



Community and Public Sector Union

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Inquiry into Superannuation Guarantee non-payment

The Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to this inquiry into Superannuation Guarantee non-payment.

As the primary union representing Australian Public Service (APS) and Australian Taxation Office (ATO) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for members in key public policy and political debates.

Role of the ATO relating to unpaid Superannuation Guarantee

The Superannuation Guarantee (SG) is an important tool in allowing workers to have a more comfortable retirement and reduce the contributions required from government in the form of aged pension or welfare payments. However, CPSU members have identified inadequacies in how non-compliance with SG is managed by the ATO.

CPSU members have commented that it is common for employers who are slow or non-compliant with their GST and PAYG reporting obligations are also slow or non-compliant with their SG obligations.

“Employers who owe the ATO money are generally having cash flow issues and put off their obligations as much as they can get away with. The Tax and SG obligations are often amongst the last to be addressed. This means the situation gets worse and can easily get to the point of no return.”

CPSU member

Feedback from CPSU members is that due to prioritisation of resources within the ATO, if an employee notifies that there has been a non-payment of SG, an audit of all of the SG payments by that employer is not completed until a pattern of non-payment has been established. This forces the burden of proof onto the employees of the business to establish a pattern of behaviour, rather than a problem being identified by the compliance area within the ATO. This was also the experience of a CPSU member who had a personal experience of SG non payment by a previous employer:

“The matter was then pursued by the ATO but I was told when I raised my colleagues’ issues of non-payment that I could only provide information for myself and if others were aggrieved they would need to complain personally and if “enough” complaints came in then ATO would consider doing a wider audit than just my case.”

The ability of the ATO to effectively manage the SG is limited due to significant under resourcing. Despite a growing population and increased expectations from the community, ATO ongoing staffing

levels have declined. Between 2013-14 and 2015-16, Average Staffing Levels at the ATO fell by over 4,000 or by nearly a quarter. The audit team, responsible for enforcing the tax compliance of individuals and multinational companies, was hit particularly hard by these job cuts. While there was an increase in the 2016-17 Budget, it has not reversed the significant cuts experienced over the last few years.

In many submissions, the CPSU has outlined how these cuts have significantly impacted the ability of the ATO to detect and deal with corporate and other tax avoidance.

Another consequence of the reduced staffing and resourcing, as reported by CPSU members, is that work that was previously completed by more senior staff, and now being completed by staff at the APS 3 and 4 level, which has led to a reduction in investigations. Many CPSU members believe that SG is a low priority for the ATO, as SG is not a revenue product for government, so cannot provide a dollar value return, like many other areas of ATO. This extends to investigation of contracting to avoid superannuation guarantee payments. For workers in this circumstance, CPSU members in the ATO report reluctance from affected workers to pursue valid claims as they consider it will jeopardise ongoing work and/or they do not have the capacity to pursue civil claims.

Impact of budget cuts to the ATO

In many previous submissions, the CPSU has outlined how cuts have significantly affected the ability of the ATO to detect and deal with tax avoidance and ensure tax compliance¹, this is also true in relation to the Superannuation Guarantee. At a time of increased scrutiny of taxation arrangements and continuing pressure to ensure revenue is collected effectively, reduced Average Staffing Levels mean the ATO management is using groups of labour hire workers to undertake core work such as compliance and debt work and undertaking audits. That is, the work has not disappeared just the thousands of people qualified and experienced to do it.

Increased use of labour hire in the ATO has been at the expense of more experienced staff employed by the ATO, including a large cohort of casual staff with years of experience doing weekly ATO shifts. Changes in shift arrangements for casuals have increased turn over and some of that work has been diverted to contracted labour hire firms.

Members report that the use of labour hire workers who do not have background knowledge has also affected the responses provided to the community. In the past the call centres in Service Delivery were an entry point into Client Engagement where people did their time developing a strong working knowledge of the tax system. With labour hire staff filling roles, that knowledge of the tax system is no longer brought over and clients lose out when that happens.

The use of labour hire has made it much more difficult for the ATO to meet its stated vision of “helping people understand their rights and obligations, improving ease of compliance and access to benefits, and managing non-compliance with the law.”²

Rather than continuing to use labour hire staff, the ATO must be properly funded to hire permanent and, where appropriate, casual staff who are trained to have the required knowledge to ensure tax compliance work is properly undertaken. Well trained ATO staff can look at more whole of client approaches and changing behaviour through education.

¹ Submissions to Corporate Tax Avoidance Senate Inquiry (2015), Tax White Paper (2015), Commonwealth Pre-Budget Consultation (2015-16, 2016-2017, 2017-2018).

² Australian Taxation Office. (2015, 21 May). About Us. Retrieved from <https://www.ato.gov.au/About-ATO/About-us/>

Regional support for small businesses

The CPSU supports greater investment in information and communication technology that is effective, efficient and fair, however, it is essential that other delivery channels for the community are maintained. Face-to-face contact, particularly in regional areas, is important to ensure the ATO has an understanding of the local economy and businesses and can best tailor their assistance for them.

In 2014, the ATO made a decision to close their regional tax offices in Cairns, Mackay, Rockhampton, Bundaberg, Toowoomba, Grafton, Port Macquarie, Orange, Bendigo, Sale, and Launceston. In 2016, the ATO closed its Darwin regional office. The ATO established these regional sites in 2000 to support Australian businesses in adapting to “a new tax system”, primarily the introduction of the GST.

As part of the Regional Tax Assistance Program (RTAP), these offices were well placed in the local community to educate taxpayers, particularly small business and local tax agents on their obligations. CPSU members also reported that local presence and awareness of relevant local economic issues meant they were able to ensure compliance and identify practical strategies to ensure local businesses honoured tax debts in a way that meant businesses, and therefore regional jobs, could be sustainable.

ATO staff in regional offices educated businesses on meeting their tax obligations, provided debt management support for businesses, fulfilled audit functions for the ATO and worked with local tax agents to support business compliance. For example, they provided information to businesses and community organisations, including indigenous organisations, on meeting superannuation and tax obligations such as FBT, GST, PAYG and fuel tax. Staff in regional offices worked with local business advisory services to educate and inform new business owners so that they were set up to succeed. They negotiated with businesses to meet their tax obligations through payment plans and guide them in avoiding future debt. They were able to undertake work specific to the region, which was particularly relevant if there is an industry downturn or climatic event that affects business revenues. Staff in regional offices had the local knowledge and local presence to negotiate outcomes that secured tax payer revenue and maintained the viability of local businesses.

RTAP officers reported numerous examples where their involvement has secured tax revenue and ensured that viable businesses can continue. Closure of these sites has meant that the ATO does not have the local practical knowledge to negotiate arrangements that keep businesses functioning and also educate them on better future tax management practices.

CPSU members have said that there is a growing problem where the ATO does not have the resources to identify through early intervention where there are businesses who are not meeting their obligations. Some small and medium sized businesses may have difficulty managing their cash flow, as they can wait three to six months for their big business clients to pay invoices. It can then be hard to manage their tax obligations.

Rather than solely relying on investments in ICT, regional taxpayers would be helped by re-establishing with the presence of ATO staff in the regions. Local ATO staff understand their communities and have relationships. This would enhance tax compliance and also provide assistance to better inform small businesses about their options.

Measures to improve compliance with the payment of SG

The CPSU also had feedback from members about technological initiatives to improve compliance, beyond addressing the significant shortfalls in staffing. The suggestions are about providing secure

real time identification of SG accumulation for the employee and balance for employers. Such as an smart phone or other application for employees to see how their superannuation balance is growing, or not growing; instead of relying on annual updates from the superannuation fund and the pay slip. A suggestion to assist employer's to better meet obligations is a payslip application or access through myGov that means more regular payment of the SG can be accounted or tracked with the ATO, or another government regulatory authority. This potentially reduces reporting at tax time and maximises taxable benefits for the business form paying superannuation on time. The ATO can then direct resources to employers or employees who do not use these tools.

The CPSU is happy to provide information on the matters raised in this submission and supplementary information on other relevant issues.

For further information, please contact

Yours sincerely,

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