

Ai GROUP

Submission to the Payday Super Consultation Paper

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About Australian Industry Group

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for nearly 150 years.

Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Our vision is for *thriving industries and a prosperous community*. We offer our membership high quality services, strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

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Ai Group welcomes the opportunity to comment on the October 2023 Consultation Paper *Securing Australians' Superannuation Budget 2023-24*.

We appreciate the stated aim of the “co-design 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.”

Ai Group strongly supports effective and practical measures to address the underpayment of superannuation contributions.

- It is unfair for employees if they do not receive their legal entitlements from employment.
- As is made clear both in the Consultation Paper and in The Treasury's Impact Analysis *Unpaid Superannuation Guarantee Package*, deliberate non-payment or underpayment of employee superannuation entitlements can place complying employers at a competitive disadvantage relative to non-complying employers.

There should be no question that the proposed changes would impose large additional burdens on employers. These additional burdens would fall both on the overwhelming majority of employers who are compliant under current arrangements as well as on non-compliant employers. Further, compliant employers who incur no penalties under current arrangements, would receive no benefit in the form of any reduction in employer penalties associated with the greater frequency of payments. under existing arrangements.

It is also worth emphasising that, according to the Treasury analysis of the incidence of underpayment, it is predominantly micro and smaller businesses that are not currently compliant. The proposed measures which cast a comprehensive net over all employers are poorly targeted to achieve increased compliance.

The additional burdens include:

- an increase in compliance costs on businesses associated with the increased frequency of payments;

- triggering of higher fees payable by employers to payroll service providers (for instance when fees rise with the quantity of transactions)
- the negative impact on business cash flows due to the bring forward of liabilities for the payment of superannuation contributions; and
- the creation of a substantial risk of duplicative and conflicting compliance regimes.

Compliance costs and increased frequency of payments

Calculation, validation and payment of employer superannuation contributions on behalf of employees is not a simple add-on to processes involved in finalising wage and salary payments for employees.

- Very often ordinary time earnings and wages and salary payments due in a period are not the same and additional information is required to calculate superannuation contributions.
- In many employment arrangements provisions are available to average ordinary time earnings over multiple pay periods. In such cases, the identification of ordinary time earnings for a particular pay period will impose additional complexity.
- For higher income employees, the maximum superannuation contribution base can apply and will require a more frequent identification of such employers.
- Superannuation contributions involve payment to a separate party so that additional validation of payee details is required.
- There would be an increased likelihood of being affected by the receipt of a change in fund details after a payment has been processed.

Cash flow impacts

Most employers will be required to make earlier contributions to employee superannuation accounts than is currently the case. While this will mean that such contributions begin to accumulate income earlier in employees' superannuation accounts, the overall economic benefit of this would be largely offset by the earlier realisation of employer liabilities. Employers can be expected to have higher expenses associated with higher interest payable and any opportunity costs associated with the earlier payment.

The adverse cash flow impacts on employers will be compounded by the scheduled increase in the SG to 12 per cent.

Substantial risk of duplicative and conflicting compliance regimes

Measures to improve compliance and recovery of unpaid superannuation have already been the subject of legislative amendment this year and will also be affected by the *Fair Work Amendment (Closing the Loopholes) Bill 2023* if it is passed by Parliament.

Commencing 1 January 2024, the National Employment Standards in the *Fair Work Act 2009 (Cth)* will require employers to make superannuation contributions in accordance with the *Superannuation Guarantee Charge Act 1992 (Cth)*, and in doing so will enable employees, their representatives and the Fair Work Ombudsman (FWO) to prosecute employers who contravene this provision and seek recovery of unpaid superannuation amounts. This was a recent amendment contained in the *Fair Work Amendment (Protecting Worker Entitlements) Act 2023* passed in July 2023.

If the *Fair Work Amendment (Closing the Loopholes) Bill 2023* is passed by Parliament, the financial penalties for employers who fail to comply with the FW Act's new superannuation obligation will significantly increase by up to 5 times. The Courts may also order, in certain circumstances that employers pay a penalty based on 3 times the value of the underpayment amount. Such significant compliance enhancing measures should be considered as strong incentives for businesses already.

Ai Group has additionally raised concerns about the confusion for employers around the role of the ATO in relation to superannuation when an enforcement and compliance function is now also vested with the FWO as an additional regulator with its own separate enforcement and compliance policy.

For instance, these the FW Act contain no protections for employers who may have relied upon an ATO Ruling or other guidance material released by the ATO, in determining whether superannuation payments would be payable in certain situations

The introduction of "payday" super creates the potential for different regulators to take different approaches. It is important that this issue is considered in designing an effective compliance framework.

Inadequate attention given to the minimisation of the additional regulatory burdens on employers

While, as noted above, the aims of the consultation process include minimisation of regulatory burdens, very little attention is given to ensuring the regulatory authorities act in ways that will minimise such burdens.

Measures could include specification of responsibilities for minimising additional burdens; penalties or other incentives to discourage imposing excessive additional compliance burdens; and preparation of material to effectively reduce employer costs.

When should the employer's obligation be satisfied?

Ai Group's early view is that employers should not be liable for delays in receipt of payment in employee accounts that are not within the control of the employer. On this issue, we would like to be able to consult more thoroughly with members than has been permitted in the timelines associated with this stage of consultation.

We are also of the view that there should be some additional allowance of time for employers given the extra demand that would be imposed by the proposed changes.

Further consultation

Ai Group strongly encourages the creation of further opportunities for input prior to the new arrangements being finalised. As noted above, to date there has not been sufficient opportunity to raise with employers the range of complex issues raised in the Consultation Paper.



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