



CHARTERED ACCOUNTANTS  
AUSTRALIA • NEW ZEALAND

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Senior Adviser  
Contributions and Accumulation Unit  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By e-mail: [sgcharge@treasury.gov.au](mailto:sgcharge@treasury.gov.au)

Dear Sir/Madam

## **Submission – Simplifying and Reducing the Harshness of the Superannuation Guarantee Charge**

Chartered Accountants Australia and New Zealand welcomes the opportunity to respond to the invitation to make a submission responding on exposure draft legislation to simplify and reduce the harshness of the superannuation guarantee charge.

We are made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over. Our members are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business. We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

Should you require any further information or wish to discuss the contents of this submission, please contact Liz Westover, Head of Superannuation on 02 9290 5704 or by email at [liz.westover@charteredaccountantsanz.com](mailto:liz.westover@charteredaccountantsanz.com)

Yours sincerely,

**Liz Westover FCA**  
**Head of Superannuation**

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## Overview of proposed legislative changes

Chartered Accountants Australia and New Zealand are supportive of measures by the Federal Government to streamline and simplify superannuation guarantee (SG) compliance for employers. The current exposure draft to simplify and reduce the harshness of the SG charge will certainly start the process to achieve this objective however we believe much more can and should be done around SG law.

Following are specific comments on the draft legislation. We also take this opportunity to highlight other issues in relation to SG compliance and where we believe further work needs to be done.

Chartered Accountants ANZ firmly believe that employers must meet their SG obligations to ensure Australians have the best chance at achieving a comfortable retirement. However, we also believe that measures designed to achieve this objective must not impose undue penalties on employers, particularly where minor or inadvertent errors have occurred nor must it allow complex and confusing legislation to surround it that may ultimately undermine what is trying to be achieved and/or hamper the ability of businesses to operate efficiently. It is appropriate to implement disincentives to late or non-payment of super contributions but we also need to be mindful of the administrative and financial burden on employers who desire to do the right thing in compliance with the law.

	Chartered Accountants are support of the measures contained in the exposure draft legislation however we believe more can and should be done to support employers to ensure correct, on time payments are made for their workers.
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## Schedule 1 - Part 1 Salary and Wages

Chartered Accountants ANZ strongly support the alignment of payment of SG charge with super contributions amounts by using ordinary times earnings (OTE) as the single reference amount for both calculations.

Two separate calculation bases and the challenges in determining what was actually to be included and excluded in determining salary and wages has always been difficult for employers, especially small businesses who do not have access to sophisticated payroll systems and/or experienced payroll staff.

We believe the single use of OTE will reduce the administrative and compliance burden on small businesses.

We further note that the use of OTE to calculate SG charge does not reduce the amount of actual contribution made for the employee than would otherwise have been made if the payment was on time. Employees will be compensated for the late payment by way of an interest charge payable by the employer. That is, importantly, employees will be none the worse off by a late payment than if the contribution had been made on time.

## Schedule 1 - Part 2 Nominal Interest Component

Chartered Accountants ANZ support the proposed approach to payment of nominal interest. This method is more equitable, easier to understand and easier to administer than previous legislation.

We agree that while it is appropriate that interest is payable to an employee for late payments of superannuation, the payment period should reflect the outstanding nature of the contributions and not

## Simplifying and Reducing the Harshness of the Superannuation Guarantee Charge Chartered Accountants ANZ submission

be calculated on the amount for the entire quarter and beyond, to which the outstanding contribution relates. This would result in yet another punitive impact on employers.

The interest rate as per Regulation 7A of the Superannuation Guarantee (Administration) Regulations 1993 currently stands at 10% which is an above market rate and can be amended by regulation should market circumstances change.

Employers who are late in making super contributions will need to make an interest payment to their employee's super accounts at this rate. This clearly constitutes a penalty component payable by the employer to compensate the employee for the late payment and is set at a fair and reasonable rate.

We note also that the loss of deductibility for late super contributions (see further discussion below) will also impose a penalty with a significant punitive impact on employers.


### Schedule 1 - Part 3 Additional superannuation guarantee charge

Chartered Accountants ANZ have no specific comments on Schedule 1, Part 3 Additional superannuation guarantee charge

### Schedule 1 - Part 4 Application of amendments

Chartered Accountants ANZ do not believe there will be any issues with a 1 July 2016 start date. However, it may need to be clarified and confirmed in the explanatory memorandum as to whether this date applies to contributions for the period from 1 July 2016, payments due from 1 July 2016 or outstanding amounts as at 1 July 2016.

This could be included by way of a further example of the application of the new law.

	Chartered Accountants ANZ are support of the use of OTE for calculation of both super contributions and SG charge. We also support the proposed changes to the calculation of nominal interest charge
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### Further work to be done

While Chartered Accountants ANZ are supportive of these measures, we believe they must be the start of further work to simplify the processes around payment of SG by employers. This is particularly important for small businesses in Australia who continually struggle with red tape. We also believe that more needs to be done to educate employers and undertake enforcement action to ensure employers meet their SG obligations.

As such, Chartered Accountants ANZ raise the following issues as still needing to be addressed.

#### Penalties

Chartered Accountants ANZ support the imposition of penalties for employers who do not meet their obligations to make super guarantee for their workers.

As stated above, we believe it is appropriate to include an interest payable component on late payments and we support the draft legislation that imposes this interest based on the dates to which late payments relate.

The inability to claim a tax deduction for all late super payments is a heavy penalty to impose on employers and acts as a significant incentive to make on-time and accurate contributions for workers. We are aware that views have been expressed within the industry that this draft legislation should not 'water down' penalties on employers. We believe that the right balance needs to be struck where employers are incentivised to meet their obligations without being overburdened, particularly where minor or inadvertent errors have been made.

To this end, we believe the lack of deductibility imposes the right level of incentive/disincentive and that in the interests of reducing red tape burden on businesses and streamlining the means by which employers meet their SG obligations, the amendments to other penalties is warranted.

### **Commissioners Discretion**

From time to time, employers make minor or inadvertent errors when making their super guarantee contributions. This may be due to an error in calculations, difficulties in obtaining employee details, obligations to comply with SuperStream, personal circumstances or other circumstances beyond their control. The result may be a late payment of a couple of days or a small underpayment. Unfortunately, despite best intentions to comply with the law, the consequences can be significant. The current laws provide little or no ability for the Commissioner of Tax to exercise his discretion such that the impact is not as significant. Chartered Accountants ANZ believe that while deliberate evaders of the law need to be appropriately penalised, greater flexibility needs to exist to deal with these otherwise minor or inadvertent errors.

While it is important to ensure that employees superannuation balances do not suffer as a result of non-payment (ie interest would be payable), the Commissioner should be able to negotiate payment plans and deductibility for businesses, particularly if such measures can mean the difference between super being paid late or not being paid at all. Furthermore, it may mean the difference in a business being able to survive and continue employment at all.

Clearly, it would not be expected that Commissioner's discretion would be exercised in cases of repeat or serial offenders.

### **Enforcement and Education**

There are two aspects to ensuring employers meet their obligations to make SG payments. Firstly, there are those employers who strive to meet their legal obligations to make super contributions. From time to time, they get it wrong. This may be because they are misinformed or simply ignorant of the specifics of the law. Measures to simplify the law as well as education are paramount to help this cohort of employers do the right thing. To this end, Chartered Accountants ANZ encourages and supports further educative and information programs to help employers as well as law changes to make the rules easier to understand.

Secondly, however, enforcement is important. Not only do employers need to understand that there are penalties associated with late or non-payment of the SG obligations, but the likelihood of being caught and these penalties actually being imposed is high. Accordingly, the ATO needs to appropriately allocate resources to follow up on complaints and take further surveillance and/or enforcement action, as necessary.

### **Definition of employee**

The definition of employee for SG purposes is confusing and complex. Under current legislation, an employee for SG purposes can include contractors. The determination of whether a contractor should be paid SG has been the subject of a number of legal proceedings. We are aware of employers who are labelling their workers as contractors to avoid having to make super contributions for them. While some of these arrangements are no more than illegal sham contracting arrangements, we also believe that some employers may be unaware that calling a worker a contractor does not relieve them of their obligations to pay superannuation.

We believe legislation needs to be clearer as to who super guarantee payments need to be paid for. Consideration may need to be given to moving away from a definition of 'employee' for these purposes which can be misleading and clearly articulating who SG needs to be paid for from an all-compassing pool of workers which may include employees, contractors and others.

### **Employee eligibility**

We would further encourage a review of the current exclusions from payment of SG, which include includes age, hours and threshold requirements.

We note that in addition to the above definition of employee, the subsequent determination of employee eligibility for SG payments can be difficult particularly where businesses may experience an unstable workforce (high turnover, part-timers and casuals with changing schedules dropping in and out of the SG system).

In saying this, we do believe that an analysis will be required of the financial impact this may have on employers, particularly small business. Chartered Accountants ANZ have supported the retention of the \$450 per month earnings threshold for payment of SG. We remain concerned that the removal of this may place a greater financial burden on employers. We would encourage consideration to indexing this amount (it was originally intended to add up to \$5,400 annual tax free threshold when introduced). We note that the retention of this threshold may be appropriate as workers on these levels of income are likely to need cash in hand to meet their current everyday living needs rather than having their money directed into super. Furthermore, any added cost to employers, particularly small business may mean the difference in being able to afford to employ someone at all. If given a choice, workers likely to be impacted would rather have a job than superannuation.

### **Discrepancies with other legal requirements**

We take this opportunity to also highlight some of the challenges for business in their interactions with awards which may have different requirements from SG. That is, the differences between super guarantee and super contributions under an award. Obligations under an award may not be discharged depending on circumstances of payment even though SG obligations are. Age limit requirements can also differ. This is a further layer of complexity that employers are challenged by and need to deal with.

We note also that it can be difficult for business, particularly small business to understand the interaction of state and commonwealth laws around employer responsibilities and obligations for superannuation, tax, workcover and payroll. Different definitions, requirements and thresholds across all these levels of law and regulation create further challenges.