net SG gap of 4.9 per cent. The net gap has remained largely unchanged since 2014-15.

Chart 1: SG gross and net gap, 2014-15 to 2019-20



Source: ATO.

Government commitments to reducing unpaid SG

Securing Australians’ Superannuation

At the 2023-24 Budget, the Government announced the Securing Australians’ Superannuation package aimed at addressing the structural drivers of unpaid SG. The Government is also further strengthening the superannuation through the Better Targeted Superannuation Concessions measure, commencing on 1 July 2025. The Securing Australians’ Superannuation package will provide important improvements to the way employees are paid their super, as well as crucial upgrades to ATO systems for identifying and recovering unpaid SG. This package contains two parts:

Increasing the payment frequency of the SG

The Government will legislate for employers to pay their employees’ SG contributions at the same time that they pay salary and wages SG charge. Around 8.9 million Australians will benefit from higher retirement savings from receiving their SG contributions earlier and more frequently throughout their working life. This change will apply to all employers from 1 July 2026. This timeframe will enable employers, digital service providers, superannuation funds, and other impacted stakeholders the opportunity to make necessary system changes to accommodate the increased frequency of payment of SG contributions.

By increasing the payment frequency of superannuation to align with the payment of salary and wages, this will both ensure employees have greater visibility over whether contributions have been correctly paid; additional time in the fund for employees to benefit from compounding returns, and increase the likelihood of the ATO being able to recover unpaid SG through earlier detection and compliance action.

The Government will also amend the SG compliance framework, including amending the calculation of the SG charge and adding new penalties to encourage compliance and align it with payday super. The current SG charge is based on a quarterly model and needs to be updated to ensure it is appropriate to the payday super model where employers have different SG payment frequency obligations. The final design of the SG compliance framework will be informed by the outcome of consultation with stakeholders and considered by the Government as part of the 2024-25 Budget.

Investing in SG compliance

The Government is also stepping up investment in the ATO's data matching capabilities. This will allow the ATO to develop and implement the necessary digital infrastructure to identify instances of underpayment or non-payment of SG in a timelier way.

From 2023, the ATO will invest in creating a new unified database which matches Single Touch Payroll (STP) data from employers and Member Account Transaction Service (MATS) data from superannuation funds at scale. This database will provide a single source showing the near-real time recorded SG position for employers and employees, enabling the ATO to identify instances and patterns of late or underpayment of SG.

This proactive SG compliance system will enable the ATO to identify instances of unpaid SG in near-real time, allowing them to work with employers in a timely manner to respond to payment errors, and recover amounts and apply additional penalties in more serious cases of non-compliance.

Further information on the current SG framework is available at **Appendix A** and implementation timelines for the Securing Australians' Superannuation package are available at **Appendix B**.

Unpaid SG recovery targets for the ATO

During the election the Government committed to setting unpaid SG recovery targets for the ATO, to be reported on an annual basis. These targets will leverage improvements in the ATO's capabilities as a result of the Securing Australians' Superannuation package to help track the ATO's compliance activities in reducing unpaid SG.

Interim SG recovery measures

In the interim period while the ATO's data and compliance capabilities are upgraded as part of the Securing Australians' Superannuation package, two new performance measures for recovery of unpaid SG have been published in the *2023-24 Treasury Portfolio Budget Statement*. These measures are:

- *SG distributed as a proportion of SG raised*: The proportion of SG charge liabilities raised for a financial year which has been collected and distributed to individuals or superannuation funds. Results would be reported two years after the financial year has ended to account for liabilities collected after the financial year has ended.
- *SG charge raised and distributed within 12 months*: The value of SG charge liabilities raised, then collected and distributed to individuals or superannuation funds within 12 months.

Numerical targets for these measures will be published for the 2025-26 financial year onwards.

Improved SG recovery measures

From the 2026-27 financial year onward, when the ATO's data and compliance capabilities are upgraded through the implementation of the Securing Australians' Superannuation package, the ATO will publish improved SG recovery measures. These measures will provide useful and clear insights into employer compliance with SG obligations and the efficacy of the ATO's capability to identify and recover unpaid SG. Improvements in the ATO's ability to recover unpaid SG will require the ATO to reassess debt recovery processes and policies to ensure that employees receive their SG contributions.

The improved SG recovery measures will include the development of an improved methodology for calculating the SG gap. The improved SG gap measure would make the best use of the improved ATO capabilities and policy settings, including data matching and data quality improvements. The ATO will be able to estimate the amount of unpaid SG through a bottom-up method, based on data reported at the individual employer, employee, and fund levels, rather than the current methodology which relies on aggregate statistics.

Purpose of consultation

This consultation paper seeks input from stakeholders on the policy and legislative design of the Securing Australians' Superannuation package. This will also be informed by ATO-led consultation on the administrative approach to the package, commencing in the second half of 2023.

The aim of this consultation process is to work with stakeholders to co-design an approach which achieves the goals of the Securing Australians' Superannuation package and is fit for purpose, whilst minimising the administrative and regulatory burden on stakeholders who will implement the changes.


Structure of consultation

This consultation paper provides an overview of the current SG contributions and administration framework. This is followed by an introduction to the Government's announcement at Budget to mandate payday super as part of the broader Securing Australians' Superannuation package. This package forms the basis of what the Government is seeking to consult on, including:

- Defining payday super
- Updating the SG charge
- Compliance mechanisms
- Other areas for consultation

These areas for consultation lead into consultation questions, stakeholder answers to which will inform the design of payday super implementation and compliance frameworks.

This consultation paper also includes an overview of the current SG framework at **Appendix A** and a timeline of the Securing Australians' Superannuation package implementation at **Appendix B**.



Consultation will continue in the lead up to the 2024-25 Budget where the Government will consider the final design of the announced changes. This consultation process will involve stakeholder roundtables and bilateral meetings with Treasury, the ATO and relevant stakeholders. If you would like to be notified about updates in the consultation process, you can subscribe to media releases at: <https://ministers.treasury.gov.au/email-subscription>. If you would like to express interest in attending a stakeholder roundtable please email paydaysuper@treasury.gov.au.

Policy considerations: Securing Australians' Superannuation package

Areas for consultation

This section seeks feedback on a range of policy design elements for implementing the Government's announcement of payday super. There are a number of policy design decisions that will require changes to the interactions between employers, superannuation funds, clearing houses, digital service providers and the ATO.

The core policy design issues are outlined below and consideration will be given to other issues raised during the consultation process.

Payday super

Defining 'payday'

Payday super is intended to achieve a few policy objectives. It is intended that individuals receive their superannuation contributions to their account as close to payday as possible, maximising the invested returns on these contributions. It is also intended to assist with employees identifying whether they have received the correct contributions by matching the SG contribution printed on their payslip with contributions information from their superannuation fund. The alignment of superannuation contributions and wages will also enable underpayments of superannuation to be identified by the ATO in a timely manner through matching data on employer superannuation payments and contributions for each pay period.

There are two models that could be used. An 'employer payment' model that would impose the requirement on the employer to make payment of the SG contributions on the day that wages and salary is made or a 'due date' model that requires contributions to be received by the superannuation fund within a certain number of days following 'payday'.

Under either model, it will be necessary to define what constitutes 'payday'. It is envisaged that 'payday' would capture every time a payment with an OTE component is made to an employee. For example, some payments with OTE components may occur outside of the regular pay cycle, such as termination payments. It is envisaged that these events will still constitute an employee's 'payday' given they contain OTE components.

Employee SG contributions will be based on the OTE paid to the employee on the payday. Employers will calculate SG owing consistent with STP reporting.

Consultation questions

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

Updating the SG charge

Unpaid superannuation is equivalent to wage theft. The SG charge is an important tool for deterring and penalising non-compliance with SG obligations and this will remain the case under payday super.

The SG charge is designed for a quarterly payment model and will need to be updated to align with a more frequent payment schedule.

Any changes to the calculation of the SG charge will be proportional to the level of non-compliance and ensure that it continues to deter and penalise non-compliance. The intent of an updated SG charge is that employees who receive contributions late should always be compensated for forgone earnings, while employers should not be unduly penalised for circumstances outside of their control or for small administrative errors. These changes could include amendments to the rate of nominal interest and the size of the administration fee in a payday super model.

In addition, the Commissioner of Taxation could be granted some flexibility to remit or reduce the SG charge or extend the due date under discrete circumstances where the employer is unable to meet the SG due date due to circumstances beyond their control. These circumstances will be limited and specified in legislation. They will not amount to a general discretion for the Commissioner to remit or reduce the charge or extend the due date for its payment on application from an employer.

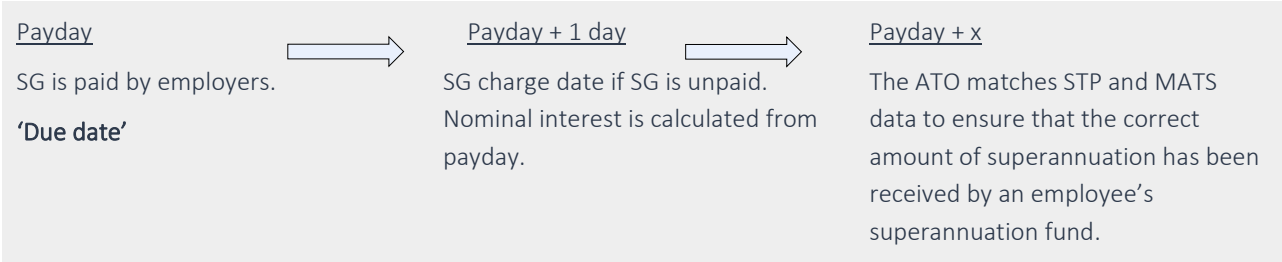
Employer payment model

The SG charge could be based upon a requirement that the employer make the payment of an SG contribution on payday. Where a payment is not made on payday, an employer would become liable to pay the SG charge from this date.

The current reporting and data mechanisms do not provide a verifiable payment date data point that could be used to monitor compliance in real-time. This model would require a new reporting and data mechanism to be established to provide the ATO oversight of the day that SG contributions are made. As the underlying policy intent is for contributions to be allocated to individual’s superannuation account as soon as possible to maximise the returns that they will receive, intermediaries would need to be incentivised to improve processing times. This could include utilising real-time modern payment platforms such as the New Payments Platform (NPP).

Timing of receipt of superannuation contributions by an employee’s superannuation fund would still need to be considered to ensure that employer contributions are received in an appropriate period. The ATO would still need to make reconciliations between MATS and STP data to ensure that the correct amount has both been paid and received by an employee’s superannuation fund.

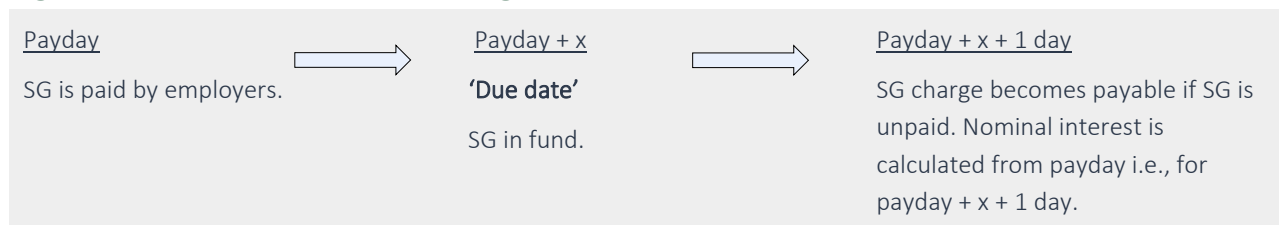
Figure 1: Employer payment model - SG charge and nominal interest accrual



Due date model

The SG charge could maintain the current model whereby an employer becomes liable to pay the SG charge if their employee's superannuation contribution is not with their fund by a specified due date (see below).

Figure 2: Due date model - SG charge and nominal interest accrual



A 'due date' model would require contributions to be received by a superannuation fund within a certain number of days following an employee's payday. As is currently the case, the day superannuation amounts are required to be received by an employee's superannuation fund will be referred to as the superannuation 'due date'. If funds are not in the account by the due date, the employer will become liable to pay the SG charge.

Compared with the 'employer payment' model, the 'due date' model would provide incentives for employers, funds and intermediaries to ensure SG contributions enter an employee's superannuation account in a timely manner. However, the setting of a due date under this model will need to allow a reasonable period for processing and administrative delays in transferring the funds.

There are some trade-offs involved in setting a reasonable 'due date'. There is merit in ensuring the due date is as close as possible to payday. This ensures employees and the ATO have visibility of the contributions as soon as possible to enable actions to be taken on non-payment and underpayment in a timely manner, increasing the likelihood that the amounts will be recovered. A due date closer to payday also recognises, and leverages, significant improvements in transactions technology which mean that less time is required for payment processing.

Treasury and the ATO have undertaken initial consultation with a number of key industry representatives. They have suggested a feasible due date for superannuation contributions to reach the fund would be between 8 to 13 days after payday. This is based on an assumption that the current payment process would be streamlined and the Bulk Electronic Clearing System is still the main payments platform. Processing SuperStream transactions using the NPP has potential to provide for a faster and more data rich payments platform when transferring SG amounts from the employer's bank to a superannuation fund, via varying data channels. If new payments technology such as the NPP are used, it is expected that the time for SG payments to reach the fund could be less than 3 days.

Consultation questions

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)?

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?
6. Would requiring a new reporting mechanism for employers under an employer payment model to the ATO on payday increase compliance burden?
7. How would intermediaries continue to be incentivised to expedite the processing of employer contributions under an employment payment model?
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?
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)?

Compliance mechanisms

SG charge assessments

Under either an 'employer payment' or a 'due date' model, the ATO will use enhanced reporting by employers and funds to ensure that superannuation payments have been paid on payday or received by the fund by the due date. The ATO will initiate SG charge assessments through their own compliance activities more frequently with lower reliance and need for cases to be raised through employee notifications.

If it is identified that an employee's superannuation contributions were not with the fund, in full, by the due date or paid on payday, the ATO will contact the employer through a 'nudge' to encourage rectification of any underpayment. Where a contribution continues to be unpaid, the ATO will investigate and contact the employer again to inform them of their liability to pay the SG charge through an SG charge assessment. As currently, the SG charge assessment would detail the amount of SG charge owing to the ATO. Once that assessment becomes due and payable, the General Interest Charge (GIC) will then accrue on any unpaid SG shortfall amounts.

Rather than issuing SG charge assessments as soon as the debt accrues, the ATO will complete regular, scheduled 'reconciliations' where they issue all SG charge assessments that have accrued in the preceding period. These reconciliations would occur after the period under review.

A short delay between the due date and ATO reconciliation would also enable any actions of employers in the period to address underpayments are accounted for in the SG charge assessments. Currently, employers can rectify underpayments of SG through late payments, potentially subject to the Late Payment Offset (LPO) which can be used to reduce the shortfall and nominal interest

components of the SG charge. Further discussion of how employers may conduct rectification prior to an SG charge assessment being raised is covered in the next section.

Considerations about the administration of payday super include how frequently and how close to payday ATO reconciliations are conducted. More regular reconciliations would ensure that SG charge amounts do not accrue excessively before employers are notified of the underpayment, and that employee entitlements are recovered through ATO compliance activities in a timely manner. Also, as employee notifications would not be acted upon by the ATO until after the end of the reconciliation period, less regular reconciliations may result in longer periods between underpayments being identified and amounts being paid into employee superannuation accounts.

Consultation questions

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?

Rectifying underpayments before an SG charge assessment is issued

Currently, the LPO enables employers to make a late SG payment to the employee's fund before an SG charge statement is lodged. The LPO is used to reduce the SG charge amount that the employer is liable to pay the ATO. In a payday super model, the LPO could enable employers to make a late SG payment relating to a period that the ATO has not yet issued an SG charge assessment for. Allowing the LPO in a payday super model could mitigate potential concerns that an employer is unable to rectify an SG underpayment until an ATO reconciliation occurs. In this scenario, the employer may need to notify the ATO as to which pay period the late payment relates to.

Alternatively, employers are currently also able to carry forward late payments to a future quarter. This retains the tax deductibility of these payments, however the employer is still liable to pay the full SG charge for the missed payments in the earlier quarter. This feature of the current system could be retained under payday super but modified so that the late payment could be carried forward to a future pay period rather than to a future quarter, with employers still liable for the SG charge on missed payments in the earlier period. This would ensure employees are no worse off and that employers can retain the tax deductibility of those payments carried forward.

Tax deductibility and compliance

Currently, where an employer is required to pay the SG charge or uses the LPO to reduce the SG charge, these payments are not tax deductible. This can be a significant penalty on employers as it increases the cost of these contributions by an amount equivalent to the foregone tax deduction, in addition to the administration fees and interest charges that already apply to the SG charge. In a payday environment, consideration could be given to limited circumstances where a late payment or SG charge payment should remain tax deductible. This may further encourage compliance, for example, by preserving deductibility only if the SG charge is paid in a timely manner, or other specific circumstances. However, any additional deductibility should also strike a balance between improving compliance for employers while maintaining a sufficient penalty framework for ongoing non-compliance.

Consultation questions

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?

SG charge calculation

The purpose of the SG charge is four-fold to:

1. Compensate employees for missed SG contributions, including foregone interest as a result of the payment not being made on time,
2. Discourage employers from making SG payments late,
3. Ensure non-compliant employers do not obtain a competitive advantage over employers who follow the rules, and
4. Compensate the ATO for the cost and administrative effort of chasing up SG underpayment and non-payment.

With the introduction of payday super, consideration could be given to updating the calculation of the SG charge to ensure it works appropriately in the context of payday superannuation.

Unpaid superannuation is equivalent to wage theft and the SG charge will continue to have an important role to play in deterring and penalising any non-compliant employers. Any updates to the SG charge would need to ensure that the SG charge remains effective in achieving the policy outcomes outlined above.

Components of the current calculation of the SG charge that could be updated include:

1. The nominal interest calculation and accrual

Nominal interest is currently calculated on the total of the individual SG shortfall amounts from the beginning of the quarter and stops accruing when an employer lodges an SG charge statement or a default assessment is made by the ATO. Under a payday super model, the nominal interest would instead be calculated from payday.

Additionally, the current 10 per cent per annum rate of nominal interest applied to the total of the individual SG shortfall amount could be amended if it is considered it is no longer fit-for-purpose considering other potential changes to the SG charge calculation. This could involve applying a floating rate of interest, such as the general interest charge, or retaining a fixed rate but considering adjustments in the context of any broader changes to the SG charge.

2. The administration fee

The administration fee is currently \$20 and applies per employee per quarter. Given payday super would involve ATO reconciliations for missed payments occurring on a more frequent basis than quarterly, changes could be considered to adjust the application of the fee for each reconciliation period to avoid the potential for excessive penalties. This fee partially recovers the cost of ATO compliance and payment recovery activities. The fee is not indexed and has not changed since 2003.

3. Additional behavioural penalty

A range of additional penalties are available to the ATO for employers who fail to meet their SG charge obligations. The existing penalties are outlined in various parts of the SGA Act and the TA Act and are tied to the due dates of the lodgement of SG charge statements to incentivise their lodgement and reliance on employers lodging an SG charge statement to report outstanding amounts to the ATO.

These penalties are intended to further encourage employers to comply with their SG obligations and to proportionately penalise non-compliance. Additional penalties should complement the SG charge in encouraging employee SG contributions to be paid on time and in full.

In the current SG environment, additional penalties are applied where an employer fails to lodge an SG charge statement by the due date. In a payday super environment, compliance will pivot away from employers self-identifying through SG charge statements. Consequently, penalties will need to be reconsidered to account for a more timely SG payment system. Any new penalties could apply to the more egregious non-compliant behaviours and be designed to ensure that employers pay any SG charge that they owe. These penalties could apply to employers through the SG charge and then additional penalties after a period of time where they do not engage with the ATO to rectify a payment error. These penalties could apply to the offending business as well as the directors individually.

Consultation questions

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

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?

ATO flexibility in SG charge remission

Currently, the Commissioner of Taxation has limited discretion to remit the SG charge. However, there are instances where employers do not meet their super obligations due to unforeseeable circumstances that are beyond their control.

The Commissioner could be afforded more flexibility to amend or exempt the application of the SG charge in cases where employers cannot meet their SG obligations due to these circumstances. Alternatively, flexibility could be provided to the Commissioner to extend the due date for the SG charge to allow more time for employers to meet their obligations in such circumstances.

For example, circumstances to allow for increased flexibility could include where the employer:

- Has been impacted by a natural disaster that has impacted their payroll operations, and
- Has a new employee where they do not yet have the fund details of the employee despite requesting this information.

Consultation questions

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?

Corrections and errors when paying SG

An updated SG charge will encourage compliance to meet new payday super obligations. However, inadvertent errors can occur in the calculation of the required SG contributions. An example of this is when an employer calculates superannuation to be paid on OTE, but the OTE base is incorrectly calculated. Other corrections could include underpayments or paying SG contributions to the wrong fund due to incorrect information provided by an employee (e.g. at the time of onboarding) or mistakes made by an employer when entering an employee's superannuation account details.

The due date for contributions could be designed such that it provides flexibility for employers to correct mistakes. For example, the SG charge could apply after a grace period as shown in Figure 3, allowing time for employers to make corrections before the SG charge is assessed. The nominal interest component of the SG charge would be calculated from the payday of the employee as

reported through the employer’s STP reporting. This is intended to ensure the employee is no worse off as a result of an employer’s actions.

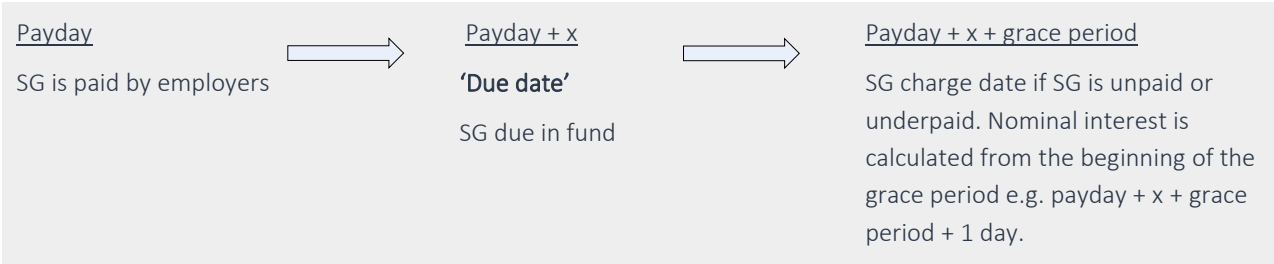
Alternatively, flexibility could be provided in instances of inadvertent non-compliance to allow the ATO to apply appropriate treatment. When employers have made an inadvertent error, a specified period of time could be allowed for employers to correct these amounts with the ATO before being liable to pay the SG charge. These corrections are distinct from the LPO or any other ‘catch-up’ provisions.

This flexibility could be given for employers who become aware of payment errors within a certain period, or receive information that the SG calculated is incorrect.

Currently, the STP payment framework allows for corrections of wages within 14 days of the need for a correction being identified, or within the next regular pay event within the same financial year where the affected employee has continuity of employment.

If an employer identifies a need to make a correction with respect to SG contributions, this could be undertaken alongside a wages correction within the STP framework, while allowing the SG contribution correction to have a separate and distinct timeframe and SG charge.

Figure 3: Grace period - SG charge and nominal interest accrual



Corrections and errors for superannuation funds

Superannuation funds have three days to allocate SG contributions to each member’s account once they have received the requisite contribution information and payment, provided the information is complete. Otherwise, superannuation funds have five business days to contact employers to correct or provide complete information, and if the error cannot be resolved funds have up to 20 business days to return the payment to the employer (see regulation 7.07G of the *Superannuation Industry (Supervision) Regulations 1994*).

Consultation questions

- 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?

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?

Choice of fund, stapling and employee onboarding

Choice of fund, stapling and default superannuation fund arrangements are interconnected with payday super. Payday super provides an opportunity to ensure they are working effectively for both the employee and employer.

The choice of fund requirements determine to which fund an employer must make superannuation contributions. Currently, employers meet these requirements by offering a paper or electronic 'standard choice form' for employees to complete during onboarding. In the first instance, employers are required to offer new employees the opportunity to choose their fund. If no choice is made, the employer must check with the ATO if the employee has an existing 'stapled' fund. This step is intended to reduce the creation of unintended duplicate accounts and their associated costs. If there is no stapled fund, the employer can create an account with their 'default' fund for the employee.

A recent review of stapling found that the current process creates an administrative burden for employers during onboarding.¹ The ATO needs to be satisfied that an employment relationship exists before returning stapled fund details, but some employers' software needs the employee's super fund details to establish that relationship. As a result, some employers are seeking to avoid stapling by requiring that new employees actively choose a fund during onboarding. This incentive to encourage active choice has led to an increase in onboarding software that presents employees with funds that have paid to be advertised. These issues can lead employees to make uninformed decisions, open inappropriate products and unintentionally create duplicate accounts.

Reforms to streamline choice of fund and address stapling concerns could include:

- Establishing a new digital ATO service that employees and employers can use to confirm the right super fund details (ideally integrating with employer software). For example, this could enable employers to satisfy choice of fund requirements by directing employees to the ATO service. An employee could then choose a fund, or, if no choice is made, an employer can retrieve details of a stapled fund if available. Such a service could be encouraged or made mandatory to ensure that employers are using validated details to correctly direct super payments.
- Introducing a new requirement for employers to offer stapling as an option for employees during onboarding. This would allow an employee to instruct their employer to complete a stapled fund request and use the results to pay their superannuation contributions.
- A ban on advertising superannuation products during onboarding. This would ensure that employees are not being encouraged into products which have paid to be advertised, may be unsuitable, and may unintentionally lead to duplicate accounts.

Consultation questions

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

¹ Review of Your Future, Your Super Measures, Treasury: <https://treasury.gov.au/consultation/c2022-313936>

address issues with data integrity under a payday super model? Should such a service be mandated?

37. What are the costs and benefits of requiring employers to offer stapling to employees? Are there other changes that could be made to the choice of fund process? Could a digital ATO service reduce the administrative burden associated with stapling?
38. What are the costs and benefits of a ban on advertising super products during onboarding?

Other payday super issues

SG reporting frameworks

The ATO currently receives SG contributions data from APRA-regulated superannuation funds through Member Account Transaction Service (MATS) and from employers through STP. These reporting frameworks were designed independently and as a result the mandatory reporting fields are not necessarily aligned. For example, STP reports year-to-date values for pay events while the Member Account Attribution Service (MAAS) and MATS report for each transaction and there is no unique identifier between the different reporting streams which links the employer, employee, and transaction. Moreover, only either an employer's SG liability or OTE are mandatory reporting fields in STP. Consequently, the ATO is limited in its ability to match the two pieces of data that they receive.

Consistent data sets will allow the ATO to create a new unified database which matches data from employers and superannuation funds at scale. This database will provide a single source showing the near-real time recorded SG position for employers and employees, enabling the ATO to identify instances and patterns of late payment or underpayment.

Consultation questions

39. How could a smooth transition be managed to aligning STP, SuperStream, MAAS and MATS reporting, either through changing the reporting requirements to year-to-date values or transaction-based reports?
40. How could a smooth transition be managed if additional fields in reporting are made mandatory?
41. Should a new unique identifier be included as a mandatory field in STP, SuperStream, and MATS which links employers, employees, and transactions?
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?

SG contributions for the 2026-27 financial year

SG contributions are accounted for, or considered to be 'paid', in the financial year they are allocated by the fund to the member's account. Under the current quarterly payment model, this means that contributions relating to quarter four of the previous financial year (1 April – 30 June) are often accounted for in the following financial year, as the due date for the contributions is not until 28 July. This means that an employee's quarter four contributions often count towards their concessional contribution cap space in the following financial year.

Table 1: Current quarterly super payment due dates

Quarter	Period	Payment due date	Year payment due in and accounted for
1	1 July – 30 September	28 October	Year SG contribution is made in relation to
2	1 October – 31 December	28 January	Year SG contribution is made in relation to
3	1 January – 31 March	28 April	Year SG contribution is made in relation to
4	1 April – 30 June	28 July	Year after SG contribution is made in relation to (because due after 30 June)

Transitional treatment may be needed for contributions in the first financial year (2026-27) the policy comes into effect, for the purposes of the concessional contributions cap. This is because contributions that otherwise would have been accounted for in the 2027-28 year will be brought forward into the 2026-27 year in a payday super model, alongside contributions which would already have been made in 2026-27. This may cause some employees to exceed the concessional contributions cap (which is currently \$27,500) or the Division 293 threshold (\$250,000) in 2026-27.

Table 2: Comparison of current and proposed quarterly super payment due dates*

Year SG due in	2025-26	2026-27	2027-28
Under existing policy settings (SG due quarterly)	Q4 (SG liability accrued in 2024-25) Q1 (SG liability accrued in 2025-26) Q2 (SG liability accrued in 2025-26) Q3 (SG liability accrued in 2025-26)	Q4 (SG liability accrued in 2025-26) Q1 (SG liability accrued in 2026-27) Q2 (SG liability accrued in 2026-27) Q3 (SG liability accrued in 2026-27)	Q4 (SG liability accrued in 2026-27) Q1 (SG liability accrued in 2027-28) Q2 (SG liability accrued in 2027-28) Q3 (SG liability accrued in 2027-28)
Under proposed policy settings (SG due in close proximity to payday)	As above	Q4 (SG liability accrued in 2025-26) Q1 (SG liability accrued in 2026-27) Q2 (SG liability accrued in 2026-27) Q3 (SG liability accrued in 2026-27) Q4 (SG liabilities accrued in 2026-27)	Q1 (SG liabilities accrued in 2027-28) Q2 (SG liabilities accrued in 2027-28) Q3 (SG liabilities accrued in 2027-28) Q4 (SG liabilities accrued in 2027-28)

*Note: Based on an employer currently paying SG on a quarterly basis. Quarters are used for comparison purposes with existing policy settings. There will be no quarterly payment requirements under a payday super model.

To avoid disadvantaging employees who may reach the concessional contributions cap in 2026-27 due to the policy change, temporary transition arrangements to contribution caps may need to be made to ensure affected employees are no worse off.

Consultation questions

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?

Maximum contribution base calculations

Currently, if an employee earns more than the maximum contribution base for the quarter, an employer is not required to pay superannuation on any employee earnings that exceed the maximum for that period. This is intended to stop employers paying contributions above the concessional contributions cap for employees. However, in a payday super model, SG contributions will no longer be paid, due or accounted for on a quarterly payment basis. This means that a new maximum contribution base will be required.

For example, the new maximum contribution base could be calculated on a payday super model (with reference tables depending on how often an employee's regular pay cycle occurs). The design of a maximum contribution base will need to consider employees who are not paid according to a regular pay cycle.

Consultation questions

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?

Defined benefit members

For those who hold a defined benefit interest, changes will be required to how benefit certificates are calculated with an increase in SG payment frequency.


There will also be some consequential changes to benefit certificates issued by an actuary, where the certificate refers to a whole or part of a quarter.

Consultation questions

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

Self-managed superannuation funds

As SMSFs are unable to report member SG contributions through the MAAS and MATS channels used by APRA-regulated superannuation funds, the potential reporting and ATO data matching models proposed in this paper cannot be applied to SMSFs. The current annual reporting cycle to the ATO required by SMSFs does not provide the same level of granularity of whether an employee's SG entitlements are being met by their employer. However, as with all superannuation funds, SMSF



trustees have the sole responsibility for the prudent management of a fund's savings. This involves a high level of responsibility, including oversight of employer SG contributions. Where employers are not paying or underpaying entitlements, SMSF members will continue to be empowered to lodge an employee notification with the ATO and will also benefit from any changes to the compliance mechanisms introduced in the Securing Australians' Superannuation package.

Consultation questions

- 46. Should there be any changes to the reporting frameworks for SMSFs and/or Defined Benefit funds to the ATO?
- 47. Are there any other changes that will be required for self-managed superannuation fund members?

Other issues

Consultation questions

- 48. Are there any other impacts on stakeholders or considerations Government should consider in policy design?
- 49. What further changes would be required under the current rules to allow employers to meet payday super requirements?

Appendix A: The current SG framework

The SG is governed by two main pieces of Commonwealth legislation: the *Superannuation Guarantee (Administration) Act 1992* (SGA Act) and the *Superannuation Guarantee Charge Act 1992* (SGC Act).

Employer superannuation contributions

Contributions above the minimum rate of SG

Some employees are entitled to higher superannuation contributions, as set out in a modern award, enterprise agreement or a contract agreed between employees and employers. Superannuation contributions made by employers above the legislated rate of SG under a modern award, occupational arrangement or scheme, count towards the minimum level of support under the SGA Act. Generally, as long as an employer's total superannuation contributions for their employee under a modern award or enterprise agreement meet or exceed the minimum level of support required, the employer will be considered to have met their minimum SG obligations.

Salary sacrifice superannuation contributions

Employees may have salary sacrifice arrangements with their employers whereby some of their salary or wage is paid instead as superannuation contributions. Salary sacrifice contributions are in addition to the minimum rate of SG and cannot be used by employers to reduce the level of superannuation support they are required to provide.

Currently, there are no legislative requirements in relation to frequency of employers making salary sacrifice payments on behalf of their employee. Payments of salary sacrifice amounts are agreed between employer and employee.

Commonly, intermediaries can also provide a salary sacrifice or 'salary packaging' service to employees. These salary sacrificed amounts are paid independently of the employer and therefore visibility for employers over this arrangement is limited.

Defined benefit contributions

Employers who make superannuation contributions into their employee's defined benefit scheme are required to obtain a benefit certificate issued by an actuary to determine whether the level of superannuation support provided meets the long-term cost of the benefits accruing. The benefit certificate has effect for the whole or part of the quarter.

The benefit certificate outlines a notional contribution rate for the defined benefit scheme. The benefit certificate also takes into account where a person was an employee but not a member of the defined benefit scheme, and the notional contribution rate is proportionately reduced to reflect this.

In some circumstances, an employee may hold a defined benefit interest alongside an accumulation interest. Any employer may have separate obligations when it comes to the payment frequency of the real accumulation interest, alongside the notional contribution rate for the defined benefit interest.

Maximum superannuation contribution base

The maximum superannuation contribution base acts as a ceiling for the amount of superannuation contributions an employer is required to make on behalf of their employees in order to avoid paying the SG charge. If an employee earns more than the maximum contribution base for the quarter, an employer is not required to pay superannuation on any employee earnings that exceed the maximum for the remainder of that quarter.

The maximum contribution base is indexed each financial year. In 2023-24, the contribution base is \$62,270 per quarter.

Tax deductibility of employer contributions

Employers are able to claim a tax deduction for superannuation contributions made on behalf of their employees to a complying superannuation fund or retirement savings account. Generally, the ability to claim a tax deduction is limited to the financial year the contributions are made. There are three contribution types that may be deductible for an employer:

- Employer contributions made before the employee turns 75,
- Contributions required by an industrial law (e.g., modern awards or enterprise agreements), and
- Advance superannuation payments for future quarters in respect of an employee.

As outlined, currently the SG charge is not tax deductible for employers who do not meet the minimum SG contribution amount by the cut-off date. Further, employers cannot claim a tax deduction if they are subject to further penalties, such as failing to provide an SG charge statement when required or when the general interest charge applies for late payment.

Superannuation payment frequency

The current superannuation compliance regime requires that superannuation contributions are received by an employee’s superannuation fund on or before the 28th day of the month following the end of the quarter (section 19 of the SGA Act). If an employer does not make the minimum SG contribution amount within 28 days of the end of the quarter, they are liable to pay the Superannuation Guarantee charge (SG charge). Table 3 sets out the quarterly superannuation payment due dates.

Table 3: Quarterly super payment due dates*

Quarter	Period	Payment due date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

*Note: Some superannuation funds and modern awards and enterprise agreements require superannuation to be paid more regularly (for example, monthly) than the current minimum quarterly requirement.

Many employers choose to pay more frequently than the minimum quarterly requirement. Although, these payments do not necessarily align with an employee’s payday. Table 4 sets out the payment frequency by employer type for the 2021-22 financial year.

For the purposes of Table 4, micro businesses are businesses with annual income less than \$2 million, small to medium enterprises have business income between \$2 and \$250 million and large market businesses have business income greater than \$250 million.

Table 4: Employer SG payment frequency for the 2021-22 financial year – count of employers

Employer market segment	Weekly	Fortnightly	Monthly	Quarterly	NA**	Total
Government	24	922	1,451	424	485	3,306
Individuals	8	4	157	463	1	633
Large market	78	391	6,209	1,183	42	7,903
Micro	10,915	11,520	157,294	403,894	4,796	588,419
Not for profit	90	933	15,591	13,020	159	29,793
Small-medium enterprise	2,555	2,371	76,680	70,357	1,255	153,218
Unknown*	128	203	3,062	8,942	47	12,382
Total	13,798	16,344	260,444	498,283	6,785	795,654
Percentage of total	1.7%	2.1%	32.7%	62.6%	0.9%	100.0%

*Note: Unknown refers to other entities where the ATO has not categorised the market segment

**Note: NA refers to payments received on an adhoc basis or at other frequencies that can not be attributed to weekly, fortnightly, monthly or quarterly patterns.

The delay between payment of wages and superannuation can make it difficult for employees and the ATO to identify underpayment of SG in a timely manner and can make it difficult to reconcile how much SG is owing for particular periods.

The SG charge

Design of the SG charge

Where an employer fails to pay their employee's SG contributions by the due date, the SG charge is raised against the employer. The SG charge levies additional taxes and fees to incentivise employers to be compliant with their SG obligations by paying SG on time and in full.

The SG charge is made up of:

- the SG shortfall,
- nominal interest of 10 per cent per annum, and
- an administration fee of \$20 per employee, per quarter that the SG contribution is underpaid.

Figure 4: SG charge



The SG charge is intended to compensate for amounts of SG that should have been paid to the employee and forgone investment earnings, and to assist in recovering administrative costs incurred by the ATO. The shortfall includes the superannuation that should have been paid to the employee, plus any choice liability. Unlike the calculation of the SG, the shortfall amount is calculated on the salary and wages of the employee (including any overtime) for that period, instead of OTE.

Nominal interest accrues from the start of the relevant quarter until the SG charge is due and payable. This is the later either of the 28th day of the second month after the quarter, when the SG charge statement is lodged or assessed by the ATO.

The SG charge is assessed by the ATO as a tax against the employer (section 16 of the SGA Act). As with other taxes, the employer is required to pay the SG charge amount to the ATO. The ATO then remits the SG shortfall amount and nominal interest to the employee's fund. The ATO retains the administration fee component as consolidated revenue.

SG charge statement

The SG charge statement is a form employers are required to submit to the ATO if the correct amount of SG is not paid on time. For liable employers, an SG charge statement must be lodged and the SG charge paid to the ATO by the SG charge due date. The SG charge statement is due one month after the SG payment is due (section 33 of the SGA Act). If an employer cannot pay their SG charge amount, they will still need to lodge the SG charge statement on time. If the SG charge statement is not lodged on time, an employer is liable for additional SG nominal interest as it continues to accrue until the statement has been lodged or an assessment is made by the Commissioner.

Discretion to reduce or remit SG charge

Currently, the Commissioner of Taxation has limited discretion to reduce the SG charge where an employer's SG contributions are unpaid or paid late.

The Commissioner has authority to reduce the SG shortfall (including to nil) for the employee in instances where the following conditions are met:

- the employer was notified by the Commissioner about an employee's existing superannuation account (known as a stapled fund); and
- that fund did not accept contributions from the employer on behalf of the employee; and
- the employer makes a late contribution to any fund on behalf of the employee.

This discretionary power is necessary to ensure employers are not liable for an individual SG shortfall for an employee where the employer has acted reasonably in compliance with the stapled fund rules (see subsection 19(2F) of the SGA Act).

Late Payment Offset and tax deductibility

If an employer makes an SG payment late but before an SG charge statement is lodged, or an assessment is made by the Commissioner, they can choose to utilise the Late Payment Offset (LPO). The LPO enables them to effectively reduce the amount of the nominal interest and SG shortfall components of the SG charge.

The late SG payment, including the SG charge, is not tax deductible for the employer. Alternatively, the employer can choose to carry forward the late payment to a future quarter for the same employee (effectively an early super payment for that employee) if that quarter commences no more than 12 months after the contributions are made. This carry forward is tax deductible in the financial year it is received by the fund.

Penalties for non-compliance

Additional SG charge (Part 7 penalties)

Where an employer fails to provide an SG charge statement when required, the ATO can apply penalties. These penalties are outlined in Part 7 of the SGA Act. Actions punishable under Part 7 includes lodging an SG charge statement late, or failing to provide a statement during an audit, with the maximum penalty being 200 per cent of the SG charge.

Other penalties

The *Taxation Administration Act 1953* (TA Act) outlines further penalties for failure to pay employees' SG contributions on time. Under the TA Act, administrative penalties are applied if an employer pays less SG charge than they should have because they have made a false or misleading statement. The base penalty is up to 75 per cent of the SG shortfall.

Where an SG charge amount remains outstanding, a company director may become personally liable for a penalty equal to the unpaid amount. The ATO can issue a director penalty notice to recover the

SG owed. The penalty is reduced once the outstanding amount is paid, or if the directors company goes promptly into voluntary administration, restructuring or liquidation.

The general interest charge also applies to the SG charge after an SG charge statement is submitted or the Commissioner makes a default assessment and acts as an additional incentive for employers to make SG contributions on time. The general interest charge is calculated on a daily compounding basis. The amount of general interest charge that relates to shortfall is then distributed by the ATO to the employee's superannuation fund. The current rate of the general interest charge for the July-September 2023 quarter is 10.90 per cent.

Payment and reporting requirements

Employers and superannuation funds are required to report SG liabilities and the payment of SG contributions across a range of platforms. This helps to improve the visibility of SG payments for both employees and the ATO.

Employer requirements

Employee choice of fund

When onboarding a new employee, employers are required to offer the employee a choice of fund. Under the SGA Act, employers must provide employees a standard choice of fund form within 28 days of commencement. Where an employee makes a valid choice, the employer must make contributions to the chosen fund to fulfill their choice of fund requirements.

If an employee does not choose a fund, the employer must request stapled fund details from the Commissioner of Taxation. Where a stapled fund exists, the employer must make contributions to this fund. If the employee does not choose a fund, and the Commissioner of Taxation determines that there is no stapled fund, the employer can make contributions to their default fund on behalf of the employee to fulfill their choice of fund requirements.


Pay slip reporting

Under the *Fair Work Act 2009* and *Fair Work Act Regulations 2009*, employers are required to issue payslips to their employees. Payslips must include the superannuation contributions that an employer is liable to make (or has made) for the pay period that the payslip relates.

While an employer is obliged to indicate on payslips the amount of superannuation contributions accrued, it does not mean that this amount is actually paid to the superannuation fund. In order to identify any shortfall, an employee must compare the amounts stated on their payslips with the statements issued by their superannuation fund.

Single Touch Payroll reporting

Single Touch Payroll (STP) is a mandatory reporting requirement of a pay event to the ATO on or before an employee's payday, subject to certain exceptions. This requirement includes reporting of an employee's OTE and optional reporting of employer superannuation liabilities. For the purpose of reporting STP, an employee's payday is either the payment date stipulated in a payment to a financial institution or the date an employer intends to make the payment into their employee's bank account.



Employers can choose to report mandatory STP obligations through either STP-enabled payroll software or through a third party such as a registered tax agent.

Digital service providers can provide automated STP lodgement to the ATO on behalf of employers. To qualify to provide these services, software providers must meet ATO prescribed digital security requirements. A list of ATO-approved STP products is provided on the ATO website.

SuperStream reporting

Since July 2016, all employers have been required to make super contributions through SuperStream. SuperStream transmits an employee's superannuation contribution and associated data from their employer to their superannuation fund. There are several options an employer can choose that are outlined on the ATO website that meets both the payment and data requirements for SuperStream. The most common is through the direct use of a clearing house or via their payroll software that has a relationship with a clearing house.

Employee superannuation contributions are generally paid to a superannuation clearing house which then distributes contributions and SuperStream data to the relevant superannuation funds. Clearing houses are discussed further below.

APRA-regulated superannuation funds must be able to send and receive information and payments using SuperStream.

SMSFs are required to receive employer contributions and the associated data electronically using the SuperStream standard. To receive SuperStream contributions, SMSFs must have an electric service address, which facilitates electronic interaction across the super network.

Small Business Superannuation Clearing House

For employers with 19 or fewer employees or an annual aggregate turnover of less than \$10 million, the ATO provides a free clearing house for employee superannuation contributions. By using the ATO small business clearing house, employers can pay their employee's SG contributions in one payment that satisfies their SuperStream requirements. When employers use the ATO's clearing house, SG contributions are considered made on the day the clearing house receives the funds, rather than the day the employee's superannuation fund receives the funds.

Commercial Clearing House

Similar to the ATO's clearing house, commercial clearing houses allow employers to make all of their employee's superannuation contributions in one payment and to satisfy their SuperStream requirements. Employers can choose a commercial clearing house from a list of providers listed on the ATO website or a clearing house associated with their payroll software or superannuation fund. There are eight commercial clearing houses which are currently operational and SuperStream compliant, several of which are associated with superannuation funds. When employers use commercial clearing houses, contributions are considered made on the day the fund receives the contribution, not the day the employer pays the contribution to the commercial clearing house.

Superannuation fund requirements

Member Account Attribute Service reporting

MAAS is a digital reporting channel through which superannuation funds and certain life insurance companies mandatorily report to the ATO opened, updated and closed accounts including relevant account attributes such as account phases, no later than 5 business days after the event.

SMSFs do not report transactions to the ATO through MAAS.

Member Account Transaction Service reporting

The MATS is a digital reporting channel through which superannuation funds and certain life insurance companies mandatorily report to the ATO all contributions allocated to a member account no later than 10 business days after receiving the superannuation contribution.

Where a payment cannot be matched to a member account, a superannuation fund has up to 20 business days to reject the payment to the sender.

SMSFs do not report transactions to the ATO through MATS.

SG compliance initiation

As the administrators of the SG, the ATO is responsible for undertaking SG compliance to recover unpaid SG from employers on behalf of employees.

The current SG compliance model primarily relies on the employer reporting the SG charge liability to the ATO (employer-initiated compliance), or an employee raising a complaint with the ATO (employee-initiated compliance).

The ATO also undertakes some proactive compliance (ATO-initiated compliance), targeting high risk industries. However, the ATO does not currently have the necessary visibility of superannuation payments or the digital resources to identify non-payment or under-payment of SG in real time or at scale.

Employer-initiated compliance


Where an employer identifies that they have not paid or underpaid SG to an employee after the quarterly due date they are required to:

- calculate the SG charge amount they owe and make the payment to the ATO, and
- lodge an SG charge statement with the ATO.

If an employer does not lodge an SG charge statement by the due date, nominal interest and any GIC continues to accrue. Once paid, the ATO forwards the shortfall amount and nominal interest component to the employee's superannuation fund.

Employee-initiated compliance

Employees are able to lodge an Employee Notification with the ATO where they suspect their employer has either not paid or underpaid their SG contributions, or has paid these amounts to the



wrong fund. The ATO will then investigate the employer using the information the employee has provided and any other data available.

Where the ATO identifies that an employer has not met their SG charge obligations, the SG charge is assessed. The ATO will require the employer to lodge an SG charge statement and then work with the employer to recover the unpaid amounts. The ATO will raise a default assessment if a statement is not supplied.

The ATO will then update the employee on the progress of their complaint through a series of letters. The letters will generally advise the employee on the progress the ATO has made with the investigation of their unpaid SG complaint or what steps are being taken to recover the unpaid SG from their employer.

ATO-initiated compliance

The ATO engages in some proactive compliance through identifying unpaid SG via third party referrals and some manual data matching of employer and superannuation fund reporting. This approach involves manual analysis of data to identify high-risk employers, being those employers most likely to have unpaid SG.

Where the ATO identifies that an SG contribution has gone unpaid, they will contact the employer to review their records and advise them to submit an SG charge statement. If an employer either contests that the obligations has been unpaid or otherwise does not comply, the ATO will undertake an SG audit and raise an SG charge assessment with additional penalties for not lodging the SG charge statement by the due date. The employer will then be required to pay any SG charge assessed to the ATO who will remit the shortfall and nominal interest components recovered to the employee's superannuation fund.

In 2020-21, the ATO undertook 19,600 reviews of employers. 16,400 of these compliance cases were reactive, triggered by an Employee Notification complaint. These reactive reviews related to 21,000 employee notifications received, as not all employee complaints result in an employer review case being created. The ATO also undertook 3,200 proactive compliance cases as result of ATO-initiated reviews.

Appendix B: Implementation timeline

Stage 1: 2023 – 2024

Implement the data matching system – The ATO will develop the digital infrastructure to automatically match data reported by employers and superannuation funds. This data matching system is the foundation required to effectively implement the SG on payday measure and proactive compliance system outlined at stage two.

Undertake consultation and co-design – Undertake consultation and co-design on the policy and administrative changes needed to effectively implement the payday super measure and proactive compliance system outlined at stage two. This consultation paper is part of this process. The Government will decide on the final design parameters for stage two following consultation and co-design.

Commence 'Interim SG recovery measures' – The ATO will commence reporting on the *Interim SG recovery measures* in the Australian Taxation Office Portfolio Budget Statement on an annual basis.

Stage 2: 2024 to 1 July 2026

The Government to announce outstanding policy and administrative design – During the 2024-25 Budget, the Government will finalise the outstanding design parameters for the Securing Australians' Superannuation package, informed by the outcome of public consultation and co-design.

Implement the SG on payday measure – The Government will introduce legislation to give effect to the measure. The ATO will work with key stakeholders in relation to implementation of the changes necessary to meet the final design parameters. This includes detailed co-design between stakeholders (including digital service providers) and the ATO, and finalisation of any required software build specifications. It will also allow time for the ATO and stakeholders to build and test solutions prior to the start date of 1 July 2026, and for employers to make changes to their cashflow to support the change if required.

Enhanced ATO compliance activities – The ATO will progressively begin utilising enhanced data analysis processes to assist with conducting compliance activity.

Stage 3: 2026 onwards

Commence SG on payday measure – From 1 July 2026, all employers will pay their employees' SG entitlements on at the same time that they pay salary and wages.

Commence proactive SG compliance system – The ATO will begin proactive SG compliance based on the more frequent payment requirements. The ATO will have the necessary digital infrastructure to identify instances of underpayment or non-payment of SG in near-real time and be able to use this function when conducting compliance.

Commence 'Improved SG recovery measures' – The ATO will commence reporting on the *Improved SG recovery measures* in the Australian Taxation Office Portfolio Budget Statement on an annual basis.