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Committee Secretary  
Senate Economics Reference Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

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Dear Committee Secretary,

**Superannuation Guarantee non-payment**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission on the impact of non-payment of the Superannuation Guarantee (SG) and options for improving compliance with and enforcement of the SG .

**About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90 per cent of the 14.8 million Australians with superannuation.

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If you have any queries regarding the contents of our submission please contact Ross Clare on (02) 8079 0809 or by email [rclare@superannuation.asn.au](mailto:rclare@superannuation.asn.au) or me on (02) 8079 0808 or by email [gmccrea@superannuation.asn.au](mailto:gmccrea@superannuation.asn.au),

Yours sincerely

Glen McCrea  
Chief Policy Officer

## Introduction

ASFA continues to be strongly committed to measures and policies that reflect the core role of the superannuation system in providing adequate retirement outcomes for all Australians.

A necessary element of compulsory contributions by employers on behalf of their employees is that contributions are actually made. If there is significant non-compliance with Superannuation Guarantee (SG) obligations this leads to poorer retirement outcomes for many thousands of employees. This leads to higher Age Pension expenditures by the government. It is in both the interest of individuals and the community as a whole that required superannuation contributions are made.

The extent of non-payment of SG contributions has been canvassed in a number of recent reports and has been discussed in the submission from the Australian Taxation Office. Estimating levels of non-compliance involves a number of challenges, because by its very nature there is little or no documentation or like material relating to payments that should have been made but are not made. That said, all the available estimates suggest that a substantial number of individuals are not receiving the benefit of all or part of the SG contributions they are entitled to with the aggregate amount likely to be in the billions of dollars a year.

This submission will accordingly focus on measures that could be taken to reduce the extent of SG non-payment. In this context, ASFA suggests initiatives in three areas:

- Reporting of contributions and applicable ordinary time earnings
- Audit activity by the ATO
- Payment of SG in insolvency cases

## Reporting

As the Australian Taxation Office has noted, the ATO does not currently have visibility or a timely way to monitor the reporting or payment of SG by an employer. Superannuation 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 a timely manner.

The introduction of Single Touch Payroll (STP) reporting, if implemented as proposed in legislation passed last year, would provide for employee level superannuation contribution information to be given to the ATO in a more timely and visible manner. This would improve the ATO's ability to monitor the payment of employee entitlements and enable the ATO to implement early intervention processes if SG contributions are not being paid.

STP reporting will become mandatory for all employers with greater than 20 employees from 1 July 2018.

This could reduce the risk of businesses getting behind on the payment of employee superannuation entitlements. The ATO would be in a better position to take early compliance action to protect employee superannuation entitlements, which is of particular relevance where businesses are deliberately wound up to avoid having to meet outstanding accrued liabilities.

Under the current law, the ATO typically receives information about SG amounts six to twelve months after the employee entitlements have been paid.

However, it appears that while employers with 19 employees or less will be able to report to the ATO through Single Touch Payroll from 1 July 2017 they will not be obliged to do so. No date has been set for reporting by small employers to become mandatory. Given that many cases of SG non-compliance involve small employers this is a significant limitation of the introduction of STP reporting in regard to assisting the achievement of higher levels of compliance by employers. Industries that have been identified by the ATO as being of high risk in terms of SG non-compliance include a number where small employers are relatively active.

The industries identified by the ATO include:

- bakery
- supermarket
- car retailing
- computer system design
- hairdressing
- cleaning
- road freight
- automotive repairers
- cafes and restaurants
- child care
- hotels

### ***Ordinary time earnings and salary or wages to be reported***

As well, a substantial employer that makes a payment which constitutes an employee's ordinary time earnings or salary or wages will be required to report these amounts to the ATO. Ordinary time earnings information will enable the Commissioner to calculate an employer's quarterly SG contribution obligations for individual employees and determine if a SG shortfall exists. More timely information would allow the ATO to engage with employers earlier to address cases of non-compliance. This could potentially prevent more punitive outcomes for such employers which would apply under the SG charge regime where non-compliance is identified further down the track.

Reporting of ordinary time earnings will avoid many of the ambiguities associated with comparing SG contributions to total wages or salary received by an employee in current individual level taxation data, such as the 2 per cent sample of individual taxpayers.

### **Enforcement of the Superannuation Guarantee**

While we note and welcome the increased focus from the ATO, the non-payment of SG contributions by employers is a critical issue impacting on the retirement outcomes of Australians.

Previous reports prepared by Tria Investment Partners show an increase in SG non-compliance, and the significant impact that this can have on the retirement outcomes of affected employees.

In particular:

- SG non-compliance was assessed to be a \$2.5 billion per annum problem in the 2014 Tria report, rising to \$2.6 billion per annum in the 2015 Tria report.
- The number of Australians affected by SG non-compliance is growing. The 2015 Tria report found that around 690,000 Australians - 6.5 per cent of the workforce - were affected by SG non-compliance annually.
- The impact on Australians affected by SG non-compliance is significant. The 2015 Tria report found that Australians affected by non-compliance lost an average of \$3,800 per annum in SG contributions – 9 months' worth for someone on average weekly earnings, more for low income earners.
- The cumulative impact of this loss on Australians' retirement outcomes is also substantial. An average 25 year old impacted by SG non-compliance for 5 years loses 14 per cent of their retirement income - \$8,000 per annum. ASFA estimates show that for a 25 year old, a one-off loss of \$4,000 in superannuation contributions could equate to a loss of over \$14,000 at retirement, in today's dollars.

SG non-compliance is clearly a serious issue, one which represents a significant risk to the retirement security of a large number of Australians.

In this context ASFA considers that dealing with SG non-compliance should be more highly prioritised within the ATO and that the relevant areas within the ATO be more appropriately funded.

In encouraging compliance, the ATO has placed considerable emphasis on communicating legislative requirements regarding SG.

A relatively recent ANAO audit report on ATO activity in regard to SG compliance notes that most of the compliance resources of the ATO's Superannuation Business Line are dedicated to addressing employee notifications of potential SG non-compliance. While some audits are conducted by the Superannuation Business Line, the number is small when compared to those undertaken by the Small Business and Individual Taxpayer business lines.

The ANAO found that audits undertaken by the three business lines have in excess of 70 per cent success rate in identifying SG obligations. Accordingly, the ANAO recommended that to improve the effectiveness of the ATO's SG compliance activities, the Superannuation Business Line should better align its SG compliance strategy with the compliance activities undertaken by other relevant business lines.

More recent information provided by the ATO indicates that the proportion of SG compliance cases arising from ATO initiated activity has increased, reaching 30 per cent of total cases in 2015-16.

Non-payment of SG was identified in 82 per cent of ATO initiated cases. This resulted in higher assessed SG amounts than employee notification cases with an average adjustment \$68,000 per employer, benefitting multiple employees. The high SG "strike rate" for ATO initiated cases suggests that a further expansion of this activity would lead to recovery of superannuation contributions for a large number of employees.

The ATO also has a greater chance of collecting unpaid SG from employers who are currently in business and solvent. In 2015-16 some 36 per cent of employee notifications related to employers who demonstrated indications of insolvency. As well, the ATO generally has difficulty addressing unpaid SG entitlements more than five years old given that employers are not generally required to keep records for more than five years.

**Recommendation 1:**

ASFA recommends that the Australian Taxation Office be provided with an additional \$10 million a year to conduct Superannuation Guarantee audits of businesses.

**Superannuation payments owed by insolvent employers**

The Fair Entitlements Guarantee (FEG) provides for the Commonwealth to pay an ‘advance’ on account of certain unpaid ‘employment entitlements’ in cases where an individual’s employment ended in circumstances connected with the insolvency or bankruptcy of their employer and the individual cannot obtain payment of their entitlements from other sources.

The treatment of unpaid superannuation in the case of an employer insolvency/bankruptcy is currently subject to a complex combination of legislative provisions, including the *Superannuation Guarantee (Administration) Act 1992*, the *Corporations Act 2001*, the *Bankruptcy Act 1966*, and the ‘director penalty notice’ provisions of the *Taxation Administration Act 1953*.

The types of ‘employee entitlements’ currently covered by the FEG are limited, and do not include unpaid superannuation contributions. However, the entitlements that can be claimed include forms of employee remuneration not dissimilar to superannuation contributions:

- unpaid wages—up to 13 weeks
- unpaid annual leave and long service leave
- payment in lieu of notice—up to five weeks
- redundancy pay—up to four weeks per full year of service.

The Australian Taxation Office has indicated that some 50 per cent of superannuation debts that they deal with relate to insolvency.

Data from the Australian Securities and Investments Commission indicates a substantial number of cases where superannuation is not paid (Table 1). Key industries where non-payment is more common include accommodation and food services, construction, business and personal services, retail trade and transport. This is consistent with the SG non-compliance risk industries identified by the ATO.

**Table 1: Number of insolvent businesses by industry and size of unpaid superannuation entitlements, 2014-15**

	<b>\$1– \$100,000</b>	<b>\$100,001– \$250,000</b>	<b>\$250,001– \$1 million</b>	<b>Over \$1 million</b>
Accommodation & food services	408	59	12	1
Administrative & support services	35	1	4	1
Agriculture, forestry & fishing	48	5	3	1
Arts & recreation services	31	4	4	0
Construction	595	75	16	1
Education & training	33	8	3	0
Electricity, gas, water & waste services	70	11	0	0
Credit provider	3	0	0	0
Deposit taking institutions	2	0	0	0
Insurance	3	0	0	0
Managed investments	6	0	0	0
Other financial services	26	1	0	2
Health care & social assistance	35	7	1	0
Information media & telecommunications	78	8	3	0
Manufacturing	179	35	7	0
Mining	62	16	9	0
Other (business & personal) services	668	99	37	5
Professional, scientific & technical services	68	11	2	0
Public administration & safety	9	2	1	0
Rental, hiring & real estate services	46	9	2	0
Retail trade	351	26	4	4
Transport, postal & warehousing	166	25	15	1
Wholesale trade	83	9	3	0
<b>Total</b>	<b>3,005</b>	<b>411</b>	<b>126</b>	<b>16</b>

In ASFA's view, there is merit in reviewing the treatment of unpaid SG entitlements in insolvency/bankruptcy, with the objective of considering how to achieve the maximum possible recovery on behalf of affected employees.

ASFA estimates that it would cost up to around \$150 million per year to include unpaid SG in the FEG, with up to 55,000 individuals affected. However, we note the Budget cost and numbers benefiting would both be dependent on the number of applications being made by those administering the insolvency of companies. A liquidator may not always make an application, depending on the amounts involved and the funds available for the administration of the insolvency.

**Recommendation 2:**

ASFA recommends that unpaid SG entitlements be included in the definition of unpaid employment entitlements for the purposes of the Fair Entitlements Guarantee.

