

Securing Australians' Superannuation

ACCI Submission

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Introduction

The Australian Chamber of Commerce and Industry (ACCI) appreciates the opportunity to make a submission on the Securing Australians' Superannuation package announced in the 2023-24 budget.

The process to reform the superannuation payment system offers the opportunity to undertake a holistic review of the superannuation guarantee (SG) system. A key objective of the reforms should be to streamline and simplify the end-to-end SG payment process, both in terms of reporting and the payment.

The business community agrees that there are potential advantages for both the employer and the employee in better aligning superannuation contributions to wage or salary payments through the introduction of pay-day superannuation contributions. With increased digitalisation of the payroll system, there are efficiencies for the business in paying superannuation on the same day as wages. However, these benefits rely on achieving greater automation of superannuation processes. The introduction of payday super needs to be coupled with investment by the Australian Taxation Office (ATO) and other government agencies to increase the automation of their payment platforms, with linkages to other data held by the ATO and other government agencies, as well as incentives for software developers to incorporate a superannuation payments module in commonly used accounting software.

ACCI acknowledges that underpayment of wages and superannuation has emerged as a significant issue in recent years. We have a low tolerance for businesses that intentionally underpay workers. Yet, it must be recognised that in the vast majority of cases that have recently come to light, the underpayment of wages and superannuation has been unintentional. With many respected large corporates, as well as government agencies such as the Reserve Bank of Australia and the Australian Broadcasting Corporation admitting to underpayment, it is clear that, in the majority of cases, the problem lies with the complexity of the modern award system, not deliberate misconduct by the employer. With over 200 modern awards and multiple rates applying within each award, as well as penalty and overtime rates, businesses face considerable challenges in navigating the system. Better alignment of the payment of ordinary time earnings (OTE) and SG contributions through payday superannuation, as well as increased automation of the system, will reduce the likelihood of underpayment and late payment.

The design and implementation of the SG system reforms should support employers, their advisors and BAS agent to easily manage SG obligations. The new arrangements should be designed to operate in line with businesses' administrative and payment processes. It is also important the reforms meet the needs of small and micro employers, not just improve the processes for large and medium-sized businesses, as they have more limited resources to adjust to the changes and increase the frequency of superannuation payments.

The following addresses the issues raised in the consultation paper.

Defining 'payday'

For the purposes of the current review, 'payday' should be defined as the payment of ordinary time earnings (OTE), which are normally paid at regular intervals, either weekly, fortnightly or monthly. Ad-hoc payments, such as termination or other extraordinary payment that are outside the regular pay cycle, should not be included in the definition of payday.

In contrast with OTE, superannuation is typically paid either monthly or quarterly dependent on the size of the business — most medium-sized and larger businesses pay monthly, while small businesses pay superannuation quarterly.

For most large and medium-sized businesses, the transition from payment of superannuation at monthly intervals to fortnightly intervals is likely to be straightforward. However, for micro and small businesses, the transition from quarterly to fortnightly superannuation payments is likely to be more problematic. With many small businesses paid by customers/clients on 90-day terms, having sufficient cash in the bank to pay superannuation may prove challenging, particularly those in staff-intensive industries where a large share of their turnover is used to pay wages. The introduction of payday superannuation may compel some small businesses to shift to monthly pay cycles to better manage their cashflow.

For ad-hoc payments or extraordinary payments of superannuation, i.e. termination or other payments outside the regular OTE pay cycle, businesses should be given the flexibility to delay payment until the next payday in the regular OTE pay cycle. Requiring superannuation to be paid on the same day as the ad-hoc payment would place an additional administrative burden on the employer. There would be little disadvantage to the employee where the associated superannuation is deposited in their account a few days after the ad-hoc payment has been made.

Small businesses have more limited resources and personnel and will find the transition to payday super far more challenging than large and medium-sized businesses. The necessary adjustments to their payment platforms or acquisition of new payment platforms will come at considerable cost to small businesses. It will also take a considerable amount of time to move across to a new system and re-train staff to use it. Accordingly, the timeline for implementation of the payday superannuation reforms, by 30 June 2026, may not be sufficient. An extended transition period for micro and small businesses should be considered to enable them to adjust to the change.

It would also be prudent to create educative materials for small businesses, outlining the changes, their responsibilities and compliance requirements. In addition, consideration should be given to setting up an advisory service, delivered by trusted organisations such as industry associations, to assist businesses through the transition. Small businesses are currently navigating an increasingly complicated regulatory environment, with a host of changes being recently implemented or to be implemented shortly that they need to ensure compliance with. The educative materials and advisory service would assist small businesses adjust to these changes as best as possible.

Updating the Superannuation Guarantee Charge

Due-date model

A due date of three working days after payday for superannuation payments to be made is reasonable. This would give the employer sufficient time to deal with any problems they may encounter with their internal payment platforms, banks, or other factors that can lead to delays in wage and salary payments and superannuation contributions. It needs to be emphasised that this must be three working days, to account for weekends and public holidays.

The pay-day super payment should be considered paid on the day the payment is sent by the employer, not received by the superannuation fund. Any delays by intermediaries in passing on payments or the super funds in processing payments should not be viewed as the responsibility of the employer. The

employer should not be liable or penalised for the time elapsed between the employer making the payment and the payment being received or accepted by the superannuation fund.

The intermediaries and superannuation funds should be incentivised to process payments in an efficient and timely manner. If a payment is late as a result of delays in intermediaries processing the payments, the intermediaries, not the employer should be penalised. Similarly, superannuation funds should be penalised if the delay is a result of their processes.

There are benefits in moving to a single platform. This ensures a consistency of approach. This would enable accounting software developers to design superannuation payment modules around a single consistent platform. This brings economy of scale, which lowers costs for both the software developer and the customer/employer. Having a wide range of different platforms would require the software developers to develop a number of different modules. This results in higher cost to the software developer in designing these modules and higher cost to the customer, who would need to pay more for each module and buy a number of modules to cater for the different superannuation funds of their employees.

Communications between employers, funds and intermediaries

ACCI's members experience frustrations with the lack of communications between employers, funds and intermediaries, such as clearing houses.

At present, employers typically only receive communications where issues with payments are incurred. Often, these communications are significantly delayed to the point where employers face penalties for non-compliance, even where issues such as underpayments are unintentional. There are no communications where a fund has received payments correctly, leaving employers unsure of whether payments have been made or where they may be held up by intermediaries.

It is a similar situation where overpayments occur. As set out above, employers operate in an increasingly complex workplace relations environment and any given business may need to ensure compliance with a plethora of award rates. In situations of SG overpayments, employers must engage in a tedious process to claw back overpaid funds which takes up a significant amount of time. As the frequency of payments increases, this will likely only compound and make the issue worse.

ACCI and its members would welcome the introduction of formal communication guidelines between funds and employers. Such guidance should be accompanied by a standard communication timeframe, whereby employers are notified where payments have been made correctly, where issues have occurred, or where payments have not been received at all. Not only would this provide peace of mind to employers, but it will provide employers with more opportunity to rectify mistakes where they occur, alleviating the administrative burden on the ATO and ensuring employees receive correct SG payments.

Small Business Superannuation Clearing House

Many small businesses take advantage of the ATO's Small Business Superannuation Clearing House (SBSCH), which acts as an intermediary between small businesses and superannuation funds and alleviates the need to make individual payments to separate superannuation funds of employees.

Unfortunately, the SBSCH is not working as efficiently as it should. While it is a valuable tool for small businesses to reduce the administrative burden associated with superannuation payments, there tends to be delays which becomes a significant issue for employers, particularly where errors occur.

ACCI is concerned that with increased frequency of payments there will be additional delays to processing. Ensuring delays do not occur will be important to prevent employers being unfairly punished for errors without appropriate time to rectify them, especially where communications between funds, intermediaries and employers are currently rare. Again, highlighting that employer should be considered to have fulfilled their requirements once they have made the SG payments.

While we note that there are no specific changes proposed for the SBSCH, ACCI strongly suggests that resourcing of the SBSCH be increased with the implementation of payday super changes to ensure that payments to funds are facilitated in a timely manner, so the intent of payday super can be met, and employers are not unfairly penalised for delays.

Compliance mechanisms

SG charge assessment

The SG charge penalty regime must be reformed. Issues often arise with rejections of payments, delayed rejections, delayed information and inadequate messaging. These are typically outside the control of the employer. Once the employer has sent payments and data, then it should be deemed that they have met their responsibility. Third parties that process and match payments and reports should be liable for delays or errors they cause. Penalties should be proportionate and only apply to employers with repeated intentional misbehaviour, not for unintentional errors. Consideration should be given to whether there a more efficient way to achieve the same outcome.

With the move to payday super, normal post-pay corrections by the pay office would require corrections to super payments. The framework for allowing these administrative corrections must be simple so as not place an unnecessary administrative burden on employers. At the same time, it is important to ensure employers continued to make super payments in line with normal pay periods (i.e. weekly, fortnightly and monthly).

Given many businesses make wage and salary payments in the middle of the pay period, with one week in arrears and one in advance, payday super arrangements will make it more difficult to identify any under/over payments of superannuation. Some flexibility is needed to allow small underpayments without penalty, i.e. the SG charge being applied, due to any variation in OTE payments in a pay period. Similarly, arrangements need to be made to enable employers to claw back overpayments.

Consideration should be given to applying an averaging arrangement, where businesses make a consistent payment based on average OTE and any underpayment is reconciled at the end of the month or quarter without the SG charge applying. In the case of overpayment, the employer should be allowed to deduct the excess amount from the next pay period.

The adoption of a common and periodic date for reconciliation of super payments (e.g. monthly or quarterly), rather than these being determined on a per pay-day basis, would provide greater consistency across the SG charge regime. This should include the provision for a 'grace period' of up to 30 days, where the employer would be allowed to make post pay corrections without the SG charge being applied. This would also reduce the enforcement effort associated with validating super payments at variable pay-day intervals.

The penalty regime must be both clear and proportionate, relative to the nature of the offence. The ATO's focus is understandably on employer requirements to make payments on time and avoid underpayment.

Yet, the ATO needs to be able to differentiate between late- or under-payments due to unintentional administrative errors or factors that are outside the control of the employer, and errors due to recklessness and deliberate actions intended to avoid or delay payment.

Many of the principles being applied in the design of the wage underpayment laws are equally appropriate to the design of the future payday super compliance framework. Therefore, all reasonable efforts should be made to take advantage of the synergy between these two, given they are subsets of the broad remuneration ecosystem.

Rectifying underpayment

The late payment offset (LPO) regime should remain a feature of the SG compliance system. Encouraging employers to use the LPO would minimise delays in the super fund receiving the late payment. It would help to reduce the burden on ATO, as payment processor and can focus on reporting. Reporting systems should be designed so that use of LPOs is encouraged.

As a design feature of the payday superannuation system, payment using the LPO should be tax deductible, just as other payments under the superannuation system are. Employers should not be penalised for using the LPO.

Tax deductibility and compliance

There are benefits in creating a unified database matching single touch payroll (STP) from employers with member accounts transaction data (MATS) from the superannuation funds. This will assist employers to ensure they are paying the correct superannuation to their employees by providing a cross-reference between the OTE paid through the STP and the superannuation received by the superannuation funds through the MATS data.

This would also give the ATO a clear line of sight in real-time, to monitor whether businesses are paying the correct superannuation contribution amount. Where a business has not made a SG contribution, or made an incorrect payment, the ATO would be able to give businesses a 'nudge' the day after the payment is due, to correct the payment. If businesses are provided three working days after the due date to make payment, this should give the business sufficient time (two days) to rectify any problem within the payment period.

SG contributions are a legitimate business expense and therefore should be tax deductible, whatever the circumstance. If a business makes a late payment, a penalty is applied through the SG charge. Not allowing tax deductibility for late payment is a double penalty. With the tax rate at 25 per cent for small businesses and 30 per cent for medium and large businesses, not allowing late payments to be tax deductible would be an excessive penalty. In most instances, late payments are inadvertent or unintentional. While businesses should take some responsibility for making sure the correct payment is made, a double penalty of the SG charge and preventing late payments from accessing tax deductibility would be extreme.

SG charge calculation

The current SG charge is more than adequately punitive for businesses. The combination of the interest rate calculation, the administrative fee and any additional behavioural penalty are more than a sufficient penalty for non-compliant employers.

The nominal interest rate of 10 per cent per annum, would more than adequately compensate employees for any foregone interest that would have accrued on the sum of the underpayment. With the average annual return of superannuation funds between 7 per cent and 9 per cent, the nominal interest rate is above this range. Therefore, the nominal interest rate would be sufficient to cover the average loss of accrued interest from the underpayment. In most cases the underpayment would be rectified within a short period (likely to be less than 28 days).

The proposed approach, with administrative charge applied per employee per ATO period is unwarranted. Given the payment system is digital, with the administration of underpayments and the SG charge automated, there is little cost to the ATO for administration of underpayment. The ATO should be provided greater funding to better automate its systems to reduce these administrative costs further. The ATO should be required to absorb these costs and not charge an excessive administrative fee of \$20 per employee per payment period.

We do not disagree with applying a behavioural penalty for businesses that intentionally underpay their employees. However, this should be commensurate with the nature of the breach. A review of behavioural penalties should be undertaken to ensure they are fair and reasonable relative to the seriousness of the wrongdoing. This would also offer an opportunity to better align SG charges with wage underpayment penalties (i.e. current civil penalties).

ATO flexibility in SG charge remission

The ATO should have flexibility to remit the SG charge in cases where employers cannot meet their SG obligations due to circumstances beyond their control. This includes events that disrupt their operations, such as natural disasters and pandemics, as well as an accident, fire on the premises, or any event that may force a business to temporarily suspend their operations so that they are not able to generate income.

This flexibility should also be applied in circumstances where the employer has requested information such as fund details from a new employee, but it has not yet been provided or where they have received incomplete or incorrect information. Situations like these are often outside the employer's control and, as the frequency of payments increases, there will likely be more instances where this occurs.

In the current tight labour market, with an uptick in the rate of people shifting between jobs, superannuation funds are not keeping pace with changes in their members. As a result, businesses are being hounded for payment by funds who had not realised their members had changed employers. With payday super going to a higher frequency, this problem will only get worse unless the system is wholly managed by the ATO.

As the system moves to real-time compliance, ATO needs to have the flexibility to determine the scale of the behaviour (honest mistake vs fraud) and be able to use its discretion as to whether to apply the SG charge or grant a remission.

Corrections and errors

Businesses should be encouraged to make catch-up payments to fix errors when they become aware of them. They should not be disproportionately punished where errors are inadvertent. If businesses are not encouraged to make catch-up payments without penalty, then they are less likely to voluntarily admit to errors and make efforts to correct them.

Businesses should make a monthly reconciliation of superannuation payments and given a 30-day grace period to make catch-up payments where errors are detected. The reconciliation period in most instances would not align with the payday frequency.

Choice of fund, stapling and employee onboarding

Establishing a new digital ATO service would simplify the process for both employer and employee. As noted in the consultation paper, when onboarding a new employee, where the employee doesn't nominate an existing or new fund, the process the employer must go through to check whether the employee has an existing 'stapled' fund is a significant administrative burden.

Given the employer is not able to access details of the employees account until the ATO is satisfied an employment relationship exists, this can lead to substantial delays in setting up the payment system for the employee's superannuation. These delays can result in SG charges applying due to circumstances outside the control of the employer.

If the ATO digital service enables the employer to immediately identify whether the employee has a stapled fund and to access information on the employees account, it would significantly reduce the administrative cost to the employer and minimise the risk of delays in making superannuation payments. It would also reduce the risk of the employer facing an SG charge.

The digital ATO service would need to be able to directly link the employee's tax file number to pre-existing superannuation account/s. The service would then need to provide the employer with sufficient details of the employee's superannuation account, to enable the employer set up its payment system to direct payments into the employees superannuation account.

Using the service should be voluntary. However, the existence of the service would place greater responsibility on the employer to reduce errors and delays in setting up superannuation payments for new employees.

About ACCI

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ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth, and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education, and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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