AUSTRALIAN HOTELS ASSOCIATION

27 Murray Crescent, Griffith ACT 2603
PO Box 4286, Manuka ACT 2603

T 02 6273 4007
E aha@aha.org.au
W aha.org.au

3 November 2023

The Treasury
Langton Crescent
Parkes ACT 2600

Via email: paydaysuper@treasury.gov.au

Dear Treasury,

**Payday super**

The Australian Hotels Association (AHA) is a Registered Organisation under the Fair Work (Registered Organisation) Act 2009. The Australian Hotels Association (AHA) represents employers in the hotel and hospitality industry registered under the Fair Work (Registered Organisations) Act 2009.

Its direct membership of more than 6,000 licensed hotel business owners employs over 275,000 people and includes pub-style hotels plus three, four and five star international accommodation hotels in each state and territory.

**Background**

In the 2023/2024 budget, the Government announced it will legislate:

- For employers to pay their employees Superannuation Guarantee (SG) contributions at the same time that they pay salary and wages, i.e., 'payday super'
- Amend the SG compliance framework, including amending the calculation of the SG charge and adding new penalties.

Treasury has commenced a consultation process and issued a consultation paper "Securing Australians Superannuation Budget 2023-2-24." The Government's objectives are broadly:

- Ensure employees have greater visibility over whether contributions have been correctly paid
- Additional time of money in the super fund to benefit from compounding returns
- Increase the likelihood of the ATO being able to recover unpaid SG

Under the current model, superannuation can be quarterly within 28 days of the end of the quarter. The consultation paper proposes two options from July 2026:

- "Employer Payment" model - Same day that wages and salaries are paid "payday"
- "Due Date" model - Must reach the fund 8-13 days after payday

**Salary/Wage and SG payment frequency**

| | When workers are paid wages or salary[1] | When workers receive super[2] |
|---|---|---|
| Weekly | 31% | 1.7% |
| Fortnightly | 50% | 2.1% |
| Monthly | 13% | 32.7% |
| Quarterly (& other) | 6% | 62.6% |

In February 2023, there 13.8 million were employed.[3] Extrapolating from the information above, you can calculate the increased volume of transactions for when all super is paid on payday.

| **Current** | **When workers receive super** | **Workers** | **Frequency** | **Transactions** |
|---|---|---|---|---|
| Weekly | 1.70% | 234,600 | 52 | 12,199,200 |
| Fortnightly | 2.10% | 289,800 | 26 | 7,534,800 |
| Monthly | 32.70% | 4,512,600 | 12 | 54,151,200 |
| Quarterly (& other) | 62.60% | 8,638,800 | 4 | 34,555,200 |
| | | 13,800,000 | | **108,440,400** |
| | | | | |
| **Current** | **When workers are paid wages or salary** | **Workers** | **Frequency** | **Transactions** |
| Weekly | 31% | 4,278,000 | 52 | 222,456,000 |
| Fortnightly | 50% | 6,900,000 | 26 | 179,400,000 |
| Monthly | 13% | 1,794,000 | 12 | 21,528,000 |
| Quarterly (& other) | 6% | 828,000 | 4 | 3,312,000 |
| | | 13,800,000 | | **426,696,000** |

**Cost to employers**

There are 795,654 employers making contributions to employee's superannuation funds. 498,283 (62.6%) currently pay super quarterly. At least 450,000 employers will have to increase the frequency of superannuation payments from four times per annum to 12 times, 26 times, or 52 times per annum, depending on salary/wage frequency. The payment frequency of superannuation is expected to increase four-fold.

That increased churn will cause increased administrative costs, but to what extent will require further work. I note that Treasury have not yet detailed any process assessment or financial cost assessment for employers.

**Recommendation**:
A detailed assessment of financial architecture and processes including additional costs is required.

**Payment of the SG**

The current financial system is incapable of having payments into a worker's fund deposited the same day that payment is made. Payment of the SG can go through several steps:

[1] https://www.abs.gov.au/methodologies/weekly-payroll-jobs-methodology/week-ending-17-october-2020#:~:text=As%20at%20August%202020%2C%20the,are%20paid%20quarterly%20or%20infrequently.
[2] Securing Australians Superannuation budget 2023-2024 Consultation Paper October 2023, p27
[3] https://www.abs.gov.au/statistics/labour/employment-and-unemployment/potential-workers/feb-2023

- Employer calculates "ordinary time earnings" (OTE) salary and wages – involves calculating ordinary hours of work but excluding e.g., overtime, expense allowances, on call allowances, annual leave loading, parental leave, ancillary leave, termination payments
- Provides OTE information to payroll manager/provider
- Payroll confirms to employer the amount of SG to be paid
- Employer confirms employee entitlements as a batch and pays lump sum SG contribution for all employees to clearing house
- Clearing house then makes individual payments to multiple funds
- Funds pay SG into employees' account

**Recommendation**:
The "employer payment date" is unachievable. At this early stage, Treasury should focus on super being received by the fund as quickly as reasonably practical, bearing in mind it currently takes up to three weeks under current structures.

**Factors that can cause delay**

As discussed by many that I have spoken with, factors that can delay the deposit of the funds into the employees account include for example:

- Employees providing incorrect payment details or being slow to advise details
- Most employers still use the Bulk Electronic Clearing System (BECS) which is slower than the emerging National Payments Platform (NPP) - noting that over time payments should become quicker as the use of the NPP increases and batch processing decreases
- Delays and time lag in clearing houses
- Some larger employers having to manage multiple payrolls due to different awards, pay cycles (weekly, fortnightly)
- Employers increasingly dealing with multiple funds including self-managed funds
- Bank account details (particularly on SMSF's) can change and contributions bounce back; Employees change super funds and forget to tell payroll
- Employers have no control over how long the process takes once a contribution leaves the paying entity; Processing can be slow at busy times (year-end)
- Contribution remittance is a separate process within the payroll run process, so much more time consuming and vastly more transactions under 'payday super'
- Complexities with the ATO contribution matching process

We also note that in initial onboarding and first payment of super for new employees there is an increased likelihood of delays and errors where quarterly contribution cycles no longer exist.

**Recommendation**:
That Treasury establish an industry reference group to solve the delay problems made up of subject matter experts involved in the superannuation payment process, e.g., employer, worker, payroll manager, clearing house, super fund, ATO and Treasury.

**Employer is liable for slow payment or processing by others**

Contributions are considered made on the final day the fund receives the contribution, <u>not</u> the day the employer pays the contribution to the clearing house. If an employee's superannuation contribution is not with the employee's fund in full by the due date, the employer is liable. None of the providers who may have been at fault in the payment process are held liable. The ATO may penalise an employer with an SG charge that includes nominal interest of 10% per annum and a $20 admin fee, both of which are not tax deductible.

This is a complex issue, but at the very least it seems inequitable that an employer is still liable once the money has left their bank account and is sitting with a clearing house. Super funds then have three days to allocate the money to each member's account once they have received the contribution.

**Recommendation**:
An employer should be exempt from any penalty on late payment of super where an employee provides incorrect or incomplete details (or such information is not provided by the ATO) that are required to accurately calculate and pay employer super contributions. Also, once an employer has paid their contribution to a clearing house or fund, then the employer should not be exposed to the SG charge for late payment. This change can be enacted immediately.

Yours faithfully,

**STEPHEN FERGUSON**
**AHA NATIONAL CEO**