

## **Overview and list of recommendations**

The Superannuation Guarantee (SG) system—in conjunction with voluntary superannuation contributions and a means-tested, government-funded age pension—forms an integral part of Australia's retirement income policy.

As such, the committee is deeply concerned by recent analysis by Industry Super Australia that indicates that employers failed to pay an aggregate amount of \$5.6 billion in SG contributions in 2013-14. The committee is keenly aware that this amount represents 2.76 million affected employees, with an average amount of over \$2000 lost per person in a single year.

The negative impacts of non-payment of the SG are pervasive and affect several distinct groups: namely employees, employers and the government. Evidence received by the committee clearly indicates that a failure to adequately detect and address SG non-compliance causes long-term financial detriment to millions of Australian employees, significant competitive disadvantage to compliant employers, and an unnecessary impost to government finances through additional reliance on the age pension. In this regard, the committee is particularly concerned that the individuals most at risk of the negative impacts of SG non-payment often come from the most vulnerable groups in Australian society.

The committee is of the opinion that SG forms a vital component of an employee's remuneration. The committee strongly believes compulsory superannuation should be categorised as deferred wages that rightfully belong to an employee. While the non-payment of SG is immediately reflected in reduced superannuation balances, in the long term it also robs an employee of the benefits of investment earnings and compound interest. This is unacceptable.

The adverse economic impact of SG non-payment on employees is stark. Employees forego their rightful SG entitlements, leading to a loss of retirement income. This in turn lowers their standard of living in retirement and potentially increases their reliance on the age pension.

Additionally, the committee is concerned that employers who comply with their SG obligations must compete against non-compliant employers with an unfair competitive advantage. Without an effective suite of enforcement mechanisms compliant businesses may be incentivised to become non-compliant which would exacerbate the current situation.

### **A more proactive stance**

As a result of evidence received from numerous submitters to this inquiry, the committee has concluded that the current approach of the Australian Taxation Office (ATO) to identifying and addressing SG non-compliance is inadequate. The

committee believes that the ATO's current reactive approach is problematic, and recommends that the ATO shift the balance to a more proactive stance.<sup>1</sup>

Given the significant size of the fiscal impact of SG non-payment on the government in terms of lost government revenue and increased reliance on the age pension, as well as the detrimental impacts on employees and compliant businesses, the committee feels that it is necessary and wholly reasonable for the government to consider stronger, more proactive compliance activities in the SG space.

### **The SG gap**

During the course of this inquiry it became apparent to the committee that due to various data gaps, it is difficult to precisely estimate the extent of non-payment of SG in Australia. Although critical of the estimate put forward by Industry Super Australia, the ATO was unable to provide the committee with an alternative figure. The committee is surprised at the ATO's apparent reluctance to engage with the issue of producing an SG gap, particularly as the matter has been raised in numerous reviews dating back to 2010. The committee strongly believes that there is a compelling need for a reliable SG gap figure produced yearly in order to track rates of SG non-payment, analysing which policies are effective, and ultimately minimising the problem.<sup>2</sup>

### **Addressing deliberate non-compliance**

The committee is also concerned about certain instances of deliberate and repeated non-compliance with SG obligations by unscrupulous employers. The committee is of the opinion that the current SG Charge (SGC) framework, with its reliance on employer self-reporting, should be reviewed in order to ensure that SGC penalties are strong enough to act as a proper deterrents.<sup>3</sup>

### **Into the digital age**

Given the recent advances in data capture, sharing and storage, the committee considers it is crucial that the SG system move towards a framework, both in terms of design and operational activities, which fully utilises the technological capabilities available in this digital information era. The committee strongly believes that moving SG compliance from the 'paper age' to the 'digital age' will enable a greater focus on proactive methods. This will in turn increase the effectiveness of efforts to detect and remedy SG non-compliance.<sup>4</sup>

### **Recommendations**

The committee has made 32 recommendations intended to address the significant problem of SG non-compliance:

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- 1 See recommendations 12, 13 and 19, as well as related recommendations 17, 27, 28, 29 and 30 for measures relating to the ATO's interaction with other agencies.
  - 2 See recommendations 1 and 2.
  - 3 See recommendation 16.
  - 4 See recommendations 3, 5, 31 and 32.

### **Recommendation 1**

2.31 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.

### **Recommendation 2**

3.31 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.

### **Recommendation 3**

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

### **Recommendation 4**

5.43 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.

### **Recommendation 5**

5.55 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.

### **Recommendation 6**

5.71 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.

### **Recommendation 7**

5.85 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.

### **Recommendation 8**

5.105 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.

### **Recommendation 9**

5.119 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

unpaid wages, as proposed in the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017.

#### **Recommendation 10**

6.40 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.

#### **Recommendation 11**

6.42 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.

#### **Recommendation 12**

6.44 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.

#### **Recommendation 13**

6.46 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.

#### **Recommendation 14**

6.59 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.

#### **Recommendation 15**

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

#### **Recommendation 16**

6.72 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.

#### **Recommendation 17**

6.85 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.

### **Recommendation 18**

6.86 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.

### **Recommendation 19**

6.97 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.

### **Recommendation 20**

6.105 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.

### **Recommendation 21**

6.112 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.

### **Recommendation 22**

6.118 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.

### **Recommendation 23**

6.119 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.

### **Recommendation 24**

6.144 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.

### **Recommendation 25**

7.11 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.

### **Recommendation 26**

7.26 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.

### **Recommendation 27**

7.27 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.

### **Recommendation 28**

7.29 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.

### **Recommendation 29**

7.32 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.

### **Recommendation 30**

7.33 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.

### **Recommendation 31**

7.54 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.

### **Recommendation 32**

7.65 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).