



SUBMISSION TO THE COMMONWEALTH TREASURY
CONSULTATION ON
Pay Day Super

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Submitted by: Gerard Dwyer
National Secretary-Treasurer



About the SDA



The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with some 210,000 members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%, approximately 131,000), under 35 years (57%, approximately 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix A.



Submission to the Commonwealth Treasury consultation on Pay Day Super

Executive Summary

Superannuation is a workplace entitlement, which is critical for retail, warehousing and fast food workers achieving a dignified retirement. Pay day super is simple. That is, when you are paid your wages, you should also be paid the corresponding superannuation. The consultation paper opens a range of options that create additional complexity and risk the commitment to pay day super never being delivered. The SDA raises a range of solutions to the challenges and notes the need to focus on progressing the promise of pay day super for workers across Australia.

Recommendations:

1. *Urgently release an exposure draft of the bill to allow for planning to implement Pay Day Super.*
2. *Legislate that the employers must pay the super when they pay wages.*
3. *Legislate that it is an offence not to pay super on the pay day with penalties like that which applies to wage theft.*
4. *Legislate an amendment to the Superannuation Guarantee (Administration) Act 1992 that super is paid on every dollar earned.*
5. *Include in the policy settings for the legislation, compliance materials and data systems that there is a link between superannuation and workers industries.*
6. *Ensure that APRA or ASIC have powers or start using existing powers to deal with the perverse onboarding practices that undermine the default, choice and stapling systems.*

Pay Day Super

1. Superannuation is a workplace entitlement, which is critical for retail, warehousing and fast food workers achieving a dignified retirement. Pay day super is simple. That is, when you are paid your wages, you should also be paid the corresponding superannuation.
2. In the past, the superannuation payment was decoupled and delayed from the payment of wages for a range of reasons including:
 - a. The administration of superannuation was paper based so fewer transactions reduced risks of errors and costs of transactions, including such things as the cost of a cheque.
 - b. When secure work was more common and superannuation was more frequently and more generously provided to those with that secure work, workers entitled to superannuation could rely on their employers' systems and processes to have their super paid regularly.
3. These and other issues are no longer faced by employers and superannuation funds. Digital systems are more common, single touch payroll is in place, and cheques are a rarity. Super is more universal and work is less consistent; the systems need to be improved to the level at which they can be trusted.
4. Today, employers state on a payslip the super amount that has been earned for that period, yet the amount earned only has to be paid quarterly. This makes it hard for workers to keep track of their super, especially if they have inconsistent hours of work. The benefits of compounding interest are lost, and the employer uses their superannuation liability for cashflow.
5. The benefit of pay day super is across the workforce, but it is especially significant for women, young workers and those on low incomes. For these workers, work is often insecure, casual and on-demand. These workers are more likely to work in industries where there is less regulatory oversight and non-compliance is often more prevalent. With wages being lower for these workers, every dollar in their superannuation counts. The interest gained from pay day super has a proportionally bigger impact for women, young workers and those on low incomes.
6. The gendered impact is significant. Women are paid less, take more time out of the workforce for caring responsibilities and are likely to retire with half of the amount of super as their male counterparts. Pay day super is one part of a series of responses that will support better retirement outcomes for women. Alongside pay day super, women deserve for super to be paid on parental leave (both government and employer), for the low-income superannuation tax offset threshold should be lifted to \$45,000, and for super to be paid on every dollar they earn including when they are under 18.
7. The problem of super theft is material for workers. The consultation paper notes that in 2019-20, the net superannuation guarantee gap after Australian Taxation Office (ATO) compliance activities was \$3.4 billion equivalent to a net superannuation guarantee gap of 4.9%. That is, \$3.4 billion of workers money couldn't be tracked down.
8. This super theft of \$3.4 billion has long been acknowledged. In March 2022, the Senate Economics References Committee delivered the report *Systemic, sustained and shameful, Unlawful underpayment of employees' remuneration* which included Recommendation 9 that the Government should "require Superannuation Guarantee payments to be aligned with the payment of wages".

9. A first step towards responding is the inclusion of superannuation in the National Employment Standards which allows workers to take recourse more easily. Following this, on 2 May 2023, the Australian Government announced that from 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages. This announcement was widely welcomed.
10. To effectively administer pay day super, the superannuation fund will need to receive data at the same time as it receive funds. This means that the data required under the SuperStream legislation and standards will be needed on a similar schedule to the transfer of funds.
11. It is now time that the Government provided an exposure draft of the legislation, with ample time for the implementation phase to be effective.

Recommendation 1: Urgently release an exposure draft of the bill to allow for planning to implement Pay Day Super.

Employer Payment v Due Date

12. The "due date" for super should be the date on which wages are paid, irrespective of the method chosen by an employer to pay the money into a fund.

It is absurd to propose that the "Commissioner of Taxation could be granted some flexibility to remit or reduce the SG charge or **extend the due date** under discrete circumstances where the employer is unable to meet the SG due date due to circumstances beyond their control." The idea that "a feasible due date for superannuation contributions to reach the fund would be **between 8 to 13 days after pay day**." is to undermine the policy commitment of the Government of the day to have super paid on the pay day. *[Emphasis added]*. While there is the potential for serious external factors impacting ability to pay (like cybercrime or IT outages) the ATO treatment of such occurrences should be consistent with approaches to wages. Superannuation is now part of the National Employment Standards, which provides a mechanism through which non-payment can be managed.
13. Small to medium employers, as well as their larger equivalents, should find it easier to process if the payroll is run on the same day as the super. On the day that a business loads payroll into the bank, it should also load its super into the relevant clearing house or funds. Further, the cashflow implications have been accounted for with the transitional period adequate for the businesses to invest in reserves that support them to meet their duties to pay their bills as and when they fall due. Employers should not be using workers entitlements to fund their business activities.
14. Clearing houses must improve the digital capacity of their systems to achieve the level of rapid transfer of funds that is presently achieved by numerous other entities including banks. There is no reason why clearing houses should require 8-13 days to transact superannuation payments.

Workers deserve assurance from the legislation that they will receive the benefits of interest and investment returns accrued on their superannuation earnings. Neither the employer nor the clearing house should be given the opportunity to game the timeframes to get benefits from withholding workers' entitlements.

Three years has been allocated to assist the clearing houses in achieving this and they need certainty quickly about the requirements so that they can update their systems in readiness.

15. The alternative model, “Employer Payment” is that the “SG charge could be based upon a requirement that the employer make the payment of an SG contribution on pay day. Where a payment is not made on pay day, an employer would become liable to pay the SG charge from this date.”

Recommendation 2: Legislate that the employers must pay the super when they pay wages.

Superannuation Guarantee Charge

16. Where an employer has not paid super on the pay day, that is super theft. Super is a workplace entitlement and thus such non-payment should be considered wage theft and penalised in a similar way. One way to assist employers with simplicity would be to have the Superannuation guarantee paid on every dollar earned rather than ordinary time earnings.
17. SDA supports that under a pay day super model, where an employer is found to have not paid super that the back pay would be the nominal interest calculated from pay day. Fund members should accrue interest, an admin fee should cover the costs to the members of the fund, and there should be a fee for costs associated with administering the charge by the ATO. Where there is repeated non-compliance, there should be the powers to consider the non-compliance an offence under the Act.

Recommendation 3: Legislate that it is an offence not to pay super on the pay day with penalties like that which applies to wage theft.

Recommendation 4: Legislate an amendment to the Superannuation Guarantee (Administration) Act 1992 that super is paid on every dollar earned.

Choice of fund, stapling and employee onboarding

18. The default system is the primary function through which universal superannuation allows the benefits to be drawn for workers on low incomes. It creates a system of industry super where members interests are met with an account designed for their context. For example, the performance objectives and investment options of the fund are tailored to their needs, the insurance includes and excludes measures designed for them, and advice and information to respond to member segments. For some funds, like Rest Industry Super, that means the account is simple with low fees, the investment options are scoped for an audience with lower balances than others, the insurance cover includes casuals, and information and advice for young people. Industry funds and the default system allows for products to respond to the needs of ‘cohorts’ as measured by member outcome statements and through design and distribution obligations.

19. Any digitised system of centralising data, be that at the ATO or outside of it in a clearing house or staff onboarding systems, should respond to the deliberate design of industry super alongside other legislative requirements such as choice of fund and stapling. Consistent with dot point 10 above, a key issue to support members to get the benefits of Pay Day Super is that contributions are matched with their account quickly. To achieve that, a super fund needs to get data about who the funds are for at the same time as the contributions. This may require an amendment to the SuperStream legislation and standards.

Recommendation 5: Include in the policy settings for the legislation, compliance materials and data systems that there is a link between superannuation and workers industries.

SG reporting frameworks

20. Some superannuation funds are paying to be higher on a drop-down menu when choosing a fund through an onboarding system. This undermines the default system of superannuation and the more recent approaches to 'choice of fund' and 'stapling'. This perverse onboarding practice undermines the industry super system, and undermines workplace laws as well as other laws such as choice of fund, stapling, and transparency through the ATO portal. These are practices that should be stopped.
21. While one option is to create legislation that deals with the matter, it is also possible that the Trustees of funds paying for this service are not acting in the interests of members and APRA are able to regulate the payment by the funds. Further, the software providers are distributing a product that is not compliant with Australian law and ASIC should be able to regulate the onboarding aspect.

Recommendation 6: Ensure that APRA or ASIC have powers or start using existing powers to deal with the perverse onboarding practices that undermine the default, choice and stapling systems.

Conclusion

22. The consultation paper opens a range of options that create additional complexity and risk the commitment to pay day super never being delivered. The SDA raises a range of solutions to the challenges and notes the need to focus on progressing the promise of pay day super for workers across Australia.
23. The SDA supports the submission of the ACTU.

Ends.

Appendix A: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its center. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations.

The world of work has changed and will keep changing. Income and gender inequality have combined to increase disadvantage. There has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

