



**Submission to the Senate Economics References Committee**

**Inquiry into Superannuation Guarantee  
Non-Payment**

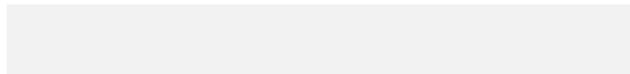
**1 March 2017**

**Prepared by  
COTA Australia**



Submission to the Senate Economics References Committee  
Inquiry into Superannuation Guarantee Non-Payment  
March 2017

Authorised by:  
Ian Yates AM  
Chief Executive  
[iyates@cota.org.au](mailto:iyates@cota.org.au)



Prepared by:  
Susan McGrath  
National Policy Manager  
[smcgrath@cota.org.au](mailto:smcgrath@cota.org.au)

COTA Australia gratefully  
acknowledges the contribution  
to the content of this submission  
by James Graham.

**COTA Australia**  
Suite 9, 16 National Circuit  
Barton ACT 2600  
02 61549740  
[www.cota.org.au](http://www.cota.org.au)

## COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

## Introduction

COTA Australia welcomes the opportunity to make a brief contribution to this Senate Inquiry, given the essential role of the superannuation system in the economic wellbeing of current and future cohorts of older Australians.

We appreciate the Senate investigating this crucial issue of some employers failing to meet their Superannuation Guarantee (SG) obligations. The SG is the fundamental plank of our superannuation system and Australian employees must be able to have confidence in the integrity of its operation. Given the compounding nature of superannuation contributions over a working life, any delays or defaults on payment of the SG have a significant impact on the retirement incomes of those affected.

In the context of longer lives and government measures to limit social welfare expenditures, superannuation balances are expected to be an increasingly important component of retirement incomes in the years to come. However, to achieve this, not only must the superannuation system continue to mature and develop in a number of ways, but its foundation elements must also be secure and reliable right now.

The recent research by Industry Super Australia and CBUS<sup>1</sup>, which found alarming evidence of underpayment of the SG, has been a wake-up call. We are particularly concerned that the evidence suggests that the main burden of non-compliance is falling on the lowest paid employees and those in the most insecure work, many of whom are women.

---

<sup>1</sup> CBUS and Industry Super Australia. *Overdue: Time for Action on Unpaid Super*, CBUS/ISA Report December 2016

In recent times there has been a strong focus on the lack of gender equity in superannuation outcomes<sup>2</sup> and COTA has been a strong voice for redressing the balance<sup>3</sup>. Given women's greater participation in casual and part-time work and the persistence of gender pay inequality, women are likely to be particularly hard hit by any underpayment or non-payment of the SG.

We also raise below the related issue of the age and earnings eligibility criteria for participation in SG arrangements. We view this as another form of underpayment, albeit officially sanctioned rather than emanating from non-compliance.

COTA strongly encourages the Senate committee to take leadership to correct the systemic factors that are resulting in SG underpayment as a matter of urgency.

## Issues

COTA considers that action to address underpayment of the SG is a priority in the following areas:

- The government's SG administrative and regulatory environment;
- The timing/intervals of payment of the SG by employers; and
- The current age and earning entry point to eligibility for an SG payment; and the salary basis on which SG is calculated.

### The SG administrative and regulatory environment

Clearly the fact that there are significant amounts of unpaid SG indicates systemic problems and a level of ineffectiveness in the SG regulatory environment and administrative processes. These have been pointed out over many years, improvements have been recommended and some have been made, although others have been left incomplete. Yet the problem persists.

COTA's view is that the SG is a fundamental aspect of Australia's retirement income system. Together with the age pension the SG is a foundational component of that system. It is therefore unacceptable that there should be significant non-compliance and failure in the system.

COTA considers that key SG issues requiring review, clarification and improvement relate to:

- Payment, tracking, monitoring, enforcement and recovery of SG payments;
- Penalties for non-payment or underpayment by employers;
- Unpaid entitlements in situations of employer insolvency; and

---

<sup>2</sup> Senate Economics Reference Committee. A Husband is not a Retirement Plan, Commonwealth of Australia 29 April 2016

<sup>3</sup> COTA 2016 Federal Election Statement [http://www.cota.org.au/lib/pdf/COTA\\_Australia/public\\_policy/cota-australia-2016-federal-election-platform.pdf](http://www.cota.org.au/lib/pdf/COTA_Australia/public_policy/cota-australia-2016-federal-election-platform.pdf)

- The legal loophole that enables employers to avoid full SG payment in regard to salary sacrificing for additional superannuation contributions over and above the SG.

In addition, it is timely to clarify the governance structure for administration and regulation of the SG and where responsibility lies for the necessary data collection, transfer and analysis to support improved compliance and outcomes for employees.

With regard to better payment and tracking COTA does not have expertise in the design of technological or program solutions, however we have a strong stake and interest in them enabling on-time SG payments.

In this context, the use of existing, everyday technical options would be worth consideration. One example put to COTA is the creation of “superannuation bank accounts”. If employees were paid the SG in connection with their wages (see later), would it not be feasible to do this through properly structured electronic banking alongside wage payments, through accounts from which transfers were payable only to nominated superannuation funds and not otherwise accessible?

As well as giving the employee flexibility with the choice of superannuation accounts, he or she would be able to check the payment of superannuation contributions, using an online banking service, at the same time as checking the payment of salary.

For the employer, payments to a bank account as an additional component of payroll, could be simpler than payments separately to a superannuation fund.

Another method of achieving more timely payment and better tracking of the SG might be broader use of the model currently underpinning the Small Business Superannuation Clearing House (SBSCH), an automated super fund payment service provided by the ATO. It allows a small business to make a single payment to the ATO, which then disburses SG contributions to multiple super funds. Evaluation of the main design features and effectiveness of this program for broader application might yield useful insights and options for ways to support more timely, assured payment of the SG.

Other submissions to the Committee deal in some depth with these matters with more expertise than COTA has, so we will not seek to replicate all their proposals. We would however indicate our in-principle support for initiatives such as:

- Completion of the Securing Super initiative to encompass pay-slip reporting of superannuation contributions (AIST submission)
- Stronger penalties for non-compliance of employers with their SG obligation

- Closure of the voluntary superannuation salary sacrifice loophole

#### **Recommendations:**

- 1. Review, clarify and where necessary strengthen underperforming components of the government's SG administrative and regulatory framework to ensure better outcomes; including stronger penalties for non-compliance;**
- 2. The closure of the loophole that allows employees voluntary superannuation contributions to be counted towards employers SG obligations.**
- 3. Technological solutions that enable cost-effective, simpler and more timely implementation of SG payment should be investigated as a matter of priority**

#### **The timing/intervals of payment of the SG by employers**

The SG is an employee entitlement – it is part of an employee's overall remuneration for their job. At 9.5% it is a significant part. As a component of remuneration that can only be accessed after ceasing full time employment and passing a specified age, it is incumbent on government, which has legislated SG, to ensure that employees receive the maximum lifetime value from SG.

Current legislation allows the payment of SG contributions up to quarterly, although they can be paid more frequently and in some cases this is required by the relevant industrial award, or the superannuation fund. That provision dates from the early days of SG when most payments, especially by smaller employers, would have been through manual systems.

The administration of wages and entitlements now takes place in a technologically transformed world from that in which the SG was introduced in 1992. The electronic transfer of payments and much more digitally sophisticated accounting and reporting systems open the potential for well-designed, secure, timely and efficient forms of SG payment that better serve the interests of both the employer and the employee. There is no longer an administrative argument for withholding the SG payment from an employee for several months.

Only paying SG every three months deprives people of the earnings on the SG for that period, a loss which compounds over time. COTA believes this is unacceptable in the environment of 2017.

COTA supports the payment of the SG to employees in real-time.

Paying the SG alongside or close to wage payments leaves no room for confusion about whose money it is and may encourage much better compliance.

Another benefit of paying the SG more regularly, when matched with a better tracking and enforcement regime, is the ability for regulators and employees themselves to identify potential defaulting much sooner, enabling earlier intervention.

Our proposal is consistent with and would be enabled by the introduction of the Single Touch Payroll, which we understand is to be mandatory for large and medium size employers from 1 July 2018. This should be extended to all employers in due course.

**Recommendation:**

**4. Key principles guiding the payment of the SG should be:**

- **The right of the employee to receive their SG payment into their superannuation account as they earn it, preferably on the same cycle as wage payments are made to the individual; and**
- **Processes should be as simple and easy to operate and track as possible for both the employer and the employee.**

**The current age and earning entry point to eligibility for an SG payment; and the salary basis on which SG is calculated.**

***The \$450 per month minimum rule***

COTA has repeatedly raised concern about the current rule that the SG is paid only to those 18 years and over who earn a minimum of \$450 per month from a single employer.

Presumably the reason for the rule was an argument that there is an additional burden on the employer to track and manage small SG payments across what may be a large casual and mobile workforce. If that is the main justification, then surely the answer is not to deny the rights of those with the greatest need to start building superannuation early and keep contributing across their entire working life, but rather to find a method that supports employers to make the payments efficiently.

We repeat the point that when this restriction was created we lived in a much more technologically basic world. Today with computerized payroll systems standard there is no longer a valid administrative reason for this restriction.

It is also essential that the superannuation system rules respond to current-day labour and job market realities. Some of the key changes in those markets that make the SG eligibility rule patently outdated, irrelevant and unfair are:

- much higher workforce participation by women, including during child bearing and

rearing years which results in a supply of workers wishing/needing to work part-time or casually for a period;

- the decline of industries such as manufacturing which were based largely on a stable, full-time, largely male workforce and the rise of the service sector with its flexible hours and demands, drawing on a more feminised and often younger workforce; and
- the increasingly common situation of individuals working at more than one casual job at a time.

In regard to the last point, it is highly likely that there is a significant number of people in the workforce who earn more than \$450 per month, but not from a single employer, and therefore are denied the SG. This issue has been constantly drawn to COTA's attention over many years.

The existence of the earnings barrier can also give rise to 'sharp practices' by some employers to reduce costs. The submission to this Inquiry from the National Foundation for Australian Women (NFAW) reports having anecdotally heard of situations where work rosters are manipulated to ensure that casual workers remain under the earnings level that attracts the SG<sup>4</sup>.

The earnings rule is one of many aspects of the superannuation system that lead to poor gender equity outcomes. The earnings barrier belongs in this Inquiry for consideration as it is a form of SG underpayment for a significant group of employees.

COTA considers that the barrier needs to be removed and that to support this our earlier recommendations regarding creating simple, streamlined, real-time payment practices for the SG are necessary.

### ***Paying SG on gross remuneration rather than ordinary time earnings***

The other matter we wish to raise about the level of remuneration on which the SG is calculated and paid is the current requirement that SG is calculated and paid on what is known as "Ordinary Time Earnings" or OTE.

While OTE excludes overtime, even when worked regularly as a requirement, and excludes paid parental leave, it is actually far more complex as pointed out by the Australian Institute of Superannuation Trustees (AIST) in its submission to the Committee (Submission No.37 p7).

Switching to gross remuneration would both simplify the calculation of SG for employers and employees alike, and properly reflect the intent that SG is a deferred consistent percentage of

---

<sup>4</sup> Associate Professor Helen Hodgson, Curtin Law School, by authority of the NFAW Social Policy Committee. Submission to Senate Economics References Committee Inquiry into the impact of non-payment of the Superannuation Guarantee, [no date provided]

employee remuneration. At present an employee is for example disadvantaged if the overtime is excluded when it is an extra payment additional to normal time wages (as with most waged employees), compared to an employee who has the expectation of regular overtime built into their (higher) remuneration package, as is the case with many salaried employees.

**Recommendations:**

- 5. The SG should be paid to all wage earners, irrespective of earnings amount, employment type or age; facilitated by a simpler SG payment system linked to the wage cycle of employees.**
- 6. The SG be calculated and paid on gross remuneration, rather than on Ordinary Time Earnings.**

**Ends**