

18 July 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 – further comments

The Actuaries Institute (**Institute**) is the peak professional body for actuaries in Australia. Our members have significant involvement in the development and management of superannuation in Australia.

We refer to our [submission of 10 April 2025](#) (April Submission) responding to the [above consultation](#).

The main purpose of this supplementary submission is to draw your attention to our further suggestions that consequential amendments be considered to the *Superannuation Guarantee (Administration) Regulations 2018* (SG Regulations) to update the Superannuation Guarantee (SG) earnings base applicable to members of defined benefit (DB) superannuation funds so that it is the same as applies for members of accumulation funds.

We have also taken the opportunity to provide further comments on the SG treatment of accumulation members in DB funds, in particular to raise the issue of whether the SG obligations for these members should be tested against the amounts and times that employer contributions are actually paid (or credited from fund reserves/surplus) rather than by deeming that employer contributions have been made using the amounts and timing specified in the SG Benefit Certificate (SGBC).

SG earnings base for DB superannuation funds

There has been a misalignment between the SG earnings bases applicable to members of DB funds and members of accumulation funds since 2019 when the SG legislation relating to accumulation funds was amended to introduce the concept of ordinary time earnings base (OTEB). The amendments provided that, from 1 January 2020, an individual's salary sacrifice superannuation contributions could not be used to reduce an employer's SG obligations via an accumulation fund – in particular, by requiring SG contributions to an accumulation fund to be based on OTEB, which is essentially *ordinary time earnings* (OTE) plus salary sacrifice contributions.

However, the SG earnings base applicable to members of DB funds, as specified in the SG Regulations, is still OTE:

- Section 5 defines "employer contribution rate" by reference to OTE and this definition is then used in section 9, thereby establishing OTE as the earnings base on which the notional employer contribution rate (NECR) for an accumulation-style minimum benefit is to be assessed in accordance with Section 8.

- Similarly, the provisions of Section 10 establish OTE as the earnings base on which NECRs for DB-style minimum benefits must be assessed in accordance with Section 8.
- Following advocacy from the Institute, in April 2022, the then Government undertook to make appropriate amendments to the SG legislation relating to DB funds, however this remains outstanding.
- As an interim arrangement pending the legislative amendments, the Institute's Professional Standard PS 403 relating to the preparation of SGBCs (which set out the NECRs for DB funds) was revised in 2022 to strongly encourage, but not require, NECRs to be measured using OTEB rather than OTE, with mandatory reporting to the Institute where OTEB is not used (no reports have been received thus far).
- While no instances of member disadvantage arising from the OTE anomaly have been brought to the attention of the Institute to date, **we remain strongly of the view that legislative amendments to align the DB earnings base to OTEB are still necessary to ensure member disadvantage is prevented.**

Noting that OTEB is proposed to be replaced with Qualifying Earnings (QE) under the exposure draft (ED) Payday Super legislation, **we recommend that the Payday Super legislation incorporates amendments to the SG Regulations to align the SG earnings base for members of DB funds with the earnings base applicable to members of accumulation funds.**

We would be happy to engage with Treasury and/or the Australian Government Actuary on the drafting of appropriate amendments.

SG treatment of accumulation members in DB funds

Our April Submission:

- urged the Government to use the opportunity presented by the proposed Payday Super legislation to rectify the historical anomaly whereby an employer's SG compliance for an accumulation member of a DB fund 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 with a Minimum Requisite Benefit (MRB) which may not specify the timing and frequency of credits to a member's account;
- recommended the SG compliance test for these accumulation members be based on the amount and timing of employer contributions actually paid (or credited from reserves/surplus in the case of reserves or DB assets being used to finance employer SG contributions for accumulation members); and
- noted that this change to reduce the risk of SG non-compliance for accumulation members of DB funds would be consistent with the broader objective of the Payday Super legislation to strengthen the integrity of the SG compliance framework.

Since making the April Submission, we have considered this matter further.

Where SG contributions are paid late or not paid, it is not straightforward for an SGBC to provide *precisely* the same SG outcomes for an accumulation member in a DB fund as would be provided by the law if that employee was a member of an accumulation fund, because of the ability for unpaid contributions in a DB fund to be allocated to affected employees' accounts from the DB funding pool and the MRB to be restated. The differences relate to the rate of earnings credited and the application of SG penalties to the employer.

This will not be the same financial outcome, for either the employee or the employer, as would apply if the late payment or non-payment had occurred in an accumulation fund, in which case the SG Charge would apply, including penalties and a different amount of earnings.

In our view, the advent of Payday Super has implications for the feasibility of continuing to include accumulation members in SGBCs using the restatement approach. These include:

- the likely increase in the number of late SG payments as system participants adjust to the new regime and hence the number of MRB restatements required – generally involving manual calculations which, for example, may take into account each individual member's SG account investment profile;
- the proposed Payday Super SG Charge regime, including a variable administration uplift, which, combined with the above factors, may increase the potential divergence in outcomes for accumulation members covered by an SGBC compared with those in accumulation funds; and
- the hindered ability of the ATO to automate SG compliance checks and associated actions for accumulation members of DB funds, as for compliance purposes SG contributions equal to NECR x QE would be deemed to have been received by the fund on payday, regardless of the amount or timing of actual contributions.

We consider that there are two broad potential approaches to the treatment of accumulation members in DB funds, which are discussed below.

Alternative 1: Remove accumulation members from the SGBC regime

This would involve changing the class of members that could be covered by the SGBC to exclude all accumulation members. It also means that the SGBC would not cover all members in the “defined benefit superannuation scheme” (noting that with fund consolidation, many DB members are now in DB sub-funds in any case).

Under Alternative 1, the SG treatment of accumulation members of DB funds under Payday Super would be the same as for members of accumulation funds – that is, SGBCs would no longer cover accumulation members of DB funds, with employer SG obligations (including consequences for non-compliance) for these members being the same as for members of accumulation funds.

Consequential issues that would need to be considered include:

- in employer sponsored funds, a mechanism to recognise appropriate credits¹ made to accumulation members' accounts from reserves that are used to meet their employer's SG obligation (which may be surplus assets in a former DB fund with no DB members remaining, or DB fund surplus assets in a continuing fund);
- the abolition of the conversion notice regime in section 6B of the SG (Administration) Act, under which accumulation funds where SG contributions are credited to members from reserves/surplus are deemed to be DB funds (and so require SGBCs);
- potential new controls and reporting where SG contributions are credited from reserves/surplus in an accumulation fund, following the abolition of the conversion notice regime; and

¹ Credits from reserves will be net of 15% contributions tax and need to be grossed up for concessional contribution reporting and assessment against an employer's SG obligation.

- technical amendments to the SIS Regulations to ensure Funding and Solvency Certificates continue to allow appropriately for the funding of SG minimum benefits of accumulation members in a DB fund.

We note that the ability for employer sponsors to efficiently utilise any surplus assets by making credits to accumulation members' accounts in a fund is an important feature of the current DB funding landscape, since it is expected to result in higher ongoing levels of funding (and thus increased security of members' benefits) than would otherwise be the case. It can mitigate employer fears of over-funding their DB liabilities and having a "stranded" surplus or resulting in windfall gains for the last remaining member at the end of life of the fund. In some cases, there is no facility for this surplus to be repatriated to the employer (even if the legislative hurdles for making such payments were cleared), which means that this is the only viable way for this surplus to be utilised.

Alternative 2: Allow an "opt-in" mechanism for accumulation members in DB funds or deemed DB funds

Under Alternative 2, the default approach would be for accumulation members in DB funds to be treated the same way as a "standard" accumulation member, however, when necessary the actuary could include a class of accumulation members in the SGBC where an employer sponsor is using surplus to meet its SG obligations for those members in the DB fund, as well as those employers who are currently utilising the conversion notice regime.

Once the surplus has been utilised, the accumulation members would cease to be covered by the SGBC (or the conversion notice would cease to apply) and the accumulation members would then be subject to the same contribution payment, timing and compliance obligations, including the same consequences for non-compliance, as for members of accumulation funds.

Over time, as the number of DB funds continues to decline and remaining surpluses are extinguished, the number of accumulation members covered by SGBCs (and in particular by conversion notices, which typically do not last for an extended period) would also decline. This approach would ensure that all employers who are no longer utilising surplus to fund accumulation member SG contributions would be appropriately subject to the Payday Super regime.

Similar to Alternative 1 above, a range of consequential amendments would also likely be required under this approach.

We would be pleased to discuss this letter with Treasury and/or the Australian Government Actuary and to assist on more technical aspects of the Government's preferred approach.

Please contact public_policy@actuaries.asn.au for any further information or to arrange a meeting.

Yours sincerely

(Signed) Tim Jenkins

Chair, Superannuation and Investments Practice Committee