



3 November 2023

Wendy Hau
Director
Superannuation Access and Compliance Unit
The Treasury
Langton Cres
PARKES ACT 2600
Paydaysuper@treasury.gov.au

Submission – Consultation Payday Super

Executive Summary - Principles for same day super

1. Employer obligation to be limited to the period they have an action obligation i.e. obligation starts after they have been provided correct superfund information by the employee and then there is a pay event. Their obligation ceases as soon as they have sent the payment instruction to their financial institution.
2. All other intermediaries are then to be held accountable for ensuring same day allocation to the member's account. (review and enhance the immediate allocation of funds into the members account)
3. Monthly: To allow all parties to have a practical and implementable administration around reconciliation, corrections, etc the system should require business to pay monthly. ie allow one monthly payment. This also decreases transaction costs.
4. Monthly payments and a different approach to reconciliation and any penalties for employers should be achieved by ATO (and employers within their software) maintaining a Super Running Balance Account (SRBA) of the employer's obligation for each employee.
 - Each employer pay event sends the information as to the employer's obligation amount for super that is calculated as at the time of the pay run: that increases the balance in the SRBA of what is owed.
 - Each month the employer verifies, reconciles, corrects each payrun and the balance of the SRBA
 - Employer makes payment of the verified amount before the 15th of the next month.
 - ATO is notified of the obligation amounts into the SRBA by the employer and also the payment amounts as advised by the superfunds (unless another mechanism is developed).
 - If employer doesn't send a payment instruction by the 15th then interest is accrued from the start of the month (i.e from 1st, not the 15th)
 - Interest is sent direct to the superfund with the next amount due for super
5. ATO must follow up

- if there is no payment by the 16th - letter 1 (interest to be paid and also outline future compliance steps)
 - Letter 2 at 30 day mark stating application of any penalties and also that debt will be disclosed to credit bureaus at 60 day mark
 - Letter 3 at 60 day mark stating advice has gone to credit bureaus and DPN etc will issue at 90 day mark
5. It is not just about employers, all parties must process on same day to achieve the intent
 6. A real review must happen of the excessive amount of data sent and also the too many identifiers that the superfunds are requiring.
 7. The Superannuation Guarantee calculation and any subsequent penalty calculations should be based on the original obligation i.e. OTE.
 8. There should be no SGC forms and removal of the redundant monthly per employee administration fee
 9. Any penalties for employers should be based on the existing Taxation Administration Act penalty system.
 10. An appropriate penalty and interest regime must be developed and applied to all other parties involved in the process of the payment being attributed to the members super account (specifically including the superfunds)

Details

A/ Meeting the intent that employees receive their superannuation.

The intent is met through a number of activities:

1. Employees providing their superannuation information to their employer/s
2. Employers
 - a. Calculating the amount of super to be paid
 - b. Paying the super based on the information provided
3. The payment transmission
4. Superfunds
 - a. Receiving the payment and relevant information
 - b. Allocating funds to the member's account
 - c. Reporting the receipt of the payments

We note that employers are only responsible for items #2 & initiating #3 above. Accordingly, the future regime should impose obligations and any resulting penalties on the employer for these items only.

The employees, other intermediaries and their processes are responsible for the delay in workers receiving their superannuation to the benefit of the member's super accounts. Accordingly, those responsible for other activities should be held accountable for delays in the correct allocation of superannuation.

An employer should become responsible for activity only once they have been provided the correct initial, or amended, superannuation contribution information. Their obligation ceases having used that correct information to instruct the payment of the superannuation amount.

B/ Employee Information

A significant cause of late or non-payment is that the employee does not provide correct information at the commencement of their employment, or any change in superannuation fund information is not made available to the employer either by the employee or effectively by the superannuation funds or other parties, including the ATO.

The employer should not be held accountable for late, incorrect or non-informed changes that prevent payment of super “on-time”.

The stapled Fund service and sharing of information provisions should be reconsidered so that verified superannuation fund information could be provided to the employer.

The Choice form should be redesigned so that an employee can see the option and choose for the employer to obtain the existing stapled fund.

C/ Payment of Super by an employer

We propose that due to the administrative burden of payment of super that will be increased by the proposed “payday super” that small employers should only be subject to an obligation to make monthly payments.

Monthly payment also allows small and micro employers to continue to rely on advisors who assist them with the super verification and payment process.

We expressly propose that employers are to be considered to have made payment at the time of instructing their financial institute to make payment. Any delay in processing by intermediaries is at the fault and penalty upon that intermediary, including the superfunds.

Prima facie we do not believe most payments should be rejected i.e. those that don’t perfectly match the data. Payments should be added to the SRBA of an employee and utilised for past or future periods. The exact matching of amounts to periods of employment should also be reconsidered.

We do not accept the lengthy time allowed to intermediaries referred to in the consultation paper. In the current digital environment, we do not accept that gateways, clearing houses nor superfunds themselves should be permitted multiple days to process the transaction. If the increased administrative burden is to be placed on employers to make more payments more often, it seems a fallacy that others are allowed time to hold those contribution amounts, derive interest income for their own benefit before allocation of the funds to the workers superannuation account.

We propose that any intermediary that holds the superannuation contribution during a time of processing MUST also then add interest components to the contribution and attribute those increased amounts to the workers superannuation balance.

D/ Employers Penalty regime

An employer’s obligation should not commence until

- A. They have been provided with valid Superannuation information from the employee, and
- B. There has been a payment to that employee which includes an obligation to accrue and pay super for that employee.

An employer should be considered to have met their obligation:

- i. when a payment instruction has been provided to their financial institution
- ii. funds are available to make the payment, and
- iii. the superannuation information provided by the employee has been utilised to facilitate the payment.
- iv. Single Touch Payroll report has been provided to the ATO that includes the superannuation information.

An employer should be monitored for

- Provision of STP reports as required under STP requirements, including the amount of SG to be paid.
- Payment of the Super amounts as directed.

ATO should maintain the above described SRBA.

Penalties would apply to the employer when:

- STP reports are not provided to the ATO (existing STP regime)
- If the balance of the running balance account is not constantly balanced and paid (i.e. the balance at the end of a month paid in full by the 15th of the next month)

Compliance requirements of the employer

- Report the amount of super obligation as of each “payday” to the employee via STP.
- Make payment at least monthly of the amount of super owed.

Penalty regime

- Interest for late payments
 - o GIC flexible rate calculated daily.
 - o To be paid to the employee’s super account directly and identified as interest.
 - o Calculated based on the balance of the running balance account.

Actions held once the employer is in an agreement/in communication with the ATO.

E/ Correction Framework

It is normal business experience that a pay to an employee may change. This occurs for many reasons including a change to a timesheet, change in leave information, change in rosters or allowance entitlements, all of which may occur in the time required to process the payrun as required by law, but often changes due to subsequent information.

Allowing the above proposed monthly super verification, reconciliation and payment allows employers to receive subsequent information and perform the necessary verification process so that any underpayment or overpayment can be taken into account and corrected before the payment is made. This will remove a significant number of interactions between employers and ultimately the superfunds and the regulators as to correction amounts.

F/ Payment to invalid superannuation information

If superannuation information for an employee changes – it is not the fault of an employer and therefore the employer cannot be considered at fault until the employee has provided correct superannuation information.

If an employer has paid funds that are to be returned from a super fund due to incorrect employee information or changed circumstances, the employer should be considered as having met their obligation and NOT required to pay further funds until the money has been returned to them.

G/ Ordinary Time Earnings - Only

We would recommend the Government re- consider the current regime as it applies to a difference between Salary and Wages, that is used for calculation of the current SGC, and Ordinary Time Earnings (OTE), that is used for Superannuation Guarantee calculations. It has long been considered that this is an unnecessary complexity in the administration of the superannuation system.

H/ Cashflow impact

As Government further considers this measure, we seek consideration and appreciation of the cashflow of business.

Drawn from discussions with COSBOA we note:

“A small business monitors and plans their cashflow cycle. Currently the payment of super is planned to meet the required once per quarter payment. If this payment is to be brought forward it must be acknowledged that it will require a different plan for who gets paid when. In order to pay the superannuation earlier and more often, payments to other suppliers will have to be deferred. This will have a cashflow impact throughout business payments.”

I/ A practical implementation timeframe

We are extremely concerned that the announced measure of “PayDay” or “SameDay” super on 1 July 2026 will not be achievable.

We do not believe that the required enhancements to administration of superannuation funds, gateways, clearing houses, payment systems within 2 years to facilitate a successful system is achievable.

94% of superannuation is reported by the ATO to be paid willingly and on time. We should ensure we do not rush to a “vision” that will result in disruption, confusion, miscalculation, an inability to match and reconcile superannuation amounts to members accounts and hence actually reduce the effectiveness of superannuation payments.

Hence, we have proposed the above monthly requirement to be at least a staged approach towards what some consider the vision.

In Conclusion

The Institute of Certified Bookkeepers, a Professional Association of 5000+ Professional Bookkeepers helping a conservative estimate of at least 250,000 small to medium businesses with all their obligations including payroll and super propose the above solutions including:

- Requiring a monthly reconciliation, verification, correction and payment process for business,

- Penalty system based on the Super Running Balance Account of the super obligation for each employee,
- Penalty, including interest, only be applied to the employer for the actions they can control, and
- A staged approach to improvements in the superannuation payment system to allow all parties to improve their systems, be accountable for their actions and to ultimately achieve maximum value to the employee super balance.

Please contact Matthew Addison, Executive Director at Matthew@icb.org.au or 0421 553 613 to discuss this matter further.

Yours sincerely



Amanda Linton
ICB Chief Executive Officer