

2 November 2023

Att: Wendy Hau
Director
Superannuation Access and Compliance Unit
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: paydaysuper@treasury.gov.au

Dear Ms Hau,

We welcome the opportunity to provide a response in relation to Treasury's Consultation Paper entitled *Securing Australians' Superannuation: Budget 2023-24*.

Maurice Blackburn Pty Ltd is a plaintiff law firm with 34 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, abuse law, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Maurice Blackburn has long argued that Australia's compulsory superannuation system needs to move, over time, away from the current quarterly lodgement arrangement to one where employers are required to pay their employees' Superannuation Guarantee (SG) contributions at the same time that they pay salary and wages. To that end, we are delighted that the Government has committed to implementing this change, for commencement on 1 July 2026.

We note the objectives of 'payday super', as outlined in the Consultation Paper:

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. (p.11)

We agree that these are highly desirable objectives for working Australians.

We also agree with the Consultation Paper's articulation of the impacts on employees of late payment, underpayment and non-payment of super:

*... 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. (p.6, emphasis added)*

The potential loss of insurance coverage is an important factor in this discussion, yet it attracts little attention in the Consultation Paper.

We encourage Treasury to bear in mind the original purpose of insurance in superannuation – that is, to insure against the loss of contributions to retirement income that occurs when someone becomes unable to work.¹ This ensures that all Australians, regardless of their socioeconomic circumstances, occupation or health status have access to basic insurance cover that will help protect them, and their capacity for a dignified retirement, in the event they are no longer able to work.

Maurice Blackburn has spoken with a number of workers who have found that they are not covered by insurance (or only had limited coverage) because the first payment of SG contributions had not been received at the time they became unable to work. Under current arrangements, an employee could be uninsured for the first three months of their employment, because the employer has not been required to make the SG payment in that time. This is clearly unacceptable.

Changes to the superannuation system by the previous Government through their Putting Members' Interests First legislation² has meant that many Australians (including those in high risk occupations) have been left (or risk being left) without affordable insurance because it will no longer be provided by their superannuation fund due to the low balance in their account. We believe that moving toward payday super will help reduce the likelihood that funds will drop below the minimum balance threshold, which would leave the worker uninsured.

The Consultation Paper clearly articulates the issue of firms entering insolvency before their SG underpayments are identified. Offering three months lag time in making SG contributions offers struggling businesses access to cash which it can use to pay bills, rather than be set aside for their employee's super. Once again, while this is happening, their workers remain uninsured.

We urge Treasury to be mindful of the potential impacts on insurance coverage for workers when compiling the results of this inquiry.

The Consultation Paper goes on to tell us that:

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

¹ See for example:

https://www.superannuation.asn.au/ArticleDocuments/359/1709_Insurance_through_superannuation.pdf.aspx?Embed=Y

² https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6331

contributions to be received by the superannuation fund within a certain number of days following 'payday'. (p.11)

Of these two options, Maurice Blackburn believes that the 'due date' model would be easier to introduce and administer. We also agree that it would incentivise both employers and super funds to monitor the successful remittance of SG contributions.

The Consultation paper is right in identifying that: "There is merit in ensuring the due date is as close as possible to payday" (ref p.13). We are concerned, however, that the suggested feasible due date for SG contributions could be set at '8 to 13 days after payday'. For those on a fortnightly pay cycle, this could mean that SG contributions are functionally one pay cycle in arrears. We encourage Treasury to recommend that expectations are set at an ideal end-point (say, within 3 days of payday, as suggested in question 8), then allow flexibility/leniency until better systems are made more widely available to employers to make this happen.

In relation to employer compliance, the Consultation Paper suggests that:

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. (p.14)

We agree that this is an appropriate process. Payday super will make it easier for an employee to track non-payment or under-payment on their payslip and draw attention to it through the appropriate reporting mechanisms. We believe that worker advocates such as unions could have an important role to play in educating workers about their rights and entitlements, and in providing assistance in correcting identified compliance issues.

It will also make it easier for super fund trustees to use real time pay data to better tailor investment and insurance options to members, thus supporting the objectives of the super system.

Maurice Blackburn is grateful for the opportunity to participate in the co-design of an appropriate payday super system. We thank Treasury for its ongoing commitment to consultation.

Please do not hesitate to contact me and my colleagues on 07 3014 5051 or at JMennen@mauriceblackburn.com.au if we can further assist with the Committee's important work.

Yours faithfully,



Josh Mennen
Principal Lawyer & National Litigation Leader
Superannuation & Insurance Law
Maurice Blackburn