ASFA Pre-Budget Submission for the 2023-24 Budget

January 2023

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $3.3 trillion in retirement savings.

Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

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Overview

The Superannuation Guarantee (SG) system is now over 30 years old this year and is delivering better retirement outcomes for Australians. It also is having a positive impact on the whole economy.

With respect to individuals' retirement prospects, the compulsory superannuation system underpins higher standards of living in retirement than otherwise would be the case.

The submission has adopted the following framework for recommendations relating to the May 2023 Budget:

- The overall package of recommendations needs to have a positive impact on Budget outcomes given the need for Budget repair
- Equity issues should be at the forefront, with measures needing to improve the position of those on low incomes, especially women
- It is important that employees receive the superannuation contributions that they are entitled to
- Any changes to the superannuation policy settings should either improve or have no adverse impact on the retirement income of the average Australian
- Any policy changes should not involve any undue compliance or administrative burden on individuals, funds or government departments

ASFA's position is that any equity measures 'at the top end' should be accompanied by measures to address equity for individuals with lower incomes/lower superannuation balances (including lifting the upper threshold for the Low Income Superannuation Tax Offset (LISTO) to remove the tax disincentive for low-income earners), and measures to address the shortfall in women's retirement savings.

ASFA considers that equity in the superannuation system is important and is advocating to specifically target superannuation tax concessions that flow to those on high incomes and/or with very high superannuation balances and to use the budget savings to assist those with low superannuation balances.

However, it must be acknowledged that the superannuation system is working well and delivering strong retirement outcomes for millions of Australians and therefore ASFA would strongly oppose any wholesale changes to the tax settings for superannuation.

Wholesale changes to superannuation cannot be considered in isolation to the rest of the tax system and would require equivalent changes to other savings vehicles as well (such as owner-occupied housing, capital gains tax and negative gearing).

It is also important that existing obligations on employers to make superannuation contributions in regard to their employees be enforced. Typically it is employees on lower wages who are affected when employers do not comply with their superannuation obligations. While many employees receive the benefit of superannuation contributions at the same time as wages are paid, there are many employers who pay contributions only quarterly. Some employers fail to pay the right amount of contributions or do not make superannuation contributions at all to their eligible employees. Requiring superannuation contributions to be made more regularly together with enhanced enforcement activity by the Australian Taxation Office (ATO) will lead to greater employer compliance with Superannuation Guarantee requirements.

The following recommendations if adopted by the Government would lead to better retirement outcomes for Australians, particularly low and middle income earners, and would also strengthen the Australian economy through increased investments by superannuation funds and improved Budget outcomes.

Improving compliance with Superannuation Guarantee obligations

Background

The ATO has estimated a net Superannuation Guarantee (SG) gap of $3.4 billion in 2019-20 (the most recent year of data available). This is the shortfall in SG payments by employers and represents 4.9 per cent of the total expected SG contributions for the year.

Left unaddressed, the issue of unpaid SG contributions comes at a significant cost to member retirement outcomes. For example, a 35 year old female office assistant on $65,000 a year who misses out on SG for 2 years would be around $24,000 worse off in today's dollars at the time of retirement.

Non-payment of SG tends to be associated with employers who pay SG infrequently. Many employers already align payment of SG with wages or pay more frequently than quarterly. ATO data indicates that in 2020-21 around 38 per cent of employers paid SG contributions more regularly than quarterly. However, large employers tend to pay contributions more frequently than small employers with over 78 per cent of contributions paid more frequently than quarterly.

Addressing the problem

Given the significance of the problem, a multi-faceted approach is needed.

First, requiring employers to pay SG contributions at the same time as wages (or at the very least more frequently than quarterly) would make it easier for employees to monitor the SG compliance of their employer and for the ATO to compare superannuation payments with wage payments. It would also limit build-up of SG liabilities of employers. In effect, the policy change would reduce the terms of payment on SG liabilities from up to four months to potentially one week in some cases.

Standard payroll systems should be able to easily accommodate such changes to payment arrangements without incurring any significant increased transaction costs. All employers now make use of Single Touch Payroll (STP). With STP, employers report employees' payroll information to the ATO each time they pay them through STP-enabled software. Payroll information includes salaries and wages, pay as you go (PAYG) withholding and superannuation. SuperStream together with the Small Business Superannuation Clearing House provides low cost or free mechanisms for making superannuation contributions.

The abolition of the $450 a month threshold for making SG payments also has removed another barrier to paying SG at the same time as wages.

RECOMMENDATION 1.1:

ASFA recommends that arrangements are put in place to require employers to make SG payments at the same time as wages from 1 July 2023. If considered appropriate, small businesses could be provided with up to an additional year to transition to the new arrangement.

Second, greater transparency of the SG gap data and associated metrics is needed.

The SG gap data reported by the ATO is an annual top-down estimate of the difference between the theoretical SG contributions and the SG contribution amount reported to the ATO. In calculating this estimate aggregate economic and financial data is used to make adjustments for the impact of the shadow economy and other factors.

ASFA considers that providing greater transparency and analysis in relation to the composition of the gap would be beneficial to interested industry stakeholders and the broader community. This could better identify where non-payment is occurring, highlighting particular industries and employer segments.

The ATO also publishes performance measures for its SG compliance program, including the value of the SGC raised and collected in future years; the value of SG entitlements distributed to individuals or funds; and the value of SG debt on hand (including the amount that is irrecoverable). However, ASFA considers that greater transparency with respect to performance targets would increase accountability, driving down the SG gap for the benefit of employees.

RECOMMENDATION 1.2:

ASFA recommends that the ATO provide greater transparency and analysis in relation to the composition of the SG gap including annual league table reporting by industry and employer size. In addition, the ATO should review the SG gap performance measures to ensure they provide a meaningful assessment of progress and are adequately linked to the overall target for the shortfall.

Third, the ATO to take immediate action to ensure non-compliant employers (including repeat and significant offenders) pay future SG contributions on time.

ASFA suggests the ATO is provided with discretion to apply a condition on an employer's SG obligations where the employer has demonstrated it cannot manage the current quarterly schedule.

This could include requiring non-compliant employers to remit all future SG contributions on behalf of employees more frequently than quarterly (e.g. fortnightly).

It is also suggested that the ATO be given a discretion to require non-compliant employers to communicate to new employees that the employer has not met all of its SG obligations in the previous 2 years.

RECOMMENDATION 1.3:

ASFA recommends the ATO be given discretion, with immediate effect, to require non-compliant employers to remit all future SG contributions on behalf of employees more frequently (e.g. fortnightly). Non-compliant employers could also be required to communicate to new employees that the employer had not met its SG obligations (in the previous 2 years). This would be in addition to the SG Charge and other existing penalties that may apply.

Fourth, the ATO be permitted to send alerts to employees in regard to the non-payment of SG.

Over a number of years, superannuation funds have made significant investment in the SuperStream member contribution and transaction reporting functions to provide the ATO with as timely and accurate member data as possible. Where SG contributions are concerned, through the Affiliation of Superannuation Practitioners (ASP), super funds continue to work productively with the ATO to help identify and address data quality issues, aligning the STP and Member Account Transaction Service (MATS) reporting and helping to improve the ATO's compliance capabilities.

As it develops a more sophisticated, preventative compliance approach to SG, ASFA understands the ATO will build analytical models to better detect when contributions are expected but have not been received, and therefore when contributions are at risk of not being paid during future periods. In addition to pursuing compliance activity with employers through this improved data ASFA suggests the ATO sends alerts to impacted employees, notifying them of the potential non-payment through the contact details it holds.

RECOMMENDATION 1.4:

ASFA recommends that the ATO be permitted to alert employees where it detects potential SG non-payment through its improved approach to data matching and contribution identification.

Fifth, director IDs to be used to help identify employers likely to have been non-compliant with their SG obligations.

Recently introduced director identification numbers (director IDs) are a unique identifier attached to Australian directors which will make it easier for regulators to trace directors' relationships with companies and identify and eliminate director involvement in illegal phoenix activity. It is suggested that the ATO, in conjunction with ASIC, investigate the use of director IDs for identifying and proactively targeting employer companies which may not be complying with SG obligations given the history of their directors.

RECOMMENDATION 1.5:

ASFA recommends regulators explore the use of new director IDs to identify employers which are likely to be non-compliant with SG requirements.

Review the treatment of superannuation payments owed by insolvent employers

Background

The Fair Entitlements Guarantee (FEG) provides for the Commonwealth to pay an 'advance' on 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. However, the types of 'employee entitlements' currently covered by the FEG are limited and do not include unpaid superannuation contributions. There have been a number of recent high profile cases, including restaurant groups, where businesses have become insolvent and there are unpaid superannuation contributions.

From the perspective of employees, unpaid compulsory superannuation contributions are equivalent to unpaid wages. They are part of an employee's remuneration and are vital for achieving dignity in retirement. Without government assistance in regard to unpaid superannuation contributions due to employer insolvency many Australian employees will have a substantial shortfall in their superannuation savings and lifestyle in retirement.

Addressing the problem

While recent changes to reporting requirements for employers and superannuation funds gives greater visibility for the ATO to unpaid employer contributions, and greater attention is being given to contributions in arrears, it is likely that there will be continuing cases where there are unpaid contributions when businesses become insolvent. 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.

It suggests that unpaid superannuation should be treated the same way for the purposes of the FEG as unpaid wages as both make up the remuneration of employees. If the ATO is subsequently able to raise an SG charge against an employer this could be used to offset any SG related payments made though the FEG arrangements.

The number of employees benefiting and the budgetary cost

ASFA estimates it would cost around $150 million per year to include unpaid SG in the FEG, with around 55,000 employees a year benefitting.

RECOMMENDATION 2:

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

Introducing SG on paid parental leave in order to reduce the retirement savings gap between females and males

Background

The retirement savings gap between males and females is one that has been well-documented and canvassed for some years now. The median superannuation balance in June 2020 for those aged 60 to 64 was around $181,000 for males and $139,000 for females which equates to a retirement savings gap between women and men of 23.1 per cent. While this figure is down on the equivalent figure for five years earlier it is still very substantial.

The reasons for this gap for women are also well documented, including time out of the workforce (predominantly as a result of raising children and/or caring for ageing parents), part-time working hours for at least a portion of their career, and gender segmentation of the labour force with traditionally female jobs receiving lower wages on average.

From 1 July 2022 the $450 a month earnings threshold for the payment of compulsory superannuation was abolished. This will assist around 300,000 low-income earners, around 200,000 of which are women. Removal of the $450 a month threshold for payment of compulsory superannuation will go a little way to improving the superannuation balances of women.

Payment of superannuation contributions in regard to paid parental leave would further assist in reducing the retirement savings gap.

Reducing the retirement savings gap and increasing the living standards of females in retirement

This is an issue that is far bigger than the employer and the individual and one that requires the backing and support of the Government to put women on an equal footing to their male counterparts. With the acknowledgement that compounding is the key to accelerating retirement savings, the earlier the additional funds are contributed the bigger the impact they will have on an individuals' retirement savings. Further we also acknowledge that each child a woman has further contributes to her time out of the workforce and consequently less retirement savings.

It is for these reasons that ASFA is proposing that superannuation contributions could be paid in regard to paid parental leave. No such payments currently are made in regard to paid parental leave provided by the government. However, while it is not compulsory for employers to pay superannuation in regard to the paid parental leave they choose to provide, many do.

Larger employers are more likely to provide paid parental leave than smaller employers. Around 50 per cent of women getting government funded paid parental leave receive employer funded parental leave as well. Survey data indicates that around 80 per cent of the employers paying parental leave also pay SG on the amount (with some topping up the government payment with SG as well).

Requiring SG to be paid on parental leave payments is likely to have a net cost for the government of around $200 million a year and would involve additional payments from employers of around $30 million a year.

How many women would benefit and by how much?

There are around 300,000 births a year in Australia, around 175,000 of them first time and around 80,000 a second child. The average age of women for first birth is around 29, the average age for a second child is 31. Income and employment tests applying to paid parental leave mean that only about 170,000 women a year receive government funded payments.

> **RECOMMENDATION 3:**
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> ASFA recommends the Government require SG contributions be made in regard to all paid parental leave payments.

Increasing the upper threshold for the Low Income Superannuation Tax Offset

Background

The Low Income Superannuation Tax Offset (LISTO) is a government superannuation payment of up to $500 that helps people earning $37,000 or less a year save for retirement. Until 2019-20, the $37,000 ceiling for LISTO corresponded with the top of the second lowest tax bracket. However, the top of the second lowest tax bracket was increased to $45,000 for 2020-21 and following years.

The maximum amount of $500 is equivalent to 15 per cent of 9 per cent of $37,000, which was in line with the 9 per cent SG when the LISTO was introduced.

The first tax bracket ($0-$18,200) incurs a zero per cent rate of tax and the second ($18,201- $45,000) incurs a 19 per cent rate of tax. For those on the 19 per cent rate there is also the 2 per cent Medicare levy. Individuals in these income bands can also benefit from superannuation payments rather than wages such as favourable impacts on family tax payments and higher child care rebates.

Addressing the problem

It is equitable that individuals on the lowest tax bands receive concessional tax treatment for superannuation that is commensurate with the rate of assistance for higher income earners. With the increase in the upper threshold on equity grounds it is reasonable to provide those earning between $37,000 and $45,000 with a tax concession in line with what they received prior to the change in the taxation rate structure. Otherwise those falling within that income band receive a tax concession of only 6 per cent of contributions, which is lower than for any other income group.

Increasing the upper threshold has implications for the maximum amount payable. The rate of the SG has also increased.

ASFA therefore recommends that the ceiling for LISTO payments be increased to correspond with the top of the second lowest tax bracket and that the maximum value of the LISTO payment be increased correspondingly to $700 in line with that tax threshold and with the increase in the SG since the LISTO was first introduced.

The number of employees benefiting

Currently around 2.66 million individuals receive a total of around $670 million from LISTO. Increasing the upper threshold to $45,000 would lead to around 1 million additional individuals receiving LISTO with expenditure on LISTO increasing by about $600 million a year.

RECOMMENDATION 4:

ASFA recommends that the upper threshold for the LISTO be increased to $45,000 a year and the maximum amount be $700 a year.

Improving equity of superannuation by reducing the amount of tax concessions going to individuals with a relatively high income and/or account balance

Background

Because tax on concessional contributions and on investment earnings generally is levied on the superannuation fund at a flat rate of 15 per cent, those members on higher marginal tax rates and/or with very high superannuation balances enjoy a greater tax concession than those members on lower marginal tax rates or who have relatively modest superannuation balances.

Reducing the tax concessions for those on a high income and/or with a high account balance

ASFA has identified two priority areas for adjusting current tax settings for superannuation:

- The threshold for the imposition of the additional Division 293 tax on concessional contributions
- The earnings tax concession for very large balances

In regard to the threshold for the additional Division 293 tax on concessional contributions ASFA is proposing that the threshold be linked to the threshold for the top personal marginal income tax rate plus an additional amount to take into account compulsory superannuation contributions. For financial year 2023-24 it is proposed that the threshold for the Division 293 tax be $200,000, that is the threshold for the top personal tax rate of $180,000 with a further $20,000 allowance for compulsory superannuation contributions. In later years the threshold for the Division 293 could be adjusted in line with any changes to the threshold for the top personal tax rate and for changes in the rate of compulsory superannuation. For example, the threshold for the top personal rate is legislated to increase to $200,000 from 1 July 2024.

Linking the Division 293 threshold in this way would mean that no further indexation arrangements would be required.

ASFA estimates suggest that in excess of $700 million a year would be raised in additional Division 293 tax if the threshold was lowered as described above.

One of the remaining concerns in relation to the sustainability of tax concessions within superannuation is the tax concession enjoyed in relation to investment earnings for high-balance members. This tax concession can be substantial for large accounts. There are at least 11,000 superannuation fund members with balances within superannuation of over $5 million according to the Retirement Income Review report. Some of these funds have balances of some hundreds of millions of dollars, well in excess of retirement needs.

While the current caps on superannuation contributions limit the ability for members to build up excessive balances in the future there is a real question regarding the appropriate treatment of high balances that were achieved in the context of more generous contribution caps in the past. The transfer balance cap regime limits the amount a member may take into pension phase. However, 'excessive' balances may still be present in accumulation accounts and therefore subject to a tax concession of up to 30 per cent of the tax on earnings (that is, 45 per cent personal tax rate less 15 per cent tax on fund earnings). A balance of $5 million in concessionally taxed superannuation cannot reasonably be justified as necessary to support a comfortable lifestyle in retirement.

ASFA estimates that introducing a $5 million cap on the amount that an individual could hold in concessionally taxed superannuation would lead to additional revenue of around $1.5 billion a year, although the exact amount raised would depend on how excess balances were invested after they were withdrawn from the superannuation system.

RECOMMENDATION 5:

ASFA recommends that:

- the Division 293 tax on superannuation contributions apply to individuals who have taxable income plus superannuation contributions equalling the threshold for the top marginal personal tax rate plus $20,000 (which is equal to $200,000 in 2023-24) or more a year.
- those members aged 65 or older with a total superannuation balance as at 1 July 2023 in excess of $5 million, whether in accumulation, pension phase or a combination, should be required to withdraw the excess out of superannuation or in the alternative pay tax at the top personal income tax rate on the investment returns attributable to the amount of the superannuation balance over $5 million.

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