



**Australian Government**  
**Australian Taxation Office**

# Australian Taxation Office Submission

Inquiry into the impact of the non-payment of the  
Superannuation Guarantee

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# Executive Summary

This submission has been prepared to support the Senate Economics References Committee inquiry into the non-payment of Superannuation Guarantee (SG).

The Commissioner of Taxation (ATO) is responsible for the administration of the *Superannuation Guarantee (Administration) Act 1992* (SGAA). The SGAA sets out employer obligations for paying compulsory superannuation for employees. It also sets out the rules under which the ATO administers this legislation.

In 2014-15 approximately 880,000 employers made payments of \$85.7 billion on behalf of about 11.7 million employees. Generally if an employee is over 18 years of age and earning over \$450 per month, the employer is required to make SG contributions on their behalf.

Given the broad design of the superannuation system, the current superannuation regime is essentially a system based on the employment relationships between an employee and their employer and then the employer's payment to the employee's superannuation fund. The ATO is informed annually of the event of SG payment, which is provided to the ATO from the employee's superannuation fund.

In 2014, the Commissioner of Taxation committed to estimating gaps for all taxes and programs the ATO administers. The identification of a 'tax gap' is an approach which seeks to estimate, through the use of macro analysis, the theoretical level of non-payment. Though the ATO has established and published credible and reliable gap estimates for some taxes, an estimate for SG is still under development. The Commissioner addressed this matter in evidence at the Parliamentary Tax and Revenue Committee in October 2016.

Reliably estimating gaps, including the SG gap, is a challenging task for the ATO. However, while the identification of the gap has benefits, the absence of a gap measurement does not directly impact on the ability for ongoing compliance actions to seek to reduce the level of non-compliance. A range of approaches are used seeking to change attitudes and behaviours by increasing awareness, educating people in their obligations and enforcing the law.

The ATO undertakes marketing and education activities on a regular basis and uses the quarterly SG due date cycle to re-enforce the need for employers to meet their SG obligations. The ATO also conducts audits and review to ascertain SG non-compliance. 70 per cent of these cases stem from employee notifications, with the remaining 30 per cent of cases actioned from ATO initiated strategies. In 2015-16 the ATO undertook around 21,000 cases that addressed SG compliance.

On average the ATO receives reports from employees which relate to approximately 15,000 employers who are subsequently investigated by the ATO each year. This represents approximately 2 per cent of the estimated 880,000 employers who make SG payments. We do find that nearly 30 per cent of these employers have in fact paid the required SG to their employee. However an SG shortfall is identified in the remaining 10,000 cases. This represents approximately 1 per cent of the estimated 880,000 employers.

Since 2010-11 the ATO has transferred almost \$2 billion in SG entitlements to employee's superannuation funds as a result of ATO action. For 2015-16, ATO compliance action resulted \$670.4 million superannuation guarantee charge raised (including penalties and interest) with \$341.3 million superannuation guarantee charge collected by the ATO.

From an industry analysis perspective, the top four industries from which reports are received by the ATO are from Accommodation and Food Services, Construction, Manufacturing and Retail Trade. These four industries represent approximately 50 per cent of the audits and reviews undertaken. Reports of non-payment of SG from these industries usually are made 1-3 years after the due date for the first period about which they are seeking assistance.

At 30 June 2016, SGC collectable debt was \$622.62 million owed across 25,665 cases. This equates to less than one percent of total employer contributions.

There are currently limitations in the data provided by third party to ATO. The main limitations are the lack of reporting of 'ordinary times earnings' information from employers and that employers who make Super contribution to employees cannot consistently be identified from member contribution summary data. These limitations reduce the ATO's abilities to identify the employers who do not comply with SG legislation.

The proposed Single Touch Payroll (STP) will simplify taxation and superannuation interactions for employers. It will do this by aligning the reporting and payment of PAYG withholding and SG with a business's natural process of paying their employees.

Use of STP is mandated for businesses with 20 or more employees from 1 July 2018. A pilot program will be undertaken in 2017 to identify the nature of benefits of STP for small businesses. A decision by government, on any expansion for STP reporting for small business employers is expected after the pilot is completed.

# The Superannuation Guarantee System

## The Superannuation Guarantee

### Introduction

1. Compulsory superannuation guarantee (SG) commenced on 1 July 1992 with the enactment of the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Act 1992*.
2. The purpose of the SG system is to ‘encourage employers to provide a minimum level of superannuation support for employees’.<sup>3</sup> Employers who do not meet their SG obligation are liable for the SG charge (SGC).
3. The system was designed for employers to pay adequate and timely SG contributions direct to an employee’s super fund. The SGC introduced a strong deterrent for employers not paying as they would incur significant penalties and additional administration fees.
4. In 2014-15 approximately 880,000<sup>4</sup> employers made SG payments of \$85.7 billion<sup>5</sup> on behalf of about 11.7 million employees<sup>6</sup>.
5. The Australian Prudential Regulation Authority (APRA) oversees the superannuation industry (except self-managed superannuation funds) as well as banks, credit unions, building societies, the insurance industry and friendly societies. APRA annually report the total contributions made by employers.

**Table: employer contributions**

| Year                          | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15            |
|-------------------------------|---------|---------|---------|---------|---------|---------|--------------------|
|                               | \$      | \$      | \$      | \$      | \$      | \$      | \$                 |
| <b>Employer Contributions</b> | 70.2b   | 68.0b   | 71.7b   | 82.1b   | 77.5b   | 81.1b   | 85.7b <sup>7</sup> |

<sup>3</sup> Page1 explanatory memorandum to the Superannuation Guarantee (Administration) Bill 1992.

<sup>4</sup> 2014-2015 ATO Annual Report, pg 12.

<sup>5</sup> June 2015 (reissued August 2016) APRA annual superannuation bulletins (includes contributions to SMSFs and salary sacrifice).

<sup>6</sup> June 2015, ABS Labour Force Australia.

<sup>7</sup> June 2015 (reissued August 2016) APRA annual superannuation bulletins (includes contributions to SMSFs and salary sacrifice). Source: APRA annual superannuation bulletins (includes contributions to SMSFs and salary sacrifice).

## The Superannuation Guarantee in operation

6. Generally if an employee is over 18 years of age and earning over \$450 per month, the employer is required to make SG contributions on their behalf.
7. These contributions are paid at least quarterly to a complying super fund, which is generally chosen by the employee. There are a few exceptions that apply mainly to government and non-resident employees.
8. The amount of SG that an employer is obligated to pay is a percentage of the worker's ordinary time earnings (OTE) which, in the main, is salary and wages paid less bonuses, overtime and termination payments related to unused annual leave.
9. Employers discharge their obligations by making quarterly contributions to the employee's chosen fund account.
10. When introduced, the SG contribution rate was 3 per cent or 5 per cent for businesses whose annual payroll exceeded \$1m, increasing progressively to 9 per cent in 2002, and rising to 9.5 per cent in July 2014.
11. While the SG contribution rate sets a minimum amount that must be contributed by employers, some awards and agreements require a higher rate to be paid.

## The Role of the ATO – Administration and legislative framework

12. The *Superannuation Guarantee (Administration) Act 1992 (SGAA)* sets out employer obligations for paying compulsory superannuation for employees. It also sets out the rules under which the ATO administers this legislation.
13. The ATO has a range of responsibilities under the SGAA including
  - educating employers and employees about their responsibilities for SG
  - monitoring employer compliance with SG obligations
  - receipt and redistribution of the SGC (as per Part 8 SGAA)
  - investigating employers for possible breaches of the SG legislation .
14. The SG law imposes a charge (the SGC) on employers, when contributions have not been paid on time. Employers may reduce their liability to the charge by paying SG contributions into their employees' super accounts.
15. The ATO can raise the SG Charge where an employer does not make the required minimum (quarterly) SG payments.
16. The Commissioner does not have discretion to defer the quarterly contribution cut-off date.

17. Eligible employees can choose the super fund to which contributions are paid. Employers who fail to pay contributions to their employees' chosen funds are liable for the choice shortfall.
18. Employers who fail to pay adequate contributions on time, or do not meet choice of fund requirements, must lodge a SGC statement with the ATO and are liable for payment of the SGC.
19. Lodgement of a SGC statement by the employer is deemed to be an assessment.
20. When employers fail to lodge a SGC statement or fail to provide the required information, they are also liable for a Part 7 penalty.
21. The ATO may also raise default assessments through audit activities.
22. The ATO has no discretion on the imposition or remission of any part of the SGC. The ATO does have discretion to remit penalties as they are not part of the actual charge.
23. Nominal interest will cease to apply after an assessment has been raised and general interest charge (GIC) starts to accrue for any unpaid SGC amounts.
24. If the employer has paid late contributions after the quarterly cut-off date and before SGC assessment, they can elect to apply the late payment offset to reduce their SGC liability.

## The Superannuation Guarantee Charge (SGC)

25. Minimum SG contributions must be paid to super accounts within 28 days after the end of each quarter to avoid the imposition of the SGC.
26. The SGC payable to the ATO is made up of three components:
  - a SG shortfall amount
  - a nominal interest amount (currently 10 per cent from the beginning of the period)
  - an administration component (\$20 per employee, per quarter)
27. The lodgement of an SGC Statement informs the ATO that an employer has not met their SG obligations. It allows the ATO to follow-up and ensure compliance and payment.
28. If an employer does not lodge an SGC Statement, the ATO has powers to raise the SG charge assessment and the employer can be liable for a penalty of up to 200 per cent of the charge amount.
29. The SGC is calculated on the total amount salary and wage and not OTE.

30. The SG shortfall and the nominal interest amounts when collected are transferred by the ATO to the employees' super fund. However, the administration component and any penalty collected are retained by the ATO and paid into consolidated revenue.
31. Unpaid SGC amounts can be recovered through a garnishee notice or legal proceedings.
32. Company directors can be liable for unpaid amounts recoverable through a director penalty notice.
33. The SGC payments are not tax deductible to the employer.

## Visibility and timeliness of data

34. The ATO does not currently have visibility or a timely way to monitor the reporting or payment of SG by an employer. Super funds report member contributions to the ATO on an annual basis and as a result ATO has no visibility of payment information for up to 15 months after the start of a year. This means non-compliant employers can be difficult for the ATO to identify in timely manner.
35. The inability for the ATO to obtain data from super funds within reasonable timeframes has been highlighted since 2010 in independent reviews on the ATO's administration of SG. Both the ANAO and IGT have raised this issue in their review recommendations.
36. Visibility of data and information will be greatly improved with the introduction of the Single Touch Payroll (STP) initiative. STP reporting will become mandatory for all employers with greater than 20 employees from 1 July 2018. Real time reporting to the ATO will support continuous monitoring of SG shortfalls at the employer and employee level for those employers required to comply with Single Touch Payroll initiative.

## Reporting Obligations

### Administrative context

37. Given the broad design of the superannuation system, the current superannuation regime is essentially a system based on the employment relationship between an employee and their employer and then the employer's payment to the employee's superannuation fund. The ATO is informed annually of the event of SG payment, which is provided to the ATO from the employee's superannuation fund.
38. This design creates significant time lags which impacts on the ATO's ability to monitor and detect non-payment early due to the quality and nature of annual reporting of



contributions by superannuation funds. This system is built around superannuation funds reporting the SG contributions made to an employee by an employer via a Member Contribution Statement provided to the ATO each October by superannuation funds.

## Employer reporting

39. There is no obligation under the *Superannuation Guarantee (Administration) Act 1992* for employers to report to the ATO about payments made to an employee's superannuation fund.
40. The ATO receives PAYG Payment Summaries annually (due 14 August), however this summary does not include SG payment data and reports 'gross' payments which do not allow for identification of 'ordinary time earnings'.

## Fund reporting

41. Superannuation funds are required to submit an annual Member Contribution Statement (MCS) to the ATO (due 31 October). The MCS focuses on member (i.e. employee) reporting and not employer reporting. The MCS reports total super contributions received by them for their members.
42. The MCS focuses on member account (ie employee) reporting and reports *total super contributions* made to their members. The MCS does not consistently identify the employer who contributed the SG.
43. The ATO received 33 million MCS lodgments for the 2015-16 financial year.
44. If an employee has multiple employers and there is a SG shortfall, the ATO cannot readily identify the non-compliant employer at the end of the year. Similarly this is an issue where employees have multiple superannuation fund accounts.

## Employee Notifications

45. Where an employee believes that their SG entitlement has not been fully paid they can notify the ATO to investigate this matter on their behalf.
46. The main way the ATO becomes aware of a potential SG shortfall is when an employee reports this matter to the ATO. This is known as an 'employee notification' (EN). The ATO receives approximately 20,000 employee notifications per year.

47. The ATO investigates all reports of unpaid super which are reported by employees and ex-employees. The ATO advises the reporting employee about the progress of their notification, being careful not to disclose information about the general financial affairs of their employer or ex-employer.
48. The ATO contacts the employee or ex-employee by letter or email at each stage of the investigation to provide a progress update or outcome.

## Data exchange and information sharing

49. We receive third party referrals from a variety of sources including the Fair Work Ombudsman, Superannuation Funds and information from the community through the ATO Tax Evasion Referral Centre (TERC).
50. Information is also received from ATO officers who identify SG issues from their other ATO duties or cases they are reviewing. These referrals are profiled and risk assessed using our information holdings including employer case history, income tax returns, payment summaries and member contribution statements. Suitable cases are selected for audit.
51. Under the Memorandum of Understanding between the Fair Work Ombudsman (FWO) and the ATO, the FWO provides twice yearly reports with details of employers who appear to have not paid SG contributions.
52. Third party referrals are an important source of information as 70 per cent of employee notifications are lodged after the employee has left their employer. Third party sources can provide timely information about potential underpayments. These referrals often compliment other information held by the ATO or assist with cases already underway.
53. Not all third party referrals generate audit cases as some lack the information needed to proceed and others have already been resolved.

**Table: Source of third party SG referrals<sup>8</sup>**

| Year    | Fair Work Ombudsman | Super Funds | Community Referrals | Internal ATO referrals | Other | Total |
|---------|---------------------|-------------|---------------------|------------------------|-------|-------|
| 2015-16 | 2,405               | 73          | 651                 | 70                     | 57    | 3,256 |
| 2014-15 | 2,103               | 33          | 431                 | 50                     | 50    | 2,667 |

<sup>8</sup> Source: ATO Employer & individual Client Engagement

## Estimates of Superannuation Guarantee non payment

### ATO Tax Gap Program

54. In 2014, the Commissioner of Taxation committed to estimating gaps for all taxes and programs the ATO administers.
55. The identification of a 'tax gap' is an approach which seeks to estimate, through the use of macro analysis, the theoretical level of the incidence of non-payment.
56. It should be noted that reported estimates of 'gaps' are developed in many countries, and are influenced by cultural and behavioural factors, global forces, complexity in business and relevant legal systems, those who take aggressive tax positions, and significantly the incidence of genuine errors made by taxpayers.
57. Though the ATO has established and published credible and reliable gap estimates for some taxes, an estimate for SG is still under development. While the methodology is considered to be sound there is in a statistical sense a low level of confidence. Based on advice from the ATO 'Tax Gap' Expert Panel<sup>9</sup> steps are being taken to find ways to increase the confidence level in the approach. The Commissioner addressed this matter in evidence at the Tax and Revenue Committee in October 2016.
58. The methodology being used by the ATO is known as a 'top down' approach. Such an approach draws from data from the Australian Bureau of Statistics (ABS). Our priority is to estimate an overarching SG gap and an industry level estimate is not proposed at this stage.
59. In particular the reliability of the SG gap is impacted by issues in respect of the integrity of the ABS Compensation of employees' data set and the deficiency created by not including the non-observed economy in the estimate. Work is underway to try and address these deficiencies.
60. Reliably estimating gaps, including the SG gap, are a challenging task for the ATO. However, while the identification of the gap has benefits, the absence of a gap measurement does not directly impact on the ability for ongoing compliance actions to seek to reduce the level of non-compliance. A range of approaches are used seeking

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<sup>9</sup> The ATO's expert panel Chris Richardson, Deloitte Access Economics, Professor Neil Warren, University of New South Wales, and Richard Highfield, former advisor to the Organisation for Economic Co-operation and Development and internationally recognised tax gap expert.

to change attitudes and behaviours by increasing awareness, educating people in their obligations and enforcing the law.

## Industry Super Australia Report

61. In December 2016, Industry Super Australia released a report entitled '*Overdue: Time for Action on Unpaid Super*'. The modelling in this report is different to the proposed ATO approach to estimating the SG gap. The ATO approach is a so called 'top down approach' which does not seek to estimate the number of employees underpaid.
62. We do not consider the number of people identified with an amount of SG underpayment in the ISA report to be reliable as the report uses 'averages' to reach a specific estimate, rather than an estimate expressed within a 'range'.
63. The ATO considers that the 'tolerance threshold' used to determine the 2.15 million people reported with an apparent SG underpayment in the report is too high. The report used a tolerance threshold of 8.5 percent across the entire population.
64. A 'tolerance threshold' is an adjustment to the rate of superannuation on the salary or wage figure to account for the fact that salary or wages reported may exceed ordinary time earnings (OTE) (because of aspects such as overtime, allowances, etc.).
65. We therefore believe the adjustments for OTE used in the report are insufficient to account for the differences seen with employment models and work practices across various broad industries. This means the report substantially overstates the prevalence of SG underpayments.
66. While the use of the so called 2 per cent sample data file from the ATO, is a valid methodological approach, the ATO does not consider that the data is sufficiently reliable to construct a targeted audit program.

# Client engagement with the system

## ATO observations of client behaviour through compliance activities

### Employers

67. When followed up by the ATO there are a range of reasons provided by employers as to why they have not paid SG. Cash flow issues are raised in approximately 70 per cent of cases as the reason for non-payment of SG when due. Poor record keeping is raised in approximately 20 per cent of cases.
68. Other reasons that are given are that their lack of understanding of some of the complexities of the SG legislation which leads to a misunderstanding of their obligations and entitlements; actions actively seeking to delay or avoid their SG obligations as long as possible and, in some cases, just not wishing to comply.
69. Case officers report a very high level of employer awareness regarding the requirement to pay SG and it is rare for an employer to claim they know nothing about SG. Those few that do usually have only one or two employee or are new to business.

### Employees

70. From our dealings with employees and ex-employees, we have observed that some are uncertain as to their status as a worker (ie contractor versus employee); some appear to have accepted cash in lieu of SG contributions and of course some employees do not actively monitor their payslips or super account. Such actions lead to a lag in the notification to the ATO when an event raises concerns with the employee to establish if they have been paid the correct amount of SG. They then contact the ATO.
71. Some workers hold themselves out to be contractors and their income tax returns demonstrate they have claimed offsets and deductions consistent with a contractor . However they then claim that they are entitled to the payment of SG, as an employee. These reports generally are not progressed, rather educational advice is provided to both parties.
72. We speculate that the possible reasons for these behaviours include that employees are not interested or engaged with their superannuation until approaching retirement.

73. There is some anecdotal evidence to suggest that some time employees do not want to risk losing job so delay reporting their employer or see more value in being involved in cash economy. Such an attitude may account for the high level of ex-employees reporting their previous employer to the ATO.

## ATO Superannuation Insights Review

74. In 2016<sup>10</sup> the ATO conducted some research on Superannuation Behaviours and Attitudes. Analysis was conducted based on over 270 source documents to obtain an understanding of the current state of the super system and identify any gaps and opportunities for the ATO.
75. Data was collected and analysed from government, industry, media and academic sources from 2014-2016.

## Findings

### Financial literacy

76. A lack of financial literacy has been identified as a barrier to active participation in the system. It is critical for long term outcomes that participants have adequate competency to make informed choices relevant to the stage of their life.

### Employment impacts participation in the super system

77. Members in more secure jobs are more likely to be active participants in superannuation, contributing through SG and voluntary contributions.
78. Members with disability, carer's responsibilities, remote locality and irregular employment are more likely to be passive participants as they are often not entitled to SG contributions.
79. Indigenous Australians and women were identified as groups particularly at risk of having less super and lower engagement due to a range of factors e.g. higher unemployment rates, differences in paid work and capacity for workforce participation.

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<sup>10</sup> December 2016, ATO Superannuation Insights Report, ATO Corporate Research and Intelligence.

### **The complexity of the system is a barrier to participation in the super system**

80. There is a profound lack of knowledge about superannuation. This is particularly evident in young people, who have been found to also have lower financial literacy than other cohorts.
81. Choice overload reinforces passivity and inertia of consumers as the time and costs involved in acquiring sufficient knowledge to make informed decisions are too great.
82. Indigenous Australians face problems with verification of identity; communication and literacy issues.

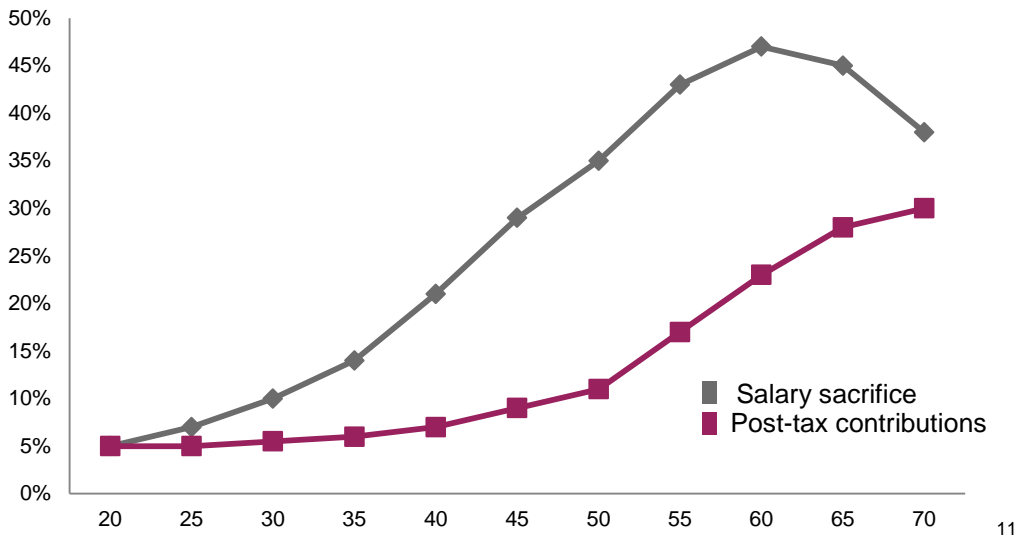
### **Competing financial priorities are causing passive participation in the super system**

83. People inherently prioritise immediate financial needs over future needs. This bias ultimately leads to disengagement and passive participation in the super system.
84. Low income earners lack the disposable income to make voluntary contributions to their superannuation.
85. High income earners have been found to actively participate and contribute to their superannuation as they have the disposable income to take advantage of government incentives.
86. Some divorcees have been found to sacrifice some of their superannuation to settle their divorce and secure other assets such as the family home.

### **As members transition to retirement they become more active in the super system**

87. They review investment strategies, lower their risk levels and increase voluntary contributions.
88. Some members transition from APRA funds to SMSFs as they are perceived to offer more control over the way their money is managed.

**Graph: Participation in voluntary contributions by age**



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## Improving engagement with employers

89. The ATO undertakes marketing and education activities on a regular basis and uses the quarterly SG due date cycle to re-enforce the impacts of employers not meeting their SG obligations.
90. The ATO offers support to business through multiple channels to make it as easy as possible to participate in our tax and superannuation systems. These channels include;
- digital services,
  - social media,
  - telephony (including interactive voice recognition), and
  - face-to-face.

## Making it easy to get things right

### SG ongoing and quarterly reminders

91. The ATO has reviewed and improved its messaging to reach and educate employers on meeting their SG obligations and how to contact the ATO where assistance is required. In 2016, our strategies included general reminders throughout the year and specific reminders for SG quarterly lodgement dates.

<sup>11</sup> Source: CSIRO Monash 2014.



92. Material website content for employers is available at: [ato.gov.au/Business/Super-for-employers/](http://ato.gov.au/Business/Super-for-employers/). Super obligations messages were also included with communication material distributed to promote SuperStream compliance.
93. To support our SG messaging we undertook a range of communication activities including:
- An infographic was developed to promote that paying super is an important part of being an employer. It shows employers how to run a quick check of their super obligations in six easy steps. Hard copies and a PDF version were made available to tax agents, DHS mobile service centres and state small business centres and supported by a promotional video.
  - Regular messaging on SG occurs through the small business newsroom. In 2016 five SG specific articles were published. Quarterly lodgement date reminders were also included under the key dates sections of the newsroom.
  - Regular social media (Facebook, Twitter and LinkedIn) was utilised for reminder messages around SG lodgement dates. As an example we had the following results from social media activities in November 2016.

**Super Guarantee social media – November 2016**



Facebook

1 post with 33,555 impressions



LinkedIn

1 post with 10,221 impressions



Twitter

1 tweet with 3,941 impressions

### **Tools, calculators and other support**

94. We have developed and improved on-line tools such as the Employee Contractor Decision Tool and the SG Eligibility Tool which are accessible through the ATO website and ATO app to assist employers to determine if SG is payable.
95. We have implemented changes to the existing Employee Notification Tool on [ato.gov.au](http://ato.gov.au). This will make it easier for individuals to lodge a notification about unpaid super guarantee by their employer and reduce the number of frivolous employee notifications lodged.

96. In October 2016, we made improvement to the SG Charge Calculator to assist employers to calculate their liability and prepare a SG Statement for the ATO. They can also now input all employee details in one statement rather than separately.
97. The ATO Small Business Superannuation Clearing House was promoted throughout 2016. We saw significant increases in registration figures from April-June 2016.

### **Tax practitioner open forums and small business conversations**

98. Reflecting the important role many tax agents play the ATO conducted education sessions for agents which included material covering SG.
99. Specific small business conversation events (including SG messaging) were held in 2016 across the country.

### **Communicating with Industry**

100. In the first half of 2016, we undertook a specific campaign focused on a number of higher risk industries. The industries targeted were bakeries, car retail, supermarkets and computer system design. Communication activities included:
  - Targeted email and letter mail-outs
  - A paid promotional campaign targeting online search/social media
  - Direct outreach to industry associations/Chambers of Commerce

### **New to business**

101. New to business essentials are part of a broader education strategy to engage and provide simple educational information and services to new businesses. The content has a whole of Government focus, with the material sitting on business.gov.au.
102. This initiative helps new business registrants with access to timely and relevant information through a series of four emails.
103. Developed in conjunction with the Department of Industry, Innovation and Science, the emails are designed to provide new small businesses with information they wouldn't otherwise know in their crucial first twelve months of business.

## **Business Enterprise Centres Australia**

104. Delivers tax essentials workshops to small business on behalf of the ATO.

## **Small Business Newsroom**

105. Delivers timely news and information directly to small businesses' inbox. The newsroom also helps small businesses remember due dates and provides easy access to other tools and services. The first newsroom email is delivered shortly after registration to support small businesses in their early establishment and help keep them on track.

106. Small Business Newsroom emails issues every few weeks to over 1.2 million subscribers. We include new small business registrants on a monthly basis (average around 30,000 per month). We have a high retention rate of subscribers – over 98 per cent. Our newsroom receives over 100,000 web views per month, with the majority of views in the few days after the email issues. We receive regular compliments from small business people and occasionally tax practitioners.

## **ATO app**

107. There are over 400,000 new users of the mobile app in 2016-17, and it has been downloaded over 1 million times since its launch in June 2013.

108. The app makes it easier for individual taxpayers, small business owners and self-managed superannuation fund trustees to conduct their tax and superannuation affairs on the go.

## **Cash Flow Management Education Program**

109. The Cash Flow Management program is a new initiative for small businesses, focusing on helping businesses better understand and manage their cash flow. It has been designed by the ATO and Price Waterhouse Cooper Indigenous Consulting, in consultation with tax practitioners, accountants, bookkeepers, and small businesses. It is designed primarily for accountants and other trusted advisors to deliver directly to their small business clients in a one-to-one environment.

## **Department of Human Services Mobile Service Centres**

110. The Department of Human Services (DHS) has two Mobile Service Centres (MSC) that travel to regional communities to provide people with information and access to government services. The ATO has entered into a partnership with DHS to join them in

expanding the services offered to include assistance to both individual and small business taxpayers.

### Small Business Conversation

111. The ATO runs 'Small Business Conversation' events nationally, where small businesses (and in particular those new to business) are invited to ATO offices to:
- learn about new products and services designed to help them
  - speak with ATO staff and have their questions answered
  - see a demonstration of ATO digital services, and
  - talk to representatives from various other government departments about what services they provide for them
112. The event is run in an expo style format so small business clients are able to visit booths and ask questions, find out more information about the tax and super systems, and see how the ATO can help small businesses to be successful.

## Supporting employees with Superannuation Guarantee

### Launched new super tools

113. In October this year we launched our revised super tools to make it easier for employees to understand and report shortfalls in SG. These tools have been re-developed to be tailored to the user experience. They have been designed to allow users to only answer questions which are relevant to their situation. We promoted these tools via social media (Facebook and twitter) to help reach the intended audience through their natural channels.
114. We have a number of tools available to assist individuals:
- [Am I entitled to super](#) - this tool helps individuals understand whether they are entitled to super guarantee contributions from their employer.
  - [Estimate my super](#) - this tool helps individuals estimate how much super guarantee their employer should have paid for them.
  - [Unpaid super](#) - this step-by-step guide is for individuals who believe their employer is not paying their super. It helps them investigate prior to reporting unpaid super to us.

- [Report unpaid super contributions from my employer](#) - this tool allows individuals to let us know if their employer has not paid super, paid super late or paid super to the incorrect fund. We will investigate the employer based on the information provided.

115. Our website provides extensive information to help people with their superannuation entitlements, health of their super and report unpaid super contributions. Links to relevant web content:

- [Individuals Super](#)
- [Am I entitled to super](#)
- [Estimate my super](#)
- [Super from my employer](#)
- [Unpaid super](#)
- [Your 5 step super check](#)
- [Report unpaid super contributions from my employer](#)
- [Salary sacrificing super](#)
- [Super guarantee](#)

## Messaging to Employees and Individuals

### Newsrooms

116. To support tax and super professionals assist their individual clients with their super entitlements, we regularly promote messages in their newsrooms and newsletters. To promote the new SG tools, in October 2016, we published:

- an article in the Tax professionals newsroom which resulted in an open rate of 35.3 per cent which is above the average open rates for newsletters (average industry open rates for newsletters are 21.6 per cent).
- an article in the BAS agents newsroom which resulted in an open rate of 41.9 per cent of total recipients

### Tax, Super and you

117. This website tailors information for youth or teachers to help explain the basics of tax and super. It covers the nuts and bolts of tax and super. It features interactive videos, quizzes and provides an online course to find out just how much your daily life is affected by tax and super. Visit: [taxsuperandyou.gov.au](http://taxsuperandyou.gov.au)

### Treasury website

118. In January 2017 we arranged for a promotion of ATO's role in super system on Treasury's website to enable easy connection for users who may be looking for super

information from that website: [treasury.gov.au/Policy-Topics/SuperannuationAndRetirement](https://treasury.gov.au/Policy-Topics/SuperannuationAndRetirement)

### **MoneySmart website**

119. We also collaborate with ASIC and ensure to have appropriate and complementary information on their website about super to help individuals:

[moneysmart.gov.au/superannuation-and-retirement](https://moneysmart.gov.au/superannuation-and-retirement)

# ATO Administration of the system

## Our Compliance Program

120. For 2015-16, ATO compliance action resulted in:

- **\$670.4 million** superannuation guarantee charge raised (including penalties and interest);
- **\$341.3 million** superannuation guarantee charge collected by the ATO<sup>12</sup>
- **2,997** default assessments<sup>13</sup> raised by the ATO
- **877** Director Penalty Notices (DPN's) were issued for SG debt of \$130 million.<sup>14</sup>

121. Since 2010-11 as a result of ATO action, we have transferred almost \$2 billion in SG entitlements to superannuation funds on behalf of 1.4 million employees<sup>15</sup>.

**Table: Raised, collected and transferred**

|                               | 2010-11 | 2011-12 | 2012-13 | 2013-14            | 2014-15 | 2015-16 |
|-------------------------------|---------|---------|---------|--------------------|---------|---------|
|                               | \$      | \$      | \$      | \$                 | \$      | \$      |
| SGC raised                    | 517m    | 553m    | 646m    | 844m <sup>16</sup> | 735m    | 670m    |
| Cash collected                | 269m    | 323m    | 337m    | 395m               | 379m    | 341m    |
| Transferred                   | 258m    | 295m    | 312m    | 388m               | 372m    | 373m    |
| Total employees <sup>17</sup> | 236,922 | 233,928 | 407,145 | 422,867            | 374,037 | 292,172 |

## Our approach

122. The ATO conducts audits and review to ascertain SG non-compliance. 70 per cent of these cases stem from employee notifications, with the remaining 30 per cent of cases actioned from ATO initiated strategies. In 2015-16 the ATO undertook around 21,000 cases that addressed SG compliance.

<sup>12</sup> Source: ATO Annual Report 2015-16.

<sup>13</sup> The Commissioner may make a default assessment based on the information we have available including payment summaries and superannuation member contribution statements.

<sup>14</sup> Source: ATO Debt.

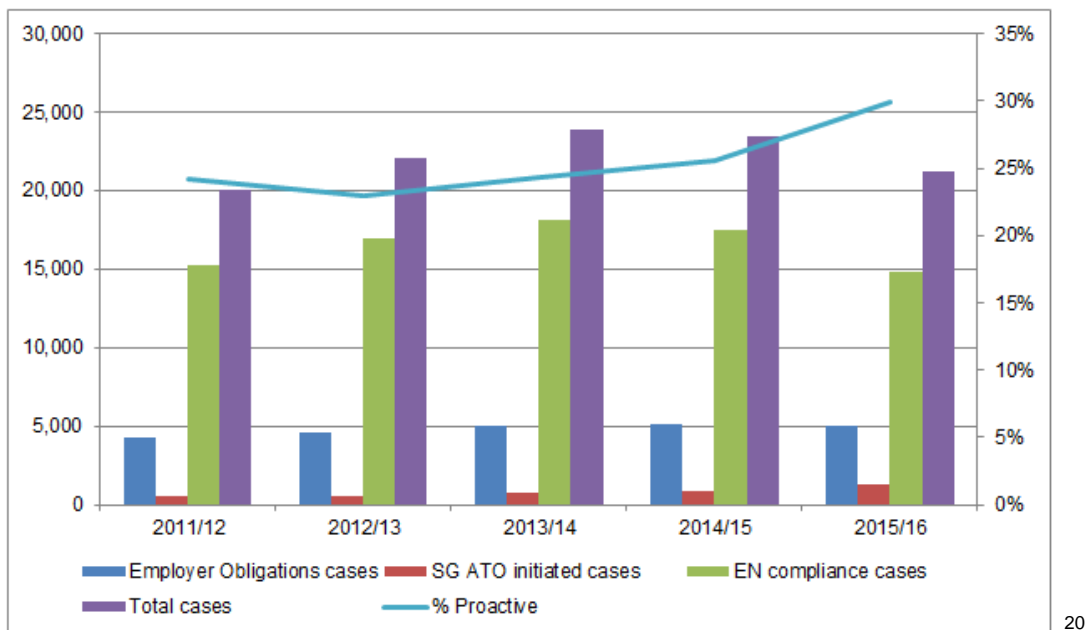
<sup>15</sup> Total count of employees who received contributions over the six years.

<sup>16</sup> This includes \$101m in penalty remissions.

<sup>17</sup> Total unique employees where money has been transferred to a fund. Employees may be reflected in more than one year.

123. On average the ATO receives employee notifications (ENs) from employees in relation to approximately 15,000 employers who are subsequently investigated by the ATO. This represents approximately 2 per cent of an estimated 880,000 employers<sup>18</sup>.
124. We do find that nearly 30 per cent of these employers have in fact paid the required SG to their employee. However an SG shortfall is identified in the remaining 10,000 cases, This represents approximately 1 per cent of the estimated 880 000 employers<sup>19</sup>.
125. The majority of our review and audit work is directly addressing employee notifications. We also undertake ATO initiated reviews and audits arising from case selections from high risk employers or from high risk industries. We also examine SG payments when reviews and audits are undertaken examining income tax employer obligations risks.
126. In summary, the compliance program is made up of the following review/audit types:
- Employer Notification (EN) cases
  - ATO initiated cases (SG Proactive cases)
  - ATO initiated cases (Employer Obligations cases)
127. Over the past three years the ATO has increased efforts to select cases from a range of sources other than employee notifications. This has been supported by improved efficiencies in the timely resolution of employee notifications cases.

**Table: Compliance cases**



<sup>18</sup> 2014-2015 ATO Annual Report, pg 12.

<sup>19</sup> 2014-2015 ATO Annual Report, pg 12.



128. We take a risk differentiated approach to our compliance activities, taking into account factors such as the industry and market segment of the employer, and their prior compliance history.
129. At the commencement of a compliance review, we actively encourage low risk employers to review their records and either pay any shortfalls immediately.
130. We have found that where the employer lodges an SGC statement they are almost invariably unable to pay the whole amount when it is due. Once SG debt is established, employers are offered a payment arrangement to assist manage the collection of the outstanding debt.
131. A Commissioner's estimate of the SG shortfall amount is used from available information (ie default assessments) when the employer has failed to provide the requested information or in instances of insolvency where the practitioner cannot identify the outstanding SG amounts.
132. Default assessments are an estimate and are raised based on the information available in ATO records, most commonly the Income Tax assessment records of the employees.
133. At the conclusion of an audit or review, the employer is sent detailed information including a finalisation letter, a 'Reasons for Decision' document, Notices of Assessment, employee listings and calculated shortfalls for the periods for which Default assessments were raised.
134. We apply additional penalty to SGC and interest on the shortfall amount, from the beginning of the relevant quarter, until the employer lodges an SG statement or the Commissioner makes a default assessment.
135. We may remit all or part of the Part 7 penalty applied to SGC payable in accordance with the discretion available to the Commissioner for this component of the SGC charge.
136. In general, penalty would be remitted in full for an employer in its first year of operation provided the employer made a genuine attempt to comply with the SG obligations.
137. Penalty is remitted to some extent in most situations. Instances could include where an established employer with an otherwise good compliance history made an honest mistake in fulfilling their obligations or the employer has taken steps to mitigate the

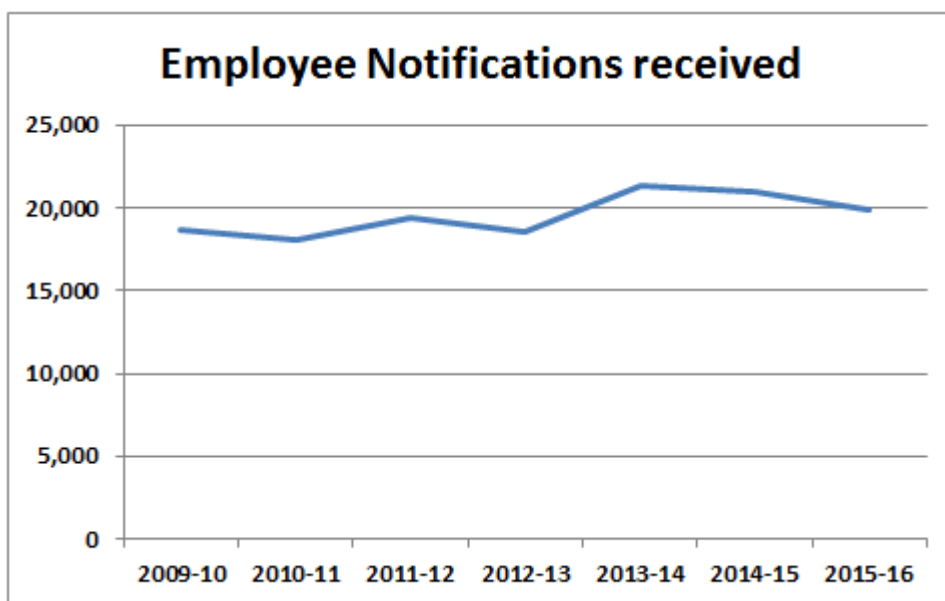
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<sup>20</sup> Source- SPR E&A Reporting and SMB EO.

circumstances that caused the failure to fulfil the obligations or the employer provided a high level of co-operation to the ATO.

## Employee notifications

138. The ATO accepts reports from employees who believe that they have not been paid the correct amount of SG or their employer has not provided them choice of fund where applicable.
139. The amount of reports brought to the attention of the ATO has remained relatively stable since 2009-10.



140. Year to 31 December 2016, the ATO has received 10,759 reports about unpaid superannuation.
141. An important step to assist the employee to identify if they have been paid the correct amount of SG is to examine their pay slip and ideally speak to their employer. This advice and a supporting 'on-line' calculator is provided on our website as part of the process to report the non-payment of SG. In October 2016 we updated our website to improve and simplify the process.
142. Analysis has indicated that for the last few years approximately 70 per cent of employees who notify the ATO, were no longer employed by the employer reported. Approximately 70 per cent of notifiers believe that no SG has been paid on their behalf, while the remainder believe they have been under paid.

143. There is considerable timeframe between when a SG shortfall arises (ie from the due date for when an employer should have paid their employee's superannuation) and when the employee lodges a report with the ATO. Most reports are received more 12 months after the due date of the first period about which the notification is received. On average, reports are received around 23 months after the due date of the first period. The balance of the ENs received relate to periods ranging from 2 to 16 years prior to notifying the ATO.
144. Notifications made to the ATO are usually arrive more than 12 months after the due date for the first period about which they are seeking assistance. To deal with this time lag the ATO has been applying a concerted effort to review and investigate cases as quickly as possibility. To that end we have improved our performance by moving from completing 50 per cent of cases within 4 months in 2012-13 to now completing 76 per cent of cases within 4 months.
145. From an industry analysis perspective, the top ten industries from which ENs are received by the ATO, are fairly consistent over time. The top four industries are from Accommodation and Food Services, Construction, Manufacturing and Retail Trade. These four industries represent approximately 50 per cent of the cases undertaken. ENs from these industries usually are made 1-3 years after the due date for the first period about which they are seeking assistance.
146. All ENs are investigated to establish the accuracy of the report through an initial review or audit action against the reported employer. Some 28 per cent of reports do not need to progress to an audit case due to finding that the:
- employer is already being contacted
  - employee withdraws report
  - employee is covered by assessments already raised
  - employer is insolvent/bankrupt and the ATO is unable to pursue the debt
  - employment was more than 5 years ago and the employer is no longer required to keep records.
147. Since 2012 we have completed approximately 15,000 employer cases per year. We identified that SG had not been paid in an average of 65 per cent of cases. With average adjustments made of \$25,000 per employer.
148. Some 97 per cent of reports of unpaid super made to the ATO were against small business employers and this same group accounted for around 98 per cent of the liabilities raised by the ATO.

149. Additionally 36 per cent of EN cases raised by ATO were raised against employers displaying an insolvency indicator on ATO systems which made debt collection unlikely and left the ATO unable to collect any payment for the employee.

## ATO Initiated Superannuation Guarantee Cases

### SG High Risk Employer

150. Another component of our compliance program is to examine employers where we suspect they may have not met their SG obligations. This approach identifies employers who, based upon analysis of ATO held data, are considered a high risk of not having met their SG obligations.
151. By comparing salary and wage data from individuals income tax returns with SG payments as reported by funds in member contribution statements, a general assessment can be made as to whether an employee may have received the SG they were entitled to. This information is then aggregated to an employer level. This assessment is by no means definitive, but can highlight employers who have a higher probability of under paying SG. This strategy focuses our audit resources upon those employers.
152. Reviews and audits undertaken under this strategy have consistently produced stronger results in terms of adjustments raised per audit than is achieved by our Employer Notification driven work.

### SG Third Party Referrals

153. In addition to reports from employees, the ATO also receives information from superannuation funds, unions, government agencies and other third parties regarding possible employer non-compliance. This information is evaluated and where suitable, compliance action is taken.

### ATO Initiated SG Proactive Results

154. In recent years we have increased our focus on non-employee notification cases, increasing from 544 cases in 2011-12 to 1,330 cases completed in 2015-16<sup>21</sup>.

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<sup>21</sup> Source: ATO, Superannuation, Engagement and Assurance.

155. ATO risk assessments and models used to generate compliance case work identify largely the same industries that drive our EN work with Accommodation and Food services, Construction, Manufacturing and Retail featuring highly.
156. Our ATO initiated cases identify non-payment of SG in 82 per cent of cases, and result in higher adjustments to SGC with an average adjustment \$68,000 per employer compared with the \$25,000 resulting from employer notification cases.

## High Risk Industries

157. The High Risk Industry (HRI) strategy focuses upon sub-industries showing a higher risk of non-compliance with SG obligations compared to other sub-industries. Our current risk mitigation strategy for HRIs has two elements; education and audit.
158. A variety of channels are used to provide information to employers including:
  - correspondence (email or paper) to all employers in the identified HRIs
  - social media content, such as tweets, Facebook and LinkedIn posts
  - paid advertising
  - web content on ato.gov.au.
159. Following the education campaign, a review is undertaken to test employer compliance in those high risk industries and assess whether there has been any change in behavior. This feeds into our high risk employer focus.

## ATO initiated Employer Obligation audits

160. ATO initiated employer obligation audits for Pay As You Go Withholding Tax also includes checks for SG non-compliance. These audits have resulted in 70 per cent of cases also identifying a SG liability.
161. For the year ended 30 June 2016, 5,000 audit cases included a review of the employers SG obligations. Of these 5,000 cases completed, 70 per cent identified non-payment of SG, with an average adjustment of \$44,000 per employer.
162. Small Businesses also make up the majority of case work with industries previously identified featuring significantly in this work also.

## Penalties

163. The ATO uses PSLA 2011/28<sup>22</sup> which provides guidance to tax officers to remit, in whole or part, the additional SGC imposed under subsection 59(1) of SGAA.
164. In 2015-16, consideration was given to penalties in 8,563 SG audit cases where we identified under payment of SG and we raised \$53m from 2,358 cases (approximately 53 per cent of cases).

## Litigation

165. Litigation plays a critical role in protecting employer's rights and clarifying technical issues and understandings. Litigation cases in relation to SG, while not overly large in number, reached a peak in 2013 but in recent years have trended down.
166. There was a significant increase in SG litigation in the 2013 and 2014 years particularly an increase in status of worker disputes, mainly arising from small business employer obligation audits where they determined workers in various industries (eg. fishing, cleaning, building, ceiling installations, demolition, pizza delivery drivers) to be employees for the purposes of the SGAA rather than as a result of employee notifications.
167. We also saw a number of litigation disputes involving the application of Part 7 penalties under the PS LA 2011/28. Many of those cases ended up settling once we obtain further evidence from the taxpayer which warranted further remission of the penalty. Although there does not appear to be a lot of Part 7 penalty only cases, there were a number of insufficient contribution disputes which also involved penalty issues.
168. SG litigation cases started to reduce in 2015 which is likely due to alternate dispute resolution and the SG audit taking a differentiated approach when considering raising assessments. In addition we have not received any litigation matters which resulted from an ATO Initiated Employer Obligation Audit for some time.

## Debt and recovery management

169. We seek to make it as easy as possible for employers to pay their SGC debts using a wide range of tools and payment channels.

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<sup>22</sup> Practice Statement Law Administration: Superannuation Guarantee- remission of additional superannuation guarantee charge imposed under subsection 59(1) of the Superannuation Guarantee (Administration) Act 1992.

170. We are increasing our use of analytics and behavioural insights to gain a greater understanding of payment behaviours and applying these insights to better tailor our services and contacts with employers with an SGC debt.

**Table: Trend in SGC debt**

| SGC          | 2011-12       |               | 2012-13       |               | 2013-14         |               | 2014-15         |               | 2015-16 <sup>23</sup> |                            |
|--------------|---------------|---------------|---------------|---------------|-----------------|---------------|-----------------|---------------|-----------------------|----------------------------|
|              | \$m           | Cases         | \$m           | Cases         | \$m             | Cases         | \$m             | Cases         | \$m                   | Cases                      |
| Collectable  | 340.14        | 11,231        | 403.35        | 12,879        | 461.59          | 17,389        | 521.39          | 25,281        | 622.62                | 25,665                     |
| Disputed     | 45.17         | 358           | 71.44         | 483           | 35.98           | 380           | 24.57           | 212           | 28.33                 | 247                        |
| Insolvent    | 454.27        | 6,089         | 461.17        | 5,561         | 517.57          | 5,774         | 598.41          | 6,541         | 718.34                | 7,977                      |
| <b>Total</b> | <b>839.58</b> | <b>17,678</b> | <b>935.96</b> | <b>18,923</b> | <b>1,015.14</b> | <b>23,543</b> | <b>1,144.37</b> | <b>32,034</b> | <b>1,369.29</b>       | <b>33,889<sup>24</sup></b> |

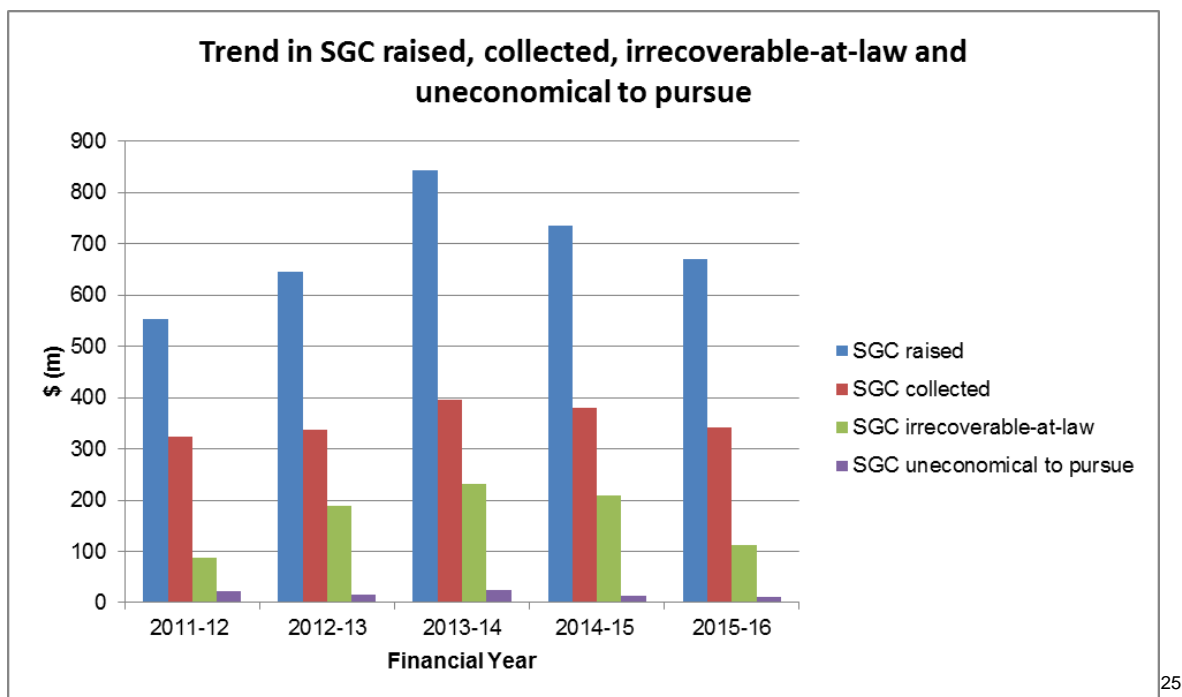
171. We recognise that employers with an SGC debt may not be in a position to pay the entire amount by the due date. To assist, we offer payment plans tailored to their individual circumstances.

172. For employers that do not engage with us to address their SGC debt we take timely stronger action including garnishees, director penalties and legal proceedings.

173. Where we establish a SGC debt following an employee's unpaid superannuation enquiry, we correspond with that employee to keep them informed of the progress of our debt collection efforts until the case has been finalised.

<sup>23</sup> Approximately \$52 million of this increase is due to a change in an internal accounting treatment that resulted in amounts previously being classified as insolvent being reclassified as collectable.

<sup>24</sup> Source- ATO Debt.



174. Over the past five financial years ‘the rate of SGC distributed to individuals or superannuation funds compared to the amount raised’ has improved by 2.4 per cent, from 53.3 per cent to 55.7 per cent.
175. At 30 June 2016, SGC collectable debt was \$622.62 million owed across 25,665 cases. This equates to less than one per cent of total employer contributions.
176. In 2015-16, the ATO granted around 6,000 payment plans worth almost \$250 million for SGC debts.
177. Only 5 per cent of cases were for amounts greater than \$100,000 and 75 per cent were for amounts less than \$15,000. About 8,000 or 35 per cent of cases were in the lowest debt level with an average SGC balance of \$273.
178. Almost a third of the cases are amounts which are less than the cost of the first stage of any legal recovery action filing fee.

<sup>25</sup> Source- ATO Debt.



**Table: SGC collectable debt by industry (top six) at 30 June 2016**

| Industry                            | Debt (\$m) | Proportion         |
|-------------------------------------|------------|--------------------|
| Construction                        | 85.0       | 14.7%              |
| Accommodation and food services     | 81.5       | 14.1%              |
| Manufacturing                       | 53.8       | 9.3%               |
| Administrative and support services | 52.3       | 9.0%               |
| Other services                      | 50.8       | 8.8%               |
| Retail trade                        | 48.2       | 8.3% <sup>26</sup> |

179. The small business and small to medium enterprise market segments have the highest amount of SGC collectable debt.

## Challenges to the effectiveness of the Commissioner’s recovery powers

180. Approximately 80 per cent of employers who incur SGC liabilities are corporate entities. In many instances, these companies are part of a corporate group in which they are the employing entity which provides labour to the related entities which own the capital equipment and other assets.
181. The employing entity incurs the SGC (and Pay-As-You-Go Withholding) liabilities, but has no income stream which would enable the use of the Commissioner statutory garnishee power, and also has no assets which would enable a dividend to be paid from its liquidation.
182. Many companies which have SGC liabilities hold assets, but those assets are encumbered to secured creditors, such that the Commissioner also has limited scope to recover the SGC liabilities via liquidation or seizure of assets.
183. Due to the lag in reporting non-payment of superannuation contributions, insolvency is a significant issue in the recovery of SGC debt, with \$113.2 million irrecoverable at law in 2015-16.
184. For SGC at 30 June 2016, insolvent debt represents 52 per cent of the total SGC debt, this compares to 19 per cent for all debt types.

<sup>26</sup> Source- ATO Debt.

185. Administrative improvements to the recovery of SGC potentially could be achieved by improving the systems that support the issuing of DPNs.
186. It appears that a significant reduction in the amount of unpaid SGC can only be achieved by some improvements in the effectiveness of the Commissioner's and insolvency practitioner recovery powers, or by the introduction of measures that would reduce the capacity or further increase the personal disincentives for employers to incur SGC liabilities.
187. Since 2012, the Director Penalty Regime (Div 269 of Schedule 1 to the Taxation Administration Act 1953) ("the TAA") has applied to company SGC liabilities. This generally enables the Commissioner to achieve recovery of the SGC liabilities by pursuing a parallel liability imposed on the company directors in the form of a penalty.
188. However, the liquidation or voluntary administration of the company automatically extinguishes any director penalty which was not already the subject of a Director Penalty Notice (s269-25 of the TAA) issued more than 21 days prior to the commencement of the insolvency administration or where the associated SGC liability was not reported for more than three months at the time that the administration commenced. Given that the reporting date for SGC is two months following the end of the quarter, it is often the case that the eventual liquidation of the company extinguishes the director penalties related to the past eight months of the company's unpaid superannuation obligations.

## Data analytics and modelling

### What we do now

189. As highlighted previously, the ATO actions all employee notifications it receives from employees reporting non-payment of SG.
190. The ATO uses data analytics and modelling in the compliance case selection process for our proactive work on the High Risk Employer (HRE) strategy. There is currently a business rule driven model that categorises employers based on their level of risk of non-compliance based upon a range of factors drawn from information in our data holdings. Upon selection for audit by the HRE risk model, SG audit staff manually risk profile each employer prior to making contact.
191. The ATO has commenced conducting an in-depth analysis of internal and external data holdings to identify, understand and quantify risk in the SG environment. It is intended

that this analysis will enable us to be more predictive of employer behaviour and inform our early contact, education and assistance approaches.

## Our challenges

### Data issues

192. There are currently limitations in the data (e.g. Member Contribution Statement) provided by third party (Super funds) to ATO.
193. One of the main limitations is that employers who make Super contribution to employees cannot be consistently identified. This limitation reduces ATO's abilities to identify the employers who do not comply with SG legislation.
194. Another data limitation is related to employees' TFNs in the Member Contribution Statement from the Super funds are not correctly reported in some instances. As the consequence, ATO is not able to identify the right employees during risk assessment of employers. It is anticipated that recent SuperStream initiatives will improve this going forward.

## Resources and performance measures

### ATO Resourcing for Superannuation Guarantee

195. Resourcing for SG work is spread across the ATO. The majority of resources sit within the Superannuation business line, with supporting services provided by client account services, law design and practice and customer service and solutions.



196. The FTE number and proportion of staff working on SG within the Superannuation Business Line in 2016-17 has remained at a similar level to that of 2015-16.

197. Within the Superannuation Business Line there are currently approximately 350 FTE employed in active compliance, of the work undertaken by the active compliance staff, 49 per cent (or 170 FTE equivalent) can be attributed to SG. These staff are based in seven sites around Australia, which are grouped into four regions.

### Service Standards

198. We investigate all employee notifications (ENs) relating to non-payment of SG (including third party complaints) within service standards.

199. The ATO aims to commence 99 per cent of employee notifications (ENs) within 28 days of receipt and, where they proceed to audit, complete 50 per cent of compliance cases within 4 months<sup>27</sup> and 90 per cent of compliance cases within 12 months.
200. Since 2013, the benchmark was met for all three of the service standards. This achievement has continued into 2016-17.

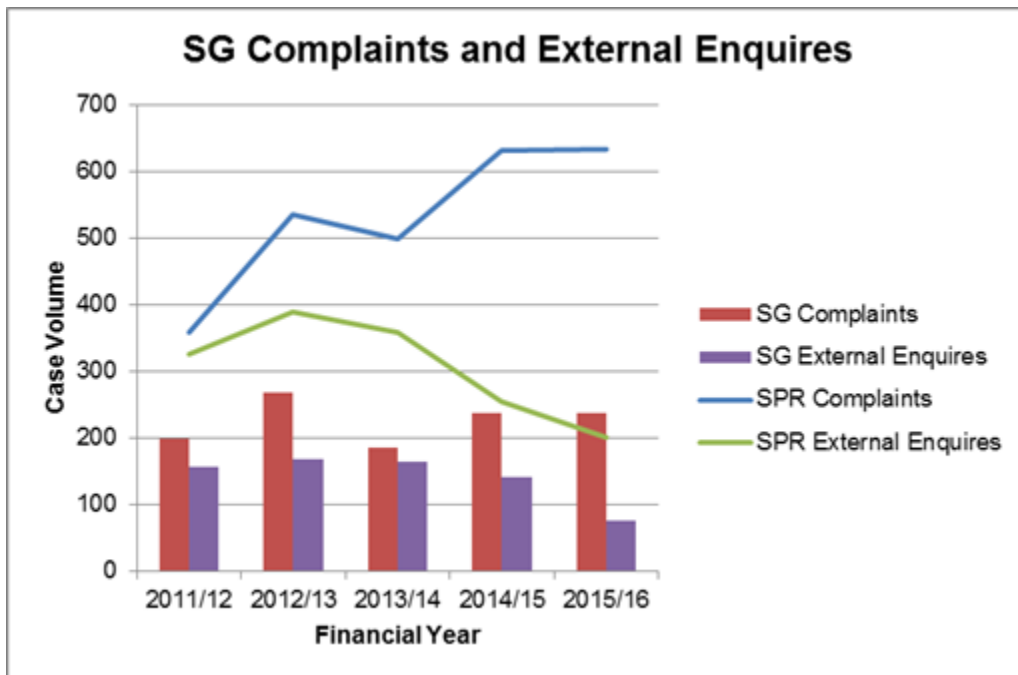
| EN Service Standard                    | Standard  | Benchmark | 2012-13 | 2013-14 | 2014-15 | 2015-16            |
|--|-----------|-----------|---------|---------|---------|--------------------|
| Commenced within 28 days of EN receipt | 28 days   | 99%       | 99.10%  | 99.40%  | 99.50%  | 99%                |
| Closed within 4 months                 | 4 months  | 50%       | 50.82%  | 70.70%  | 73.50%  | 76%                |
| Closed within 12 months                | 12 months | 90%       | 99.70%  | 99.80%  | 99.90%  | 100% <sup>28</sup> |

## Complaints and enquiries

201. On average, Superannuation receives approximately 800 complaints per year; 600 of these relate to SG and 200 are external enquiries (including from Members of Parliament, Commissioner Correspondence, Treasury Briefings and reviews of finalised complaints).
202. We view complaints not as an issue but as an opportunity for improvement and take advantage of these opportunities by supplying feedback and escalating known or potential issues identified through this channel or implementing change where able.
203. The principal driver for superannuation complaints is SG; this trend has been consistent since 2010-11. More specifically, the majority of SG complaints relate to the limitations of the employee notifier (EN) process to ensure the payment of an employer's outstanding SG obligations is in line with employee expectations.

<sup>27</sup> This standard is being reviewed.

<sup>28</sup> SPR E&A Reporting.



204. In 2011-12 SG complaints made up 55 per cent of total Superannuation complaints, over time this has decreased to 37 per cent in 2015-16. As the number of ENs received annually remains consistent this is a positive result.
205. Between 2011-12 and 2013-14 the number of SG external enquiries were consistent, at approximately 160 each year. This has decreased in the past two years to a low of 76 in 2015-16.

## Scrutineer Reviews and Recommendations

206. In June 2015 the Australian National Audit Office (ANAO) reported on its assessment of the effectiveness of the ATO's activities to promote employer compliance with SG obligations. The ANAO concluded that:

*'Overall the ATO's administration of the SG Scheme has been generally effective, particularly having regard to the scale of the Scheme..... Nevertheless, to better target its activities and more effectively promote employer compliance with SG obligations, the ATO should gain a greater understanding of the levels of non-compliance across industry sectors and types of employers. This is important given the potential impact of non-compliance on the retirement income of employees, and the role of the Scheme in reducing reliance on the age pension.'*

207. The ANAO advanced four recommendations to support the ATO's compliance efforts;
1. To provide greater assurance of the level and nature of non-compliance the ATO;

- a) *better analyses non-compliance at the industry level and among categories of employees most at risk, and*
- b) *further engages with external stakeholders involved in SG compliance.*
2. *To more effectively encourage employers to comply with their SG obligations, the ATO increase the emphasis on its role in enforcing compliance in its communication and marketing activities.*
3. *To improve effectiveness of compliance activities, better align the SG compliance strategy with the compliance activities undertaken by other relevant business lines.*
4. *To reliably assess the effectiveness of compliance strategies, the ATO;*
  - a) *develop indicators, targets and timeframes to assess if goals are being achieved,*
  - b) *conclude whether strategies are effectively addressing SG compliance risks.*

208. The ATO agreed with and is implementing each of the ANAO's recommendations.

209. The Inspector General of Taxation (IGoT) is currently undertaking a review into the ATO's employer obligations compliance activities. Under the terms of reference the review will focus upon easing the compliance burden for employers and the ATO's conduct of compliance activities including pay-as-you-go withholding, fringe benefits tax, director penalty notices for super guarantee charge and the ATO's engagement with employees and employers in the resolution of these activities.

# Opportunities and initiatives underway

## Recent developments

210. There are a number of initiatives and programs underway that are directly or indirectly connected with employers' compliance with SG.

## SuperStream

211. SuperStream utilises digital technology to provide a simpler, consistent method for making super contributions, registering new employee super accounts and providing associated data. It includes a package of reforms designed to enhance the 'back office' of superannuation.

212. SuperStream requires data to be in a standard format so it can be transmitted consistently across the super system – between employers, funds, service providers and the ATO. The data is linked to the payment by a unique payment reference number.

213. This means

- employers can make all their contributions in a single transaction, even if they're going to multiple super funds
- contributions and rollovers can be processed faster, more efficiently and with fewer errors
- people can be more reliably linked to their super, reducing lost accounts and unclaimed monies.

## Small Business Superannuation Clearing House (SBSCH)

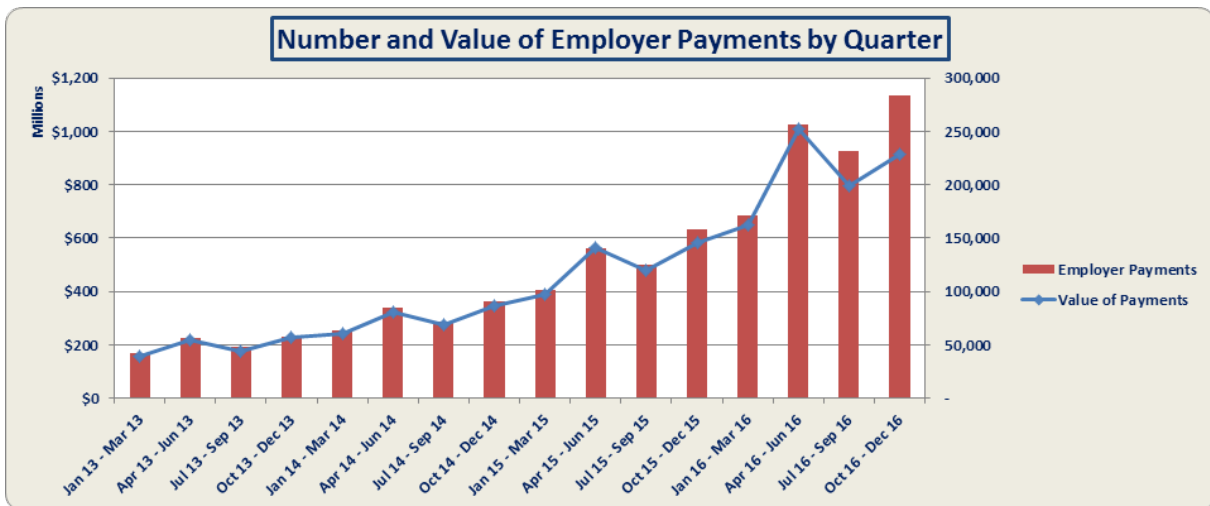
214. The Small Business Superannuation Clearing House assists employers to meet their SG obligations by making the payment process easier, reducing red tape and compliance costs. It was developed as part of a 'free safety net' approach for small business as part of the Super Stream Program.

215. It is an ATO supported service which provides an online super payments service available 24 hours a day, 7 days a week that lets small businesses with fewer than 20 employees, or a turnover of less than \$2m, pay their super contributions in one transaction to a single location.

216. As at 30 June 2016, there were 212,782 employers registered with the SBSCH, of the approximately 700,000 small businesses employers eligible to use the ATOs SBSCH.



217. As at 31 December 2016 there were 260,645 employers (approx. 37 per cent of those eligible) registered with the SBSCH of which 245,382 had made payments in the past 12 months.
218. In the year ended 30 June 2016 we processed 3.86 million payments totalling around \$2.7 billion in SG payments.



## Single Touch Payroll

219. The proposed Single Touch Payroll (STP) will simplify taxation and superannuation interactions for employers. It will do this by aligning the reporting of PAYG withholding and SG with a business’s natural process of paying their employees.
220. Use of STP is mandated for businesses with 20 or more employees from 1 July 2018. A pilot program will be undertaken in 2017 to identify the nature of benefits of STP for small businesses.
221. A decision by government, on any expansion for STP reporting for small business employers is expected after the pilot is completed.
222. Under the current design, Single Touch Payroll will provide opportunities to identify the non-payment of SG by providing real time visibility of SG liabilities and payments and will enable the ATO to continuously monitor SG shortfalls at the employer and employee level.
223. The ATO will be able to predict and monitor SG payment patterns for changes or ‘missed’ payments. As a result, the ATO will be able to put in place preventative measures, for example:

- where the ATO can see an employer pays SG near the due date, SMS reminders could be sent
- where a predicted payment is missed the ATO could contact the employer before the SG due date
- where an employer has a shortfall and has yet to lodge to SG statement the ATO can instigate action and in some cases issue a default assessment

## Transparency of tax debt

224. In MYEFO 2016-17 the government announced a transparency of tax debt initiative, allowing the ATO to disclose to credit reporting bureaus the tax debt information of businesses that have not effectively engaged with the ATO to manage their debts.

225. At this time all tax debts for taxpayers with an ABN, including SGC, are in scope for credit reporting where they:

- exceed \$10,000 and are overdue in part or in full by 90 days, and
- are not entered in or compliant with a payment plan, and
- are not subject to dispute.

226. Community consultation has commenced and will inform the detailed design for this measure, due to be implemented from 1 July 2017.

# Appendices

## Appendix 1 – History of Superannuation Guarantee Legislation

### 1 July 1992

- SG legislation came into effect. Refer to the tables at the end of this section for a list of the charge percentage increases since inception.

### 1993- 94

Structural Changes to SG – Treasurer’s Statement 28 June 1994.

- Small SG Payments (Small Amounts now known as Superannuation Holding Accounts Reserve – SHAR). Policy to prevent erosion of small amounts of superannuation. Establishment of member protection rules for accounts of less than \$1,000 and of an ATO holding mechanism to assist employers making small superannuation contributions on behalf of their employees. (ATO mechanism is not a superannuation fund it will be exempt from the supervisory and taxation requirements of superannuation funds).
- New rules proposed on extended use of TFNs for identification, amalgamation and transfer of superannuation accounts. Increased use of TFNs in Superannuation – SIS legislation will be amended to allow greater use of TFNs within the superannuation system to enable better tracking of member’s entitlements.
- Improvements to SG rules. SG should complement not replace award superannuation provisions Ordinary Time Earnings and Earnings Bases.

### 1997-98

- From 1 July 1997 maximum age for compulsory SG contributions increased from 64 to 69.

### 2003-04

- From 1 July 2003, employers have to make SG contributions on a quarterly basis.

## **2005-06**

From 1 July 2005

- Eligible employees are able to nominate the superannuation fund into which their employer's contributions are to be paid – that is, Choice of fund.

From 1 January 2006

- Late payment offset introduced. Employer contributions made for an employee to a superannuation provider within one month of the SG due date are able to be used to offset the portion of any SGC for the quarter that relates to that employee.

## **2006-07**

From 1 July 2006

- Removal of the Productivity Benefit Act for new employees will mean that the ATO will have responsibility for ensuring superannuation compliance of Commonwealth Government agencies.
- Superannuation contributions will be payable on back payments made after the termination of an employment relationship. The resulting SG obligation will arise in the quarter in which the back payment is made.

## **2007-08**

From 1 July 2007

- Removal of the aged based contribution limits.
- As part of the Federal Government's 2006-07 Budget, the ATO was given an additional \$19.2 million over four years to improve responsiveness to employee inquiries about unpaid SG contributions. The ATO will provide enhanced services by addressing the backlog of inquiries and providing more timely completion of future investigations. The ATO will also be able to provide employees with more advice on the progress of inquiries.
- Royal assent received 23 June 2008 for Late Payment Offset. These legislative amendments were introduced to widen the eligibility requirements that allowed employers to offset late super guarantee contributions against the super guarantee charge.

## **2008-09**

- From 1 July 2008, SG contributions are based on ordinary time earnings.
- Further amendments to the LPO. From 26 March 2009 contributions paid late but before the SGC assessment date can be used for the offset.

## **2010-11**

- From 1 July 2010 free small business superannuation clearing house commences for employers with 19 or less employees.
- Government announces Stronger Super reforms package. Includes MySuper default fund. Reforms package is in response to the Cooper Review into Australia's super system.

## **2012-13**

From 1 July 2012.

- Changes made to Superannuation Co-Contribution incentive and introduction of Low-Income Earners Government Contribution.

## **2013-14**

- The SG rate to gradually increase from 9 per cent to 12 per cent by 1 July 2019<sup>29</sup>;
- From 1 July 2013 the SG age limit was abolished. Employers must pay SG contributions for eligible employees aged 70 and over.
- From 1 January 2014, employers must make contributions for employees who have not made a choice of fund to a fund that offers a MySuper product.
- From 1 April 2014 the Small Business Superannuation Clearing House transfers to the ATO.

## **2014-15**

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<sup>29</sup> Legislation has been introduced into Parliament to defer the rate rise by two years.

- 1 July 2014 Employers (except small business) commence using payment and data standards for employer contributions.

**2015-16**

- 1 July 2015 Small business employers (less than 20 employees) commence using payment and data standards for employer contributions.

## Appendix 2 – Employee Notifications

### Superannuation Guarantee – Employee notifies of Superannuation Guarantee shortfall

