



Australian Government

Australian Government response to the
Senate Committee on Economics report:

Superbad - Wage theft and non-compliance of the
Superannuation Guarantee

May 2024

Response to the recommendations

Recommendation 1

In the interests of better informing the debate on the current state of the SG system, the committee recommends the Minister for Revenue and Financial Services publicly release the interim and final reports of the multi-agency working group on SG non-compliance, as well as the 2016 review by the Inspector-General of Taxation as soon as is practicable.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

The committee recommends that the ATO prioritise its work on calculating and publishing an accurate, reliable estimate of the SG gap. Additionally, the committee recommends that the ATO commit to publishing the SG gap annually in order for progress to be tracked over time.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

The committee recommends that the government strongly consider introducing amendments to the SGA Act to remove the \$450 monthly threshold on SG eligibility.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4

The committee recommends the government introduce amendments to the SGA Act to ensure that an employee's voluntary salary sacrificed superannuation contributions cannot count towards the employer's compulsory SG obligation, nor reduce the OTE base upon which SG is calculated.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5

The committee recommends that the government strongly consider introducing amendments to the SGA Act to require SG to be paid at least monthly, and preferably in alignment with regular pay cycles.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6

The committee recommends that the government investigate options to extend the ATO's current private binding advice and administratively binding advice frameworks to make them available to workers as well as businesses.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 7

The committee recommends the government review the definition of Ordinary Time Earnings for the purposes of SG obligation calculations and undertake an examination on the wider implications of any potential changes.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 8

The committee recommends the government consider further initiatives that will assist small business employers in managing their cash flow responsibly in order to provide them the best possible chance of fulfilling their SG obligations.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 9

The committee recommends the government consider amending the SGA Act to extend liabilities of unpaid SG to corporate entities, similar to the expanded accessorial liability provisions for franchisors and holding companies in relation to xii unpaid wages, as proposed in the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 10

The committee recommends that the ATO continue to improve its communication process with individuals to keep them promptly and meaningfully informed of the progress of their employee notification.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 11

The committee recommends that before entering into a payment plan to recover SG from a non-compliant employer, the ATO be required to notify the affected employee and gain their consent to the course of action.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 12

The committee recommends the ATO give consideration to more proactive SG initiatives, such as the options put forward by the Inspector-General of Taxation to incorporate random audits into its SG compliance activities.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 13

The committee recommends that the government review ATO resource levels to ensure that the agency is well-equipped to undertake effective and comprehensive compliance activities to combat SG non-payment.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 14

The committee recommends that the government consider a legislated option for employees, or third parties acting on their behalf, such as unions or superannuation funds, to take private legal action in the relevant courts against their employers for unpaid SG.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 15

The committee recommends that superannuation funds seeking default status in industry awards be required to have a rigorous arrears collection process in place.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 16

The committee recommends that the government review the SGC regime and its management by the ATO to ascertain whether it is adequate, with a view to increasing penalties for deliberate and repeated acts of non-compliance by employers.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 17

The committee recommends that the ATO review all current compliance and recovery activities related to unpaid SG to determine which ones should remain with the ATO, and which ones could be transferred to, or shared with, the Fair Work Ombudsman. As a starting point, the committee recommends that the Fair Work Ombudsman begin to receive and act on SG non-payment complaints where appropriate, rather than simply referring the affected employees to the ATO.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 18

The committee recommends that the government consider increasing the resource levels of the Fair Work Ombudsman to ensure it is properly equipped to carry out any additional SG compliance or recovery activities it may acquire from the ATO.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 19

The committee recommends that the government investigate potential legislative amendments to strengthen the ATO's current ability to recover SGC liabilities through the Director Penalty Notice framework in order to stop company directors undertaking fraudulent phoenix activity and avoiding their SG obligations.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 20

The committee recommends that the government consider implementing a Director Identification Number scheme to prevent individuals engaging in illegal phoenix activity and repeatedly avoiding SG obligations.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 21

The committee recommends that the government consider amending the Corporations Act to ensure that the priorities in section 556 apply during all liquidations, regardless of whether the business being liquidated was operated through a trust structure.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 22

The committee recommends that the government consider amending the SGA Act so that nominal interest on SGC in the case of insolvencies apply up to the date of liquidation, in alignment with other creditors as set out in the Corporations Act.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 23

The committee recommends that the government consider amending the SGA Act to allow insolvency practitioners to pay outstanding SG contributions directly to an employee's superannuation fund.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 24

The committee recommends that the relevant government agencies undertake further research into the fiscal and legislative impacts of an expansion of the current Fair Entitlements Guarantee scheme to cover unpaid SG entitlements.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 25

The committee recommends that the government revise the information that APRA regulated superannuation funds must include in Member Contribution Statements to include a breakdown of each category of superannuation payment an employee has received, as well as the employer it was received from.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 26

The committee recommends that the ATO and ASIC review their data sharing arrangements to ensure that information on insolvency cases is being referred in a timely manner from ASIC to the ATO.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 27

The committee recommends that the ATO and ASIC work together to collect data on abandoned companies to produce a comprehensive picture on the levels of unpaid SG contributions left by such companies.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 28

The committee recommends that the ATO and FWO review their memorandum of understanding to consider whether more frequent information exchanges would improve their SG compliance activities.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 29

The committee recommends that the ATO and ASIC increase their formal cooperation with superannuation funds to coordinate measures around early detection of non-payment of superannuation guarantee.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 30

The committee recommends that privacy provisions which may inhibit information flows between the ATO and APRA regulated superannuation funds be reviewed and that the ATO seek advice from the Office of the Australian Information Commissioner as to the extent to which protection of public revenue exemptions in the Australian Privacy Principles might facilitate improved information sharing.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 31

The committee recommends that the government strongly consider expanding Single Touch Payroll to all businesses, with equal consideration given to how small businesses could be best supported in adopting the initiative. The committee recommends that Single Touch Payroll apply to all employees and contractors on an employer's payroll. The committee also recommends that the government give consideration to whether STP should require both the reporting and payment of tax and superannuation obligations.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 32

The committee recommends that the Fair Work Regulations 2009 be amended to require: the amount of earnings that the SG is calculated on; any voluntary superannuation contributions due; compulsory SG due; and all amounts of superannuation (both voluntary and compulsory) paid into an employee's superannuation fund (rather than just the amounts accrued).

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.
