

3/11/2023

The Treasury

**Attention: Payday Super**

Retirement, Advice and Investment Division

By e-mail: [PaydaySuper@ato.gov.au](mailto:PaydaySuper@ato.gov.au)

Dear Treasury Officer

**Re: Securing Australians' Superannuation Package**

The Australian Workforce Compliance Council Ltd (AWCC) is Australia's first and only membership based (not for profit) association for Payroll and Payroll related Digital Service Providers. AWCC was incorporated on the 22 October 2022 as a result of 3 years research into Wage-Theft and other payroll related non-compliance.

The creation of AWCC was a key outcome of this research as it was found that Australia had no member-based association or "voice" to objectively represent and advocate for those who operationalise Australia's Workforce and related labour legislation. It is vital to recognise that payroll professionals total economic representation to the Federal, State and Territory Governments is approximately one-third of the nation's GDP, making them an integral part of the economic success of Australia. Failing to recognise payroll as a skilled profession not only undermines their contribution to the economy but also threatens the integrity and efficiency of the entire workforce.

After almost three years of research and planning, AWCC Ltd is nearing its launch date (February 2024), however, due to the November 2023 Payday Superannuation Consultations, AWCC is advancing for public release its position to support the industry position on these matters.

AWCC submits the following response which includes a number of recommendations for change pertaining to the change of frequency of payment of superannuation from quarterly to each pay.

Our contact for any queries is Deanne Windsor, Director AWCC Ltd and President of the Employment Technology Providers Australia division via email [deanne.windsor@awcc.asn.au](mailto:deanne.windsor@awcc.asn.au)

Your sincerely,

**Deanne Windsor**

Director

Australian Workforce Compliance Council Ltd



Australian Workforce  
Compliance Council

# 2023 Securing Australians' Superannuation Package Consultation - Treasury



The Australian Workforce Compliance Council Ltd

Australian Company Number (ACN): 663 421 805

Australian Business Number (ABN): 1166 342 1805

A public company limited by guarantee

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# 1. About AWCC Ltd

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## 1.1 Background on the creation of AWCC Ltd

- (a) AWCC Ltd was created as a result of 3 years of research into Wage-Theft and other payroll related non-compliance.
- (b) The Australian Workforce Compliance Council Ltd (AWCC), Australia's first and only membership based (not for profit) association for Payroll and Payroll related Digital Service Providers (DSPs) was incorporated on 22 October 2022.

## 1.2 The drivers to create AWCC and its relation to the Payroll Profession

- (a) The following drivers were identified as a result of research that originally began with a permanent Wage-Theft solution for Australia.
  - (i) Australia's Workplace Relations<sup>1</sup> System had no regulated operational workforce unlike the Department of the Treasury's Tax/BAS Agent<sup>2</sup> system.
  - (ii) Professions, Universities and Associations which claimed to know and represent the National Workplace Relations system have insufficient knowledge, skills, education and training. Schools and degrees reviewed found to be insufficient included: Human Resources, Industrial Relations, Accounting, Bookkeeping, Lawyers including Tax and Employment Law Specialisations.
  - (iii) A number of initiatives were needed to address those best positioned to mitigate Workplace Relations non-compliance including Wage-Theft<sup>3</sup>. These were to be centred around payroll and payroll related Digital Service Providers (Employment Technology).
  - (iv) Many current limitations exist that must be resolved to develop national capabilities able to mitigate and manage Workplace Relations and State/Territory related risk. This ranged from Wage-Theft to income tax (Pay As You Go Withholding) and superannuation guarantee non-compliance.
  - (v) Limitations identified included no interest or understanding of what payroll actually does by universities (22 were interviewed), nor was any interest expressed to conduct research into payroll by the same universities. Thus, no appropriate AQF 7 or higher (Bachelors or above) degree exists for payroll.
  - (vi) Current legislation mis-aligns the Payroll profession to either Accounting or Bookkeeping via the Tax Agent Services Act 2009<sup>4</sup>, placing Tax/BAS Agents with inappropriate skills, education and training at the centre of Workplace Relations activities, including award interpretation and operations due to a clause within the Tax Agent Services Act that, all who charge a fee for Taxation and Super services must be an accountant. Therefore, locking out the Payroll profession from solely working on Payroll related Superannuation and Taxation.

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<sup>1</sup> <https://www.dewr.gov.au/australias-national-workplace-relations-system>

<sup>2</sup> <https://www.tpb.gov.au/tax-agent-services>

<sup>3</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/ExploitationofCleaners/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ExploitationofCleaners/Report)

<sup>4</sup> <https://www.tpb.gov.au/legislation>

- (vii) Payroll as a profession needs significant assistance to bring it up to speed with that of other regulated professions including Taxation and Business Activity Statement (BAS) Agents, and in addition to Professional Standards Scheme self-regulated professions such as Accountants and Lawyers.
- (viii) Payroll lacks any dedicated degree from AQF 7 (Bachelors) or higher (Masters) AQF 8-9. Such degrees exist in other OECD countries including the UK, whose Chartered Payroll Practitioners have access to Advanced<sup>5</sup>, Bachelors and Masters Degrees<sup>6</sup> in Payroll.
- (ix) Australia had no member-based association or “voice” to represent those who operationalise Australia’s Workforce and related labour legislation. The total economic representation to the Federal, State and Territory Governments is in the order of roughly 1/3<sup>rd</sup> of the nation’s GDP. This was noted in the 2019 Independent Review of the Tax Practitioners Board dated 2019<sup>7</sup>, by the Peak Bodies. Of particular interest in the report were the following statements in relation to payroll:

*“payroll service providers and Digital service providers are what we (Peak Bodies) refer to as tax intermediaries.....and it is important any changes as part of this review are future proofed.”*

*“payroll service providers.... may have qualifications that do not necessarily fit within the structure as contained in the TASR.”*

*“There were no submissions suggesting any changes to the current arrangements for payroll service providers.”*

- (b) As the above demonstrates, to date, payroll and payroll service providers including digital service providers have had no representation, and it has been left to intermediaries to fill this void for them for representational purposes. These intermediaries (known as the peak bodies) consist of Associations for Bookkeepers, Accountants, Superannuation Funds and in some cases, Lawyers.
- (c) The other main group which influences national policy in this space include politically affiliated groups such as Unions and Employer Groups. Both of which utilise experts that mostly consist of Economists and Lawyers. Each of which AWCC views as not being operational labour and related legislation experts which is our new working definition for Payroll Professionals and Payroll Digital Service Providers (Payroll Technology Companies).

### 1.3 AWCCs purpose:

- (a) As a result, the Australian Workforce Compliance Council (AWCC Ltd) was formed on 22 October 2022, and work began to create the first membership-based association for Payroll Professionals and their Digital Service Providers including Payroll and Industrial Relations Technology.

<sup>5</sup> <https://www.cipp.org.uk/training-and-education/study/fdpayroll.html>

<sup>6</sup> <https://www.cipp.org.uk/membership/chartered-membership/why-become-chartered-with-the-cipp.html>

<sup>7</sup> <https://treasury.gov.au/review/review-tax-practitioners-board-final-report>

- (b) AWCCs Purpose is defined in its Constitution as follows:
  - (i) Provide a voice for the Payroll Practitioners and Employment Technology Providers who operationalise Australia’s Labour and related legislation.
  - (ii) Endeavour to increase the public standing, credibility and capability of its Payroll Practitioners and Employment Technology Providers.
  - (iii) Advocate on behalf of our members to all Governments on matters of national policy in relation to the operational application of labour and related legislation.
  - (iv) Conduct and publish research to support our industries.
- (c) The AWCC Director and President of Employment Technology Providers Australia (ETPA: a division of AWCC), **Deanne Windsor**; and the Management Committee members of the ETPA, **Janice Rosevear** and **Brett Reed**, would be pleased to discuss these issues further.
- (d) Deanne, Janice and Brett have extensive and long-term experience with ATO engagement and consultation on payroll-related matters, most recently:
  - (i) Single Touch Payroll Design
  - (ii) Single Touch Payroll Phase 2 Design
  - (iii) Your Future Your Super Working Group
  - (iv) Employee Commencement Working Group
  - (v) Extensive other DSP engagements that demonstrate their participation and genuine desire to address whole-of-industry interests

## 2. Submission Details

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### 2.1 Scale and Scope of Proposed Solution/Timeline

- (a) The purpose of this submission is to provide feedback to the Department of Treasury on Securing Australians’ Superannuation Package Consultations, specifically on the topics and issues identified for comment in the Treasury consultation paper released on 9 October 2023.
- (b) Some of the core, overarching issues with the consultation paper is the context of the reforms to move to payday super. That is:
  - (i) Inconsistent terminology used by Treasury with regard to “wage-theft,” specifically *“Non-payment and underpayment of SG contributions is equivalent to wage-theft.”* We recommend treasury ensure its use of this term is consistent with the DEWR proposed “Closing the loopholes bill” and industry expert definitions of the term in addition to industry treatments of associated risks including criminal prosecution. AWCC Ltd submitted to the Industrial Relations discussion papers on the issue a number of definitions in and around wage-theft, namely wage-theft is criminal and has intent (deliberate underpayment), whilst underpayment is non-intentional. Full copies of these definitions are located at Annex A
  - (ii) AWCC Ltd is concerned by the erroneous assumption throughout this paper that a competent and capable payroll profession exists to administer what it commonly calls through the paper “compliance.” This profession does not exist and AWCC Ltd as part of its research was successful earlier this year in defining the professions current capability and names within the ANZSCO (Australian and New Zealand Standards

Classification of Occupations) and having created a Payroll Manager Capability. However, AWCC Ltd identified a need to create a regulated payroll profession, in addition to its first degree, ensuring it is moved up to a level of skill appropriate to carry out Workforce Compliance, including meeting all requirements identified within this paper. Until the profession is uplifted via a proposal to be put forward early next year by AWCC Ltd to the entire Federal Government, including Treasury, we are not confident that any payroll related superannuation reform can be successfully implemented, or regulated.

- (iii) Workers who are eligible for superannuation guarantee contributions do not receive payments in respect of their ordinary hours of work from a single, uniform process. Employees may be paid via payroll solutions, but many contractors are paid via the financial procurement-to-pay solutions. One single solution designed for newly hired employees onto payroll will fail to address the complex issue of super guarantee contributions.
- (iv) Circumstances where the payer may need to confirm or acquire their worker super fund member account are not limited to newly hired workers but include ongoing transactions throughout the employment/engagement life cycle. Furthermore, there are many circumstances where payments in respect of the ordinary hours of work are made after the employment/engagement relationship has ceased or the worker is transferred to another related entity on the same payroll/procurement-to-pay solution. These are the standard business processes that currently contribute to super guarantee. A solution is required for all of these circumstances.
- (v) Generally for employees, the payments in respect of the ordinary hours of work originate from industrial instruments (awards, agreements, etc) that do not clearly define the payments in relation to the ordinary hours of work. This is the root cause for misclassifying payments with respect to super guarantee. Additionally, the comprehensive ATO SGR 2009/2 does not encompass all of the payments defined in Modern Awards, including very typical payments such as for TOIL (time off in lieu of overtime) in all its forms (absence, cash out, upon termination). Given that for contractors, the complexity of allowances and range of payments generally does not apply, payments in respect of ordinary hours of work is typically easy to identify.
- (vi) There are many options and channels for how employers may meet their current data and payments obligations for super guarantee contributions. Many of those business-to-business transactions do not have mandatory channel validations, thus ensuring that the employer is not advised or aware of invalid data that slows the process to deposit contributions into members accounts. Data integrity is the foundation of this process and would be best supported by digital, secure services that enable the employer/payers to confirm or obtain member account details whenever they are making a payment in respect of ordinary hours of work, regardless of the stage in the employment/engagement lifecycle. Integrity of data in the core business management systems would rely on real-time accurate member account details from government.
- (vii) Super guarantee contributions is but one contribution type that employers/payers are obliged to pay. The additional contribution types must be taken into account when determining how the minimum super guarantee contributions may be reformed. If the other contribution types are excluded from the reforms, the additional administrative processes and costs will be prohibitive for business. Nothing exists in isolation within payroll, there are interdependencies. Furthermore, some large employers permit their employees to choose a different super fund for their pre-tax and post-tax

contributions. Whilst Modern Awards may stipulate a payment due date for payment of post-tax contributions, no such requirement is defined for pre-tax contributions. This hampers the effectiveness of those salary sacrifice to superannuation arrangements if the employer pays salary and wages each pay but, if sacrificed, only each quarter.

- (viii) DSPs have gained extensive experience in engagement and solution co-design with government, from Employee Commencement, Single Touch Payroll (both phases), YFYS stapled fund services and others. What is critical to understand is that the process is complex, must solve for all stakeholders, solutions, use cases and complexities. In every instance, government has grossly underestimated the time required to achieve the level of detail and solution that industry can accept and adopt. The ambitious timeline for payday super that may encompass an onboarding solution (previous ATO solution took 2 years and failed to deliver an acceptable solution), data validation solution, possible changes to both Single Touch Payroll and SuperStream and others. Some of these changes will require extensive changes, not only for the specific functionality, but to any interdependent functions, data and processes. That is unlikely to be achieved in the tight timeframes proposed for this solution.



## 3. Detailed Feedback

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### 3.1 Current Employer-Approach to Super Guarantee

- (a) As with the best reforms, it is important to understand the current stakeholders, roles, processes, pain-points, inefficiencies and legislative scope of the current process undertaken.
- (b) The current end-to-end process for employers to meet their superannuation guarantee obligations includes many steps, use cases, responsibilities and related processes, such as:
  - (i) Confirming an employment or engagement relationship with the worker that establishes the superannuation guarantee obligation of the payer for that worker for the payment of ordinary time earnings;
  - (ii) Comprehensively identifying the employee or contractor such that government can successfully match the worker to their taxpayer/ABN identity and their nominated super fund can uniquely identify the member of their fund;
  - (iii) Employees and/or contractors providing the details of their choice of super fund, with the specific details required, by the due date for the employer/payer process to successfully deposit contributions into their member account by the due date;
  - (iv) Payers correctly calculate the ordinary time earnings and superannuation guarantee related to payments in respect of their ordinary hours of work as part of their payroll process or procurement-to-pay process;
  - (v) Send accurate and complete data and payment via the relevant channel to the super fund or clearing house in sufficient time to deposit contributions into the member account by the due date;
  - (vi) Receive confirmation that the contributions were deposited successfully into the correct member account by the due date.
- (c) Many pain points and inaccuracies exist within that process, as they do for the various use cases other than a new employee or contractor hired by the payer, such as:
  - (i) Contributions may be payable to former employees and contractors after their employment or engagement has ceased, such as for arrears payments and ongoing worker'' compensation payments;
  - (ii) Workers do not understand the detail they are required to provide to their employer about their super fund member account, thus delay or avoid providing the details they do have.
  - (iii) Workers may "transfer" between related entities on the same payroll, thus payment is made by a new payer but the super fund data is stored against the worker and the worker assumes that tax and super data is already provided to their "employer".
  - (iv) Many payroll solutions require the identification of the specific super fund in order to store the payroll-calculated super guarantee contribution amount against a specific pay code that has unique accounting attributes, such as posting to a specific vendor or general ledger account.
  - (v) Employees transfer their super to new funds without advising their employer; close accounts upon retirement or death without consideration for any post-termination payments that may result in additional super guarantee contributions; funds may be

acquired by other funds without notification to employers of their member account detail changes.

- (vi) Workers may have other contributions, both pre-tax and post-tax, generally to the same super fund, but may be to other funds or on behalf of dependants and the administrative burden on employers to handle the contribution payments separately exponentially increases administration costs to business.
- (vii) Underpayments and overpayments are a regular occurrence in payroll that may be due to late notification about a change to circumstances or entitlements. Overpayments occur regularly, including when a payment is made that should not have been made, or when a payment is made that is initially classified as in respect of ordinary hours of work, but may be changed to a payment that is not in respect of ordinary hours of work. Recovering these contributions in error from the member account is a significant impediment to payday super. Delays to receive the refund of contributions in error average 3 months.
- (viii) There are a range of options available to employers to meet their SuperStream obligations that include options that do not overtly enforce data validations, thus significantly adding to the administrative burden for employers.

## 4. Questions Raised in Submission

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### 4.1 Defining Payday

- (a) Response to Question 1 – the frequency of payments in respect of the ordinary hours of work is significant, due to the pay cycles defined in the industrial instruments. Large employers, in particular, may have employees across a range of awards and agreements that introduce multiple frequencies and paydays. In addition to the regular pay cycles, to meet Fair Work obligations, many off-cycle payments are made. Some employers have hundreds of occurrences per year. The procurement-to-pay cycles are based on payment due date of the tax invoices, so “payday” may be a spread of accounts payable due dates.
- (b) Response to Question 2 – implementation issues may include the range of issues identified in points under section 3.1(c) above. Identifying the employer default fund may require extensive redesign of some payroll solutions, as large employers may have a range of default funds to encompass different groupings of employees. Ensuring that detail is available for any digital services may take extensive redesign.

### 4.2 Updating the SG Charge

- (a) Response to Question 3 – there are impediments due to the payment of super guarantee being made in the finance accounts payable solutions for results from payroll solutions. Some large employers have extensive integration where the posting of payroll to accounting may take in excess of 12 hours to complete. Additionally, the super guarantee is only one contribution and if the payment of that is out of alignment with the other contribution types, it will introduce significant administrative costs to make separate payments.
- (b) Response to Question 4 – the issue with weighing up the pros and cons of one model over another is the assumption that one size fits all. That a small or micro business process will be the same as a large or big business process. Additionally, payroll solutions versus procurement-to-pay solutions do not function the same way. It may be appropriate to enable

payers to nominate a model for a group of workers that best supports the natural business process to streamline the obligations.

- (c) Response to Question 5 – this assumes a payroll regular pay cycle that is only a subset of the types of cycles and types of workers. Off-cycles in payroll and the complex array of accounts payable due dates for contractors in procurement-to-pay solutions isn't accommodated with this approach.
- (d) Response to Question 6 – if the solution only focuses on employees in payroll (excluding contractors in procurement-to-pay solutions), then this will create undue complexity to administer, where payments may be constant. As mentioned above, there are other contribution types that must be addressed in any proposed model to reduce the administrative burden for payers. Additionally, large businesses may allow their employees to select different funds for different contribution types.
- (e) Response to Question 7 – it is assumed that this question refers to registered agents rather than all intermediaries (such as for related entities on the same payroll) that referenced outsourced payroll arrangements.
- (f) Response to Question 8 – whilst those alternative payment platforms exist, there is not widespread adoption of them by all superannuation clearing houses or funds. The issue of reduced time between payer payment and contribution deposit relies on the accuracy and validity of the data that is not addressed in this consultation paper. Without addressing that issue, all proposed changes are compromised.
- (g) Response to Question 9 – shorter timeframes rely on the prerequisite of accurate, real-time, valid data about the payee and their super fund. Without addressing this current impediment, the timelines will be unachievable.
- (h) Response to Question 10 – regulation would need to be supported by digital services, validation in channels and standards as well as the payment platform that would minimise the delay in contribution deposits.
- (i) Response to Question 11 – the process has not been reformed in this opportunity for reform. It is tweaking an “analogue” solution, rather than redesigning a process and solution for the future.
- (j) Response to Question 12 – there must be common mandatory standards for each channel and enable DSPs and employers to revisit their chosen channel to meet their obligations. Additionally, how contributions in error are addressed is critical for any model.

#### 4.3 Compliance Mechanisms

- (a) Response to Question 13 – the concept and details for ATO reconciliations is the basis of the issue here. The payer in payroll for Single Touch Payroll may not be the financial accounts payable payer for SuperStream due to the differing scope of cash versus accrual. Procurement-to-pay solutions may hinder any attempt to reconcile, as contractors are not mandatorily in scope, as they are typically not paid via payroll. Real-time reconciliations would reflect liability versus deposits, but sequencing is the biggest impediment to align these two components of reconciliation.
- (b) Response to Question 14 – voluntarily paying the shortfall as soon as possible should be supported in any model. Challenges include attributing the shortfall to a specific period or group of periods.

- (c) Response to Question 15 – developing one single approach for the complex array of workers and circumstances where payments relating to the ordinary hours of work are made is problematic, as the different technical solutions that pay those workers and the cycles and timing of payments is complex.
- (d) Response to Question 16 – rewarding those who fail to comply with their obligations undermines the compliance approach for payers who successfully meet their obligations.
- (e) Response to Question 17 – the issue with nudges is about to whom those notifications are sent for payroll versus procurement to pay. There are significant issues now with the identification of contact persons for different roles within the business.
- (f) Response to Question 18 – a ranking system, where payers are scored on how they meet obligations is one that would follow other successful uses of non-financial incentives to comply.
- (g) Response to Question 19 – changes would be required that address the complexity of solutions, timing and cycles of workers for whom payers have a superannuation guarantee obligation.
- (h) Response to Question 20 – that rate should be indexed, to be responsive to economic circumstances.
- (i) Response to Question 21 – a progressive penalty regime would align with existing taxation penalties and provide incentive to address the shortfall as soon as possible.
- (j) Response to Question 22 – per worker (employees and contractors) per “period” that aligns with the reconciliation period would provide for reductions where there is more than one payment period within the reconciliation period, thus incentivising delayed corrective action.
- (k) Response to Question 23 – if the purpose is to due to “cost recovery” of government services, then more information is required to accurately assess the amount.
- (l) Response to Question 24 – if the charge is based upon the current inequitable model, where the payer is penalised for delays outside of their control, then the tax deduction should be permitted where the responsibility lies other than with the payer.
- (m) Response to Question 25 – the reasons for failure to meet the obligation should be a factor in the amount of the SG charge, weighted for the percentage of non-compliance compared with the compliance. That is, if one incident of non-compliance out of a thousand occurs, versus 1,000 out of 1,000, then the penalty should be proportionate.
- (n) Response to Question 26 – as mentioned previously, a super guarantee ranking score may ensure that those with extensive financial resources also suffer some loss due to non-compliance, where otherwise they may just pay the penalty and continue the behaviour. There may be steps that can be taken to mitigate the loss of rank, such as all staff in the process (either payroll and/or procurement-to-pay) complete a free online super guarantee training course, annual solution and process audits etcetera.
- (o) Response to Question 27 – as mentioned previously, if the charge applies for circumstances outside of the payers control, the charge should be reduced accordingly.
- (p) Response to Question 28 – addressed in the prior response
- (q) Response to Question 29 – yes, there should be discretion to remit the components of the charge.

- (r) Response to Question 30 – yes, there should be discretion to remit where circumstances prevent the payer from meeting their obligations, such as technical failure. These should be supported by appropriate evidence.
- (s) Response to Question 31 – yes, there are many circumstances where delays cannot be overcome within the time limit, deferrals should be sought and considered, based upon a uniform criterion for specific categories of reasons for failure to meet the obligations.
- (t) Response to Question 32 – yes, the deferral should be permitted based upon the frequency of pay. Perhaps by the following payment cycle or the like.
- (u) Response to Question 33 – data integrity of data combined with the constant state of corrections for payroll should be accommodated to address the recall of contributions in error. Procurement-to-pay processes should align with that model.
- (v) Response to Question 34 – this is completely unacceptable and may be improved through rigorous and generous real-time data validation by the payers and in the channel, to reduce the incidence of invalid member account details. Real-time data validation for the worker, identity, super details, fund and member account details should be available whenever the payer is making a payment in respect of the ordinary hours of work.
- (w) Response to Question 35 – there should be a grace period in relation to the payment cycle.
- (x) Response to Question 36 – there is significant payroll/procurement-to-pay solution changes required to support an effective onboarding digital solution. This is why past attempts have failed. This is significantly more complex than this consultation paper suggests. Additionally, new employee is only one use case for super guarantee obligations. None of the other use cases for payroll or for procurement-to-pay have been identified or addressed in this consultation paper.
- (y) Response to Question 37 – the issue with stapling is that the current wholesale and retail services are not fit for purpose and do not align with the natural business processes. Issues raised by industry were deemed “too complex” to address in one digital service. The suggestion of adopting one digital service for one use case and others for the other use cases is not a viable investment option for DSPs.
- (z) Response to Question 38 – the undue influence of advertising through the choice of fund process was explored in depth in the ATO Employee Commencement Design Working Group that operated for 2 years to co-design an acceptable digital solution for industry.

#### 4.4 Other Payday Super Issues

- (a) Response to Question 39 – the complexities of the interdependence of data is the complex factor to be addressed with these services. For example, STP is the payer that may be the employer in payroll, however, SuperStream is about the financial accounts payable accrual payer. Alignment, scope and timing is complex. STP can only be delivered as YTD amounts due to the complexity of corrections, retroactivity and timing to meet the Fair Work obligations. They do not lend themselves to transaction based data, as for accounts payable transactions. This would be a very high degree of complexity to do so, based upon years of participating in government co-design of payroll-specific services. Additionally, it excludes the contractors in the procurement-to-pay solutions.
- (b) Response to Question 40 – this section of the consultation paper shows a lack of understanding of the STP pay event and data structure. There are valid reasons why some fields are mandatory and others are conditional. It is highly complex and again excludes the contractors in the procurement-to-pay solutions.

- (c) Response to Question 41 – this proposal fails to understand the significance of the technology use to make payments in respect of the ordinary hours of work. Payroll functionally delivers the Fair Work obligations and procurement-to-pay the contractual obligations and accounts payable the financial obligations. The suggestion that an accounts payable transaction reference can be captured in real time in payroll or procurement-to-pay is invalid.
- (d) Response to Question 42 – there are extensive, technological reasons why employees on payroll may not or cannot have OTE reported as a mandatory field in the STP pay event. These were defined and discussed in detail with the ATO through the design phase of STP. Many payroll solutions would require extensive modifications to deliver that functionality, including impacts of retroactive payments. It also excludes contractors in procurement-to-pay solutions.
- (e) Response to Question 43 – easing the concessional caps through the transition period would have to minimise the likelihood of abuse of transition but must exist for legitimate and valid transition arrangements.
- (f) Response to Question 44 – maximum contribution base should be based on payment cycle frequency to align with super guarantee contribution calculation cycles.
- (g) Response to Question 45 – there would have to be extensive consultation with the defined benefit fund trustees and actuaries to determine the impact of more frequent payments on the contribution amounts required by payers.
- (h) Response to Question 46 – there should be a path to alignment with accumulation funds, as much as possible. Retaining investment-specific processes complicates the administration of the super guarantee contributions by payers.
- (i) Response to Question 47 – ability to provide required data to payers in a timeline that supports the payroll and procurement-to-pay solutions is required.
- (j) Response to Question 48 – impacts to the significant scale of change in an environment where significant change is still in play places an unfair burden on business and DSPs. The unrealistic and overly ambitious scale of change to an existing process fails to understand and recognise the system development lifecycle and cost impacts. Additionally, inadequate detailed and coordinated guidance from the Fair Work Commission/Ombudsman and ATO on super guarantee contributes to the non-compliance now. This gap must be addressed in a user-centric approach to support the move to payday super.
- (k) Response to Question 49 – recognition that the five-party contributions to super guarantee transactions including workers, technology solutions, payers, super funds and government is its own eco-system that exists within the context of other obligations and costs. This is a very good concept, but an incredibly complex structure and process to change in the inadequate timeline allotted to effect it by 1 July 2026.



## Annex A

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AWCC Ltd Industrial Relations submission extract (DEWR Workplace Relations proposed changes May 2023 – industry consultation papers).

- (a) Whilst AWCC fully supports a criminalised Wage-Theft Act, it does not agree with the current line of questions, and in turn options listed in this category for reasons we will briefly outline below in advance of submitting our final proposal. However, if an Act is created, we recommend it break wage-theft into the following four categories of non-compliance which include some elements of our research for justification.
  - (i) **Wage-Fraud (not Wage-Theft).** Wage-theft originated as a United States Union term and reflects a non-Westminster style of labour relations. This term was first coined in Australia by the Age Newspapers Adele Ferguson, due to the first mass wage-theft allegations report of 7/11 and Dominos stores, after which the ACTU then adopted the term. However, wage-theft in itself denotes a criminal act of one unknown party against another, whereas wage-fraud uses fraud control guidelines and definitions and relates to something which is internally and intentionally perpetrated within an organisation. It is therefore a more appropriate description as it focusses on a generally accepted definition of fraud which is “dishonestly obtaining a benefit” that may or may not be financial in nature. One such example is mentioned during several cases pertaining to Mantle Group (Annex D) where Commissioner Hunt of the Fair Work Commission refers to their efforts of wage-theft as “obtaining a competitive advantage” which in this case was a deliberate strategy to unfairly compete with other restaurants by subsidising products with stolen wages. Wage-fraud also includes several victims, not just the employee, which are the State (both Federal and State pay related revenue including payroll taxation), Superannuation funds and in the case of ASX listed entities, shareholders as financial reports have been inflated via fraudulent activity, thus opens up this issue to one of Corporate Financial Statement fraud, and potential breaches of the Corporations Act.
  - (ii) **Underpayments.** Underpayments are a significant issue which has many unintentional contributing factors to non-compliance, these include use of software with no Australian presence, and in turn, Australian ability to integrate, or be configured to comply with our countries labour laws including awards. As stated in Annex B, we believe regulated practitioners including Tax, BAS and lawyers are not adequately trained or educated in operational labour and related legislation, thus leading to incorrect and erroneous advice resulting in both over and underpayments, in addition to breaches of other Acts including Taxation and Superannuation. Anecdotal research of payroll professionals working with SMEs who represent 90% of our country’s employers and 43% of Australia’s workforce, have stated to AWCC during the past three years that they believe that at the time of onboarding, 100% of small businesses are non-compliant with the FWA Acts awards including Retail, Hospitality and Clerks. The issue of accidental or unintentional underpayment is significant and not well understood by any Australian Government, Union or Employer Group.
  - (iii) **Overpayments.** Payroll professionals in both public and private industries have made it clear to AWCC that where there are underpayments there is always overpayments (usually of a much higher frequency than underpayments) and most importantly, the causes are the same, meaning both under and overpayments are symptoms of the

problem, and not the problem itself. Subsequently our proposal will be recommending a non-compliance framework which recommends the same penalties for overpayments as underpayments, thus placing the emphasis of remediation on “Workforce Compliance Governance” or WCG for short. Whilst governance is generally a medium to large entity issue, AWCC has an effective proposal for small business which again, is designed to treat the cause of the problem and not the symptom.

- (iv) **Maladministration.** It has come to our attention that wage-theft is occurring in the Department of Defence against vulnerable ranks of the Australian Defence Force (lower ranks) and Federal Public Servants not only in Defence, but across several Federal Departments. However, when intentional underpayments are detected and these moneys are not directly pocketed by the SES/EL2 or ADF Commanding Officer or their delegates, deliberate underpayments are not classified as fraud and in turn not investigated or actioned further for either disciplinary conduct or remediation. For this reason, we also recommend any wage-theft act created includes this category in addition to whistle blower protections which do not exist for federal employees or defence members. Furthermore, we also recommend protections against employer driven penalties for overpayments. Department of Defence initiated a penalty system over 10 years ago whereby ADF members may be charged for not declaring an overpayment. Any serving member, public servant or any employee should not be persecuted by their employer due to the employer having a poor Workforce Compliance framework that results in overpayments.
- (b) In summary, AWCC recommends a compliance framework which centres on forms of non-compliance, one criminal in nature and the rest categorised as civil, and in turn, have assigned appropriate civil penalties:
  - (v) **Category One – Wage-Fraud.** A criminal offence which exhibits “intent” and dishonestly obtaining a benefit, either financial or non-financial, including a competitive advantage.
  - (vi) **Category Two - Underpayment,** which is separated from forms of non-compliance and results in accidental or unintentional underpayments which generally lack proof of “intent.”
  - (vii) **Category three – Overpayment.** A form of non-compliance that may attract financial penalties.
  - (viii) **Category four – Maladministration.** A code of conduct (leading toward potential dismissal) breach by Federal Public Servants and Australian Defence Force Members who deliberately underpay entitlements as per the respective Departmental Enterprise Agreements or ADF Pay and Conditions Manual.