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Securing Australians' Superannuation – Consultation Paper - Submission

Australian Bookkeepers Association (ABA) is a recognised professional association supporting bookkeepers in Australia. Our members are primarily bookkeepers in public practice who assist small business and members of the public with their bookkeeping needs and many of their statutory obligations. A large percentage of our members are BAS Agents. The Payday Super Initiative is highly relevant to our membership because of the active role they play in supporting small business employers in meeting their payroll, SG and SGC obligations.

We have reviewed the Consultation Paper and provide this submission in response, which deals with consultation questions 1-36 from your paper. In addition, we have supplied discussion material around the two models being considered, Payday and Due Date, together with commentary around what the SGC process could look like under the Payday model.

What Constitutes Payday?

As stated in your paper. in terms of the dictionary and general social interpretation, the term "payday" means the day the employee is entitled to be paid. It does not mean the "day the employee is entitled to be paid plus 8 to 13 days". It is hard to articulate a definition of "payday" that does not embrace the notion of "paid on payday". Perhaps what is more important is the intention behind the government's payday initiative in the first place.

The initiative announced by government is based on the premise that if an employer pays SG on payday, then good things happen. Deliberate non-payment or late payment is reduced, there is less chance the employer goes broke before remitting super and the employee has more money in their super account, faster, thus improving retirement outcomes. The announcement was not headlined as an initiative to reduce the processing times of clearing houses and super funds, however these should not be discounted as they do affect the timing of transmission into a member's account.

It is that one act - an employer paying SG on payday - that is the essence of the government initiative. Clearing house & super fund processing times and exception management are tangential issues (albeit relevant ones).

The minimum expectation from the initiative – from policy makers and society alike - is that employers pay as close as practical to payment of wages and that a robust system of compliance ensures that happens. For this reason, we believe that the logical model to choose from the consultation paper is the Payday model, not the Due Date model. In addressing your 36 consultation questions (and with a Payday model in mind) the responses and suggestions made seem more logical with easier implementation pathways and improved outcomes for all stakeholders. The Due Date model, by contrast, is a pseudo solution that falls short of truly fulfilling a “payday promise”.

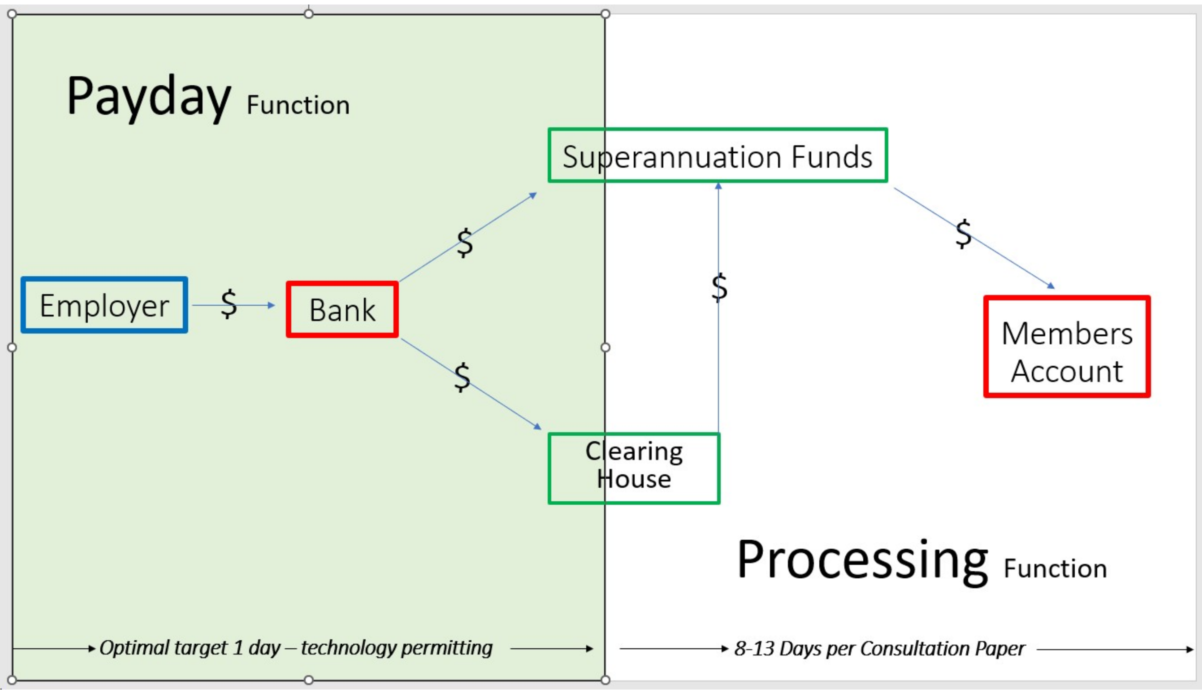
Payday Model Advantages

We believe there are clear advantages in the Payday model, including:

- The model has clarity as it **meets the “payday promise”**; SG is paid sooner (i.e. on payday) and with certainty (i.e. with better monitoring and enforcement).
- The messaging that would accompany the initiative would be simple and clear: “super is now paid on payday”, whereas messaging under the alternative model would be clunky and underwhelming: “the superannuation you were entitled to on payday is due to be in your account in 8-13 days.”
- The **notion is simple, easily explained** and easily understood. Employees can more **readily reconcile** payslip data with payments to their employee’s super account.
- Other than clarity of messaging in meeting the initiative, there is **more substance with the Payday model**. While both models envisage payment at or around payday, the Payday model delivers on many other fronts which are articulated in the balance of this submission.
- Employers have the **certainty** of knowing that when they report and pay on payday, they have complied with the SG laws. If employers are to bear the extra cost, administration and cash flow impact of the Payday initiative; they can at least take solace in the certainty and ease of compliance of the Payday model.
- Employers will find it easier to manage SG contributions if these are made concurrently with wage payments rather than as a separate function at a later date. This would also **reduce the administrative burden**, as employers would be reconciling and paying amounts simultaneously. Indeed, it seems inevitable that digital service providers (DSPs) will build the necessary smarts into their software to enable the simultaneous batching of the payments of an employee’s net wages (to the employee’s bank account) and an employee’s SG entitlements (to the employee’s super account).
- SG contributions calculated and paid each payday will help businesses **better manage their cash flows** by avoiding what would otherwise be lump sum payments.
- **Employee/employer trust** is improved under a Payday model. With visible payday remission of SG, this improves an employee’s level of confidence in the integrity of the employer’s payroll function. Any lag in receipt into a member’s account can be attributed by the employee to the subsequent processing of SG and not inaction by the employer. A Due Date model makes less clear the employer’s role in getting super into an employee’s super account promptly.
- The Payday model allows an orderly meeting of the “payday super promise” by 30 June 2026. By essentially quarantining the **Processing Function** it can be **separately refined over time.** Any gains that can be made before 30 June 2026 should be, and any further gains that can be made by system and technology improvements can be made over time without being tied to the 30 June 2026 launch date.

- The Payday model provides an opportunity to step away from the current SG/SGC regime (see figure 1) to separate and **better target each party's role in the processing of SG**. Currently employers are held legally responsible for reporting SG under STP and paying SG on time (*Payday function*), and are then also held responsible via the SGC laws for any delays in the processing of payments to a members' accounts (*Processing function*). The Payday model assists as it quarantines the Payday function (the employer role) which can be more readily complied with and policed. The Processing function (the process from Super Funds/Clearing Houses into members' accounts) is separately identified and can be refined over time to minimise exceptions and streamline both reporting and movement of funds. Refining of the delays in the Processing function are not constrained by the 30 June 2026 start date for Payday super and further improvements to delivery times into members' accounts can be made over time as processes and technology improve.

Figure 1: Payday Model



- The Payday model can provide definitions that are futureproof, whereas the Due Date model builds in redundancy. Technology will continue to improve speed and accuracy, particularly in terms of the Processing Function of SG into members' accounts (i.e. less exceptions and more efficient dealing). By contrast, in a Due Date Model, incorporating estimates of the processing function (8-13 days per the Consultation Paper), builds into legislation **redundancy** of model. It also lessens the endeavour to improve processing times. A Payday model remains sound as the employer pays on payday. As processes improve, the passage of funds to members' accounts should speed up and not be limited to processing times arbitrarily decided in 2023. Clearing houses and super funds should have an incentive to build efficiencies that accelerate SG processing times; indeed the separating of their role from the employer's payday role enables that.

- The ATO will be able to improve their overall compliance approach:
  - Matching STP records of payday payment with receipts by super funds & clearing houses (*Payday function)* is **an easier and more direct** match than with deposits into members' accounts.
  - The Payday model provides for a **timelier matching** process. Payday plus 1 day should be possible currently whereas the Due Date model retains an unacceptable lag. Start with payday plus 8-13 days, add time to effectively match STP to MATS reporting, add time to nudge an employer, then add time to pursue employer compliance activity (1 – 2 months all up). A Payday model brings forward the ability to chase non-compliance by a month or more and better honour the spirit of the Payday initiative because it is enforced sooner.
  - Speed and accuracy of matching will increase effectiveness of ATO activity which directly targets the function that is at the core of this initiative, namely the non-payment or late payment of SG by an employer. It is a far **more proactive approach** than the Due Date model. The Due Date model is simply a derivative of the current system which has been criticised by the ANAO as being too reactive. Consistent and early matching under the Payday model will shape employer behaviour for the better, more so than the belated matching of the Due Date model.
- The Payday model paves the way to dramatically **modify and simplify the current SGC system** which has many flaws that were well documented in Treasury's Think Tank co-ordinated by Bevington Group in June and July. Incumbency and familiarity of process should not be a reason to gravitate to the Due Date method. To adopt the Due Date model would be to cling to the current system and drag along its many flaws. By contrast, the Payday model presents a watershed opportunity to leave the SG system in better shape for all stakeholders. A Payday model better delivers the real change that is required.

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?

There will be a myriad of implementation issues irrespective of the choice of method including legislative, systems changes for stakeholders, DSP implementation, communication and more. Given this, the better approach is to focus on the system that is proposed to exist on the other side of implementation (see “What Constitutes Payday?” notes above). Does the chosen method leave all stakeholders better off?

In order to facilitate efficient matching of employer compliance with their payday obligation a few things need to happen:

- STP lodgements need to carry identifiers of the SG payment destination(s), i.e. intermediaries – clearing houses and super funds
- Intermediaries need to capture receipt information to facilitate matching.
- Clearing houses should be approved and operate under a regulated framework.

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

Implementation issues will likely be significant, potentially negative and will take adjustment by various stakeholders:

Employers: probably the most affected group, employers will have increases in administration (potentially 52 SG attendances per year versus 4). Transmission costs (payroll software & clearing houses) may go up with the increased activity levels. In addition, employers will have a cash flow challenge to meet the earlier and more regular SG payments. The bringing forward of payments will be absorbed over time but the regular outflow of SG will have an enduring impact on employers with irregular or seasonal incomes (e.g. construction industry, farmers etc).

Clearing Houses/Superannuation Funds: the sheer volume of transactions will put system pressure on both clearing houses and superannuation funds. Potentially, this could increase their administration charges; presumably they will provide feedback on this issue.

ATO: The sheer volume of transactions will challenge the matching process (currently MATS to STP); its impact is best assessed by the ATO. There are also implications that will prove positive. Mandating more regular SG payments could prove beneficial for both employees and employers in several ways:

- **Employee Financial Security**: More regular payments ensure that employees' superannuation accounts are consistently updated, providing better financial security and the opportunity to compound earnings for retirement
- **Prompt Dispute Resolution**: A more regular payment schedule allows for quicker identification and resolution of any discrepancies, minimising financial risks for both parties involved.
- **Enhanced Compliance Monitoring**: Regulatory bodies like the Australian Taxation Office (ATO) can better monitor compliance due to the real-time nature of payments and reports.
- **Reduction in Penalties**: Frequent contributions reduce the risk of late payments and, consequently, the potential for penalties associated with late or missed SG contributions.

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- **Operational Efficiency**: Employers can optimise their payroll systems to automate SG contributions alongside wage payments, streamlining operational efficiencies and reducing the need for separate processes for SG contributions.
- **Strategic Budgeting for Employers**: Employers can more strategically budget for SG contributions when these are more evenly spread out, enhancing cash flow management.

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)?

Payday model advantages are substantial including simplicity for all stakeholders, better targeting of roles of employers, clearing houses and super funds, more timely identification of non-payment/late payment, enabling of a more proactive approach to ATO compliance, more direct matching of employer payment obligations, improvements to employer/employee trust, and future proofing of technology advancements. See "Payday Model Advantages" (page 2) for a more detailed discussion of the advantages. No specific disadvantages of a Payday model were identified that would not also be inherent in a Due Date model.

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

Advantages seem to be very few for the employer if they are committed to immediate payment in order to meet an arbitrarily set 8-13 window. Perhaps there is a familiarity aspect in processing payroll/SG in that they remit SG in the same manner. This is more than offset by the employee/employer disadvantages (i.e. employee stays legally responsible for the action of others, less simplicity and transparency, no improvement in trust, a lesser and slower recovery of unpaid SG through the SGC process).

From a clearing house and super fund perspective, maintaining the status quo with a Due Date model probably means less impact on systems and an easier transition post-30 June 2026. As a counter, there would likely be less of an imperative to reform systems and streamline processes that there would be under Payday model.

From an ATO perspective, incumbency of systems means less impact of the 30 June 2026 start date. As a counter, the current system has failings that would continue under a Due Date model, namely difficulties in proactively detecting non-payment, collecting SGC and processing SG shortfalls through the SGC process.

Incumbency and ease of transition should not be preferred as a reason to favour the Due Date model over the Payday model, which carries with it genuine reform that improves the outcome for employees and employers. See Payday Model Advantages on page 2.

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?

"Payday" in its simplest form should mean payday; a system built on exceptions breeds confusion and complication rather than simplification. No standardised date can meet the diverse payroll structures and cycles.

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

This would depend on the reporting mechanism envisaged. There may be an increase but with the lead-time available, DSPs may be able to neutralise it if the payday super obligation can be incorporated into a payroll function for each pay event. The long-term advantages of more accurate, real-time reporting in our view would outweigh these concerns.

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

Under a Payday model, the employer obligation is separated from the intermediaries; thus, each is subject to scrutiny for their respective roles in getting SG into members' accounts. Intermediaries should be accountable to ensure the most efficient processing of funds into members' accounts. If employers have played their part by reporting OTE under STP and have paid across the funds, then intermediaries need to play a role in shortening processing times. There would be natural pressures to do so as each intermediary is vying for business, so processing time and cost will be differentiating features in a commercially competitive environment. Processing times could be reported through the Your Super Comparison tool in addition to fees and performance that are currently reported; this would encourage genuine reform to accelerate SG processing times.

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?

In the Payday model, we view a 3 day timeframe as more than ample (even without NPP) on the proviso that the employer's payday obligations are satisfied on receipt by either an eligible superannuation fund or "approved" clearing house. Clearing houses would need to be "approved" but that would seem achievable given they exist in highly regulated space with high levels of governance, and necessary given their strategic role in a post 30 June 2026 environment. They are small in number and the legal mechanism for approval already exists under Reg 7AE of the *Superannuation Guarantee (Administration) Regulations 1993* for the purposes of subsection 79A(3) of the SGAA 1992. There ought to be an extenuating circumstances proviso that allows the ATO the discretion to disregard the date set (e.g. systemic banking failure, internet issue, etc). Perhaps 3 "business days after payday" would be a better description to allow for public or banking holidays that disrupt the processing of a banking transaction.

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

Under the Payday model, where the employer's obligation to pay on payday is isolated from intermediaries' obligations, the clearing house processing timeframes will be highlighted consequently. Any move to shorten a clearing house's processing time will no doubt impact their business model in some manner, and they are best placed to provide that guidance.

Separating their function from the employer's obligation provides an impetus to improve processing times with the use of current and future technology advancements, without tying them to the employer's payday obligation.

There will be a dramatic increase in clearing house frequency of transaction which could result in fees passed onto employers and employees. Competitive pressures should limit that, but it is a real risk.

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

In the Payday model (not tied to receipt into a member's account), the employer's timeframe to pay could be regulated i.e., payday + 1 or 2 days to allow for banking exceptions. There is a danger in regulating intermediaries if an imposed date does not prove feasible. Allowing too much time might ultimately prove redundant with technology advancements and may stifle the need to constantly improve. A better approach would be to work with intermediaries before and after 30 June 2026 to constantly shorten processing times.

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

Separation of the employer's obligation from that of intermediaries achieves this (see Payday Model Advantages on page 2). Employers cannot do any more than report and pay on payday. The ATO cannot do any more than keep employers accountable for their payday obligations at the earliest point in time. Intermediaries will be able to eke out efficiencies in processing that streamline allocation into member accounts. Innovation does not need to be complete by 30 June 2026 but the legislated process on 30 June 2026 needs to provide for that innovation to improve processing times.

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)?

Benefits in allowing multiple platforms include freedom of choice, potential cost savings to the employer and negating the dependency on the providers of NPP. The risk is in speed of meeting the payday obligation which is limited by current non-NPP methods.

Allowing multiple payment methods introduces flexibility but also complexity, potentially slowing down processing times. A unified system like NPP would standardise and speed up the process but perhaps reduce flexibility.

SG/SGC Compliance

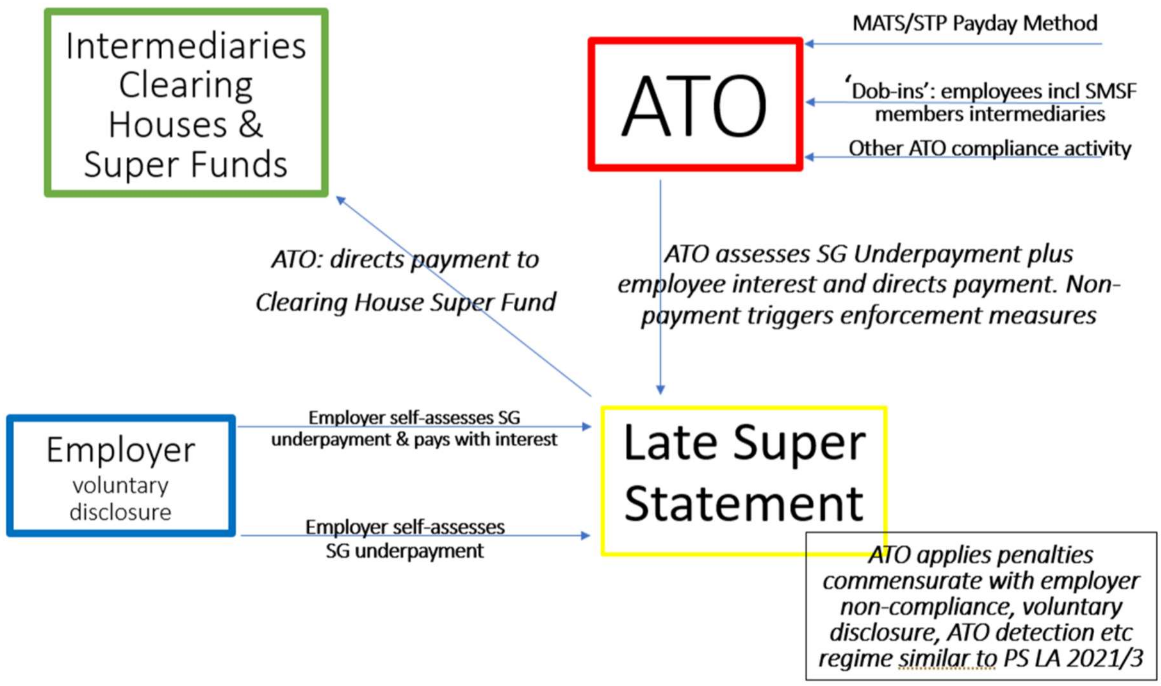
Adoption of the Payday model provides an opportunity to rethink the current SG compliance and SGC landscape. The current approach is outdated, difficult to administer by both ATO and employers alike and, from the point of view of providing a SG to employees, it has not been as successful as its designers intended. The Superannuation Gap of circa $4b is testimony to that. It has failed to detect non-payment or late payment, and when an SGC assessment is raised, only about half is ever collected (ANAO finding) and the process is slow to pass the SG Shortfall collected as part of an SGC to a member's account. The Payday model is an opportunity to build a better system that is fit for purpose and makes real inroads into the SG Gap. In doing so, this necessarily means being prepared to let go of, or remodel, the current regime.

Suggestions for remodelling the SGC system which are premised on adopting the Payday model include:

- If an SGC regime is to continue then payday not date received into a members account needs to be the yardstick to eliminate many of the problems in the current system.
- Late payment of SG requires payment of the SG Shortfall plus interest calculated from payday until it is paid. The SG Shortfall is paid direct to a complying/approved intermediary.
- The SGC administration fee is scrapped as we suggest the ATO should cease to handle SG Shortfall and interest, which further simplifies the late payment process.
- The ATO retain a penalty regime (currently Part 7) as a deterrent to non-compliance.
- The ATO no longer collects a super shortfall and interest. They direct/oversee payment to complying Super Funds and approved clearing houses (the intermediaries) as part of a late payment process.
- The process is administered via a lodged return or statement (see SGC Regime Replacement - figure 2 below) which for the purpose of this submission we have titled "Late Super Statement" (LSS). The LSS is complete when the employer has paid the SG Shortfall (with interest), but remains an open lodgement, open for administration by employers and the ATO. The LSS could be administered through the ATO's Online Services or DSP built payroll software (or both).
- The LSS accrues interest until paid to an intermediary.
- Employers who have failed to meet their payday super obligation can self-lodge an LSS. They can then update their LSS when paid with a payment identifier from intermediaries.
- The ATO will raise an LSS populated by STP Pay Event data plus an interest accrual that could be automated. The ATO raise LSSs as a result of matching, verified "tip-offs" and other employer non-compliance reporting.
- Payments made under a self-lodged LSS are tax deductible.
- Payments made under an ATO lodged LSS are potentially not tax deductible as an additional deterrent but also as an incentive to self-assess and keep a SG shortfall visible and actionable which is not a feature of the current system or the Due Date model.
- The ATO retains a penalty regime (currently Part 7) which it administers with discretion depending on the level of culpability along the lines of their current Practice Statement PS LA 2021/3. Penalties raised are not tax deductible.

Figure 2: "new" SGC Regime

SGC Regime - Replacement



Compliance mechanisms

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?

Under the Payday model, we believe matching should take place between the employer's reported SG under STP and receipt by intermediaries (complying super funds and/or approved clearing houses). This would seem a more direct matching process and be able to be conducted within days of payday. Additionally, this approach would seem better able to be automated than the current MATS to STP process. That being the case, we would see no reason to select a trailing ATO reconciliation period if the matching process is more direct (i.e. employer to intermediary).

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?

Yes, see SGC Replacement Regime (figure 2 above) and preceding notes as we believe there should be a self-lodgement facility which is more efficient for all parties, and it should offer enough incentive to engage in the process rather than hide and hope the ATO do not detect non-compliance (i.e. current state and a negative feature of the Due Date model). Our rationale:

- Proactivity: This mechanism allows employers to rectify errors or late payments proactively, reducing penalties and simplifying reconciliation.
- Cash Flow: Employers can better manage their cash flow by pre-emptively settling SG charges.

Compliance: Enhances the employer's ability to remain compliant by providing a clear path to rectify errors or omissions in real-time.

Tax deductibility and compliance

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?

A Payday model that also directs/overseas the payment of SG Shortfall + interest per SGC Replacement Regime (figure 2 above) obviates the need for an LPO as it is implied in the model. In principle though, application of a late payment applied against the SG debt outstanding should remain. It offers flexibility and a faster passage of SG to a members account than handling of an SG Shortfall by the ATO using a Due Date method.

Our rationale:

- Historical Debt: Applying late payments to the earliest period outstanding would help clear historical debt and thus reduce the ongoing compliance burden.
- Accountability: A declining scale of benefits for late payments discourages lax payment behaviour.

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?

Yes, where an employer self-assesses their late payment and pays SG then the late payment should be tax-deductible. It provides incentive for the late payer to engage the system rather than waiting and hoping not to be caught out. Voluntary engagement via self-assessment should also lead to a more lenient form of penalty (see SGC Replacement Regime earlier notes and Figure 2). Where an employer has been identified by ATO activity, matching or tip-offs, then the late paid SG plus interest might not be tax-deductible, adding a further incentive to engage rather than hide.

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

Wholesale education of a new simplified Payday model would be essential. Mediums should be varied through associations, to current employers, to agents and to all new PAYGW registrants. Employers that fail in their Payday Super obligation could be subject to a more intensive educational effort. Some additional recommendations that utilise natural systems providing real time prompts:

- Real-time dashboards that highlight pending SG obligations.
- Contextual in-app nudges in accounting software packages commonly used by SMEs.

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

Deductibility of self-assessed SG Shortfall plus tailored preferential penalty outcomes should be sufficient to incentivise employers to pay SG in a timely manner. Penalty regimes could allow for previously tardy employers that improve SG payment timelines (a combination of positive reinforcement and progressive discipline).

SG charge calculation

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

The current regime which is highly punitive should be more than sufficient to appropriately punish non-compliers. Efficient matching under a Payday model (not present currently) would identify more non-compliers and present them with a punitive regime. Penalties should be progressively punitive, serving as an effective deterrent for wilful non-compliance, but with an eye to the level of intent behind the non-compliance.

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?

Yes, a more efficient process of pursuing unpaid super should mean that the 10% nominal rate is not as consequential so there would be little need to complicate calculations by reference to a variable rate presumably benchmarked against super fund earning rates.

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?

Yes, the employee should be compensated for the loss in earnings. It is a relatively simple calculation and can be readily automated. Maintaining a penalty regime punishes non-compliers.

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?

We suggest scrapping the administrative charge as it is another layer of complexity and if the ATO handling of SG Shortfall can be eliminated, perhaps it is a redundant part of the SGC system.

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

We suggest it is eliminated altogether; see previous questions 22 & 23 as well as SGC Replacement Regime Figure 2 earlier.

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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?

Yes, see question 16. Voluntary engagement should be encouraged, and tax deductibility is one incentive to do so. Inevitably, some employers will be faced with circumstances outside of their control e.g., a major builder goes into liquidation temporarily preventing on time employee payments by a sub-contractor.

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)?

See SGC Replacement Regime earlier notes and Figure 2 for a consideration of the various components of the current SGC. In principle though it is agreed that the punitive aspects should be proportionate to the non-compliance to ensure fairness.

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

The proposed penalty regime mirrored on the current Part 7 penalties should be sufficient. Further weighting on the quantum of the existing penalty for more egregious behaviours (wilful non-compliance, serial offenders etc) is preferable to a range of new penalties – the deterrent value is the same and the confusion value of new penalties is avoided.

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?

No; the flexibility is well articulated in the current PS LA 2021/3 and PS LA 2007/1 (GA) and so long as current flexibility levels are maintained the integrity of the tax system is not undermined with a Payday model. The ATO should have that flexibility as there is a broad spectrum of reasons that will prevent compliance. At one end of the spectrum, you may see the subcontractor who is a victim of circumstances and at the other end you might see the serial "Phoenixer" hell bent on non-compliance.

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?

Culpability, intent, previous compliance history, co-operation; all factors well considered in PS LA 2021/3 and PS LA 2007/1 (GA) should be exercised in cases of genuine hardship, inadvertent errors, or natural disasters affecting the business. This discretion ensures fairness and helps preserve business continuity and ongoing employment where non-compliance was driven by unforeseen circumstances.

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.

See earlier notes and comments on SG shortfall, interest, and administrative charge. Suggestions for a reformed SGC regime would see the discretion vest in the penalty (part 7-like component), and not the amount due to the employee i.e., SG Shortfall plus interest.

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 period for any extension? Should there be a limit on this?

The Payday model outlined previously (see SGC Replacement Regime & Figure 2) essentially provides for an extension process. If the employer self-assesses and does not pay, they have engaged with the system and can seek extensions for payment. Exceptional circumstances should be considered at this time. If very exceptional circumstances transpire (fire etc causing total systems loss) then there is likely not to have been a payday (no OTE Pay Event) in the first place to trigger non-payment of SG.

Corrections and errors when paying SG

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

Where minor previous errors cause an amendment that retrospectively increases or decreases a previous calculation of SG on OTE we suggest in the interests of administrative ease that these are considered fresh pay events and the SG adjustment made at the point of error detection with any catch-up contribution made at that time. No attempt is made to retrospectively rectify prior errors and impose penalties etc. Perhaps a de minimis threshold is used to differentiate between a minor error as opposed to wage theft or habitual underpayment.

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 period for 'catch-up' contributions could be within the next pay cycle. The period should be standardised irrespective of payday frequency to simplify compliance.

Rationale:

- Standardisation: Easier for employers to manage.
- Immediate rectification: Minimises the impact on the employee's super balance.

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?

If minor errors are corrected as essentially “new events” then the corrections can be made quickly and efficiently. It becomes more complicated under a Due Date model. Error messages should be standardised across all intermediaries (super funds and clearing houses).

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

Under a Payday model that isolates the employer obligations and discharges them on payment of the SG, the error resolution becomes a secondary function. There should be time pressure on all parties (intermediaries, employers, and employees) to resolve errors to ensure the integrity of the Payday super initiative. There ought to be a visible collaborative approach such that all parties with an interest in the error can work to a speedy resolution. A clearing house returning an entire employer contribution for a minor error should not be permitted as is currently the case. Employers and employees also need to complete their obligation to provide information to properly direct a contribution. To ensure a commitment to resolving errors and exceptions (by any of the stakeholders: employee, employer, intermediary etc) then time limits should be imposed. Earlier responses to questions 7-11 provide further thoughts on setting arbitrary dates and the potential redundancy that builds into the system when future technology advances continue to deliver efficiencies.

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?

Grace periods should exist but should be applied at the ATO’s discretion in limited circumstances such as genuine errors or unforeseen circumstances such as natural disasters. We note that any grace period under a Due Date model also delays matching, then ATO nudging and compliance activity. The Payday model previously outlined (see Figures 1 & 2) makes provision for a more direct grace period, thus not undermining the goals and outcomes of the Payday super initiative. For these and other reasons previously outlined, the Payday model is the correct path.

Choice of fund, stapling and employee onboarding

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 that delivers the employer with certainty over choice of fund is essential in our view. Currently, stapling requires a Pay Event to access information which is problematic for new employees and needs an overhaul. Real-time verification can prevent errors, especially under a payday model, and simplifies the compliance burden.

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The Payday model outlined previously does not need an extension process. The employer self-assesses (arguably a de facto deferral of payment). Non-self-assessors are exposed with early matching of payday payments.

Australian Bookkeepers Association is pleased to provide this submission and we are happy to clarify or discuss any of the comments raised. Please contact Peter Thorp on 07 32904914 or peter.thorp@austbook.org.au

Yours sincerely

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