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3 November 2023

Dear Wendy

### Submission in response to the Consultation Paper on Securing Australians' Superannuation

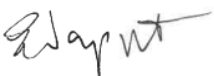
Vialto Partners welcomes the opportunity to provide our response to the Treasury Consultation Paper on Securing Australians' Superannuation.

Previously the global mobility tax and immigration business of PricewaterhouseCoopers, Vialto Partners is the world's first tech-enabled, people first, global mobility company focused on cross-border compliance for taxation, immigration, payroll, business travel and remote work.

While Vialto Partners recognises the need for reform to superannuation guarantee compliance, any such reform should be part of a broader reform to streamline and simplify the compliance process for employers making it easier to comply with their superannuation obligations, particularly as it relates to individuals that may be required to work internationally as part of their ongoing employment. Our comments are set out in Appendix A below.

We are happy to discuss our response to the queries. Please contact Emma Wappet at [emma.wappet@vialto.com](mailto:emma.wappet@vialto.com) or Maria Ravese at [maria.a.ravese@vialto.com](mailto:maria.a.ravese@vialto.com) should this be required.

Yours sincerely



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## Appendix A: Our response to Treasury's questions

In summary, Vialto Partners would support the alignment of superannuation contributions with the payment of salary, on the basis that this is legislated in tandem with the **extended deadline** noted in our response to question 1 as well as the **grace period** suggested in question 2 for penalty-free resolution of errors.

Our responses to other questions represent our suggestions on how the current system could be modernised to remove existing hurdles and challenges for employers and employees, especially those involved in remote and cross-border working arrangements. We have substantial experience of issues faced by employers with a globally mobile workforce particularly as it relates to their Australian employment tax obligations and would welcome the opportunity to discuss this with Treasury in greater detail.

We would also like to highlight that we have referred to the Australian National Audit Office (ANAO) report<sup>1</sup> on '*Addressing Superannuation Guarantee Non-Compliance*' at several points in our response to Treasury. We believe this report contains relevant information and critical insight into the current processes and requirements related to superannuation guarantee compliance.

Finally, for the purposes of clarifying our responses, we also take the opportunity to outline the definition of "payday" as this is pivotal to the broader discussion. Our responses are based on the definition that "payday" is the date noted as the payment date in the STP PayEvent report<sup>2</sup> for the corresponding payroll. In some broader context, this is not usually the day the employer makes payment, as this is usually the preceding business day. Therefore, the payment date reported in the STP reports represents the date on which it is expected that the employees will receive, and have use of, their pay into their bank accounts.

### Payday super

#### 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 ?

A significant proportion of our clients already make superannuation payments more frequently than prescribed by the current quarterly superannuation compliance deadlines.

This approach works well with monthly payment schedules and also for employees paid on a fortnightly basis, but may present a challenge to employers paying on a more frequent basis, e.g. weekly. This is due to the likelihood that the next "batch" of superannuation contributions may need to be established before the last batch is processed. Specifically, this may be an issue if a clearing house can only have one active contribution batch at any given time which could raise the risk of payments being rejected if there are multiple batches in progress with the same reference numbers.

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<sup>1</sup> Australian National Audit Office, *Addressing Superannuation Guarantee Non-Compliance*, available from <https://www.anao.gov.au/work/performance-audit/addressing-superannuation-guarantee-non-compliance> [accessed 01 November 2021]

<sup>2</sup> As reported in the field "PaymentRecordTransactionD" in the STP PayEvent Report.

This is further exacerbated if an employer has to make an out of cycle payment before a regular payroll is completed.

As a leading provider of global mobility advice and compliance services, we also assist a large number of internationally mobile workers coming into Australia. We also assist foreign employers with the setup and registrations with the ATO to employ in Australia for the first time. Both of these situations frequently require additional time due to one-off registrations and in some cases, needing to rapidly onboard new processes with overseas stakeholders who are unfamiliar with Australian employer obligations.

The current quarterly deadlines have been helpful in this regard, as they can allow additional time for the employers and employees to establish themselves in Australia and yet remain compliant. However, a payday superannuation regime would make this extremely difficult due to the transition to very short deadlines for payment that will not accommodate additional processing time when commencing operations.

Therefore, one of our key recommendations is that an **extended deadline** for the payment of superannuation is afforded in certain circumstances to recognise the additional time requirements faced by employers. The circumstances in which we would recommend the **extended deadline** to be granted would include, but potentially not be limited to:

1. A newly registered employer in Australia processing the first payroll
2. A new migrant or temporary worker in Australia waiting for their TFN number to be issued
3. A temporary worker in Australia where the income is reported under the "IAA" STP Income Stream type
4. Outbound assignees working overseas with a Certificate of Coverage in place, who are paid on a foreign payroll (see question 48)

In cases 1 and 2 above, we propose a one-time 28 day extension.

For case 3, in which an ongoing shadow payroll will be operated to meet Australian obligations, we suggest that payment of superannuation is deferred in line with the IAA STP reporting exemption, i.e. up to the end of the month following payment. This would ensure alignment between STP reporting and superannuation payments in the shadow payroll.

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

Treasury acknowledges in the consultation paper that there are circumstances where an employer may make inadvertent errors with the calculation or payment of contributions. Employees can also provide out of date or incorrect details regarding their choice of superannuation fund.

As the frequency of superannuation contributions increases, so does the risk of more frequent errors. Therefore, we strongly support the ATO's suggestion of a grace period for resolving these errors before triggering an obligation to lodge a superannuation charge statement. This would allow and encourage employers to quickly resolve any mistakes without penalty. That is to say that if an

error is resolved within the grace period, there is no need for the employer to lodge a superannuation charge statement.

Furthermore, there are other practical considerations that the Treasury should address, especially regarding adjustments and refunds. Many of our clients currently contribute superannuation on wages paid in advance (e.g. employees paid monthly, 2 weeks in arrears, 2 weeks in advance). In this situation, where an employee may take unpaid leave or terminate their employment in the latter 2 weeks, this may lead to an overpayment of superannuation. It is crucial for Treasury and relevant industry stakeholders to define a clear process for handling superannuation refunds (potentially within an agreed timeline).

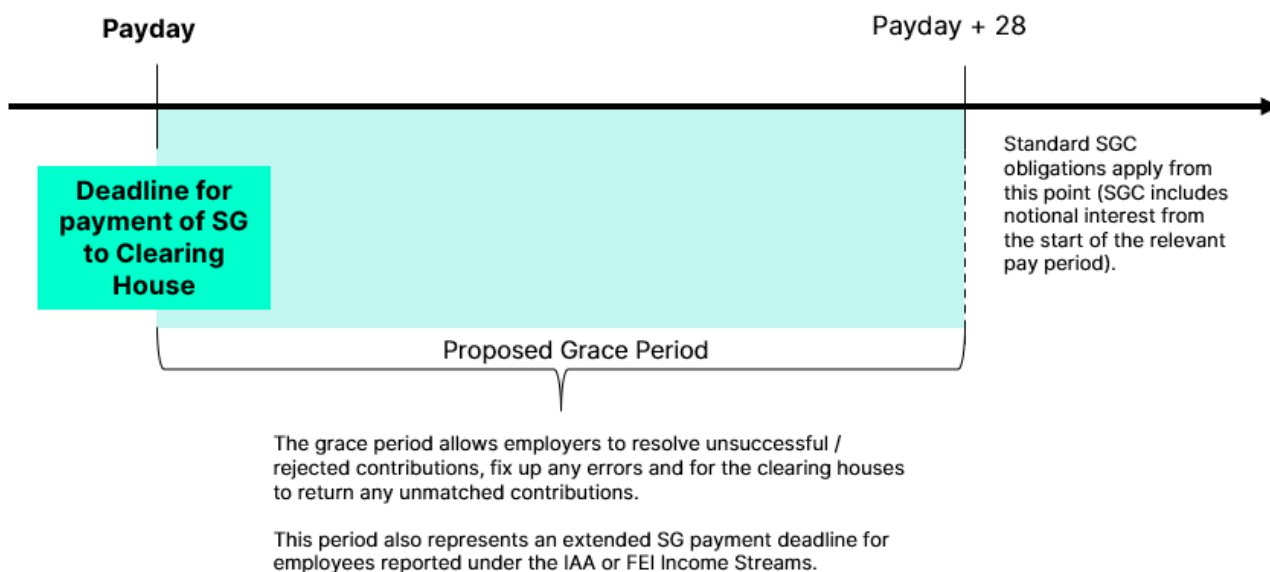
The length of any such grace period for making amendments to superannuation contributions needs to consider the practical timelines currently experienced when dealing with unmatched payments, returned funds or issues identified from a payroll review. For example, the ATO notes that superannuation funds have up to 20 business days to reject a payment where this cannot be matched. The grace period would, at a minimum, need to allow for these 20 days plus the time for the employer to receive the returned funds, rectify any incorrect details and make another attempt at payment.

In line with the extensions noted in question 1, we believe a **28 day grace period** after payday would allow sufficient time for these corrections to be made without penalty to the employer.

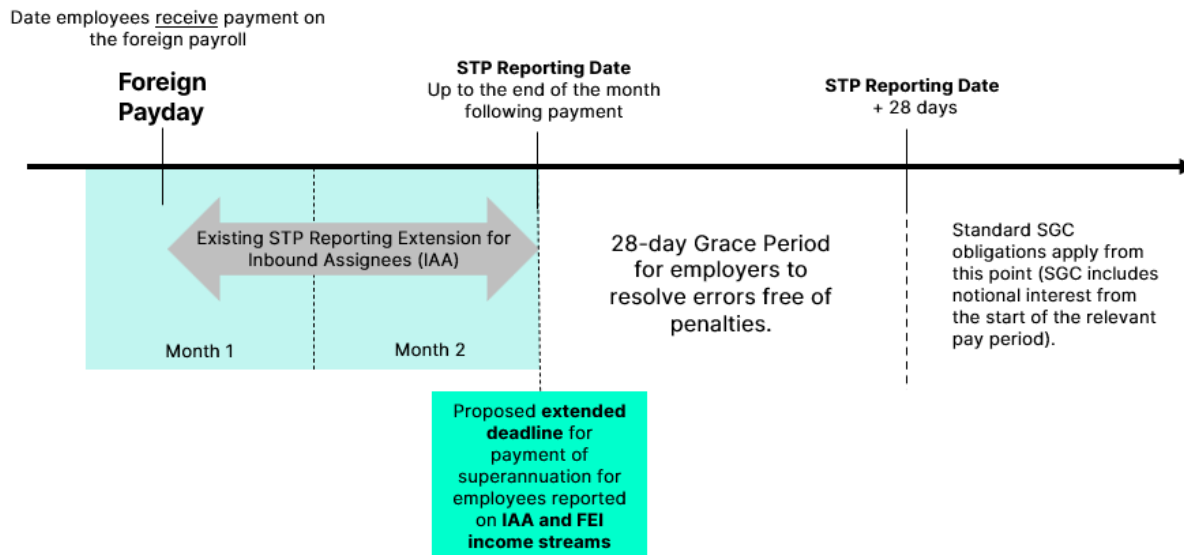
We would also like to clarify that this suggested 28 day grace period would apply from the extended due date suggested in our response to question 1.

**Figure 1: Proposed grace period**

Date employees receive payment  
(the "PaymentRecordTransactionD"  
field noted in STP PayEvent reports)



**Figure 2: The extended deadline and grace period for employees reported via IAA and FEI income streams:**



## Updating the SG charge

### 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 introduction of payday super, which requires employers to pay superannuation contributions on payday rather than quarterly, has both advantages and disadvantages.

#### Advantages

- **Timely contributions:** Payday superannuation ensures that contributions are allocated to an individual's superannuation accounts as soon as possible to maximise the returns they may receive (equally may expose the employee to increased investment losses).
- **Simplifying the process:** A significant number of employers currently already pay superannuation on a monthly basis as part of a consistent payroll operation model. Furthermore, many of our clients will make payment of statutory liabilities, including superannuation, on the same day as wages are paid to employees. This results in a standard process steps from month-to-month (as opposed to additional quarter end steps) and potentially reduced payment administration.
- **Improved employee communications:** Notification of superannuation contributions received can be inconsistent at the moment, even for those employers who currently

pay on a basis that is similar to a payday basis. A more frequent legislative requirement may encourage a more consistent cadence of notifications to employees who may then be more aware of missed payments.

- A critical advantage of the “employer payment” model is that employer’s liability ceases when payments are made by the employer and not when the payments are recorded as received by the employee’s superannuation fund as is the case with the “due date” model. Employers will have the ability to monitor their own compliance as they will know when they paid the clearing house and can verify this against the agreed payment deadline.
- We believe this resolves a key blindspot in the current legislation and process. Currently, the employer will be aware of when they paid the clearing house, will receive the notification from the clearing house when the contribution is matched however to our knowledge has limited to no information as to when the contribution is actually received by the fund. As a result, they do not proactively know if they have met the required deadline for a given contribution.

## Disadvantages

- The shift to payday super may have a negative impact on employer’s cash flows, depending on their current practice for managing superannuation funding. Employers may also need to adjust their payroll systems to accommodate the new superannuation payment frequency.
- We also note that it would also create an additional administrative burden and therefore a cost on employers who have already invested heavily in payroll software and compliance over the past five years to meet the requirements of both phases of STP.

In conclusion, the “employer payment” model simplifies the process for payday super implementation, ensures timely contributions to employees’ superannuation accounts and with the right approach should provide a greater clarity to employers.

Regardless of the direction the ATO chooses to take for payday super, any new process must allow employers to have a clear visibility of the entire process to which they are held accountable. It is not conducive or fair compliance practice to impose a deadline on an employer of which the employer cannot measure nor monitor

## ***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)?***

In our view the “due date” model is similar to the current system which requires employers to ensure that the funds are received by the superannuation fund within 28 days after the end of the quarter.

This approach places the responsibility on employers to guarantee the timely delivery of superannuation funds to employees which can be challenging due to factors outside the employer's control.

As noted in our response to question 3, we believe that employers have no current oversight of the date contributions are received by the funds and therefore do not have visibility if the required deadline is met. We believe the "employer payment" model of payday super offers a fairer and more transparent approach as employers are seen to have met their obligations when payment is made rather than when funds are received by the superannuation fund.

Furthermore, the introduction of payday super will lead to more frequent superannuation contributions, resulting in more transactions and a higher likelihood of errors. Treasury should acknowledge that this may lead to a significant increase in unintentional non-compliance as employers and other stakeholders (such as superannuation funds) become familiar with the new system. Even if an employer's error rate stays constant, a higher number of contributions will result in a higher number of errors.

In summary, the "due date" model may present challenges for employers in ensuring timely contributions to employees' superannuation accounts and it does not appear to rectify the issue of fund visibility. On the other hand, the "employer payment" model of payday super streamlines the implementation process, ensures punctual contributions and appears fairer in respect to employer obligations.

***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?***

Establishing a standardised due date for superannuation contributions, independent of the frequency to when salary and wages are paid may not be necessary if payment of superannuation made concurrently with payment of employee net wages is the selected approach.

The "employer payment" model effectively standardises the approach for all employers, ensuring that superannuation contributions align with salary and wage payments. Furthermore, as mentioned in our response to question 3, many employers make payment of statutory liabilities, including superannuation, on the same day as net wages are paid to employees. Regardless of the method implemented, it is key that the meaning of payday is clearly defined.

As mentioned in our response to question 1, one caveat is that there may be practical challenges for employers with a high frequency payroll (e.g. weekly) who have multiple superannuation contribution batches in process at any one time. This may cause issues with matching of payments made to the clearing house where these payments are made with the same reference number. A potential solution to this would be for the clearing house to stipulate a unique payment method for each contribution batch.

We have discussed at question 1 our recommendations for an extended payment deadline to deal with new employers or employees in Australia, as well as the additional complexity for IAA

employees. We have also noted at question 2 our recommendations for a grace period to resolve any errors or rejected contributions.

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

Payroll teams have spent significant time on new reporting mechanisms over the last 12-18 months to accommodate STP Phase 2. Furthermore, substantial investments were made in technology and teams to facilitate the roll out of STP Phase 1.

We have seen many examples where payroll software packages are yet to fully resolve all issues and requirements with regards to STP reporting especially as it relates to amendments to prior years and the granularity of STP Phase 2 reporting in certain situations (for example IAA and FEI reporting). Many software providers have chosen not to implement parts of the STP reporting specification, as they have needed to focus their resources purely on meeting core requirements.

With this in mind, it is our opinion that introducing an extra set of reporting obligations on payroll teams and software developers may exacerbate the current challenge to software developers to keep their software up to date with all aspects of the reporting landscape.

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

*[No response provided to this question]*

**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?***

Please see our responses to questions 3, 4 and 5.

We hold the view that implementing a "due date" model may not be the most effective solution for the challenges at hand. The primary concern with this model is that it does not fully remove the responsibility from the employer for factors that are often outside their control. Even with the implementation of a modern payment platform, employers would still be obligated to ensure that funds are deposited into their employees' accounts by a specified deadline.

In essence, the "due date" model does not address the core problem, which is that employers, despite their best efforts, may struggle to guarantee timely contributions to employees' superannuation accounts due to the lack of visibility in the fund transfer process.

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

*[No response provided to this question]*



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

*[No response provided to this question]*

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

As mentioned earlier in our responses, employers currently do not have any oversight of the date contributions paid are actually received by the employees' funds. Our recommendation is to ensure that any new rules prescribe a clear deadline that is fully visible to the employer, so they may monitor and confirm their own performance.

Aside from deeming an employer's obligation to be met with payment of the funding for a superannuation contribution batch to a clearing house, another option would be to consider the third party reporting model provided by some service providers. The model promoted by these providers is that the employer pays the employees' funds directly (i.e. without using a clearing house) and the service provider completes all required reporting on behalf of the employer. This approach provides an alternative method of giving the employer clarity over the date to which they are held accountable and still maintains the required reporting.

**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 benefits or risks in only allowing one payment platform (such as the NPP)?***

In our experience as global mobility advisors, the current requirements for paying superannuation present a significant challenge to foreign employers with remote employees in Australia. As a result of remote working patterns frequently established during the pandemic as well as a continuing trend for distributed workforces, a large number of our clients have no operating presence in Australia but yet have employees working fully remotely in Australia.

One of the challenges these employers face is that they have no operating presence in Australia and they do not have an Australian bank account. The vast majority of superannuation clearing houses can only accept payment from within Australia and also require an Australian bank account into which rejected payments can be made. In our experience, this is the only area of Australian employer taxation compliance that requires payment from a domestic account and can be a material factor regarding the viability of remote workers in Australia for foreign employers on an ongoing basis.

We would like to raise this issue and request that it is given due consideration when designing any new rules as lowering the challenge for employers to be compliant with their obligations increases both the chance of that employer being compliant and also the attractiveness of Australia to foreign employers.



One suggestion would be to allow foreign employers (with no operating presence in Australia - perhaps those with a Withholder Payer Number as opposed to an ABN), to make payment of superannuation via the employee. For example, the employer remits payment of the super from an overseas account to the employee who then arranges forwarding of the funds to their choice of superannuation fund. This arrangement would be supported by formal documentation clearly illustrating that the superannuation funding is paid on top of salary and wages and enforcing the employees' obligation to forward on the funding. This is not unlike the IR56 regime implemented by New Zealand in similar circumstances.

## **SG charge assessments**

- 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?**

*[No response provided to this question]*

- 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?**

*[No response provided to this question]*

## **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?**

*[No response provided to this question]*

- 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?**

*[No response provided to this question]*

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

*[No response provided to this question]*

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

*[No response provided to this question]*



## 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 Superannuation Guarantee Charge (SGC) system is punitive as highlighted by the ANAO report<sup>3</sup> where it identifies a 'significant' risk where :

*"..some employers may end up with substantial debts due to the relatively harsh nature of the SGC, which poses threats to business viability and the recovery of employee entitlements..."*

We believe that changes to the SGC are necessary to adapt to the proposed introduction of payday super. In the short-term, we anticipate employers may experience teething issues with the new requirements as they experienced with both phases of STP. This could lead to an increased level of unintentional non-compliance, driven by factors beyond employers' control.

The ATO should consider leniency with regards to penalties for genuine late or incorrect lodgement as provided for the roll-out of STP reporting.

To address this, we recommend a balanced approach that maintains the punitive nature of the SGC (to encourage compliance) while ensuring that the new SGC model is easy for employers to understand and comply with. With this in mind, we make the following recommendations in relation to the SGC:

- Calculation based on OTE: To ensure fairness and equity across industries, we suggest calculating the shortfall amount based on ordinary time earnings (OTE) rather than salary & wages. This adjustment accommodates variations in overtime opportunities across different sectors and establishes a standardised approach. The interest component already provides sufficient compensation to the employee for late payment of contributions.
- Change the interest component: The interest rate of 10% may not accurately represent the earnings foregone by employees. A more precise reflection of foregone earnings should be considered possibly based on a market rate set on a periodic basis (as with the ATO's rates for general interest charges).
- Change to a flat administration fee: We recommend shifting from the existing model of calculating administration penalties to a flat fee for non-compliance as discussed in response to question 22. This approach simplifies the system while retaining the punitive element.

Recognising the partial effectiveness of SGC penalties and payment plans and the potential threats to business viability and employee entitlement recovery, these changes, though minor, have the potential to significantly improve superannuation guarantee compliance while imposing a proportional penalty on employers who do not meet their obligations in a timely manner.

<sup>3</sup> Australian National Audit Office, *Addressing Superannuation Guarantee Non-Compliance*, available from <https://www.anao.gov.au/work/performance-audit/addressing-superannuation-guarantee-non-compliance>, p. 23 [accessed 01 November 2021]

**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?**

The 10% nominal interest rate within the SGC is intended to compensate employees for the earnings they forgo when their superannuation contributions are not paid on time. As noted in our response to question 19, this rate may not accurately reflect the actual foregone earnings. Depending on market conditions, it is possible for funds paid on time to result in an investment loss rather than gains.

**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?**

In implementing a payday super model, we recognise that non-compliance can often be unintentional. This was recognised by the ANAO audit report<sup>4</sup>. To address this issue effectively, we recommend Treasury to implement a transition arrangement similar to the STP transition (see our response to question 19). We further propose the below interest table that balances the interests of both the employees and the employers during the transitional period.

**Interest payable by age of superannuation guarantee shortfall during transitional period**

Age of super guarantee shortfall = Current Date - Payday	Interest rate on shortfall amount (per annum)
1 - 28 days	0.00%
28 - 56 days	4.00%
More than 56 days	6.00%

It is important to note that the above table should be viewed as a methodology to compensate employees for their forgone earnings rather than to impose an artificially high interest rate on non compliant employers. The proposed model allows employers some flexibility in meeting their obligations while at the same time ensuring that the employees are adequately compensated. The initial 28 day period suggested aligns with our suggested grace period in question 2 whereby it is our view that this period is of adequate length for employers to take prompt remedial action. While a 6% interest rate may still be considered as punitive, this meets the previous legislative intent to provide a sufficient deterrent to act as encouragement to employers to comply.

We also acknowledge that the proposed changes to the interest component should not severely impact the cash flow of employers. Our proposed grace period and revised interest rates strike a balance between encouraging compliance and ensuring the financial viability of businesses.

<sup>4</sup> Australian National Audit Office, *Addressing Superannuation Guarantee Non-Compliance*, available from <https://www.anao.gov.au/work/performance-audit/addressing-superannuation-guarantee-non-compliance>, p. 29 [accessed 01 November 2021]

**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?**

The existing \$20 per employee per quarter charge is reasonable and seems in proportion to the justification to the fee. As this is automatically calculated by the SGC worksheet provided by the ATO, it is also quite straightforward to include in any calculations and submissions.

However, the current fee structure becomes less reasonable if it were to be charged on a per payday or other more frequent basis given the transition away from quarter-based liabilities.

In addition, the current system of an admin fee of \$20 per employee per quarter is administratively complex and a burden on both the employers and the ATO to recover. Notably, this would be extremely difficult and financially impractical for employers with frequent pay periods to pay this fee.

Based on the above, we would recommend that the \$20 fixed fee is replaced by a flat % rate administration fee, which we suggest is set at 1% to 1.5% of the shortfall amount. The

This approach has several advantages:

- **Simplicity:** Charging a flat fee based on the shortfall amount simplifies the process for both employers and the ATO
- **Consistency:** It ensures a consistent charge across small to large employers with different pay frequencies
- **Scalability:** The administrative fee percentage proportionally addresses the degree of non-compliance as larger shortfalls result in higher charges
- **Reduced administrative burden:** Large employers with frequent payrolls will not have to deal with the complexity of multiple charges per quarter, making compliance easier.
- **Indexation is not required** (noting the current charge of \$20 has not changed since 2003).

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

Please see our response to question 22.

**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?**

A full deduction should be allowed for any errors resolved within the grace period we have proposed at question 2.



**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 noncompliance (that is, the size of the debt)?**

*[No response provided to this question]*

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

*[No response provided to this question]*

### **ATO flexibility in SG Charge remission**

**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?**

PS LA 2021/3<sup>5</sup> already exists and provides guidance to the ATO regarding remission of additional SGC penalties under Division 7.

We have noted previously that there are circumstances in which errors are made without intent by the employer nor as part of a scheme of avoidance regarding obligations. This is one of the reasons we have suggested the 28 day grace period. However, there are scenarios where an error regarding superannuation compliance has occurred and required a longer period for identification and resolution. In these situations SGC statements have been lodged.

**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?**

As discussed at question 48 below, temporary visa holders are required to withdraw funds from their superannuation and close their fund following their permanent departure from Australia (subject to certain criteria) as a Departing Australia Superannuation Payment (DASP).

This is an acknowledgement from the government that these employees do not intend to retire in Australia and will not be using superannuation as a vehicle to provide future retirement income. Employees are required to request a DASP at any time following their departure and do not need to coordinate this with the employer.

There are situations where SG contributions will be required after such time the DASP has been paid (or during the withdrawal process). One common example is as a result of a bonus being paid to the employee after their departure from Australia, that fully or partially relates to duties that the employee performed in Australia. This may happen several months after the employee's departure, at which time there may not be a superannuation fund available to receive payment.

At present, the only way for an employer to meet their superannuation obligations on such payments is for the employee to open another superannuation fund for the departed employee, make the contributions and submit a second DASP in due course. This is not a sensible outcome for the employer, the employee or the ATO.

<sup>5</sup> Australian Taxation Office, *Practice Statement Law Administration 2021/3*, available from <https://www.ato.gov.au/law/view/pdf/psr/ps2021-003.pdf>, p. 23 [accessed 01 November 2021]

As a result, we would suggest a mechanism whereby if the employee meets all of the following conditions, their employer is granted an exemption from the superannuation guarantee and instead pays the equivalent of the DASP tax liability to the ATO:

- The employee has already permanently departed Australia;
- The employee has no plans to return to Australia;
- The employee has cancelled their temporary visa;
- The employee has claimed the DASP.

If no exceptions are provided for these employees as outlined in question 48, there will be delays in making these payments. This is an example where the ATO should have discretion to remit charges.

That being said, we believe that the Law Administration Practice Statement should be updated to reflect the potential administrative burdens that employers will face with the introduction of payday super such as the employee onboarding experience or incorrect superannuation fund details, bounce backs etc.

**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.**

*[No response provided to this question]*

**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?**

Please see our comments in question 1 regarding newly arrived employees and new entrant employers to Australia.

### **Corrections and errors for superannuation funds**

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

We strongly support a formal "catch-up" mechanism as there is with STP and general payroll reporting. This encourages employers to proactively make these catch-up contributions proactively. We have suggested a 28 day grace period to encourage prompt resolution of errors where possible.

**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?**

Any such timelines will need to consider the period in which any such errors are commonly identified and resolved. There is little benefit to allowing a catch up period of one week when





superannuation funds have up to 20 days to return funds or employees can provide superannuation choice details within 28 days. We have taken this into account when suggesting our grace period of 28 days.

**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?**

*[No response provided to this question]*

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

*[No response provided to this question]*

**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?**

*[No response provided to this question]*

**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?**

As acknowledged in the consultation paper, the introduction of superannuation stapling has presented additional administrative burdens for payroll teams, especially with the requirement to first lodge an STP report to evidence the employment relationship. We do not believe the current process will support the introduction of payday super as it currently stands.

Our suggestion would be for employees to maintain their choice of superannuation fund (if they have one) via MyGov. The employee would maintain these details with the assistance of the ATO in the event of USI/SPIN updates for a fund. The ATO may also be able to assist by including the compliance status of the fund with the MyGov record, so that the employee is not required to provide the letter of compliance to the employer.

Rather than the employer needing to lodge stapling enquiries, the employee would nominate access to these details for their employer via an option once logged into MyGov. If the employee does not provide the details within a certain period, the employer is permitted to enrol the employee in their default fund. We suggest this period is 28 days in alignment with other grace periods suggested.



**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?**

*[No response provided to this question]*

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

While not a feature of the systems used by Vialto Partners, we are aware of a number of payroll software platforms that have a reduced fee or free-service basis in exchange for the promotion of certain financial services products to employees.

While we disagree with this model of offering software on the basis it could result in employees making uninformed decisions regarding financial services or products, we recognise that if this were to be banned it would likely result in an increased cost for employers who were otherwise benefiting from the reduced fees. That said, we believe the benefit of transparency and informed decision making by employees outweighs any additional costs imposed on employers.

**SG reporting frameworks**

**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?**

*[No response provided to this question]*

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

*[No response provided to this question]*

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

A unique identifier is always useful when completing reconciliations, especially between ATO and payroll records. If a new contribution identifier were to be introduced however, it would require updates to payroll software and we have raised some concerns in this regard at question 6.

We recommend that an identifier is concatenated from existing fields in a payroll system, such as:

1. The STP submission ID for the corresponding PayEvent report; plus
2. The employee's TFN; plus
3. The employee's date of birth.

This should result in a unique number for every contribution, even in the case of employees who have not yet provided a TFN and their employee is temporarily using a special tax file number.

**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?**

*[No response provided to this question]*

**SG contributions for the 2026-2027 financial year**

**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?**

We suggest a one-off amnesty of any excess concessional contributions for this year within a defined margin. For example, if an employee is paid monthly, their employer may report 1/12th more superannuation in 2026-27 due to the change in timing. Perhaps the ATO could apply a 10-20% threshold of excess contributions on which no action is taken nor charges imposed.

**Maximum contribution base calculations**

**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?**

We see a number of models currently used by our clients who pay superannuation more frequently than quarterly. The two most popular approaches are to either:

- Pay superannuation each payroll up to the point at which the employee hits the maximum contribution base (MCB). With this approach superannuation paid for month 3 would be lower than months 1 and 2 (occasionally this can also impact month 2 as well).
- Make smoothed superannuation contributions. Where the employee is predicted to exceed the cap, the superannuation on the maximum contribution base is calculated and paid equally across the months within the quarter, irrespective of the OTE paid. This method requires reconciliation when the employee terminates to determine the final superannuation amount payable in the absence of scheduled contributions later in the quarter.

We also believe that any mechanism adopted should consider the accompanying STP implications as well. For example, under the existing STP reporting concessions for inbound assignees to Australia, the quarterly caps are misaligned in the first quarter due to the STP reporting concession (refer question 48 for further details).

## *Defined benefit members*

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

*[No response provided to this question]*

## *Self-managed superannuation funds*

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

*[No response provided to this question]*

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

*[No response provided to this question]*

## *Other issues*

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

As detailed in our introduction, Vialto Partners is a global mobility consulting firm focused on cross-border compliance and risk assessment for tax, immigration, business travel, rewards and compensation, and remote work.

We would like to take this opportunity to raise a number of difficulties faced by employers relating to compliance with superannuation obligations with respect to employees who are required to work internationally as part of their ongoing employment. This includes employees in the following situations:

- employees working in Australia on temporary visas (including employees on business trips)
- employees working in Australia who are paid from foreign payrolls
- employees working outside Australia who continue to have superannuation contributions paid and are required to have income reported through STP for employers to comply with certain reporting requirements.

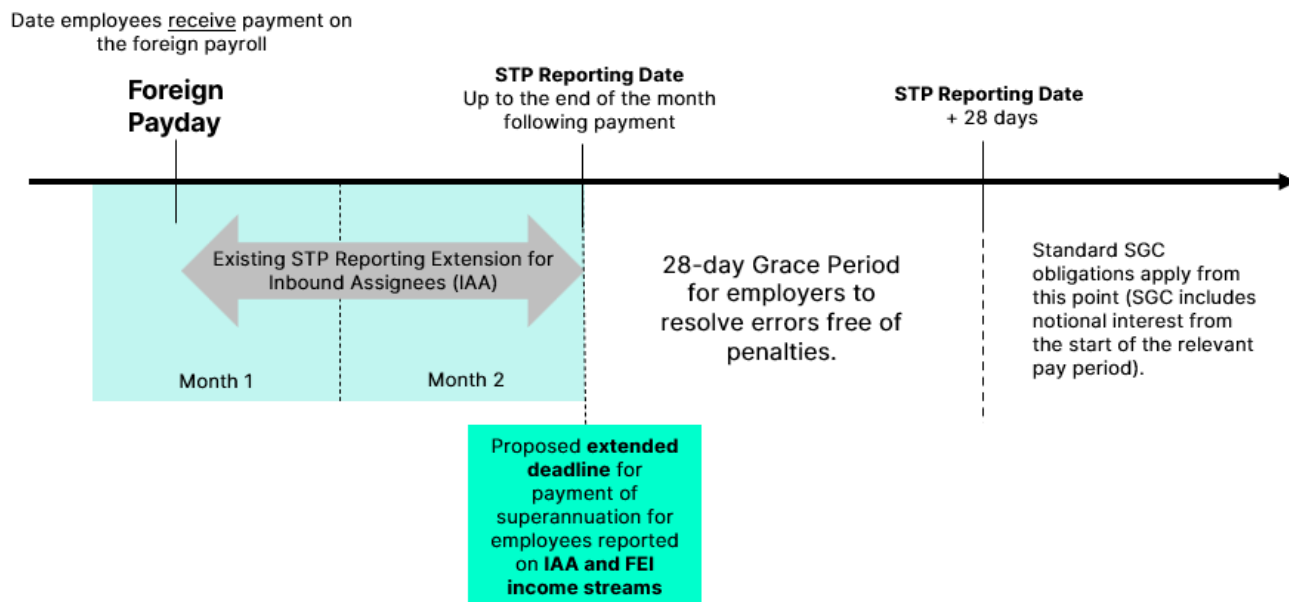
#### **A. Payday superannuation concession for inbound assignees paid from a foreign payroll**

The ATO has provided [Single Touch Payroll reporting concessions](https://vialtopartners.com/) to employers of inbound assignees who are paid in part or in full from a foreign payroll. Rather than being reported through STP on or before payday, employers have until the end of the month following the month of the foreign payday to report through STP (with the exception of June foreign payrolls, which must be reported by the end of June). These concessions are an

acknowledgement that real time reporting for foreign payrolls is almost impossible to achieve, due to the difficulty in obtaining the data, analysing it for Australian tax purposes, and for the Australian payroll to then report through STP.

We note that the current reporting concession results in a misalignment for superannuation reporting where only two months of income may be reported for STP purposes in the first quarter of the year and four months are reported in the last quarter of the year - this makes alignment with the maximum contributions base more difficult. We also note that many IAAs are exempt from contributing to superannuation under the terms of Australia's bilateral Social Security Agreements (SSA). This reduces the impact for a large portion of IAAs.

We request that this same concession is afforded to payday super payment and reporting requirements - treating the date the foreign paid income reported through STP via the IAA Income Stream as the relevant payday for payday super.



We request that the definition/criteria of an inbound assignee is kept consistent between the two obligations with one change to allow for application to business travellers to Australia (refer to italicised text), i.e., an inbound assignee is an individual that:

- is employed by an offshore entity – for example, an entity that is non-resident for Australian taxation purposes
- is seconded to Australia *or travels to Australia for business purposes*
- has all, or part, of their base salary and other remuneration paid by an offshore entity

- is maintained in Australia using a 'shadow payroll arrangement'. This is a notional payroll for the purposes of
  - paying tax and social security obligations
  - applying internal tax equalisation and protection policies.

The request for the concession to be aligned to payday superannuation is not just for additional time for reporting. If it is not adopted, there will be a misalignment of the reporting for the superannuation guarantee versus gross wages (where the STP concession is adopted), which makes any income matching or audit activity difficult in these situations.

*B. Payday superannuation concession for outbound assignees with a certificate of coverage in place who are paid from a foreign payroll*

Australia has bilateral SSAs with a number of countries. One of the purposes of the SSAs is to prevent the double payment of social security for employees who are temporarily assigned between countries by their employer - for Australia, this relates to superannuation. Where the requirements of these Agreements are met and a certificate of coverage (COC) is obtained, generally the social security in the employee's home country remains payable and an exemption from host social security is available. Under the SSA, where a COC is obtained, the employer is subject to the laws of the home country regarding social security contributions and associated reporting. For reporting purposes, currently, under items 2 and 2A of section 389-5(1) of the ITAA 1953, the OTE or salary and wages under the SGAA 1992 must be reported on payday.

As an example, where an Australian employee is sent by their employer to work temporarily for an affiliate in the US, the employer can obtain a COC from the ATO which requires the Australian employer to maintain SG contributions during the period the employee works in the US for the affiliated company. In this situation, the Australian company (commonly the group company who is the former employer of the individual in Australia) often continues to pay the contributions via the payroll in Australia. Importantly - for the purposes of payday super reporting - the employee may, however, be paid by the affiliate in the foreign location.

It is evident then that the same challenges for employers with outbound employees who have COCs in place therefore arise as for employers with inbound assignees to Australia who are paid from a foreign payroll (due to issues with receiving, analysing and exchanging the data, etc).

Firstly, while outside the scope of this review, we request that an *STP reporting concession* for SG is provided to employers in this situation - aligned to the IAA concession - so that foreign payday income can be reported up to the end of the month after the month of the foreign payday - rather than on payday as required under s389-5(1).

We then request that the same concession is afforded to payday superannuation payment and reporting requirements for those outbound employees with a COC in place, treating the foreign payday as the relevant payday for payday super. These two concessions in tandem will allow employers time to coordinate the reporting and payment of the relevant income and also provide the ATO with the right data at the right time for income matching purposes.

*C. Superannuation contributions on trailing payments for temporary visa holders who have permanently departed Australia*

For employees who work in Australia on temporary visas, a significant portion of these employees do not intend to retire in Australia. They will not be using the superannuation to fund their retirement, nor will they rely on the Government for pension support. Indeed, in cases where the employee is seconded to Australia on an international assignment for a fixed period of time, often the employee continues to participate in their home pension scheme with employee and employer contributions continuing to be made within the practice of the home plan. For these reasons, we believe that concessions should be afforded to employers of these temporary visa holders in specific situations.

As discussed at question 28 above, temporary visa holders are able to withdraw funds from their superannuation and close the fund following their permanent departure from Australia (subject to certain criteria) as a Departing Australia Superannuation Payment (DASP). This is an acknowledgement from the government that these employees do not intend to retire in Australia, and won't be using superannuation as a vehicle to provide retirement income.

There are situations where SG contributions will be required following the time the DASP is paid (or during the withdrawal process). As an example, it may be as a result of a performance bonus being paid to the employee that partially relates to the time spent in Australia. In order for the employer to be compliant, a superannuation fund needs to be re-established for the employee and then another DASP needs to be initiated to close the account. This causes a significant amount of administration on behalf of the employee, the employer and the superannuation fund.

We request that an alternative such as one of the following options is considered for employees on a temporary visa who have permanently departed Australia (and are therefore foreign residents) and who have received a DASP or have applied for a DASP (and therefore do not have a superannuation fund available):

- A full exemption from superannuation guarantee charge is given to payments made to these employees.
- A cash allowance equivalent to the superannuation guarantee entitlement is able to be paid to the employee, rather than a superannuation contribution.
- A mechanism whereby if the employee meets all of the following conditions, their employer is granted an exemption from the superannuation guarantee and

instead pays the equivalent of the DASP tax liability to the ATO. Note, this is similar to a practice previously in place with the ATO. An arrangement of this nature would reduce the administrative burden on employers and employees, without any reduction of the taxation revenue. In fact, it is likely that the ATO would receive the DASP tax earlier than would otherwise be expected under the current rules;

- The employee has already permanently departed Australia;
- The employee has no plans to return to Australia;
- The employee has cancelled their temporary visa;
- The employee has claimed the DASP.

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

*[No further details to add for this question]*