

3 November 2023

Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Ms Wendy Hau,

Submission on Securing Australians' Superannuation consultation paper

The Institute of Financial Professionals Australia welcomes the opportunity to provide this submission on the Securing Australians' Superannuation consultation paper.

We have examined the consultation paper in detail and support the change for employers to pay superannuation guarantee (SG) at the same time they pay salary and wages. Our submission provides details regarding our recommended payday super model and also addresses the questions in the consultation paper.

Our recommended payday super model

In our view, we would like to see the SG regime move to a pay date (ie, payment date) model. Our proposed regime is similar to the 'employer payment model' as outlined in the consultation paper, however, a number of key differences/features exist. These are summarised as follows:

1. Payment date model is preferred

We recommend redesigning the SG system by moving from the current 'due date' (ie, receipt date) model to a 'pay date' (ie, payment date) model. This pay date model would impose the requirement on the employer to make payment of SG contributions on the day that salary and wages are made.

The benefit of a pay date model is that it would facilitate the objectives of the payday legislation better, as employers will see the payment of SG as a usual and expected part of paying salary and wages. It would streamline the process and may be easier to encourage payroll software providers to integrate the payday super payment into their process for payday.

Under this model, as long as employers have made the payment of their contributions on payday (ie, the amounts have left the employer's bank account) and those payment details are correct, then any delays in receipt that may occur behind the scenes would not impact the employer as they have met their obligation to pay SG to their employee's superannuation fund or to the superannuation clearing house. That is, provided the

payment is paid out on time, the employer will not be liable for penalties that result in delay in receipt.

The issue with choosing a due date model is that SG may still be received late. This model may lead to a level of non-compliance as it is something an employer can 'put off' until a later date and require another process to pay the SG contribution later. It also creates a disconnect between the payment of salary and the payment of SG contributions.

A due date model will perpetuate the issue with the current system where employers make the payment out of their bank account on time, but the receipt of the payment is delayed due to reasons that are outside of an employer's control, such as errors or delays with banks or superannuation clearing house processing times. Such errors or delays can cause an employer to miss the SG due date and therefore be subject to SG penalties.

A further issue with the due date model is that for employers with employees on different pay cycles it could be difficult to keep track of whether superannuation funds have received SG payments for all employees. This will be particularly challenging for employers who have many employees that have different working arrangements (ie, full time, part time, casual employees, etc).

In our view, the pay date model will be fairer, administratively simpler and will result in greater compliance. For these reasons, we prefer the pay date model as it meets the original rationale around the 'payday' super proposal.

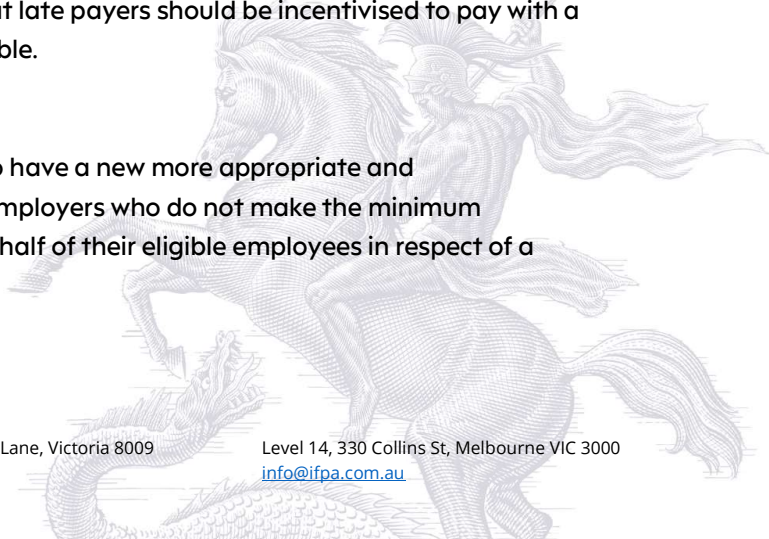
2. Introduce a fairer and proportionate penalty regime

Currently, employers who accidentally do not pay on time or make contributions to the wrong superannuation fund are penalised at the same harsh rate as employers who deliberately do not make SG contributions for their employees. This means late paying employers are still required to lodge an SG charge statement, pay the SG charge, lose deductibility for the contributions, are subject to Part 7 penalties of 200%, etc.

Therefore, we believe there should be different penalties for late payers and accidental non-payers versus deliberate non-paying employers. We recognise that non-payers should be penalised more severely but believe that late payers should be incentivised to pay with a penalty that is proportionate and reasonable.

3. New graduated penalty regime

We believe the pay date model should also have a new more appropriate and proportionate penalty regime. Currently, employers who do not make the minimum required amount of SG contributions on behalf of their eligible employees in respect of a



quarter pay the automatic additional SG charge which is equal to 200% of the SG charge amount.

Instead, we recommend the government introduce a graduated penalty regime that is lenient on infrequent late paying employers and is harsh on deliberate non-paying employers. This could be based on the income tax regime. For example, 25% for failure to take reasonable care, 50% for recklessness and 100% for deliberate non-payment.

Under our pay date model, there would be a graduated penalty regime. We propose the following:

- For employers who make the payment of contributions on time, no penalties and the contributions are deductible.
- For employers who pay contributions but pay them late, they must pay interest from the payment due date but otherwise no other penalties, no obligation to lodge an SG charge statement, no other penalties and the contributions and interest are deductible.
- For employers who don't make contributions, SG charge assessments would be issued by the ATO, graduated penalties would apply (based on culpability) and the SG charge would not be deductible.

We believe this model will encourage and incentivise compliance as employers will make these payments quite readily as they will be penalised with an interest cost of say 10% pa from payday. This change will see late paying employers not being overly penalised or sluggish by late payment penalties as compared to non-payers. Rather, the penalty for late paying employers is proportionate and reasonable.

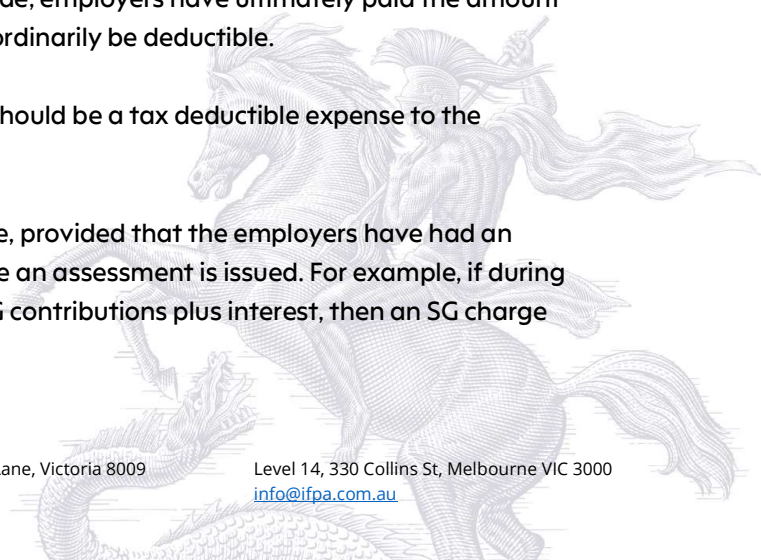
Non-paying employers on the other hand should face stronger penalties. But these penalties should be proportionate in a similar way to the current income tax penalty tax regime.

4. Deductibility of SG contributions and SG charge

Regardless of when a SG contribution is made, employers have ultimately paid the amount to their employees which would otherwise ordinarily be deductible.

As a result, we believe all SG contributions should be a tax deductible expense to the employer in the relevant year it is made.

An exception to that could be the SG charge, provided that the employers have had an opportunity to pay late contributions before an assessment is issued. For example, if during an ATO investigation the employer pays SG contributions plus interest, then an SG charge



assessment will not be issued and the SG contributions and interest would be deductible. If the employer did not take up that opportunity and the ATO issued an SG charge assessment, then that SG charge would not be deductible.

5. Superannuation clearing houses should be regulated

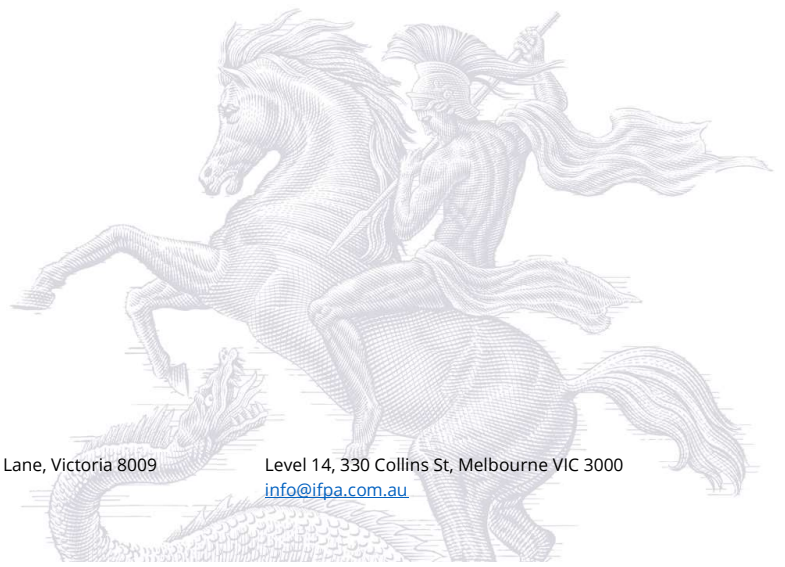
We believe the government should consider regulating superannuation clearing houses so they are obligated to remit SG on time under the pay date model. Provided the employer has paid SG on payday, any issues that arise between payment and receipt dates should fall on the superannuation clearing house. This is because at present, the clearing house's issue becomes the employer's issue as should the clearing house not pay the SG contribution on time, the employer is penalised. This is a further reason why we prefer the pay date model rather than the due date (receipt) model.

That said, if we must have a due date (receipt) model, we would like due date to be the date the SG contribution is received by the superannuation clearing house (not the date the clearing house forwards the payment to the superannuation fund).

6. Micro businesses to be exempt from payday super

We believe there should be a claw out from the payday super regime for micro businesses (ie, 10 or less employees). We propose micro businesses remain as quarterly SG contributors. This is due to the additional administrative burden on such businesses will be difficult to bear for them, particularly as many of them don't have appropriate systems and access to appropriate payroll systems.

In the alternative, such businesses should be given more time to move to the payday model, eg an extra couple of years or so.



Consultation questions

We now consider the questions contained in the consultation paper.

1. What implementation issues could arise if 'payday' is defined as being each time a payment is made to an employee with an OTE component?

There are a number of problems that the OTE framework presents. We often see employers innocently calculating SG incorrectly on an employee's OTE so we would like to see the removal of OTE so that SG is paid on salary and wages.

Although salary and wages are similar to OTE, one of the key differences between these two payment types is that OTE includes overtime payments. There is a lack of understanding why SG is generally not paid on overtime so having one definition of earnings on which SG is paid will mean a much simpler system and fewer inadvertent errors made by employers when working out how much SG to pay on their employees earnings.

We recognise that some employers may have to pay more SG for some employees who work overtime, but the risks of making mistakes will be much lower under this proposal.

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

A number of systems must be improved to ensure a smooth transition to paying SG contributions on a more frequent basis, such as:

- ATO systems – the ability to check whether an employee has a stapled fund must be improved to enable employers to either make contributions to the employee's stapled fund, or make contributions to the employer's default fund if the employee does not choose a fund and the ATO determines there is no stapled fund. As discussed in the consultation paper, establishing a new digital ATO service that employers and employees can use to confirm the right superannuation fund details that is integrated with the employer's software is a step in the right direction as it will reduce the administrative burden on employers when a new employee starts and enable the employer to satisfy their choice of fund requirements.
- Superannuation clearing houses – may be ill-equipped to handle payday super. We are aware of issues where superannuation clearing houses cannot process multiple payments in quick succession and have had a history of delays where some payments through the clearing house have taken weeks and/or months to process payments to be received by superannuation funds. We will need to see the clearing house system improved to accommodate more frequent SG payments.
- Payment platforms and SuperStream – a faster payment process will be needed to ensure SG payments reach an employee's fund on or just after payday. As discussed

in the consultation paper, this may be achieved by processing SuperStream transactions using the new payments platform (NPP) which will enable SG payments to reach an employees fund in less than 3 days.

- Payroll systems – although technological improvements with systems (such as Single Touch Payroll) and bookkeeping software allows employers to automate the process of paying salary and wages and SG contributions, such systems may need to be improved to also pay SG at the same time as salary and wages.

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)?

We believe the advantages outweigh the disadvantages when it comes to paying SG contributions on payday which is why this is our preferred model. Not only will employees receive their SG on payday, but the risk of late or no payment will be minimised as employers will have an obligation to pay more frequently and also have the incentive to pay on time otherwise penalties will apply.

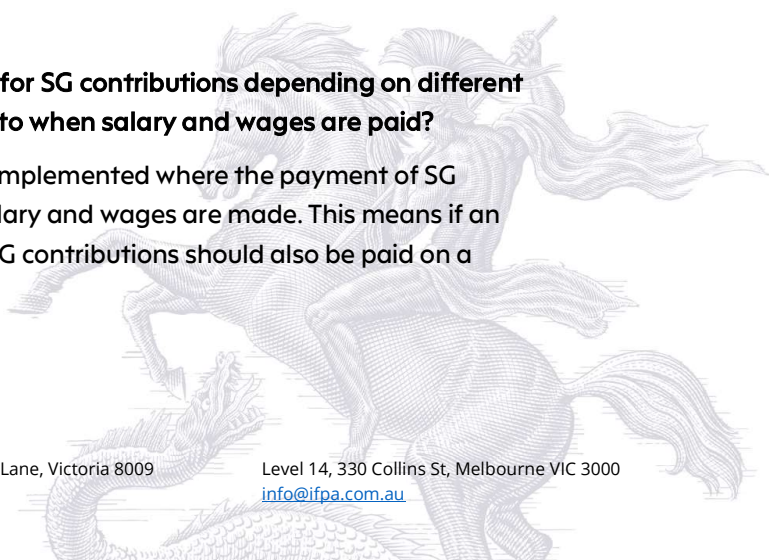
4. Are there any advantages or disadvantages with the requirements of payday super being fulfilled if the employee's superannuation fund has received employer contributions a certain number of days after payday (i.e. the due date model)?

As stated earlier, although having more time to pay SG can be advantageous to some employers, we believe a due date model can still lead to late SG payments. This may be due to employers putting off paying SG contributions until a later date which leads to a level of non-compliance. It also creates a disconnect between the payment of salary and the payment of super contributions.

A further issue with the due date model is that for employers with employees on different pay cycles, it could be difficult to keep track of whether superannuation funds have received SG payments for all employees. This will be an administrative burden for all employers, but it will be especially challenging for large companies that have many employees that have different working arrangements (ie, full time, part time, casual employees, etc). In our view, the pay date model will be fairer, administratively simpler and will result in greater compliance.

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?

We believe the pay date model should be implemented where the payment of SG contributions are made on the day that salary and wages are made. This means if an employer pays all employees fortnightly, SG contributions should also be paid on a fortnightly basis.



If we consider the rationale behind payday super, the aim is to ensure that employees receive their SG as close as possible to payday.

However, if we go down a standardised due date model that does not align with pay frequency, it will be difficult for employees to work out whether they have been paid their SG contributions as they will not be able to match their large SG contributions to what hours they may have worked or what pay cycle they may be on. As such, we don't see the point of having a payday super regime if SG contributions are due by a set date regardless of when salary or wages are paid.

That said, if the government decides to go with the due date (or receipt date) model, then we suggest that a monthly standardised due date applies to SG contributions as it will make it easier to monitor the receipt of SG contributions once per month rather than every time the employer makes a payment. For example, each month's SG contributions are due by the 14th day of the following month.

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

We believe that any reporting mechanism that may be required for employers under an employer payment model should be captured in the employer's payroll system and filtered through single touch payroll (STP).

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

As noted earlier, we believe that superannuation clearing houses should be regulated so they are obligated to remit SG on time under the pay date model.

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?

If SG contributions cannot be made real time, then as close as possible to payday is the next best option. We believe a due date of 3 days after payday for SG contributions under a due date model is not realistic. We believe at least 14 days is required or a fixed date after the end of the month. For example, by 14 days after the end of the month.

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

Please see the answer to question 7.



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

Please see the answer to question 7.

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

By implementing a payday SG approach, we believe good payroll systems and payment platforms that facilitate quick and efficient payment of salary and wages will also facilitate better SG contributions on payday. Thus, we see this question being more aligned to paying SG contributions on pay date rather than a due date (receipt) model as it will allow the payday super model to remain up to date at all times.

12. What are the benefits or risks associated with allowing multiple payment methods and how might this affect payments processing for clearing houses and superannuation funds? Would there be benefit or risks in only allowing one payment platform (such as the NPP)?

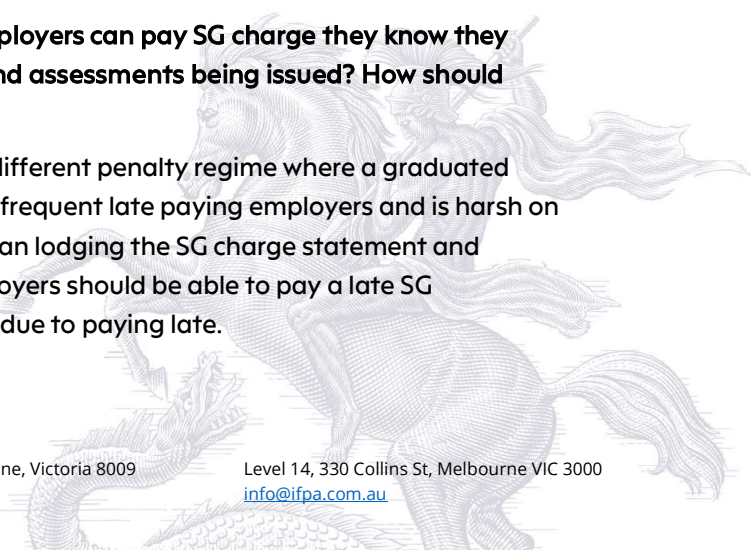
For the reasons outlined in our answer to question 7, we believe that superannuation clearing houses should be regulated so they are obligated to remit SG on time under the pay date model. It is also our view that there are advantages of having more than one payment platform to enable intermediaries or clearing houses to improve their processing times. Whether it is utilising real time modern payment platforms such as the NPP or another payment platform, having competition leads to lower prices, more choices and better products and services.

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?

We believe weekly or fortnightly would be too frequent, however a monthly timeframe appears to be a good compromise. As employees are all paid at different frequencies, having a monthly timeframe would neatly reconcile any underpayments that may have occurred during the month.

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?

Under our payday approach, we propose a different penalty regime where a graduated penalty regime applies which is lenient on infrequent late paying employers and is harsh on deliberate non-paying employers. Rather than lodging the SG charge statement and paying the SG charge by the due date, employers should be able to pay a late SG contribution, including any nominal interest due to paying late.



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?

Rather than using the LPO and carry forward of late payments options, we believe our payday approach where employers can make a late SG contribution plus interest (without the need for a SG charge statement) is a simpler option. This option will allow late payments count towards the employee's contributions and employers will pay a nominal interest amount for every day they are late.

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?

As mentioned earlier, we believe all SG contributions (including late contributions) should be a tax deductible expense to the employer in the relevant year it is made. This is because employers have ultimately paid the amount to their employees which would otherwise ordinarily be deductible.

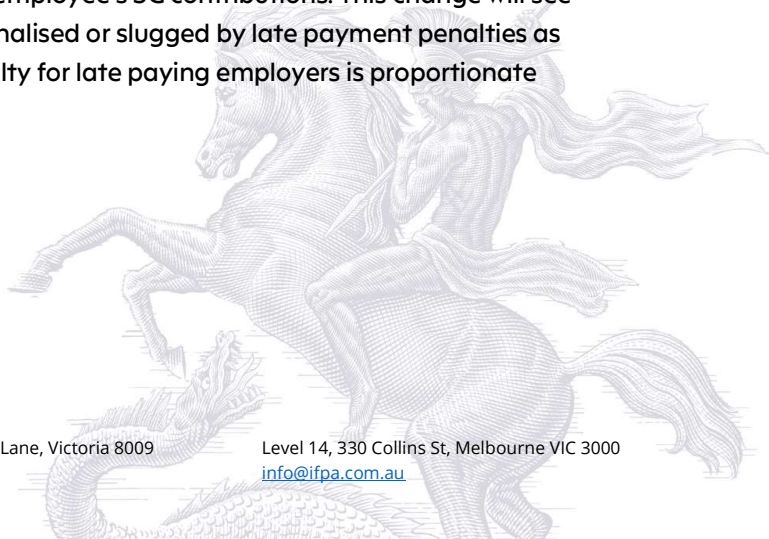
One exception could be the SG charge for those employers who fail to make SG contributions, even after nudges from the ATO or after the commencement of an investigation.

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

As we move to paying SG on payday, we believe sending prompts or nudges to employers to remind them of their SG obligations just prior to every payday will be excessive. That said, as mentioned in our answer to question 13, employers could be reminded to pay any outstanding SG amounts on a monthly basis.

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

Yes, we believe our pay date model will incentivize employers to pay on time and will encourage compliance and for employers to rectify errors. Employers will make SG contributions quite readily as they will be penalised with an interest cost of say 10% pa from payday for every day they don't pay their employee's SG contributions. This change will see late paying employers not being overly penalised or sluggish by late payment penalties as compared to non-payers. Rather, the penalty for late paying employers is proportionate and reasonable.



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

As mentioned earlier, we believe there should be different penalties for late payers versus non-paying employers. We agree that non-payers should be penalised more severely but believe that late payers should be incentivised to pay with a penalty that is proportionate and reasonable.

Non-compliant employers who do not pay SG contributions should face stronger penalties, but these penalties should be proportionate in a similar way to the current income tax penalty tax regime.

If the government decides to keep the SG charge model for late paying employers, then we believe the ATO requires more discretion to reduce or remit the SG charge. Further, we believe there needs to be a lower bar to remit because at present, there are certain circumstances where there may be small errors or reasons outside of an employer's control which still do not meet the requirements for remission.

20. Does the current nominal interest rate of 10 per cent per annum adequately compensate employees for the foregone interest that would have accrued in the fund had their super been paid on time?

Yes, we believe the nominal interest rate of 10% pa is an appropriate number as it is generally going to be a better return for the employee than what they would have earned in their superannuation fund. In the end, the employee will be compensated for lost earnings and will obtain a benefit out of receiving a late SG contribution. We believe a simple flat rate is preferred to a variable rate.

However, if a variable rate is chosen, we believe it should vary to frequently. For example, annually or at the most quarterly.

21. Does a nominal interest charge of 10 per cent per annum remain appropriate in a payday super model? Or are there alternative models that could address different degrees or severity of lateness?

Yes, as mentioned above, we believe the nominal interest rate of 10% pa remains an appropriate penalty in a payday super model. It is also our view that the 10% nominal interest rate applies from payday, not from the start of the relevant quarter.

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?

Our preference is for the administrative fee of \$20 per employee, per quarter be abolished. In many cases, the administrative fee can be higher than the SG contribution debt itself. For

example, if a company has hundreds or thousands of employees and a small shortfall or a payroll system error occurs, the administration fee can be excessively high because the penalty is per employee per quarter.

That said, if the administrative fee must remain, we recommend that it applies per offence, not per employee penalty.

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

As mentioned in question 22 above, our preference is for the administrative fee to be abolished.

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?

For the forementioned reasons, we believe all SG contributions should be a tax deductible expense to the employer in the relevant year it is made. This is because employers have ultimately paid the amount to their employees which would otherwise ordinarily be deductible. We don't believe that employers should be punished with a double penalty.

25. Are there any other changes to the components of the SG charge that should be considered in the move to a payday super model, in the context of the purpose of the charge? For example, should the punitive aspects of the charge be more proportionate to the size of the non-compliance (that is, the size of the debt)?

As proposed throughout this submission, we believe there should be different penalties for late payers versus non-paying employers. We recognise that deliberate non-payers should be penalised more severely but believe that late payers should be incentivised to pay with a penalty that is proportionate and reasonable. As such, we are proposing that the government introduce a graduated penalty regime that is lenient on infrequent late paying employers (ie, a nominal interest rate from payday) and is harsh on deliberate non-paying employers.

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

As noted earlier, non-compliant employers who do not pay SG contributions should face stronger penalties that are proportionate in a similar way to the current income tax penalty tax regime.

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?

As stated earlier, under our pay date model, we don't believe this is needed.

However, if the government continues with an across the board SG regime the ATO will need greater powers to remit the SG charge (ie, have a lower barrier for the ATO to remit) and/or we need a graduated scale in penalties.

We believe this is required as we need a system which differentiates the late payers to the non-payers.

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?

Examples of circumstances that could allow the ATO to remit the SG charge include:

- Where an employer's SG contributions are inadvertently paid late (ie, infrequent late paying employers)
- In special circumstances that are unusual, or out of the ordinary factors lead to an unfair, unintended or otherwise inappropriate outcome
- Where the employer makes a reasonable arguable mistake with respect to their SG contributions – for example, whether SG is payable in relation to a contractor or not.

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.

Ultimately, we believe that employees and contractors should not be worse off. Therefore, generally, we do not believe that the obligation to make SG contributions and interest should be remitted.

One exception to that rule are “double dipping” contractors. Where a contractor has received a higher amount inclusive of superannuation, then we believe that, while SG should still generally apply, that the ATO be given the power to remit to ensure that such contractors don't receive a double dip advantage of higher contractor amounts and SG contributions.

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?

Yes it would be appropriate for the ATO to have discretion to extend the due date for the SG charge (if it remains as part of the SG regime). Although this discretion to extend should only be used in very limited circumstances, this may be appropriate for certain employers who may need a little more time to finalise payment.

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

As stated earlier, under our pay date model, employers should be allowed to pay SG contributions late along with the nominal interest amount. It would only be for those employers who don't pay SG contributions at all that will receive a harsher penalty.

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?

As mentioned above, we suggest that employers should be allowed to pay SG contributions late. We haven't suggested a time period as for every day the employer does not pay SG contributions, they will pay nominal interest amount from payday.

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?

We believe that errors should not get in the way of an employer making a late SG contribution. Employers should be able to make a late SG contribution any time without waiting for errors to be corrected.

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

As mentioned above, under our pay date model, minor errors which lead to late payments will not need to be corrected if the employer pays the SG contribution.

That said, for more serious errors or non-compliant employers who have a bad history of non-payment should correct errors within a certain timeframe. The 20 business day time period appears to be an appropriate timeframe.

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?

As our preference is for the pay date model, we will not be answering this question.

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 mentioned earlier, the ability to check whether an employee has a stapled fund must be improved to enable employers to either make contributions to the employee's stapled fund,

or make contributions to the employer's default fund if the employee does not choose a fund and the ATO determines there is no stapled fund.

We believe that establishing a new digital ATO service that employers and employees can use to confirm the right superannuation fund details that is integrated with the employer's software is a step in the right direction as it will reduce the administrative burden on employers when a new employee starts and enable the employer to satisfy their choice of fund requirements.

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?

In addition to our answer to question 36 above, we believe the stapling and onboarding process can be simplified for new employees.

In designing a new 'digital ATO service', it will be important to have a system where an employer can easily determine which employees have a stapled fund. This will remove the timing issues that many employers face when a new employee joins as many employees take their time or do not provide their superannuation fund details to their employer.

Once employees have provided their TFN to their employer, this should then allow the employee's details to be linked to their superannuation fund. Unless an employee chooses a different superannuation fund, the employer will have the stapled fund details and will then be able to start paying SG on payday.

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

We believe that employees should not be influenced or encouraged into products which have paid to be advertised, may be unsuitable, and may unintentionally lead to duplicate accounts.

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?

We will not answer this question and will leave it to the experts in the reporting sector to provide their views on this matter.

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

We will not answer this question and will leave it to the experts in the reporting sector to provide their views on this matter.



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

We will not answer this question and will leave it to the experts in the reporting sector to provide their views on this matter.

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?

We will not answer this question and will leave it to the experts in the reporting sector to provide their views on this matter.

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 believe the ATO should have better discretion than what they currently have to disregard or reallocate concessional (and non-concessional) contributions for a financial year. This can be achieved by giving the ATO a lower barrier where late SG contributions can be reallocated to the years or periods in which they relate to rather than being allocated and counted for the year that they are paid.

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?

As we move to paying SG on payday, it does not make sense for the maximum superannuation contribution base to be calculated on a quarterly basis.

Perhaps a monthly basis would be feasible as it would also align with our proposed monthly timeframe for ATO reconciliations (see answer to question 13).

On another note, the current regime for opting out of receiving SG contributions where an employee has multiple employers is cumbersome and should be streamlined. Many employees in this position find it difficult to opt out of the SG regime due to the paperwork (ie, the SG employer shortfall exemption certificate form) and timeframes that must be adhered to. A potential option would be once the paperwork has been lodged with the ATO, the SG exemption certificate could remain in force until it is revoked by the employee (or employer). This would create a much simpler and easier system to opt out of the SG regime.

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

We will not answer this question and will leave it to the experts in the defined benefit sector to provide their views on this matter.

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

We understand that the potential reporting and ATO data matching models proposed in the consultation paper cannot be applied to SMSFs. In our view, we don't need SMSFs to enter into the same systems that large APRA-regulated funds have mainly due to the fact that individuals who choose to set up their own SMSF have the sole responsibility for the prudent management of their fund's savings.

In many cases, SMSFs receive SG contributions from a related family business so trustees should know when SG contributions are made. For unrelated third party employers, it is the trustees' responsibility to have oversight of their employer's SG contributions.

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

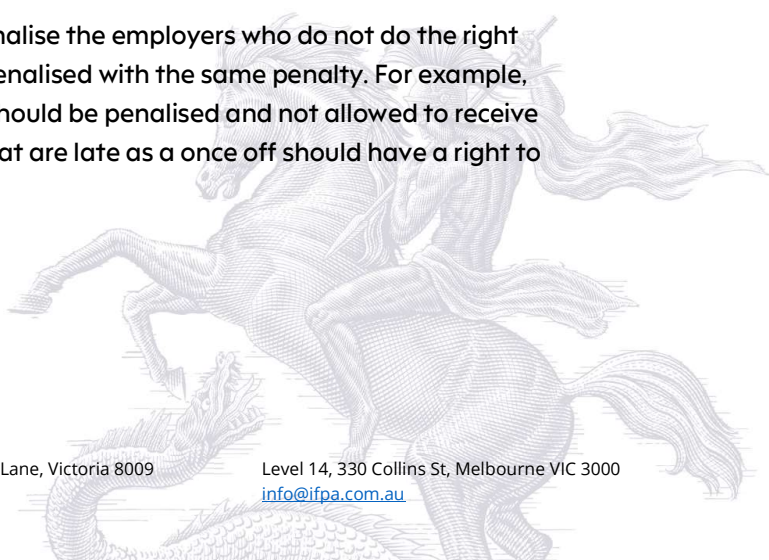
One comment we would like to make is that the current administration by the ATO creates difficulties for employees who have elected to have their SMSF as their choice of fund where a SMSF has lodged its annual return late. In these circumstances, we believe there should be a bit more flexibility, or that it shouldn't be administered as harshly as it currently is.

The issue for SMSFs that don't lodge their returns on time is the risk that the fund cannot receive employer SG contributions until the outstanding annual tax return has been lodged. We understand this is designed as a penalty to encourage trustees to lodge on time but the period from when the SMSF is cut off from receiving SG contributions to when the fund is then allowed to receive contributions again (ie, after lodgement) could create issues if SG contributions are required to be made on payday.

In these circumstances, if the fund cannot receive SG contributions, the only other option is to pay the SG contributions into another fund until the SMSF is back on the ATO's register (ie, Super Fund Lookup).

We believe there should be an ability for affected employees to challenge this rule. In our view, where circumstances are beyond their control, it should be reasonable for a fund to continue to receive SG contributions.

We believe the ATO should continue to penalise the employers who do not do the right thing but we don't want to see all SMSFs penalised with the same penalty. For example, trustees who have not lodged for 5 years should be penalised and not allowed to receive any SG contributions, however for those that are late as a once off should have a right to receive SG contributions.



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

Not to our knowledge.

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

At this stage, we feel the key aspects of the payday super regime framework have been addressed however we will need more time to consult on the operation of the regime once a payday option has been chosen.

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If you have any questions in relation to this submission, please contact Phil Broderick on (03) 9611 0163 or pbroderick@sladen.com.au or Natasha Panagis on (03) 8851 4535 or n.panagis@ifpa.com.au.

Yours faithfully,



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About the Institute of Financial Professionals Australia

The Institute of Financial Professionals Australia is a not-for-profit membership association (originally known as Taxpayers Australia, then more recently Tax & Super Australia) and has been serving members for over 100 years. With a membership and subscriber base of over 15,000 practitioners, our association is at the forefront of educating and advocating on behalf of independent tax, superannuation and financial services professionals.

This submission is made by us on behalf of our members' interests.

