

Securing Australians' Superannuation Budget 2023-2024
Consultation Paper

Submission on behalf of

**FIR Admin Services Pty Ltd (ABN 89 641 541 657) and
Fraser Island Retreat Pty Ltd (ABN 59 153 792 306)**

Author

Russell Postle

E russell.postle@bdo.com.au; M 0419 703 581

The author is a director and shareholder of the two companies

Abbreviations

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

Background

FIR Admin Services Pty Ltd (ABN 89 641 541 657) (FIR Admin Services) is the employer entity for Fraser Island Retreat Pty Ltd (ABN 59 153 792 306), the business which trades as K'gari Retreat / Fraser Island Retreat (FI Retreat) located in the village of Happy Valley on K'gari (Fraser Island). FI Retreat provides a range of services including holiday short stay accommodation, café / bistro and bar and general store. The FI Retreat business is primarily in the hospitality sector.

FIR Admin services employs about fourteen people at a time. Being a hospitality business in a remote location, the workforce can be more transient and the total number of employees per annum is closer to fifty.

FIR Admin Services provides online onboarding for all employees through the online rostering software. Not all employees use this software.

FI Retreat operates in a remote location; the Telstra tower in Happy Valley is 3G with limited bandwidth for mobile phones. Currently there is no other mobile provider. When there is a fault with the Telstra tower there is no mobile service available. This happened in 2022 and again in 2023 when there was no mobile service for several days.

FI Retreat also uses the NBN satellite service for internet access but this service tends to be impacted by inclement weather. A StarLink service was installed very recently and is providing improved internet so hopefully staff can now access data online.

Payroll and accounting cannot be undertaken at the business site due to quality of internet services.

Submission responses

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

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

- Employers must pay superannuation on all qualifying amounts of OTE with the result that some payments by the employer will be less than \$10.
- Under Choice of Fund rules, employers must pay superannuation contributions to the fund nominated by the employee so the employer cannot make a payment of a superannuation contribution for that employee until the employee has provided this information to the employer.
- If an employee has not provided details of their nominated superannuation fund to the employer, that employer is required to submit a Stapled Fund request to the ATO - this request is subject to conditions that restrict employer access. If the ATO will not or is unable to provide the details of a stapled fund to the employer, then the employer is required to enrol the employee into a nominated fund.

These steps all require time to be processed and responses.

In reality not all employees are focused on their superannuation and FIR Admin Services will regularly need to chase the employee for details of their superannuation fund.

The impact of a requirement to adopt a payday superannuation payment will vary by industry sector and nature of the workforce.

FI Retreat is a hospitality business and the workforce in the hospitality industry will regularly display the following characteristics:

- More transient in nature so many employees will apply for employment with the intention to experience a location rather than seeking a long term employment relationship.
- Many in the hospitality sector are in the early stages of their working life and do not appreciate the need for them to supply their superannuation fund details on a timely and accurate basis.

Employers whose businesses involve employees with shorter terms of employment have a higher number of employees that businesses in sectors which have fairly constant employment.

This means employers whose businesses involve employees with shorter terms of employment have a higher risk of incomplete or incorrect superannuation fund details and being penalised by have SG charges apply.

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

ATO search for stapled funds

The search function for an employee's stapled superannuation account is where if an employee does not provide details of their super account, the employer is required to request details of the stapled fund from the ATO.

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

So if an employee works for an employer for a short period and then moves to another employer the first employer is denied the ability to search. The link to the employee is currently established by either the STP data being processed or the most recent lodged Employee Declaration.

Attachment 1 is an example of a stapled fund search performed on 25 October 2023 for FR Admin Services. A letter confirming these details was received on 6 November 2023. This system will need change to accommodate a shorter superannuation payment date.

Under the proposal for payday super the employer will be required to do the search before the first payroll with that employee included but may be after the employee has moved job

FIR Admin Services submits that the ATO will need to relax the criteria in order to allow the employer to search for a stapled fund. The ATO system will have a record of all searches undertaken by employers so will be able to monitor and quickly identify if a search is unjustified.

3. Are there any advantages or disadvantages with the requirements of payday super being fulfilled if employers make the payment of SG contributions on 'payday' (i.e. the employer payment model)?
4. Are there any advantages or disadvantages with the requirements of payday super being fulfilled if the employee's superannuation fund has received employer contributions a certain number of days after payday (i.e. the due date model)?

Employer's responsibilities

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

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

From time to time an employee will make an error when providing the details of their superannuation fund; this error will only be apparent to the employer when the first payment of superannuation is made by the employer. FIR Admin Services has had instances where this has occurred and a separate payment made once the correct information is available to FIR Admin Services as employer.

Similarly amalgamations and other changes to superannuation funds have periodically resulted in changes to the payment details for an employee contribution. Whilst these changes will be notified to the employee, these changes do not always get passed on to the employer, becoming apparent when a payment to a payee that has previously been processed is unexpectedly rejected.

The employer's link to an employee's superannuation account balance is limited to that of contributing employer. The contractual relationship is between the employee member and the superannuation fund.

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

An employer is required to contribute the applicable minimum superannuation contributions for employees and those contractors to whom the entity pays amounts within the extended definition of salary and wages.

If an employer fails to

- contribute the required amount of superannuation;
- by the required date;
- to the superannuation fund that is the employee's nominated fund.

the employer is liable to pay SGC. This is a penalty.

FIR Admin Services submits that the employer's responsibilities should be limited to those aspects that are within the employer's control:

- The employee selects of which superannuation fund they will be a member;

- The trustees / administrators of the superannuation fund are responsible for their internal processing systems;
- The directors / management of the superannuation clearing house are responsible for their internal processing systems.

FIR Admin Services submits that the due date model leaves the employer responsible for systems and processes that are beyond the control of the employer.

An assessment of SG is a penalty system.

FIR Admin Services submits that it is inequitable that an employer has no control over the selection of the employee's superannuation fund nor that fund's internal processes but is to be penalised for delays by that fund as if it were the employer's fault. This is unfair.

5. Should there be a standardised due date for SG contributions depending on different pay cycles, independent of the frequency to when salary and wages are paid?

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

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

Many larger employers pay their contributions fortnightly. FIR Admin Services pays the superannuation contributions at least monthly.

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

FIR Admin Services submits that the timing for meeting SG compliance should be monthly - all superannuation contributions to be paid to the superannuation funds by the 28th of the month following the month in which the payroll was made.

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

FIR Admin Services submits that it is appropriate to reduce the frequency of SG measurement from quarterly to monthly.

FIR Admin services submits that the data reported to the ATO through the single touch payroll system should be sufficient data.

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

Employers select a payroll software provider to manage the payroll process and many of these payroll software packages are linked to super stream processes.

FIR Admin Services uses MYOB payroll as it allows electronic transfer of data from the online rostering / timesheet software and also provides an integrated superannuation payment process.

In reality there are limited selections of payroll software and to change providers is a major administrative exercise.

FIR Admin Services submits that the employers lack any real power to incentivise the super stream processors and the superannuation funds. If Treasury is of the opinion that the current system lacks incentivisation then this is a reflection of the overall system design.

Treasury may need to consider regulation of the super stream processors and the superannuation funds - it is beyond the power of the employer to incentivise.

8. Given reduced payment processing times facilitated by modern payment platforms, is a due date of 3 days after payday for superannuation contributions under a due date model feasible? What would prevent this timeframe?
9. What impact would shorter payment timeframes have on clearing houses and other financial intermediaries that facilitate the payment of superannuation contributions to funds?
10. Would shorter payment timeframes require regulation of these financial intermediaries to ensure payment timeframes are met?

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

The ATO offers the Small Business Superannuation Clearing House (SBSCH). FI Retreat as well as a business that is associated with FI Retreat use the SBSCH.

For the associated business superannuation data entry for October payroll was made on 26 October with a Bpay completed on the same date. The ATO email confirming the data process was dated 1 November noted the payment was received 27 October.

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

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

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

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

Under the current system, FIR Admin Services uses the MYOB super payments system - the amount of contributions for each employee is generated in the software and the payment presented for payment approval. Once authorised, MYOB debits the nominated bank account.

Once authorised by FIR Admin Services, control of the payment process is with MYOB. The direct debit may not occur until the next day. FIR Admin Services is unaware of the time process steps used by MYOB. The payment of the superannuation contributions is started early enough to meet the SG deadlines.

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)?

The NPP is a concept at this stage. Innovations in payment and data platforms will result in allocation of funds in a more timely manner.

With the removal of the \$450 threshold there are more transactions in number and more transactions of a smaller quantum.

The multiple payment forms allow a matching of the employer size to the manner of payment such as the SBSCH for employers with small numbers of employees.

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

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

13. What is the appropriate timeframe for ATO reconciliations? For example, fortnightly or monthly? Should the timeframe differ depending on the frequency of payday or would a standard timeframe be more appropriate?
14. Should there be a mechanism whereby employers can pay SG charge they know they have accrued, prior to the reconciliations and assessments being issued? How should this occur?

There is a multitude of paydays in many businesses.

FIR Admin Services pays most staff on a fortnightly payroll run.

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

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

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

A SG charge is double penalty

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

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

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

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

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

15. Should the LPO and carry forward of late payments remain a feature of the SG compliance system in a payday super model? Could an alternate system be adopted whereby late payments apply retrospectively to the earliest period outstanding?
16. Should late SG contributions be tax deductible under certain circumstances, for example when an employer amends the SG charge before it is assessed by the ATO?

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

FIR Admin Services submits that the LPO and carry forward system should be retained.

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

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

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

- Changing the SG matching period from a quarterly cycle to a monthly cycle;
- Allowing employers to correct minor mistakes and adjustments (including reloading superannuation payments rejected due to incorrect information supplied to the employer) without the multi penalties that apply at present on losing the tax deduction, having to lodge the SG charge forms and the expanded base for SG calculation (in lieu of OTE)

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

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

20. Does the current nominal interest rate of 10 per cent per annum adequately compensate employees for the foregone interest that would have accrued in the fund had their super been paid on time?
21. Does a nominal interest charge of 10 per cent per annum remain appropriate in a payday super model? Or are there alternative models that could address different degrees or severity of lateness?
22. How should the administrative component of the charge apply? Is per employee, per ATO reconciliation period appropriate, considering your responses above to the appropriate timeframes for ATO reconciliations?
23. Should the amount of the administrative component of the charge be changed? If so, what is the appropriate amount, and why?
24. Given that the current SG charge is not tax deductible, are there any circumstances where a non-compliant employer should be able to make a tax deduction for the SG charge paid?

Re Q24, FIR Admin Services submits that the and the SG payment should be deductible should only apply to OTE where the payment is made on a voluntary basis within a reasonable time frame and for minor corrections.

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?

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

This will also see the funds reach the employee's superannuation account on a more timely basis than the delayed process at present going via the ATO systems.

- 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?

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

- 31. Should employers be allowed to make 'catch-up' contributions due to errors?
- 32. What would be a reasonable time period to allow employers to make 'catch up' contributions that aligns with the intent to pay superannuation alongside wages? Should this time period differ depending on payday frequency?
- 33. What are the challenges in correcting SG payments under a payday model? Is this an efficient way for employers to make corrections? Should error messages be standardised across funds?
- 34. Is the 20 business day time period for superannuation funds to resolve errors appropriate in a payday super model?

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

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