asfa
the voice of super

SUBMISSION

Submission to Treasury: Securing Australians' Superannuation – Budget 2023-24

Consultation paper

8 November 2023

The Association of Superannuation Funds of Australia Limited
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)
F 1300 926 484
W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2023/35

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

Submitted via email to: paydaysuper@treasury.gov.au

8 November 2023

Dear Ms Hau

Securing Australians' Superannuation - Budget 2023-24: Consultation paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this feedback in response to your confidential consultation on *Securing Australians' Superannuation - Budget 2023-24: Consultation paper* (Consultation Paper).

ABOUT ASFA

ASFA is a nonprofit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

GENERAL COMMENTS

Thank you for the opportunity to provide feedback on the *Securing Australians' Superannuation – Budget 2023-24: Consultation paper* (Consultation Paper).

ASFA member organisations welcome and support the initiative to ensure that members' superannuation contributions are paid more frequently and in a timely fashion (Payday Super). It is imperative, however, that issues within the existing contribution payment system are addressed before any proposal to increase the frequency and timeliness of contributions is introduced.

EXECUTIVE SUMMARY

ASFA submits that

- the design phase of Payday super should
  - employ a co-design approach
  - adopt key design principles agreed between the ATO, ASFA, the GNGB and AIST
  - utilise Standard Business Reporting (SBR)
  - be given sufficient time to ensure the design is effective/appropriate
  - address current issues with SuperStream
  - adopt the 'due date' model
  - perform an impact analysis
  - be technology and payment system neutral
- the implementation phase of Payday super should
  - put in place an appropriate governance structure during the program of work
  - allow stakeholders adequate time for implementation.

DESIGN OF PAYDAY SUPER REGIME

1. General principles

1.1. Adoption of co-design approach

Given the complexity, scope and scale of what will become the Payday super, ASFA strongly recommends consideration be given to establishing a stakeholder advisory panel/reference group.

This group should comprise senior personnel and facilitate a co-design process to determine and develop the key features of the Payday Super regime. Key stakeholders represented on the group should include the government (in particular the Treasury and the Australian Taxation Office (ATO)); the superannuation industry (including trustees, service provider intermediaries and software providers); the banking industry and other payment facilitators, and employers and their service provider intermediaries.

The development of SuperStream benefited greatly from the adoption of a co design approach that saw early engagement with key government, industry and employer stakeholders. Other examples of the success of this approach include responses to regulatory change programs, such as the First Home Super Saver Scheme and Downsizer contributions, as well as other initiatives such as the Department of Human Services Automation of Income Stream Review.

1.2. Key design principles

It is important that the stakeholder advisory panel recognise that its purpose is to assist in the design and delivery of a Payday Super regime that is effective and efficient, and will benefit super fund members and industry participants.

In 2019 a document was agreed and signed by the ATO, ASFA, AIST and the Gateway Network Governance Body (GNGB) with respect to SuperStream Design Principles. These principles are to ensure that the impacts of new technologies on SuperStream and super are assessed and addressed.

There are eight design principles as follows:

> **Principle 1** - Any changes to the SuperStream Standards should continue to provide best outcomes to superannuation fund members.
>
> **Principle 2** - There should be only one single standard to comply with.
>
> - SuperStream data and payments must be in accordance with SuperStream standards
> - The payment system is and should remain agnostic.
>
> **Principle 3** - A whole of industry position needs to be established
>
> - The superannuation industry, employers and software developers have invested $1.5 billion to implement SuperStream and gain the efficiencies it has delivered
>
> **Principle 4** – Superannuation industry stakeholders have an obligation to consider the extent and impact of new technologies on SuperStream, including cost/benefits, security, 'fit-for-purpose', alignment with international and Australian Standards and long-term efficiency.
>
> - In relation to 'cost/benefit' assessment any investment must be carefully scrutinised and have particular regard to those entities that bear the cost.
>
> **Principle 5** – Changes to the SuperStream Standard (including regulatory change) must satisfy a business case for the change and be progressed in consultation with the superannuation industry.

Principle 6 – The implementation of new technology must satisfy a business case for the change and be progressed in consultation with the superannuation industry.

Principle 7 – Governance of the SuperStream Standard must remain with the Government regulators (ATO and APRA).

Principle 8 – Governance of the SuperStream Transaction Network, or any newly-created network that operates in a SuperStream environment, must be representative of superannuation industry stakeholders and be subject to a members' best interests test.

Given the proposed changes and the introduction of new services and technology, it is important that the design of the new Payday super measures employs these principles.

1.3. Standard Business Reporting (SBR)

Standard Business Reporting (SBR) is a standard approach to digital or online record-keeping introduced by government in 2010 to simplify business reporting obligations.

Software developers build SBR rules into their business software to make it 'SBR-enabled', utilising a taxonomy of terms required by government agencies in their reporting. Businesses that use SBR-enabled software are able to report data to government using information already recorded as part of running their business.

SuperStream is the best example of the deployment of SBR standards and SBR standards should continue to be used for Payday Super.

1.4. Importance of sufficient time to design

In order to design an effective, efficient, regime it is critical that sufficient time is allowed for the design phase.

It is important that all key stakeholders are engaged in a comprehensive analysis of, and discussion about, potential consequences and that options can be identified. Exploring consequences and developing alternatives can involve multiple iterations **–** to execute this thoroughly takes time.

There is a risk that, unless the timeframes to design Payday Super are appropriate, these issues are likely to be compounded.

1.5. Condition precedent to success of Payday super – resolving issues with SuperStream

As part of the scope of the design phase of the Payday Super regime it is important that existing issues with the payment of superannuation contributions are identified and addressed.

Employers and super funds experience a level of frustration with SuperStream, Single Touch Payroll (STP) and the Superannuation Guarantee (SG) regime which need to be addressed to enable Payday Super to work effectively for all stakeholders.

Amongst other things, these issues include:

1. issues with the current choice of fund and stapling process for new employees
2. issues with the data provided by employers not matching the data held by super funds
3. dealing with requests for total or partial refunds to employers
4. complexities caused by the difference between OTE and Salary and Wages.

Given the deleterious effect of the existing issues with payment of super contributions, in particular with respect to data, it is important that these are addressed prior to the introduction of Payday super. Accordingly, we recommend that ameliorating these data issues be the subject of a separate review prior to commencing Payday super.

1.5.1. Choice of fund and stapling process for new employees (onboarding)

When it comes to onboarding, there is limited support for employers when fulfilling their choice of fund obligations.

The current ATO process to obtain the details of any stapled fund for a new employee requires

- there to be an existing employment relationship, evidenced to the ATO (through provision of a TFN declaration or equivalent), for an employer to be able to make a stapled fund request with respect to a new employee
- employers to contact the ATO manually on a member-by-member basis (unless it is a bulk request for 100 or more employees)

which creates a considerable administrative burden and delays for employers.

Further, the stapled fund request only returns information with respect to the member's interest in the super fund – the Unique Superannuation Identifier (USI) of the fund/product and the member's account number – it does not return information with respect to the employee/member.

Given the effective operation of choice of fund, stapling and employee onboarding is critical to the success of Payday super in

- achieving its policy objectives
- ensuring the interests of employees
- not imposing undue costs and risks on employers and superannuation funds; and
- improving the data quality issues currently affecting SuperStream contribution processing

we recommend that the onboarding process be the subject of a separate review prior to commencing the design of Payday super.

1.5.2. Data provided by employers not matching the data held by super funds

In particular, there is a need to develop and rollout consistent processes to improve data quality, especially how to manage errors.

If the current issues are not resolved the increased frequency of contribution payments will only serve to exacerbate these issues. Any changes to the regime for the payment of super contributions should look to ameliorate these issues and avoid creating new ones.

This is the primary reason why we recommended that the due date model be adopted, as the employer pay date model does not provide an incentive for an employer to supply accurate and complete information.

If the employer pay date model were to be adopted then the design would need to ensure that issues with data quality were not perpetuated and exacerbated. Consideration could be given to providing, where the employer has not provided accurate and complete information, the payment does not qualify as an SG contribution, however, this would be onerous for the ATO to monitor.

1.5.3. Need for standardised error messages/processes

Given that employers have an obligation to provide accurate and complete data, the design of Payday super will need to ensure that

- standardised error messaging
- standardised processes
    - to correct errors, including a clear obligation on the receiver of the error message
    - to reject contributions where there are incorrect or incomplete details
    - with respect to the refund of overpayments

are embedded into the design of Payday super.

1.5.4. Dealing with requests for total or partial refunds to employers

Similarly, dealing with requests from employers for a refund represents a significant inefficiency in the system and poses additional challenges with respect to reconciliations and verifications.

1.6. Employer payment versus due date models

Under the employer payment model it is proposed that the SG obligation has been met when the employer has made the payment, as opposed to the current due date model where SG compliance is met when the contribution is received by the fund.

The significant drawbacks of the employer payment model include:

- there is no incentive for an employer to correct any incorrect/incomplete data
- this will lead to the quality of super fund data becoming even worse than it is currently, and result in significant manual work and re-work
- there is no incentive for intermediaries to forward the money and data as quickly as possible
- while regulation of intermediaries may be a possibility it is likely the cost would outweigh any benefits and would not resolve the issues with the quality of the data provided by employers

For these reasons we strongly support the due date model.

1.7. Impact analysis

The design of the Payday Super regime should endeavour to minimise the effect on super funds and employers, both in terms of capital expenditure to changes systems/processes and the ongoing running costs involved to process contributions. To the extent possible the design should seek to leverage off existing systems and processes.

When assessing the feasibility of various design options it is imperative that analysis of the impact on super funds, employers and intermediaries be performed, including a cost/benefit analysis.

1.8. Technology and payment system neutral

The Payday Super regime should be technology neutral with respect to the payment system.

Accordingly, the design of Payday super should not be founded upon whether payments are made through the Bulk Electronic Clearing System (BECS), New Payments Platform (NPP) or a Central Bank Digital Currency (SBDC) but should develop a single framework, irrespective of the system of payment used.

Among other things, accelerating the introduction of new payment technology, on top of existing issues with SuperStream, will only serve to increase risks, complexities and costs for stakeholders. Designing Payday super to be technology and payments system neutral will serve to 'future proof' the regime and support subsequent changes to payment systems and technology as they mature.

When it comes to matters such as timeframes, ideally these should be prescribed in subordinate legislation so they can more readily be modified to reflect changes. By way of example, with the eventual decommissioning of BECS, the timeframes to make a contribution could be reduced.

1.9. Unintended consequences

Member organisations have identified that, if the current issues are not addressed, there is a risk that some employers may move to a less frequent pay cycle in order to reduce the likelihood of an SG shortfall/SG charge being imposed.

IMPLEMENTATION PHASE – PROGRAM OF WORK

1 Governance

Given the scale, scope and complexity of this multi-year, high-cost program of work, it is critical that an appropriate governance structure be put in place for the implementation phase.

In particular, it is critical that there be a steering committee/reference group, comprised of key stakeholders, that oversees the implementation of the regime and provides guidance and support, akin to the one that was established for SuperStream. A collaborative approach between government and industry stakeholders will be key to a successful outcome for stakeholders and, most importantly, superannuation fund members/employees.

Further, consideration could be given to establishing an ongoing advisory panel which assesses the effectiveness and efficiency of the SuperStream system, reviews new technologies and provides advice to the relevant Minister as appropriate, such as with the current review of the payments system. This panel could consider both the risks to, and opportunities within, the SuperStream ecosystem to ensure a faster, more accurate and secure system for the benefit of all stakeholders.

2 Adequate time for implementation

Superannuation funds, employers and service provider intermediaries will need sufficient time to implement the changes necessary for Payday Super, as complying with the new Payday Super regime will necessitate considerable changes being made to complex data and payment systems.

To meet the new requirements, stakeholders need to be able to implement long term, strategic, automated solutions, as opposed to interim, tactical, solutions. Interim solutions cause stakeholders to incur considerable additional, and unnecessary, risks and costs, including doubling-up on development costs, additional costs involved in rework and potentially wasted effort, as well as higher maintenance costs, as interim solutions inevitably necessitate a significantly greater level of manual involvement.

In order to implement the necessary system changes stakeholders will need sufficient time for detailed analysis of the new requirements; clarification from the ATO as to interpretation or application (if necessary); the documentation of business, functional and technical system requirements; the design of the system solution; its build; comprehensive regression testing, and other implementation activities such as the development of processes and procedures and the delivery of necessary training. Further to this, IT builds must also coincide with predetermined IT release dates for projects and system enhancement.

Change management of this magnitude is not only expensive but making significant alterations to ITC systems and databases also poses a risk to system functionality and data. The most effective means by which such a risk is mitigated is by utilising robust project management methodologies to determine timelines; identifying interdependencies; producing a staged project plan; including sufficient time for regression and user acceptance testing, and executing in accordance with the plan.

All of this takes time and resources.

When it comes to implementing system changes there are interdependencies and capacity constraints. Rushing to meet deadlines materially increases the risks to a project and increases costs, which in the case of super funds ultimately are borne by the members.

To the extent that a project timeframe is contracted, costs are driven up and the quality of outcome potentially is compromised. This will be exacerbated by the fact that the entire superannuation industry and service providers will be implementing the reforms at the same time, with a limited pool of ITC and project resources available.

To mitigate the risks outlined above, it will be important to ensure that there is an appropriate timeframe for implementation.

MEASURING EFFICIENCY AND EFFECTIVENESS

Currently, there is no independent way to assess the efficiency and effectiveness of the $1.5 billion SuperStream system.

Given nearly all SuperStream transactions are now digital, measuring and reporting transaction flows could be introduced so that regulators can assess the effectiveness of any policy changes and new technologies, as well as monitor and act to ensure continuous improvement and innovation. We recommend that consideration be given to the introduction of a SuperStream Efficiency Index where stakeholders regularly report to the ATO, which would publish this information on an aggregate level.

SPECIFIC COMMENTS

ASFA members have provided the following specific feedback with respect to the Consultation Paper.

1. Payday super

1.1. Defining 'payday'

Consultation questions

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?

ASFA is supportive of the move to Payday super.

The most significant implementation issue that could arise if 'payday' were defined as being each time a payment is made to an employee with an OTE component is that it would serve to increase significantly the number of paydays and payday events, especially when compared with the current quarterly regime.

Accordingly, it will be important to ensure that the design of Payday super endeavours to make the system as efficient as possible, including minimising the degree of manual intervention required, to reduce the impact on stakeholders, in particular employers and super funds.

An increase in the number and frequency of SG payments would lead to an increase in the number and frequency of messages between employers and ATO, employers and super funds, and super funds and the ATO. In addition there would need to be changes made to Information Technology and Communications (ITC) systems of employers, intermediaries, and super funds.

The increased number of transactions and ITC changes may serve to increase costs for super funds, resulting in the membership of the fund being charged higher fees. Given this, it will be imperative that stakeholders are provided with sufficient time to be able to design and implement their Payday solutions, in order to ensure it is as efficient as possible and manage both capital and ongoing costs.

Another major implementation issue arises with respect to the commencement of a new employee.

Currently the employer has 28 days in which to provide a choice of fund form to a new employee. If no choice is made the employer needs to check for a stapled fund, and if there is no stapled fund the employer needs to open a member account with its default fund.

The design of Payday super will need to accommodate this process, including providing a longer period for an employer to capture the relevant information with respect to a new employee's super, in order to be able to make a contribution. While this will be especially relevant for employers with seasonal and/or casualised workforces, it will affect all employers.

In the design of the new Payday super regime there may be a need to take into consideration Defined Benefit (DB) funds and employers that are under an existing obligation to pay within a prescribed period of their pay date. Currently more than 200,000 members of an SMSF are receiving regular SG contributions, with SMSFs being regulated by the ATO.

In light of the increased frequency of SG contributions proposed under Payday super, we recommend there be a review of the potential effect on defined benefit funds and the process of making and reporting SMSF SG contributions.

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

When more regular SG payments are mandated the implementation issues that could arise include that there will be more payments and data in the system that will need to be reconciled and an increased risk of administrative and/or processing errors.

Given this, there will be a need to address data quality to ensure there is not a significant increase in errors, rejections and rework.

Employers will be under increased 'pressure' to make the payment and forward the data more quickly, which is likely to result in there being more issues with data quality. This will increase the number of errors and manual work that super funds will need to deal with and will increase the volume of communication and follow-ups from super funds to employers for data in order to be able to process and allocate contributions.

Intermediaries, such as clearing houses, reconcile the money and data received before they are able to send it on to the relevant super funds, so more payments and data will affect their processing.

The additional burden of managing exceptions may result in funds needing to become 'stricter' about rejecting erroneous data from employers, which may not be in the best interests of members affected by the errors.

2. Updating the SG charge

2.1. Employer payment model

2.2. Due date model

Consultation questions

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)?*

The main advantage with the employer payment model is that the employer has control over the timing of the payment of the contribution on payday.

The main disadvantages with the employer payment model are that:

- the current reporting/data mechanisms do not provide a verifiable payment date when the contribution was made to be used to monitor compliance in real-time
- given this, this would necessitate mandating existing fields and/or introducing new reporting/data elements into the existing mechanism to provide the ATO with oversight of the day that SG contributions are made, presumably through STP
- this may prove to be more onerous for employers and their agents/intermediaries. This is especially the case for large employers – by way of example, during the implementation of SuperStream, a large employer needed three to four additional FTE and a week to prepare their contribution data
- employers rushing to make a super contribution on payday is likely to result in more data issues. The employer payment model may not allow the employer time to reconcile, make adjustments and correct errors, including ensuring they have the superannuation fund details with respect to new employees

- where a new employee has not provided the details of their super fund this necessitates a stapled fund request, which can delay the employer's ability to make a contribution. This may necessitate a longer timeframe for employers in which to make a contribution with respect to new employees
- there is no incentive for contributions to be remitted to the superannuation fund (and allocated to a member's superannuation account) as soon as possible to maximise the returns they will receive
- accordingly, intermediaries would need to be incentivised separately to ensure processing times are as efficient as practicable. Mandatory service levels for each party, including intermediaries such as clearing houses, will be key to the success of this model. This may mean that there is a need for the regulation of intermediaries
- there is no incentive for an employer to submit complete and accurate data or to respond to the super fund with respect to rectifying errors or providing further information.

If SuperStream is to work effectively in even larger volume and intermediaries, such as clearing houses, are to be subject to mandatory service levels there will need to be corresponding obligations on employers to ensure their data is correct. Given this consideration should be given to making some of the current optional data reporting fields mandatory and enforcing that this takes place.

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)?*

The advantages of the due date model are that it:

- is a variant of the current model, whereby an employer becomes liable to pay the SG charge if their employee's SG contribution is not with their fund by a specified due date
- provides an incentive for employers, intermediaries and funds to ensure that SG contributions are paid to an employee's superannuation fund in a timely manner
- allows time for an employer to reconcile, make adjustments and correct errors; and
- provides time to obtain the super fund details of new employees.

Members have observed that the current eight to thirteen business days (not including handling of errors or onboarding new employees) is based on a combination of the time to process files and the current timeframe for financial institutions to process the payment, which can be up to five business days. Given this, the mooted timeframe of three business days after 'payday' for the super fund to have received the contribution may not be feasible.

Overall, we would support the adoption of the 'due date' model.

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?*

The benefit of 'payday super' is that it sets the expectations with both employers and employees that, when salary and wages are paid, the SG should be paid at the same time.

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

Under an employer payment model, requiring new reporting for employers to the ATO on payday, in STP or otherwise, would increase the compliance burden on employers and their agents/intermediaries as well as on the ATO.

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

Under an employment payment model incentivising intermediaries to expedite the processing of employer contributions would prove challenging, as the employer's SG liability is measured against the due date of its payday and not date of receipt by the fund.

This would necessitate the creation of a separate, discrete form of incentive which, given that intermediaries generally are not regulated, would prove challenging.

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?*

Under a due date model, given that the regime should be technology neutral, the prescription of a due date of three days after payday for super contributions is not feasible, as effectively it would compel all parties to utilise a payment platform such as NPP and preclude the use of existing payment platforms such as BECS.

Compelling the use of the NPP, prior to decommissioning BECS, would have significant implications for superannuation funds and their service providers and would serve to significantly increase their costs, as well as those of employers and other intermediaries.

Further, while in the short-term prescribing a due date of three days would, in effect, represent a soft compulsion to change to NPP it would not serve to encourage the use of other payments systems (such as the Central Bank Digital Currency) in the future.

In suggesting a due date three days after pay day there is an implicit assumption that each party in the process can submit, reconcile, lodge, and pass through contributions and data to the next party in close to real time. While NPP may allow the money to flow through quickly, the contributions data file process, through gateways and other intermediaries, will still take some time.

When determining the timeframe, the policy position that super contributions should be made as soon as possible after payment of salary and wages needs to be balanced against the practicalities for employers, including ensuring the need to have correct details, reconcile payments and make any adjustments to correct errors. The timeframe should also factor in time to undertake fraud checks, sometimes performed in more than one part of the processing chain, to ensure that these checks are not discouraged from being made.

Given this, three days may not allow sufficient time for quality data to be provided by employers or for errors to be managed.

Improvements to the integration between payroll systems and clearing houses, the development of new payment channels, and enhanced onboarding infrastructure, allowing quicker identification of a 'stapled' fund, may facilitate faster payments in future.

Given this, we recommend that a detailed process review should be undertaken to determine an appropriate initial due date, taking into account all the current payment platforms utilised by employers, although consideration could be given to reducing the timeframe in future. This should take place as part of an extensive co-design process involving all key stakeholders.

9. *What impact would shorter payment timeframes have on clearing houses and other financial intermediaries that facilitate the payment of superannuation contributions to funds?*

Shorter payment timeframes would have the effect of placing pressure on clearing houses and other financial intermediaries to facilitate the payment of superannuation contributions to funds and provide less time to reconcile data, undertake fraud checks and resolve issues.

Ensuring data integrity in the system is paramount to reducing errors and enabling the achievement of shorter timeframes.

As per above, shorter payment timeframes would also have the effect of compelling the use of the NPP, which has wider implications.

One of the implications of utilising the NPP currently is that, when the fund receives the payment, the payer's Pay ID would be that of the clearing house, not of the employer. All participants across the system would have to agree to report the employer's Pay ID as the Ultimate Pay ID, utilising standards developed to support international payments, to enable super funds to return SuperStream contributions that they are unable to allocate back to the employer's Pay ID.

To ensure the NPP is used in a manner that is fit-for-purpose for both employers and super funds going forward would necessitate further analysis across a range of different SuperStream scenarios.

10. *Would shorter payment timeframes require regulation of these financial intermediaries to ensure payment timeframes are met?*

Shorter payment timeframes may necessitate regulation of financial intermediaries to ensure that the timeframes are met, as it is not feasible or practical for employers to enforce any obligations.

Any timeframes imposed should ensure that it allows sufficient time for reconciliation / data issues to be resolved and fraud checks to be performed.

11. *How can the payday super model be designed to ensure it can adapt to changes and innovations in payment and data platforms?*

The payday super model should be designed such that the obligations are contained in primary legislation, with requirements such as the timeframes prescribed in secondary legislation.

This would provide the flexibility to ensure that the regime is able to 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 benefits associated with allowing multiple payment methods is that it reflects what currently is occurring and the commercial reality that employers, service providers and superannuation funds engage different payment methods suited to the size, scale, and nature of their business.

The risk of only allowing one payment platform is that it would amount to the government effectively prescribing the method of payment that can be used by employers, service providers and superannuation funds and limits the freedom of the market to operate effectively and competitively.

Effectively prescribing a payment platform would result in a substantial build cost for all parties and remove the flexibility that may be necessary for future improvements to the industry. There is a need to ensure that the addition of a new payment method and/or the removal of an existing payment method, should be achieved in a measured and controlled fashion.

3. Compliance mechanisms

3.1. SG charge assessments

Consultation questions

The current SG charge is made up of several components, which overall provide an incentive to pay a SG contribution and avoid incurring the SG charge.

Any redesigned SG charge should:

- encourage the employer to pay on time, and to make a top-up contribution as soon as an underpayment becomes apparent
- ensure the member does not miss out on investment earnings
- contribute to the cost of the ATO raising an SG charge
- give the ATO discretion to reduce the severity of the effect of the charge on the employer, including allowing the deductibility of part or all of the SG charge; and
- allow the ATO to impose additional administrative penalties in instances where an employer regularly makes late payments.

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?

The appropriate timeframe for ATO reconciliations is likely to be monthly.

Performing reconciliations any more frequently would materially increase the number of reconciliations to be performed and be unduly resource intensive. Monthly reconciliations would strike the right balance between benefits to members and the costs to the ATO.

A standard timeframe would be more appropriate than a differing timeframe depending on the employer's payday, as this would introduce undue complexity for little or no benefit.

The timing of the reconciliations performed by the ATO would need to factor in

- the ten business days for funds to submit their MATS reporting to the ATO
- allowing for employer adjustments, especially for prior periods, error rejection and resubmissions by the employer.

Furthermore, the implications of employers and/or funds correcting earlier reporting, after the ATO has completed a reconciliation, will need to be considered.

The circumstances where this may occur would include where an employer has provided new/updated information, requests a full or part refund or a super fund rectifies a processing error.

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 should be a mechanism whereby employers can pay an SG shortfall amount they know they have accrued, prior to the reconciliations being performed and assessments being issued.

For a prescribed period ('grace period') after the due date an employer should be able to make a super contribution to the super fund, with the only consequence being the loss of deductibility. It would only be after the expiry of this grace period that the ATO would raise an SG charge.

3.2. Rectifying underpayments before an SG charge assessment is issued

3.3. Tax deductibility and compliance

Consultation questions

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?

Some form of the current Late Payment Offset and carry forward of late payments should remain a feature of the SG compliance system in a payday super model.

Consideration could be given to the adoption of an alternative system whereby late payments apply automatically to the earliest period outstanding.

We recommend a detailed process review should be undertaken to inform the design of the SG charge. This should take place as part of an extensive co-design process involving all key stakeholders, to ensure appropriate outcomes.

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?

Consideration could be given to late SG contributions being partially tax deductible under certain circumstances, such as where an employer makes a late SG contribution during the grace period or pays the SG charge arising from an SG shortfall amount within a prescribed period after receipt.

17. What kind of prompts or nudges could be provided to employers to be aware of and meet their SG obligations on time?

The kinds of prompts or nudges that could be provided to employers could include text messages or emails to the nominated employee/representative, reminding them that they have an obligation to make SG contributions and indicating that it appears as though they may not have met their SG obligations for the previous period.

Ideally improvements in error messaging between funds and employers should be consistent with the nudges received from the ATO.

18. Are there more appropriate incentives outside of the LPO to encourage employers to pay SG in a timely manner?

One possible incentive outside of the LPO, to encourage employers to pay SG in a timely manner, may be partial tax deductibility for the payment of SG contributions during the 'grace period' after they are due.

3.4. SG charge calculation

3.4.1. The nominal interest calculation and accrual

3.4.2. The administration fee

3.4.3. Additional behavioural penalty

Consultation questions

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

Changes to the SG charge to ensure the charge remains adequately punitive for non-compliant employers could include:

- payment during the grace period – no loss of deductibility
- payment after grace period but before assessment raised – partial loss of deductibility
- SG charge raised and payment received within prescribed period – larger partial loss of deductibility plus nominal interest charge and administration fee
- SG charge raised and not paid in full within prescribed period – total loss of deductibility for amount not paid plus nominal interest charge and administration fee. This could also include a separate administrative penalty that increases the longer the SG charge remains unpaid.

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?*

Whether the current nominal interest rate of 10 per cent per annum adequately compensates employees is a function of the foregone investment returns that would have accrued in the fund.

This will vary from employee to employee and investment option to investment option and importantly will be a function of investment market returns for the relevant period. Given this, and the quarterly reporting of investment returns to APRA, it may be more appropriate to utilise an amount based on the average MySuper returns for the relevant quarter.

In circumstances where returns were low or negative a 'base' rate of interest could be utilised, which would apply when the average MySuper returns were below the 'base rate', say 5 per cent. Having said that, the rate needs to encourage employers to pay sooner than later and so if five percent is less than the current borrowing rate for the business it may not encourage payment, as it may be cheaper to incur an SG charge for a short period than to borrow money to make an SG contribution.

An alternative approach may be to adopt something similar to the ASIC remediation guidelines which recommends the RBA cash rate plus six percent as an acceptable rate.

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?*

An alternative model that could address different degrees or severity of lateness could be to utilise an amount based on the average MySuper returns for the relevant quarter(s).

As per above, the nominal interest rate needs to ensure the employee is no worse off and encourage payment by the employer.

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?

Applying the administrative component of the charge on a per employee / per reconciliation period basis, would be appropriate, especially if reconciliations are performed monthly.

23. Should the amount of the administrative component of the charge be changed? If so, what is the appropriate amount, and why?

The amount of the administrative component of the charge should reflect the amount necessary for recovery of the costs incurred by the ATO, both capital and ongoing costs.

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?

Given that there is a policy objective to incentivise the employer to pay SG contributions and/or an SG charge as soon as possible, a non-compliant employer should be able to make a partial tax deduction for the SG charge paid within the prescribed period.

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)?

Changes to the components of the SG charge that could be considered, in the context of the purpose of the charge, are that the punitive aspects of the charge could be more proportionate to the length of time the employer was non-compliant.

With the exception of the administration fee (that is a flat fee per employee), the effect of the loss of deductibility and the nominal interest charge are proportional to the size of the debt.

26. What should 'additional behavioural penalties' look like in a payday super model?

'Additional behavioural penalties' could include the imposition of an additional fixed, flat, penalty amount if the employer has not paid the SG charge in full by the prescribed date.

3.5. ATO flexibility in SG charge remission

Consultation questions

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?

Granting the ATO flexibility to remit the SG charge in certain circumstances would risk the integrity of the SG charge, however, the ATO should be given the discretion to extend the due date for payment in limited and prescribed circumstances.

This could include where the employer or intermediary has been affected by a natural disaster, a cyber security incident or other circumstance beyond their control, or where the employer has made a reasonable error.

An alternative may be to grant the ATO the power to allow a tax deduction for part or all of the SG charge, depending on the circumstances.

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?*

The circumstances where the ATO could have some discretion to extend the due date for payment could include where the employer and/or a service provider intermediary has been affected by a natural disaster, or other circumstance beyond their control, that has impaired their ability to remit payments and/or data on time, or where the employer, after making reasonable efforts, has made a genuine error.

With respect to new employees, the ATO should also have discretion in circumstances where the employer has, in good faith, actioned a choice form provided by the employee but the super fund is unable to match the details provided by the employer with a member in their fund and, accordingly, rejected the contribution.

Consideration will need to be given to designing Payday Super to provide employers with a longer initial period in which to make an SG contribution with respect to a new employee. As they require the employer to obtain information in order to be able to make an SG contribution, new employee registrations should be treated differently to ongoing contributions.

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.*

Any discretion with respect to the SG charge should be to treat the payment of an SG charge as if it were the late payment of an SG amount.

The ATO should not have the discretion to remit any components of the SG charge, as this would disadvantage the member / employee, but should have the ability to treat an amount as a late payment of an SG amount, as opposed to an SG charge, which would benefit the employer with respect to its deductibility.

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?*

A discretion for the ATO to extend the due date for the payment of a SG contribution would be more appropriate than a discretion to remit an SG charge.

Exercising a discretion to extend the due date for payment of an SG contribution would be appropriate where the employer and/or a service provider has been affected by a natural disaster or other circumstance beyond their control, that has impaired their ability to remit payments and/or data. A discretion could also be exercised where the employer has onboarded a significant number of new employees during the period, perhaps prescribed as a proportion of their existing workforce.

An appropriate time period for any extension, in a monthly due date regime, could be to the next due date in a month's time. In circumstances where the cause of the disruption has extended beyond a month the ATO should have the discretion to extend the due date to a date one month after the disruption has been resolved.

3.6. Corrections and errors when paying SG

Consultation questions

31. Should employers be allowed to make 'catch-up' contributions due to errors?

Employers should be allowed to make 'catch-up' contributions due to errors or other adjustments to reflect matters such as additional hours or shift work.

Apart from providing an incentive for employers to make a contribution as soon as possible, allowing employers to make 'catch-up' contributions can contribute to improving data quality.

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?

A reasonable time period to allow employers to make 'catch up' contributions would be a fixed period, possibly 10 business days, irrespective of 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?

The challenges in correcting SG payments under a payday model include incorporating this into the ATO reconciliation process and the penalty regime, and may necessitate amendments to employers' STP reporting, noting more frequent contributions will increase the volume of error corrections.

This would still represent an efficient method for employers to make corrections, as opposed to having to wait for the ATO to perform a reconciliation and raise an SG charge with respect to SG shortfall, and would serve to improve data quality.

One challenge for super funds is matching employee data provided by the employer against member data held by the fund. Super funds are required to match their member data to data held by the ATO but it does not appear as though employers have this obligation, as the data that super funds receive from employers does not always match ATO data.

In this circumstance funds, after contacting the employer and attempting to rectify the issue (which is a manual and inefficient process), reject the contribution and refund the money, compelling the employer to resubmit the payment and data. Standardised, and user-friendly, error messages would assist with this process.

Another particular challenge is that of employers needing to adjust contributions from a previous period. While positive adjustments are handled readily, negative adjustments cause issues, as there are a number of reasons, both regulatory and practical, as to why a super fund may not be able to 'refund' a contribution from a prior period.

Managing errors includes the need for employers to respond to rejections from funds - rejection messaging should be standardised and mandated such that they are passed through to an employer for resolution. Employers should be required to respond to an error message and re-submit the contribution to the super fund, with corrected data, within a prescribed time frame.

Ideally error messages should be standardised across funds. We recommend that this should take place as part of an extensive co-design process involving all key stakeholders.

34. *Is the 20 business day time period for superannuation funds to resolve errors appropriate in a payday super model?*

The timeframe is contingent on addressing the current underlying issues with data quality and the ability of super funds to liaise with employers with respect to errors and missing data.

The increase in the frequency of super contributions would create a corresponding increase in the volume of errors to be resolved, thereby necessitating a material uplift in manual administration effort outside of SuperStream, and creating the need for additional headcount/FTE.

Initially the 20 business day time period for super funds to resolve errors may be appropriate, however, if enhancements to SuperStream processes were to be made – in particular with respect to error messaging - this would improve super funds' ability to liaise with employers. Consideration could then be given to reducing this time period – ultimately, if a fund is unable to process a contribution within three days, it would be able to be reject the contribution and send it back to the employer for rectification.

Consideration would also need to be given to the time taken to resolve new member registration issues and the 15 business days currently provided for under SIS Reg 7.07D. Where, due to incomplete member registration, a super fund is unable to allocate a contribution and rejects it then, unless the member registration issue is resolved in a timely manner, the next contribution also is likely to be rejected.

As per above, it is critical that common SuperStream standards to correct errors, for both employers and super funds, be established.

35. *Under a 'due date' model, would it be appropriate for a period of grace to apply after the due date for SG contributions? If so, should the grace period apply automatically? Or should it be applied at the ATO's discretion in certain limited circumstances?*

It would be appropriate for a period of grace to apply after the due date for SG contributions.

The grace period should apply automatically, not at the ATO's discretion, by incorporating it into the timeframe. This would make the regime less complicated and encourage employers to make late SG payments as soon as practicable.

Consideration could be given to a grace period of, say, ten business days, that would allow for errors to be rectified and the contribution resubmitted.

The ATO could be given the ability to extend the grace period in certain circumstances, such as where the employer and/or a service provider has been affected by a natural disaster or other circumstance beyond their control, that has impaired their ability to process and remit payments and/or data.

3.7. Choice of fund, stapling and employee onboarding

Consultation questions

36. *Would a digital ATO service simplify the choice of fund process and assist employees and employers to confirm the right super details? What functionality would be required? Would this address issues with data integrity under a payday super model? Should such a service be mandated?*

A digital ATO service would greatly simplify the choice of fund process and would assist employees and employers to confirm the correct superannuation details for employees.

The service would need to be an online, real time, service, with operability into digital platforms such as employer's payroll software, which would allow for the exchange of data between the employer's payroll or HR system and the ATO. The ATO should ensure any tool is able to be integrated into existing employment tools used by employers and employees, which would ensure that the ATO's tool is used widely and data integrity issues are resolved more quickly.

Such a service would need to be able to validate employee and super fund details to address issues with data integrity, efficiency and timeliness.

In designing a digital ATO service consideration would need to be given to the needs of employers who are 'standard employer sponsors', or participating employers. By way of example, this can include a participating employer in a defined benefit scheme or where an employer has an arrangement with a super fund, such that its employees are eligible for particular insured benefits and/or the employer may pay for part/all of the insurance premiums and/or may contribute at a higher rate.

In circumstances such as the above the employer needs to be able to provide to a new employee information about the super fund and any arrangements that may be in place.

As per above, there will be a need for the design of Payday super to provide sufficient time for an employer to make an SG contribution with respect to a new employee.

37. *What are the costs and benefits of requiring employers to offer stapling to employees? Are there other changes that could be made to the choice of fund process? Could a digital ATO service reduce the administrative burden associated with stapling?*

The benefits of requiring employers to offer stapling to employees is that this would provide employees with full visibility of their existing superannuation accounts, allowing them to make an informed choice. The current costs to employers with respect to stapling include that the ATO process requires an existing employment relationship and employers need to contact the ATO manually on a member-by-member basis, (unless it is a bulk request for 100 or more employees).

A digital ATO service would significantly reduce the current administrative burden on employers associated with stapling.

38. *What are the costs and benefits of a ban on advertising super products during onboarding?*

We agree with the need for regulation with respect to the onboarding process.

We recommend introducing clear and concise legislative obligations/requirements, to establish a clear framework for employee onboarding that protects consumers and would enable employers / super funds to supply employees with information with regulatory certainty, including possibly requiring employers to inform employees of the YourSuper Comparison tool.

Given the effective operation of choice of fund, stapling and employee onboarding is critical to the success of Payday super in

- achieving its policy objectives
- protecting the interests of employees
- not imposing undue costs and risks on employers and superannuation funds; and
- improving the data quality issues currently affecting SuperStream contribution processing

we recommend that this be the subject of a separate review prior to commencing the design of Payday super.

4. Other payday super issues

4.2. SG reporting frameworks

Consultation questions

39. How could a smooth transition be managed to aligning STP, SuperStream, MAAS and MATS reporting, either through changing the reporting requirements to year-to-date values or transaction-based reports?

A smooth transition could be managed through changing the reporting requirements in STP to transaction-based reporting, together with the inclusion of an identifier for each transaction.

40. How could a smooth transition be managed if additional fields in reporting are made mandatory?

A smooth transition could be managed if additional fields in STP reporting are made mandatory, such as the OTE and the employer's SG liability for the employee.

41. Should a new unique identifier be included as a mandatory field in STP, SuperStream, and MATS which links employers, employees, and transactions?

Ideally a new, unique, identifier should be included as a mandatory field in STP, SuperStream, and MATS which links employers, employees, and transactions.

Given adding a unique identifier would result in costs for developing and rolling out a new field in an existing process, we recommend that a detailed co-design process should be undertaken, including to determine what would be the source of truth of this identifier, and whether, to minimise development costs, existing fields should be explored.

42. Are there any issues or consequences with including an employer's SG liability and OTE as a mandatory, rather than optional field in STP reporting?

The major issues with including an employer's SG liability and OTE as a mandatory, rather than optional, field in STP reporting is that it may necessitate significant system changes for a number of employers and their intermediary service providers.

4.2. SG contributions for the 2026-27 financial year

Consultation questions

43. What is the best mechanism to avoid disadvantaging employees who would reach the concessional contributions cap in 2026-27 due to the accounting of SG contributions in the year the policy commences?

One possible mechanism to avoid disadvantaging employees may be for there to be a temporary increase in the concessional contributions cap and the Division 293 threshold for the 2026-2027 financial year to reflect the fact that there could be up to five quarters worth of contributions being made in the financial year.

Another possible option may be to create the ability for an affected member to be able to

- demonstrate to the ATO that exceeding the cap was as a result of the Payday changes; and
- request that the ATO release the excess amount to the member, with no penalty attached.

4.3. Maximum contribution base calculations

Consultation questions

44. On what period should the maximum superannuation contribution base be calculated in a payday super model? Would there be issues if it remained a quarterly calculation? Are there any other mechanisms that could help prevent employers paying over the concessional contributions cap for employees?

One possibility may be that there is an annual maximum contribution cap, where the employer ceases making contributions once the employee has reached the contribution cap for the year.

Alternatively, the period on which the maximum superannuation contribution base should be calculated should be that of the employer's regular pay cycle, with reference tables akin to those for withholding tax. If it remained a quarterly calculation there may be an issues with employees whose OTE fluctuates from period to period.

4.5. Defined benefit members

Consultation questions

45. Are there any other changes that will be required for defined benefit members?

Given the special nature of defined benefit funds, in particular the 'pooled' nature of the funds, and that, with respect to defined benefits members, employers pay a gross amount in accordance with the actuarial funding certificate, they will need special treatment.

Among other things, the ATO will need to be able to distinguish between those members of a defined benefit fund who are:

- defined benefit members
- 'hybrid members' with both a defined benefit and one or more accumulation accounts
- accumulation members.

Given this, it will be important that a review of the requirements for defined benefit funds be identified and addressed as part of the design of Payday super.

4.5. Self-managed superannuation funds

Consultation questions

46. Should there be any changes to the reporting frameworks for SMSFs and/or Defined Benefit funds to the ATO?

Given that the members of an SMSF are also a trustee, they would be in a position to have oversight over the payment of SG contributions by employers directly.

As per the above, with respect to defined benefit funds the ATO will need to be able to distinguish between defined benefit members, 'hybrid members' and accumulation members.

47. Are there any other changes that will be required for self-managed superannuation fund members?

A co-design process engaging all stakeholders would aid in identifying whether any other changes will be required.

4.6. Other issues

Consultation questions

48. Are there any other impacts on stakeholders or considerations Government should consider in policy design?

Consideration could be given to a 'soft launch', transitional, rollout of the process in the six to twelve months prior to 1 July 2026, to allow employers to prepare for the 1 July 2026 commencement date.

One possibility that may be worth considering is an amendment to the way in which superannuation is reported on payslips to include the amount of SG actually paid to the employee's super fund as well as the amount of SG payable. This would serve to assist the employee in becoming aware where their employer has not met its SG obligation in a timely manner.

Further, in circumstances where an amount of SG remains unpaid for a prescribed period after it became payable, which could be the 'grace period; if this is defined, consideration could be given to imposing an obligation on the employer to issue a letter to the employee stating the shortfall amount, when it is going to be paid and adding that interest will be payable.

49. What further changes would be required under the current rules to allow employers to meet payday super requirements?

Ensuring that employers and their service providers are engaged in a co-design process engaging all stakeholders would aid in identifying what further changes may be required.

++++++++++++++++++++++++++++

Should you have any queries with respect to this, please contact me on (03) 9225 4021 or via fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy