



Actuaries
Institute.

10 April 2025

Superannuation Access and Compliance Unit
Retirement Income and Superannuation Division
Treasury
Langton Cres
Parkes ACT 2600

Email: paydaysuper@treasury.gov.au

Dear Sir/Madam,

Consultation: Payday Super – exposure draft legislation

The Actuaries Institute (**Institute**) welcomes the opportunity to make a submission to this consultation. The Institute is the peak professional body for actuaries in Australia. Our members have significant involvement in the development and management of superannuation in Australia.

The Institute supports the proposal to require employers to pay their employees' superannuation (**super**) at the same time as their salary and wages and update penalties and charges for late or missed super payments, as proposed in the Payday super exposure draft legislation. The proposal will help ensure individuals receive the Superannuation Guarantee (**SG**) contributions to which they are entitled.

Our submission largely focuses on the treatment of individuals with defined benefit interests, given the significant role of actuaries in the management of defined benefit (**DB**) super.

Salary definition

The amendments to the *Superannuation Guarantee (Administration) Act 1992* (the **SGA Act**) in 2020 prevented an individual's salary sacrifice contributions being used to reduce an employer's minimum SG contributions to an accumulation fund. However, they did not address the treatment of SG obligations via a DB arrangement. As a result, hundreds of thousands of employees were not covered by the SGA Act amendments because the DB arrangements also apply to members with accumulation benefits in those funds. The proposed changes to the definition of 'salary or wages' in the exposure draft legislation address this inconsistency in the treatment of individuals in DB arrangements. We strongly support this occurring.

SG benefit certificates

Paragraphs 1.72-1.75 of the draft Explanatory Materials (**EM**) note that employers with employees who are members of DB arrangements obtain an SG benefit certificate (**SGBC**) to reduce or eliminate their exposure to SG shortfalls, and that an SGBC attests to the level of super contributions that the members' benefits are equivalent to – this is known as the notional employer contribution rate (**NECR**). The SGBC also certifies the minimum requisite benefit (**MRB**) as defined in Regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994* (the **SIS Regulations**).

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While Paragraph 1.72 of the draft EM makes clear that these arrangements are not intended to change in the amended framework, the effect of the move to the new payment frequency and the introduction of new terms such as Qualifying Earnings (**QE**) means that we would expect all SGBCs issued on and after the proposed commencement date of 1 July 2026 to reflect these changes.

In the Institute's [submission](#) to the 2023 Securing Australians' Superannuation Consultation, we suggested that to avoid unnecessary cost, an SGBC should only be updated to reflect the changes when next due for renewal. In this regard, we note that there do not appear to be any changes contemplated to Section 10 of the SGA Act, which sets out the expiry and period of effect of an SGBC. We support this practical approach.

The proposed legislation will deem that a notional contribution is made by the employer for a member and received by the DB arrangement on the QE day where the employer is covered by an SGBC. The effect of not requiring SGBCs to be updated is that they may be inconsistent with the legislation including in relation to accumulation members in DB arrangements (see below for further discussion on these members) until they expire and are updated. As SGBCs can remain in effect for up to five years, it could be up to five years after the legislation commences before a particular employer's SGBC is aligned with the legislation. While this will not adversely affect the employer's SG compliance due to the deeming provision, until the SGBC is updated there will be no requirement for the DB arrangement to adjust the member's MRB in a manner consistent with the new legislation. While we support this as a practical approach, we recommend that the Government reduce the number of individuals subject to the SGBCs and use this opportunity to treat accumulation members of DB arrangements in the same manner as all other accumulation members (see below).

Accumulation members in DB arrangements

Our 2023 submission also identified the historical anomaly that an employer's SG compliance for an accumulation member of a DB arrangement is determined in the same manner as for a DB member of that fund, that is, by reference to the NECR applicable to the member specified in the SGBC. **We continue to recommend that the SG compliance test for these accumulation members should be based on the employer contributions actually paid** (or credited from reserves/surplus in the case of reserves or defined benefit assets being used to finance accumulation member contributions). This change to reduce the risk of SG non-compliance for accumulation members of DB arrangements would be consistent with the broader objective of the Payday Super policy to strengthen the integrity of the SG compliance framework. It would also ensure that accumulation members in DB arrangements have the same visibility within the same timeframes over the employer contributions actually paid or credited as any other super they have in other funds. We therefore urge the Government to use the opportunity presented by this reform to address this potential disadvantage to this large cohort of accumulation members (we estimated in our 2023 submission that there are hundreds of thousands of employees who are accumulation members of defined benefit plans who are at risk of being disadvantaged).

Other matters

a) Choice of fund

Paragraph 1.91 of the draft EM discusses the choice of fund rules in respect of employees who are defined benefit members. Currently a standard choice form is not required to be provided to a defined benefit member if any one of the following three conditions is met:

- the scheme is in surplus and has been at all times since 1 July 2005 (subsection 20(2) of the SGA Act)

- the member has accrued the maximum benefit under the DB arrangement (subsection 20(3) of the SGA Act); or
- the member's benefit would not be affected if the employer made contributions to a fund other than the DB arrangement.

While the draft legislation includes these three conditions, Paragraph 1.91 of the draft EM indicates that all three of these conditions need to be satisfied in order for the employer to not be subject to a choice loading. We recommend this paragraph be rewritten for clarity.

b) Advertising on onboarding

The draft legislation proposes to ban advertising of super products during onboarding of new employees, with certain exemptions for MySuper products. We support this development given the additional licence conditions for MySuper products. This is to be achieved via new section 992AB of the *Corporations Act 2001 (Cth)*. However, we have concerns as to whether draft subsection (2) will achieve this objective. This is because the draft subsection proposes to provide an exemption where the product is a *beneficial interest* in the employer's default fund. However, advertisers do not advertise beneficial interests in a product, but rather the product as a whole. We therefore encourage the Government to review the drafting of this subsection to ensure it achieves the desired objective. We also note that the advertising ban will also include an exemption for certain MySuper products where the conditions and disclosures to be prescribed in regulations are met. However, the draft regulations were not included in the package of materials released on 14 March. We encourage the Government to release the draft regulations as soon as possible, as it will take funds time to draft the required disclosures.

c) Timing

We encourage the Government to consider extending the start date for the payday super regime more generally, to ensure that employers and super funds have time to make the necessary system and process changes once the final form of the legislation is certain.

The Institute would be pleased to discuss this submission. If you would like to do so, please contact executive@actuaries.asn.au.

Yours sincerely

(Signed) Tim Jenkins

Chair, Superannuation and Investments Practice Committee