



Australian Government
Australian Taxation Office

ATO Response

Queensland Parliament

Education, Employment and Small Business Committee

Inquiry into wage theft in Queensland

July 2018

Contents

Introduction	3
The role of the ATO in relation to the administration and enforcement of superannuation guarantee.	4
ATO response to matters raised by the Committee	5

Introduction

The Education, Employment and Small Business Committee of the Queensland Parliament are conducting an inquiry into wage theft in Queensland. To assist the Committee in its examination of the issues, The Australian Taxation Office (ATO) has provided responses to specific details requested by the Committee.

- Data or monitoring specific to Queensland on:
 - the incidences and types of non-payment of superannuation (i.e. unpaid or underpayment of superannuation contributions by employers) reported to the ATO
 - outcomes of these issues.
- Any current projects the ATO is conducting which focus on education, monitoring or enforcement of superannuation concerns relating to wage theft
- A response to recommendations relevant to the ATO from the Senate Economics References Committee report, Superbad – Wage theft and non-compliance of the superannuation guarantee (Parliament of Australia, May 2017), and
- Other background information which would assist the Committee in its examination of wage theft in Queensland.

The role of the ATO in relation to the administration and enforcement of superannuation guarantee.

- 1 The Fair Work Ombudsman is an independent statutory office which investigates and acts upon reports where an employee is not receiving their entitled pay and conditions as outlined in the through the *Fair Work Act 2009*.
- 2 The ATO is responsible for investigating reports of the compulsory minimum superannuation guarantee (SG) not being paid by an employer to an employee.
- 3 The ATO legislative basis to follow up SG is drawn from the *Superannuation Guarantee (Administration) Act 1992* (SGAA). This Act sets out employer obligations for paying compulsory superannuation for employees. The ATO is charged with ensuring that employees receive their minimum superannuation payment from employers.
- 4 The SGAA sets out the authority and actions the ATO can take with respect to the non-payment of the mandatory superannuation payments to employees. The law imposes a Superannuation Guarantee Charge (SGC) on employers, when contributions have not been paid on time. SG is due and payable on a quarterly basis to employees.
- 5 Under the SGAA, the ATO has a range of responsibilities in responding to superannuation including:
 - educating employers and employees about their responsibilities for SG.
 - monitoring employer compliance with SG obligations.
 - under Part 8 of the act the ATO has responsibilities for the receipt and redistribution of the SGC.
 - investigating employers for possible breaches of the SG legislation.
- 6 The ATO can raise the SGC where an employer does not make the required minimum (quarterly) SG payments.

ATO response to matters raised by the Committee

- 7 From our experience non-payment of SG obligations by employers is typically more prevalent in small and micro businesses and in certain industries. It is driven by a range of factors including; lack of knowledge, cash flow, systems, record keeping issues and at times intentional disregard. The ATO undertakes a mixture of SG activities that includes:
 - the provision of educational and information material for the community including employers and employees.
 - taking action on all employee notifications made to the ATO by employees. These notifications are complaints from past and current employees that believe they have not been correctly paid by their superannuation guarantee by their employer.
 - actioning of referrals from other government agencies and ATO initiated cases.
 - compliance checks to address employers' non-compliance with pay as you go withholding, fringe benefits tax and superannuation obligations.

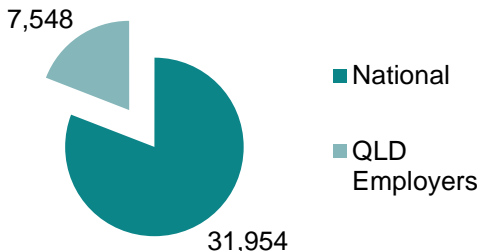
- 8 The ATO does not target specific regions with respect to unpaid SG. We develop strategies and conduct review and action cases based on risk assessments.

Data or monitoring specific to Queensland

Analysis of Queensland employer case results

- 9 In 2017-18, the ATO actioned 31,954 cases across Australia relating to the non-payment of SG, of which 7,548 (23.62%) cases related to Queensland based employers.

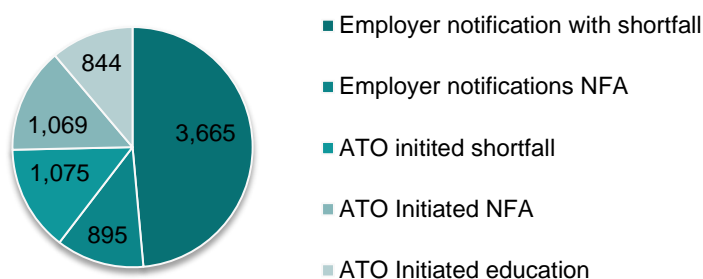
Chart 1: SG non-payment cases actioned



Note: Employers registered in another state but operating in Queensland are not included in these figures, meaning these figures may be considered understated.

- 10 Of the 7,548 cases related to employers registered within Queensland, 4,740 (62.79%) employers were found to have an SG shortfall identified.
- 11 Queensland employer cases were identified from:
- 4,560 cases were from employee notifications, of which: 3,665 (80.37%) cases resulted in a SG shortfall
 - 895 (19.63%) cases resulting in no further action
 - 2,988 cases were from ATO sources, of which: 1,075 (35.98%) cases resulted in a SG shortfall
 - 844 (28.25%) cases resulted in education being provided to the employer
 - 1,069 (35.77%) cases resulted in no further action required.

Chart 2: Outcome of cases against Queensland employers



Current projects the ATO is conducting which focus on education, monitoring or enforcement of superannuation concerns relating to wage theft.

Addressing employer non-compliance with superannuation guarantee

- 12 The ATO investigates all employee notifications of unpaid SG however not all employee notifications will result in a case being actioned. This may be because:
- the employee withdraws their notification or was not entitled to receive SG
 - the initial investigation identifies that SG has been paid
 - the employer may already be under audit and the new notification will be included in that investigation.
- 13 The ATO also identifies potential non-compliance through referrals from third parties and examination of ATO-held data which directs the ATO-initiated reviews and audits on higher risk employers.
- 14 From 1 July 2018, the ATO has been given additional funding from the commonwealth government to establish a Superannuation Guarantee Taskforce. This taskforce will operate for three years extending the ATO's current compliance activities.

- 15 The taskforce will focus on ATO initiated cases, including cases selected from recently tested data models. Testing these case selection models has shown a 93% strike rate where liabilities have been raised against employers who have not paid SG. Cases will also be selected from our identified high risk case pool.
- 16 From late 2018, the ATO will begin to progressively receive data from large superannuation funds which will provide visibility of SG payments received by funds from employers for their fund member's employees. This data will enable the ATO to further enhance our case selection models.
- 17 As a result of additional funding from the commonwealth during 2018-19, the ATO will have an increased capacity to focus on SG Debt collection activities. In addition the ATO will also ensure that we issue, in appropriate circumstances the continued use of Director Penalty Notices.
- 18 Subject to the passage of new legislation the ATO will, in suitable cases, seek to apply new enforcement powers including:
 - prosecution as a criminal offence of failing to comply with a written notice to pay
 - failure to comply with a security deposit requirement.

Monitoring non-payment of superannuation guarantee

- 19 The ATO monitors non-payment of SG in several ways such as:
 - plans to refresh the ATO's estimate of the Superannuation Guarantee Gap in the 2018 calendar year. Timing is dependent upon the availability of the data required to undertake the calculations and expertise.
 - periodically refreshing previously published gap estimates and releasing new estimates once we are satisfied they are reliable, credible and meaningful.
 - using 3rd party data sources and referrals to aid our case selection models.
 - using advanced analytical models to identify potential non-compliance with employer obligations and breaches of SG legislation.
 - using a mix of compliance activities as described above.
 - constantly reviewing and enhancing processes, approaches and strategies.

Employer education and assistance

- 20 The ATO provides ongoing education and assistance to help employers understand their SG obligations. For instance we:
 - continually review and improve our SG web content (including our online tools and calculators) for both employers and employees. Additionally, we are now working closely with other federal government departments that have an interest in SG, with the objective being to create greater consistency and harmonisation of information across government.

- published the ‘Super guarantee client health check’ practical resource on the ATO website which is designed to help businesses who employ staff meet their SG obligations. Tax professionals can use it to help their clients understand their obligations.
- regularly discuss SG obligations at all Tax Agent forums and presentations to ensure advisers are aware of recent developments and changes in approach.
- publish monthly articles in the online Small Business Newsroom on relevant SG topics, as well as issuing quarterly SG due date reminders via our social media channels.
- published an infographic¹ to help employers run a quick check to ensure they have got their super obligations right. This product is available both online and in hardcopy and has been distributed widely at educational events for small businesses across the country.
- regularly hold small business education seminars to assist new businesses understand their obligations and requirements. Super guarantee is a focus in these sessions.
- worked closely with advisors to develop cash management training (including SG obligations) for small businesses given that a lack of cash flow management is a common cause of employers failing to meet their SG obligations.

Response to recommendations relevant to the ATO from the Senate Economics References Committee report ‘Superbad – Wage theft and non-compliance of the Superannuation Guarantee’.

- 21 The response to the recommendations from this Committee is a matter for Government.
- 22 However, the commonwealth Government has recently announced a number of proposed legislative announcements² in relation to the policy settings and administration arrangements of SG.
- 23 It should be noted that these bills are still before Parliament.

¹ [Employer Super Obligations Brochure](#)

² [Minister for Revenue and Financial Services media Release 'Tackling non-payment of workers' superannuation'](#)
[Minister for Revenue and Financial Services Media Release 'Protecting workers' superannuation'](#)

Treasury Laws Amendment (2018 Measures No. 4) Bill 2018

- 24 The Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 introduces reforms that will increase visibility, transparency; accountability and fairness of the superannuation guarantee system.
- 25 The Bill expands Single Touch Payroll reporting to include all employers, amends super fund reporting requirements and includes the following additional provisions that allows the Commissioner to:
- direct an employer to undertake a course of education relating to their employer obligations.
 - direct an employer to pay unpaid and overdue super guarantee charge liabilities.
 - apply for a Court order to compel an employer to comply with a security deposit requirement.
 - disclose protected information to employees about a failure, or suspected failure, of their employer to comply with their obligations to pay SG.
 - creates a criminal offence for failing to comply with a written direction.
 - removes the three month period before director penalties are 'locked down' in respect of unpaid SGC liabilities.
- 26 We will use these powers to encourage and assist employers to meet their SG obligations and recover for employees those contributions to which they were entitled but did not receive.
- 27 The application of these powers will be considered on a case by case basis, taking into account the specific circumstances of each employer.

The Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018

- 28 The Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018 introduces a one off opportunity for employers to self-correct past SG non-compliance without penalty.
- 29 Employers who voluntarily disclose previously undeclared SG shortfalls during the Amnesty and before the commencement of an audit of their SG will:
- not be liable for the administration component and penalties that may otherwise apply to late SG payments, and
 - be able to claim a deduction for catch-up payments made in the 12-month period.
- 30 Employers will still be required to pay all employee entitlements. This includes the unpaid SG amounts owed to employees and the nominal interest³, as well as any associated general interest charge⁴.

³ [Examples of calculating the nominal interest](#)

⁴ [General interest charge](#)

Other Background Information

- 31 The ATO does not currently have any real time visibility over an employer's SG obligations to their employees. As indicated there are reporting reforms that will commence in late 2018 that will increase the regularity of reporting from superannuation funds on the payment of SG payments to their members. However, currently the ATO only receives information on superannuation guarantee payments received by superannuation funds on an annual basis.
- 32 Current reporting arrangements mean there can be a lag of up to 14 months in the reporting of contributions that employers have paid. This delay reduces the effectiveness of the ATO's compliance work and ability to monitor non-payment of SG.
- 33 The ATO has relied upon data acquired through annual PAYG withholding summaries and Member Contributions Statements to assist identifying employers at risk of not paying SG.
- 34 Member Contribution Statements are received annually from the funds and the data is sometimes incomplete and/or inaccurate and does not consistently identify employers who have made the contribution for the members.
- 35 PAYG withholding summaries do not include superannuation guarantee payment information and do not show 'ordinary time earnings' which is the base amount the SG obligation is calculated.
- 36 The ATO is progressing other approaches such as seeking additional data sources from some super funds that actively follow up employers who haven't made contributions. This data is progressively being used to complement our analytical models for case selection.
- 37 We have consulted with superannuation funds on how to increase the number of referrals where funds see the apparent non-payment of SG.
- 38 Our future work will build on any additional data that becomes available through the Single Touch Payroll initiative which will require superannuation funds to report SG payments they receive from employers for their employee fund members.
- 39 We anticipate that analysis of this additional data will drive and automate much of our future SG educational, nudge and compliance activities.
- 40 These changes will also progressively improve our ability to monitor SG non-payment.
- 41 In February 2017 the ATO provided a submission⁵ to the Senate Economics References Committee inquiry into Superannuation Guarantee non-payment. This submission provided the Committee with a detailed explanation of the ATO's perspective and insights.

⁵[ATO submission to the Senate Economics References Committee inquiry into Superannuation Guarantee non-payment](#)

