SUPER SCANDALOUS:

How to fix the $5 billion scourge of unpaid super

Industry Super Australia

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About Industry Super Australia

Industry Super Australia (ISA) is a research and advocacy body for Industry SuperFunds. ISA manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings of nearly five million industry super members.

Industry Super Australia Pty Ltd, ABN 72 158 563 270, Corporate Authorised Representative No. 426006 of Industry Fund Services Ltd, ABN 54 007 016 195, AFSL 232514.

Authors

Thomas McMahon, Senior Manager – Policy & Research (tmcmahon@industrysuper.com)
Ella Cebon, Senior Policy Adviser (ecebon@industrysuper.com)

Where case studies have been used in this report, names have been changed.

Executive Summary

Unpaid super affects more than a quarter of employees, costing each affected worker an average of $1,700 per year. In 2018-19, Australian employees missed out on a total of $5 billion in employer super contributions. Young workers, and those on low wages or working in construction, transport, trades, hospitality and accommodation, are most likely to be underpaid super.

The impact of unpaid super on workers is clear and long-lasting: less money to retire on, greater reliance on the age pension – a bill the taxpayer picks up – and, for many, the risk that critical insurance policies tied to super will lapse.

The government's attempts to fix the problem have so far failed to put a significant dent into the total amount of unpaid super, which has been at least $4.5 billion a year over the past six years. While most employers do the right thing, those who do not cause significant harm to individual workers and, ultimately, to all taxpayers. They also gain an unfair business advantage over employers who do meet their obligations to pay super.

Our quantitative analysis of tax data, combined with 16 interviews with union and business-group representatives, as well as superannuation funds, identified three main causes of unpaid super:

- **Poor business practices by employers, insolvency and theft.** Employers who are more likely to avoid paying super tend to have insufficient administration systems and poor cash-flow management. Some are insolvent.
- **Super contributions are not visible to employees.** Quarterly payment of super combined with pay slips that show what super is payable – rather than what has actually been paid – makes it very hard for employees to know if their super is unpaid and to take action. This issue was also highlighted by the Commonwealth government's Retirement Income Review.
- **No effective deterrent.** Although it has real-time visibility of whether super is paid, and has powers to impose significant penalties when it is not paid, the ATO has been reluctant to impose full penalties or make its compliance action visible to the community. Fear of detection and sanction by the ATO is therefore not an effective deterrent for those employers who avoid paying super contributions allowing them to undercut employers doing the right thing.

This is ISA's third report on unpaid super. Together with our earlier work, the new research carried out for this report points to four policy reforms that can help ensure Australian workers are not deprived of their employer super contributions and that honest employers are not penalised or disadvantaged when they meet their legal obligations to their employees. They are:

- **Mandate payment of super on pay day.** The single most effective change would be to require employers to pay superannuation guarantee contributions at the same time they pay employees' salaries. This simple reform would address many of the causes of unpaid super identified in this report.
- **Enforce penalties for employers who do not pay super.** The ATO should be much more rigorous in applying the existing enforcement regime. The ATO should also publicise its enforcement action so that fear of detection and penalty acts as a real deterrent for employers looking to avoid paying super.
- **Facilitate other actors to assist in recovery.** Other relevant agencies, such as the Fair Work Ombudsman, and third parties such as unions and funds, should be given greater scope to work with the ATO to recover unpaid super. This could be achieved by allowing the ATO to share data with funds, or by allowing it to delegate an agent – such as a fund or a service provider to a fund – to recover unpaid super.
- **Extend the Fair Entitlements Guarantee to cover SG contributions.** The Fair Entitlements Guarantee should be extended to cover unpaid super contributions. This would mean super would be treated in the same way as other employee entitlements in the event of employer insolvency.

It remains an accepted fact by our lawmakers that many Australians do not receive their mandated employer superannuation contributions, regardless of what is printed on their payslip. Parliament has known about this problem for too long. The best solution is to mandate payment of super with wages. It's time the parliament acted.

Introduction

Under Australia's mandatory superannuation system, employers must now contribute at least 10 per cent of each employee's earnings to a superannuation fund.[1] These contributions help ensure that employees are more financially independent and enjoy quality of life when they eventually retire.

Over the past 30 years we have built a super system that holds more than $3 trillion in assets, funds that are used, and will continue to be used in the future, by millions of retirees to supplement their age pension. The size and strength of our super system also helps to fund and stabilise the broader Australian economy, helping businesses and workers to weather crises such as the 2008 global financial downturn and the recent COVID-19 pandemic.

But the success of our system, and its capacity to help fund a dignified retirement for workers, depends on employers doing the right thing: paying super contributions for each employee in full and on time.

Unfortunately, this is not always the case. Many Australians do not receive their mandated employer superannuation contributions.

This report, which builds on previous work by ISA[2], shows that this problem of unpaid super affects more than a quarter of all employees. It costs affected workers $1,700 a year, on average, in unpaid entitlements. In 2018-19, the most recent year for which figures are available, a total of $5 billion in super entitlements were not paid. In each of the last six years unpaid super has totalled at least $4.5 billion. This is a persistent and significant problem and it is not going away.

In an effort to understand the problem, ISA has undertaken new quantitative analysis of tax data, and conducted a comprehensive literature review, encompassing previous government inquiries and submissions. We have also undertaken qualitative research, conducting 16 interviews.

This report sets out our findings and proposes concrete solutions that could help ensure that Australians receive the superannuation they are entitled to.

It is set out in three sections.

» Size of the problem and who is affected

This section outlines the results of ISA's quantitative analysis of the problem of unpaid super and shows that many of the affected workers are those who can least afford to miss out. Indeed, the groups most affected are also most likely to have had their super balances wiped out by the COVID-19 early release scheme.

» Why do some employers not pay super?

This section identifies several recurring causes of unpaid super, including poor business practices, poor visibility of contributions by employees, and the lack of an effective deterrent for employers who do not pay.

» Policy solutions

This section sets out four realistic and pragmatic reforms that would tackle the problem of unpaid super.

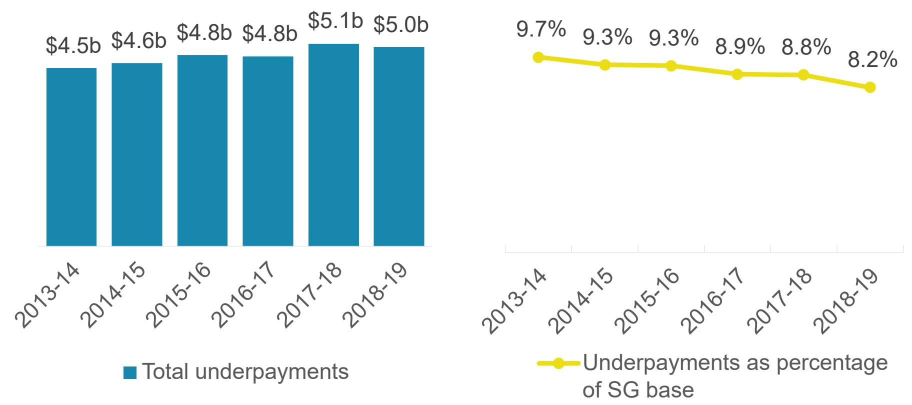
Size of the problem and who is affected

While the large majority of employers comply with their obligation to pay the superannuation guarantee (SG), non-compliance by some employers leads to a large pool of unpaid super. In this section we show the impact of unpaid super by occupation, gender, population and age. We also show the compounding effect of the COVID-19 early release scheme on unpaid super and the impact on retirement savings over time.

ISA analysis shows that in each of the last six years the total amount of unpaid super has never been less than $4.5 billion. It 2018-19, the most recent year for which data is available, unpaid super averages $1,700 per affected worker and affects more than a quarter of all employees. This is despite numerous government inquiries and reforms aimed at addressing the issue, including the ATO's improved ability to monitor contribution payments through the Single Touch Payroll (STP) initiative.[3]

Chart 1 (below) shows that the dollar value of underpaid super over the last six years has either remained static or increased. However, the amount of unpaid super as a proportion of earnings has decreased slightly, probably due to employment and wages growth over the same period.

Chart 1: Value of total underpayments (left) and underpayments as a proportion of the total SG base (right) from 2013-14 to 2018-19



Source: ISA analysis of 2 per cent sample file, 2013-14 to 2018-19.

Impacted occupations

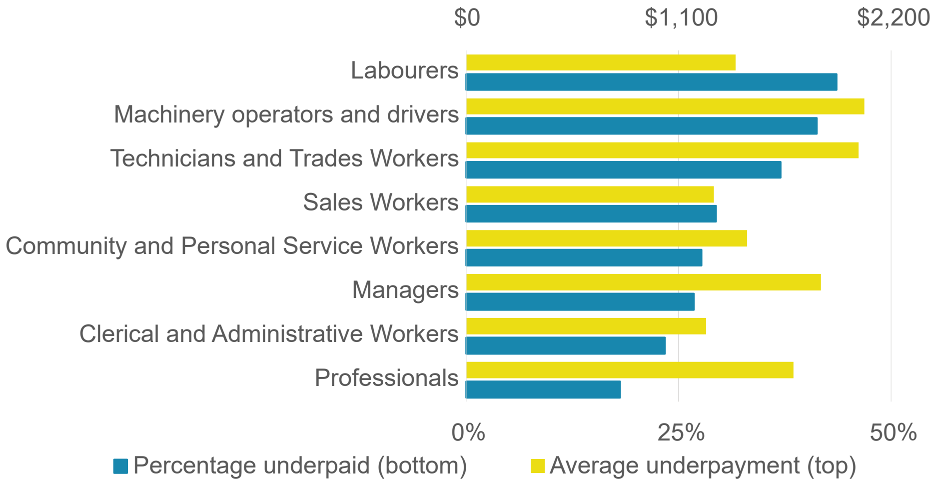
ISA analysis shows that unpaid super is most likely to affect Australians employed in construction, trades and transport, and hospitality and accommodation workers. This is consistent with the findings of the 2017 Superbad inquiry, which noted in its report:

> Evidence received by the committee indicated that instances of non-payment of SG occurred more frequently in certain industries, owing to workforce characteristics inherent to them. These characteristics included low wages and insecure work patterns. These at-risk sectors included the construction, transport, hospitality, accommodation and cleaning industries.[4]

Chart 2 breaks down ISA's estimates of the percentage of population by occupation affected by unpaid super. It shows that labourers, machinery operators and drivers, technicians and trades workers, and sales workers are most likely to not be paid super.

Chart 3, which shows employee notifications received by the ATO about unpaid super, gives a similar result. The largest proportion of notifications about unpaid super for 2019-2020 came from workers in accommodation and food services. This is not obvious in Chart 2 because hospitality workers are included in the category of Community and Personal Service Workers, alongside occupations less prone to underpayment, such as protective service workers, carers and aides.

Chart 2: Percentage of population underpaid and average value of underpayment by occupation in 2018-19



Source: ISA analysis of 2 per cent sample file, 2018-19.
Note: Other occupation categories excluded.

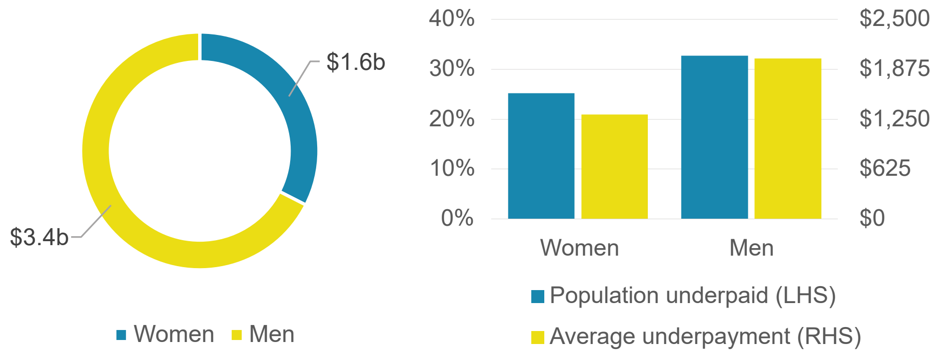
Chart 3: ATO complaints received during 2019-20, percentage and count breakdown by industry of business

Source: Senate Economics References Committee, Wage theft inquiry, QON W4 ATO, September 2020.

Impacts by gender and population and age

Unpaid super is more likely to affect men and younger Australians, as Chart 4 shows. This is because men are more likely to work in the heavily impacted occupations described above – as labourers and construction workers, for example – and also because men earn more than women.

Chart 4: Total value of unpaid super (left), and percentage of population underpaid and average value of underpayment (right) by gender in 2018-19



Source: ISA analysis of 2 per cent sample file, 2018-19.

What does the reality of unpaid super look like in the life of a young worker? The following examples were provided by The Young Workers Center in Victoria.

Iris, a florist
Iris lived and worked in the Yarra Valley as a florist. In 2007 she started work as an apprentice and worked for more than 10 years. She was underpaid wages and never received any super.

The Young Workers Centre was successful in recovering $20,000 in unpaid wages and super.

Henry, signwriter apprentice
Henry started work as an apprentice signwriter in Frankston when he was 17. He was employed from 2013 to 2017. Henry was not paid super and he was also significantly underpaid his wages.

Henry was owed more than $30,000 in unpaid wages and entitlements and $4,000 in unpaid superannuation. His employer was de-registered and his wages and entitlements were not recovered.

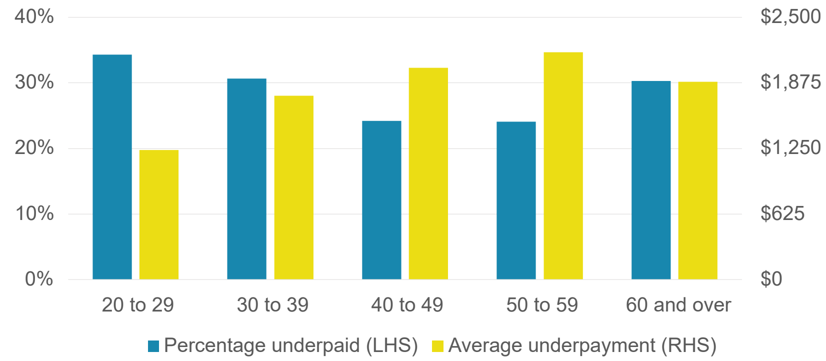
Sally, a worker at a fast-food chain
Sally lives in Croydon, Victoria. At 16 she started casual work in a fast-food chain. At 19 she became a permanent full-time employee and worked for another six years.

Sally was only partially paid super in the final three years of her employment, which led her to question whether she should have received super for her earlier periods of employment, particularly for the years she worked as a casual employee.

The Young Workers Centre calculated that she was owed more than $20,000 in super. But Sally's employer, a franchisee, had gone out of business and her super was never recovered.

There are a range of reasons why younger Australians are more likely to be affected. They earn less money, have less bargaining power and, as the next section of this report explains, they are less likely to notice if their super has not been paid – or to chase it up if they do. Chart 5 shows that in 2018-19 more than 30 per cent of workers aged between 20 and 39 did not receive their full employer contributions. By contrast, 24 per cent of workers aged between 50 and 59 were underpaid super.

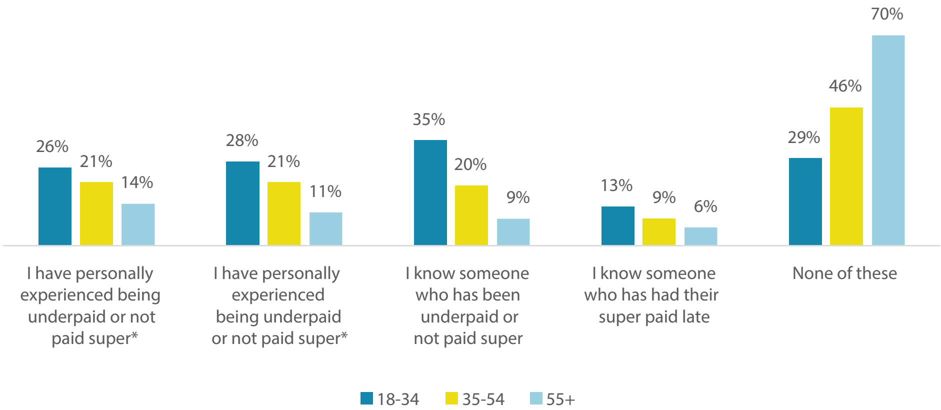
Chart 5: Percentage of population underpaid and average value of underpayments by age group in 2018-19



Source: ISA analysis of 2 per cent sample file, 2018-19.

This analysis is backed up by research commissioned by ISA that shows that younger Australians are more likely than older workers to say that they have experienced being underpaid super, not paid or paid late, or know someone who has experienced being underpaid, not paid or paid late.

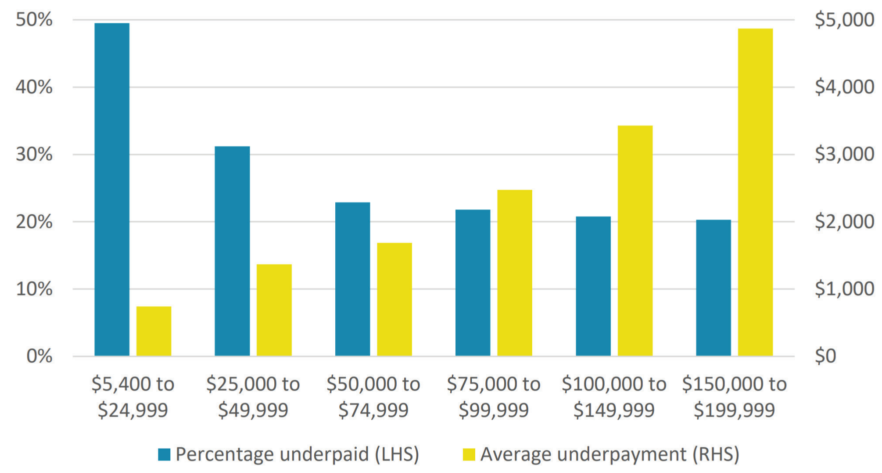
Chart 6: Breakdown of responses to the question of, 'Which of the following applies to you?'



Source: UMR research, June 2021.
Note: Respondents able to choose multiple options unless choosing 'none of these'. *Only asked to respondents who have savings in a super fund or a SMSF.

The likelihood of being underpaid super increases significantly for lower-paid workers. Chart 7 shows that for workers earning between $5,400 and $24,999 the probability of being underpaid super is 49.5 per cent; the probability for workers earning between $25,000 and $49,000 is 31.2 per cent. This significant difference reflects the fact that those who earn less have less bargaining power – and are also less likely to notice if their super has not been paid, or to pursue it if they do.

Chart 7: Percentage of population underpaid and average value of underpayments by salary and wage level in 2018-19



Source: ISA analysis of 2 per cent sample file, 2018-19.

The compounding effect of COVID-19 early release scheme

Unfortunately, the cohort most at risk of unpaid super – younger Australians – is the same cohort that accessed the COVID-19 early release scheme in greatest numbers, significantly draining their savings in the process. ISA analysis of the early release of super scheme shows that:

- 725,000 Australians effectively drained their super accounts. 594,000 of those – or 82 per cent – were aged 35 and under
- Young people had the highest number of applications: 64 per cent of the total applicants (2.2 million) were 40 and under. Almost half of all applicants, 1.71 million, were 35 and under
- Nearly 40 per cent of workers aged 26-30 accessed the scheme

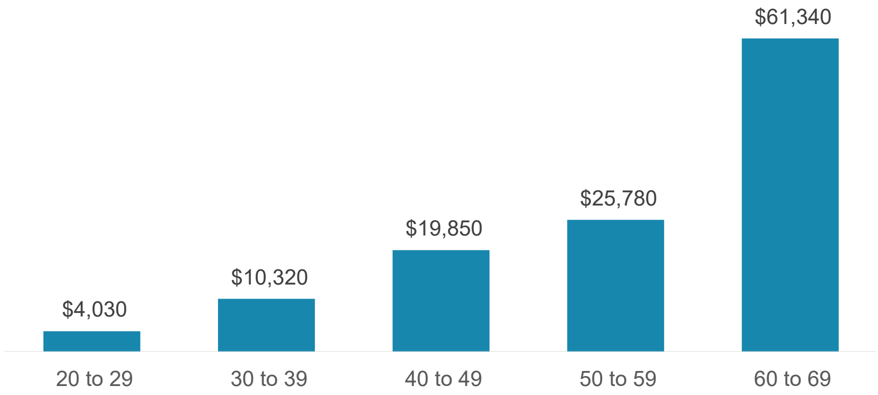
Impact of COVID-19

Our interviewees, who included representatives of superannuation funds, business and unions, were inconclusive about the impact of COVID-19 on unpaid super. Some funds have seen little impact, which they speculate was due either to the nature of their membership or to government programs such as JobKeeper. One union interviewee reported that for some employees, COVID-19 meant they were paid super contributions for the first time – because their employer received JobKeeper. However, migrant workers who were not entitled to JobKeeper often lost their jobs, received no support and – ironically – had to withdraw their super under the government's early release scheme to pay for living expenses. Other interviewees reported that it's still too early to assess the impact of COVID-19 on unpaid super.

The impact of unpaid superannuation compounds over time and will have a lasting negative impact on an individual's final superannuation balance at retirement. The data suggests both persistence of underpayment over more than a single year and the costly impact of lost returns on the missing contributions. The cost to retirement savings is staggering with members robbed of more than $60,000 in super savings by retirement (see Chart 8). As a result, retirees have substantially less savings to enjoy retirement and taxpayers are on the hook for higher age pension costs.

It also suggests compliance activity and the recoupment of underpaid amounts is not working well enough to restore workers' retirement savings to where they would otherwise be.

Chart 8: Average super balance difference by age group in 2018-19



Source: ISA analysis of 2 per cent sample file, 2018-19.
Note: Individuals making voluntary contributions excluded. Estimates constructed by taking, for each age group, the difference in mean balances between the underpaid group and those not underpaid by income bands and then weighting by the proportion of the SG eligible population in each income band to arrive at a single weighted average. This methodology controls for differences in the underlying income distribution and thus asset distribution between the underpaid group and those not being underpaid.

Why do some employers not pay super?

ISA interviewed 16 representatives from superannuation funds, business and unions to seek their views on why some employers do not pay super. In combination with our literature review, this qualitative research identified three main reasons why some employers fail to pay employees their full super entitlements. They are:

- Poor business practices by employers, and insolvency
- Super contributions are not visible to employees
- No effective deterrent

Poor business practices by employers, insolvency and theft

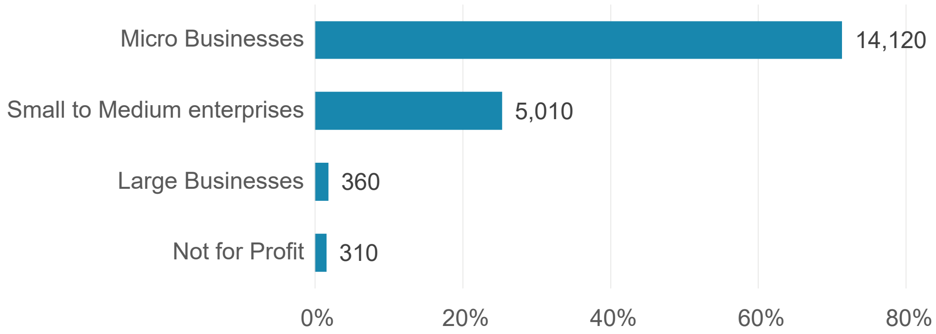
Cash-flow management and administration systems

Poor business practices, which include inadequate management of cash-flow and ineffective administration systems, were raised by super fund representatives as key drivers of unpaid super, particularly in smaller businesses.

Funds said that while employers generally want to do the right thing, they will often have cash-flow problems – driven by a combination of insufficient inflows and limited internal capacity and skill to manage financial resources. This is often coupled with poor administrative capability to attend to timely payment of super. These are often smaller, non-office-based businesses without efficient administration systems. As one fund representative noted: 'Characteristics are that they have smaller jobs, they don't have the infrastructure in place, e.g., salaried staff, they often have their partner doing books/paperwork. Payment of superannuation becomes a secondary thing for them.'

This perception is supported by ATO analysis showing that 'cash-flow issues' were the reason for non-payment in 70 per cent of cases, and poor record-keeping was a factor in approximately 20 per cent of cases – figures that have remained steady for many years.

Chart 9: ATO complaints received during 2019-20, percentage and count breakdown by size of business



Source: Senate Economics References Committee, Wage theft inquiry, QON W4 ATO, September 2020.
Note: Individual Non-Business Clients and Government market segments excluded.

However, cash-flow issues and poor record-keeping are not necessarily indicators that a business is struggling financially. One interviewee observed that unpaid super can happen in a successful business where extended payment terms are offered or creditors are slow to pay: 'lumpy cash flow does not mean a struggling cash flow'. Funds with arrears programs said that many employers will pay super, or enter into a payment plan, after receiving one or two reminders. This suggests that for some businesses super is regarded as an easy source of cash when they run into difficulty paying bills and that the money to pay super contributions can often be found when pressed.

One super fund representative indicated that the number of employers detected by their arrears program reduces by approximately 25 per cent within five weeks of the fund issuing its first arrears reminder.

Insolvency

It is also clear that insolvency is a leading cause of non-payment of super. Data on insolvencies in 2018-19 released by the Australian Securities and Investments Commission shows that while 18.6 per cent of insolvencies involve unpaid wages, a much higher proportion – 48.1 per cent – includes unpaid SG contributions. The total amounts of unpaid super were also higher than for unpaid wages. While 10.5 per cent of insolvencies featured SG debts of greater than $100,000, just 2.3 per cent of reported insolvencies featured unpaid wage debts of at least $50,000.[5]

Theft

Of course, there are also employers who simply choose not to pay their employees' super contributions. Such employers are also likely to be avoiding a range of other obligations, such as paying tax and wages, or meeting occupational health and safety requirements.

Super contributions are not visible to employees

The super regime assumes that employees are in a position to detect and report that their super has not been paid. However, employer SG contributions need only be paid quarterly, which means that they are not visible in real time. Super is paid on an employee's ordinary time earnings (OTE) and can be hard for an employee to calculate because it includes things like shift loadings and commissions. Employees must wait three months or longer to confirm that their super is being paid correctly or paid at all. Further, an employee's pay slip will report what SG is payable, not what has been paid.

The Retirement Income Review highlighted this problem, noting that, 'since the SG is not required to be paid at the same time as wages, employees may find it difficult to monitor if they are being paid the SG to which they are entitled.'[6]

Some workers only discover that their super has not been paid when they attempt to claim on their insurance.

GREG, 50s, head chef

For years, Greg, a head chef at a heritage pub in Sydney's western suburbs, was not being paid his super entitlements, despite super appearing on his pay slip. Once Greg realised he wasn't being paid he took it up with his employer. Greg made appeal after appeal to his employer but this resulted in nothing but weasel words and empty promises. Meanwhile, Greg sustained an infection in his foot which quickly worsened. When the infection developed into a flesh-eating bacteria doctors had no option but to amputate Greg's leg from just below his knee.

As if this wasn't enough to deal with, Greg was advised by his fund that his TPD insurance had lapsed because his super was not being paid by his employer.

While Greg is supported by his wife and family, the stress of the injury has been compounded by the systemic failures that plagued Greg's experience as he embarks on the complex process of recovering his entitlements.

(Interview conducted with Industry Super Australia, July 2021)

Even when an employee notices that their super has not been paid, they are often reluctant to take it up with their employer because they fear being fired.

TALLULAH, administrative worker at a construction company

Tallulah was employed for three months. As part of her job she was asked to tidy up the bookkeeping and to review accounts. While doing this she noticed that the employer did not appear to have ever paid super for any of its employees.

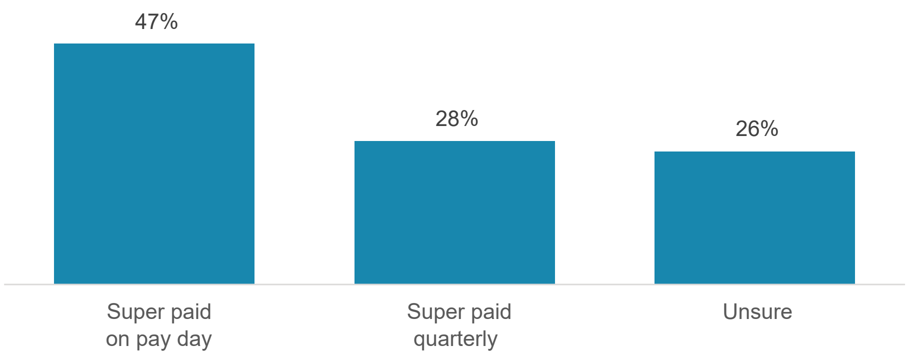
Tallulah asked about payment of super on her own behalf and on behalf of other employees.

The employer fired her.

(Name changed, case study supplied by the Young Workers Centre in Victoria)

National research commissioned by ISA in June 2021 showed that almost half of Australians (47 per cent) believe employers must pay SG into an employee's super account at the same time they pay salary. Only 28 per cent understood that employers are only required to pay SG quarterly, and 26 per cent were unsure. These figures strongly suggest that current payment settings are driving widespread public confusion and a lack of awareness among workers about whether or not their super has been paid.

Chart 10: Breakdown of responses to the question of, 'Which of these two statements do you think is true?'



Source: UMR research, June 2021.

The survey also showed low consumer awareness of the problem of unpaid super. Fewer than 10 per cent of people thought the issue affected as many as one in three workers. A majority (51 per cent) thought it affected far fewer workers than that, while many (37 per cent) were unsure.

Confusion caused by the disconnect between reporting on pay slips and payment was a common issue identified by those we spoke to about their experience of unpaid super. Because super was shown on their pay slip, they simply assumed it has been paid.

LUCY, 40s, childcare worker

Lucy works full-time in a childcare centre in regional NSW. When new management took over the centre from the previous long-time provider there was no change to the super shown on Lucy and her colleague's pay slips. Almost a year later, however, Lucy was contacted by her super fund and advised that her account was about to be closed due to inactivity – no contributions had been made by the new employer.

Lucy's pay slip had always shown her super entitlement. She had no reason to believe it wasn't being paid. In fact, she'd always assumed it was paid on pay day. Two years later Lucy and her colleagues – whose super had also gone unpaid – are still trying to recover about $50,000 in unpaid super contributions.

This example is typical of the experience of victims of unpaid super. Many workers who reasonably assume that because super is on their pay slip it is being paid at the same time as their wages only discover later that they never received their employer contributions.

(Name changed, interview conducted with Industry Super Australia, July 2021)

Low community awareness of when employers are required to pay super, combined with low awareness that super is often unpaid, means many employees are simply unaware that there is any issue with their super and therefore don't raise the matter with their employer or with those who can assist with recovery, such as the ATO, the Fair Work Ombudsman (FWO) or their fund. An unpaid super contribution is unlike other business debts, where there is usually a creditor tracking payment and – when non-payment is identified – chasing the debt.

No effective deterrent

The ATO is responsible for ensuring that employers comply with their obligation to pay the SG and for imposing sanctions if an employer does not comply. In the absence of an SG statement from an employer, the two main channels through which the ATO may become aware that an employer has not paid some or all of the SG owed to its employees are through Employee Notifications to the ATO and the ATO's proactive surveillance work.

Employee Notifications

Historically, the ATO has not had a clear and timely view of an employee's earnings, related SG entitlements and payments, and so has relied heavily on notifications by employees that their employer may have not paid super. In 2019-20 the ATO received 35,428 Employee Notifications of unpaid super relating to 21,158 businesses. Given that in the preceding financial year, around three million employees were not paid some or all of their super, this is a soberingly low figure. The ATO's capacity to monitor employee earnings and employer contributions has improved significantly in recent times. The ATO states:

> We have pay-event reporting of SG accruals and event-based reporting of contribution payments from funds regulated by the Australian Prudential Regulation Authority. This information provides us with end-to end visibility of where an employer has not met their SG obligations for their employees.[7]

However, anecdotal evidence from some funds is that the ATO has yet to fully integrate this enhanced visibility into its compliance work. The ATO has not published any public reports on the use of pay-event reporting and event-based reporting in its SG compliance work. It is therefore unclear how much the ATO relies on reporting by employees and employers rather than on its own real-time data.

The ATO website sets out its detailed process for addressing Employee Notifications.[8] However, our research suggests that these steps may not always be followed. Evidence from the Community and Public Sector Union to the Superbad inquiry suggested that the ATO will only act in relation to an employer if there is a pattern of non-compliance – and not on the basis of just one Employee Notification. The ATO does not accept that this is the case.

This perception is supported by a number of interviewees who expressed general disappointment in the transparency and timeliness of the ATOs actions in response to an Employee Notifications. Some unions reported that members had filed Employee Notifications but received no communication from the ATO.

A group of childcare workers who were unpaid significant sums of super are still waiting to hear from the ATO two years after first lodging their complaint. Meanwhile the employer remains solvent and continues to operate the business while ex-employees remain unpaid waiting for the ATO to act.

(Case study supplied by the United Workers Union)

Proactive detection

The ATO also undertakes a program of proactive detection of non-compliance that does not rely on complaints by employees or self-reporting by employers. The 2017 report of the Superannuation Guarantee Cross Agency Working Group contained a commitment by the ATO that it would increase the quantum of pro-active reviews and audits of employers from 30 per cent of all cases to 40 per cent. This followed criticism by the Inspector General of Taxation that the ATO's approach to SG compliance was insufficiently proactive, and the Superbad inquiry's recommendation that the ATO consider more proactive measures such as random audits.

Again, there is little recent public data on the ATO's audit activity. However, we note that the Australian National Audit Office – which last published a report on the ATO's SG compliance work in 2015 – will assess the effectiveness of the ATO's activities in addressing SG non-compliance as part of its 2021-22 work program. As this work will include assessing the extent to which the ATO has implemented the recommendations made by the Auditor-General[9] and the Superbad inquiry, we expect it will contribute to a better public understanding of how the ATO has been performing this work.

Penalties for not paying super

On paper, the existing penalties for egregious non-payment or underpayment of super are strong. As a base requirement, employers who do not comply with their SG obligations must pay the Superannuation Guarantee Charge (SGC) – comprising the full amount withheld, plus interest of 10 per cent, and an administration fee of $20 per employee, per quarter.

In addition, employers who do not cooperate with the ATO – either by being late to notify of an SG shortfall, or by refusing to provide relevant paperwork – can incur further charges. Known as 'Part 7 penalties', which are 200 per cent of the original SGC amount.[10]

In practice, however, the ATO has been reluctant to apply the statutory 200 per cent penalty and instead, as a matter of practice, remit down penalty amounts substantially. This creates a moral hazard where unscrupulous employers believe it's worth the risk to not comply because if they get caught, they only have to pay what they would have had to anyway with a nominal amount of interest. Anyone who has received a parking ticket knows the penalties are substantially higher than the parking fees to act as an effective deterrent.

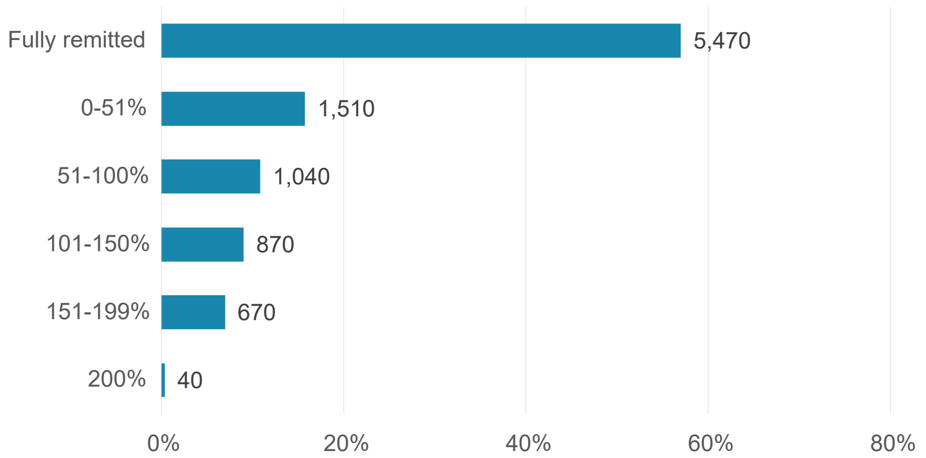
In the 2018-19 financial year, just 3 per cent of identified unpaid SG cases attracted penalties of 100 per cent or more of the base SGC; in the 2019-20 financial year the figure was 2.5 per cent. However, in the period 1 July 2020 to 31 May 2021, 16.4 per cent of cases attracted penalties of over 100 per cent.[11]

As a component of the recent SG amnesty for historical unpaid amounts[12] a carrot and stick approach was adopted where Part 7 penalties were waived for employers who voluntarily repaid historical amounts coupled with a minimum 100 per cent penalty for employers subsequently found to be non-compliant during the amnesty period. However, the efficacy of this initiative is significantly undermined by the fact that the higher minimum penalties do not apply to future breaches of the law that lead to non-payment or underpayments.

While the modest increase in the number of penalties above 100 per cent suggests some change in enforcement behaviour, we also note that the ATO recently released a draft practice statement containing principles on penalty remission for its staff to follow.[13] Unfortunately, this proposed approach to penalty remission will do little to address the problem of unpaid super because it:

- Takes a permissive approach to a mandatory obligation by framing the SG regime as one which encourages rather the requires employers to pay super
- Fails to use penalties to deter non-compliance because the ATO will provide a full or partial waiver in all but the most egregious cases
- Gives guidance to employers on how to delay paying SG and receive a lower penalty in setting out which conduct will receive a waiver and in what amount

Chart 11: Penalties imposed by ATO during 2020-21 to 31 May, percentage and count breakdown by size of penalty



Source: Senate Economics References Committee, Super Guarantee Compliance, Answers to QON, Australian Taxation Office, June 2021, BET 230.

Data on recovery action for unpaid super is only reported by the ATO in its Annual Report at an aggregate level. The ATO does not publish details of how many penalties of different types it issues, nor what their outcomes are. More granular data has been disclosed to Parliament in responses to Questions on Notice.[14] The figures provided to Parliament shown in Chart 11 (above) give an insight into the number and range of penalties imposed.

Compliance action by ATO is not visible

Because the public does not have a clear view of the ATO's compliance activity in this area it is likely that many employers who do not pay their employees' full super entitlements do not fear detection and enforcement action. Perversely, while the ATO is comfortable publishing its permissive approach to imposing penalties, it appears uncomfortable publishing its compliance outcomes. Interviews conducted for this report reflected mixed views about how business perceives the ATO's compliance activity. One interviewee noted that 'when late payment has been identified by the ATO some employers have received punitive fines. There are some employers that are concerned about that risk.'

Other interviewees, though, felt that the ATO does not do enough to follow up on unpaid super or to impose penalties that are a sufficient deterrent. One expressed the view that 'employers just aren't scared of what is going to happen if they don't pay super'. Although it was made in the context of misconduct by financial institutions, Commissioner Hayne's comment, that 'misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished',[15] is pertinent in the context of misconduct by employers who fail to pay the due super on time.

The obligation to pay superannuation arises in three ways:

1. Under the Superannuation Guarantee (Administration) Act 1992 (SGAA)

2. Through an Enterprise Bargaining Agreement, Award or contract of employment

3. In some cases, by contractual agreement between an employer and a superannuation fund

While some industry funds have active arrears programs to assist employees to recover unpaid super, only the ATO can pursue employers for breach of the SGAA and impose sanctions on employers for non-payment.

Policy solutions

The Commonwealth government has progressed some important measures that help to address the unpaid super problem. These are:

- The Treasury Laws Amendment (2018 Measures No. 4) Act 2019 gives the ATO power to issue directions to employers who fail to comply with SG obligations, including orders to pay unpaid super and penalties for non-compliance. It also extends STP reporting so that all employers regardless of size must report payroll and superannuation information to the ATO. This will improve the visibility of compliance with SG obligations.

- The Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Act 2019 amends the Superannuation Guarantee (Administration) Act 1992 to close the loophole that currently allows employers to use employees' voluntary salary - sacrifice contributions to satisfy their SG obligations. The Bill also prevents an employee's SG base being reduced by an employee's salary sacrificed amounts.

- The Superannuation Guarantee (SG) Amnesty Bill 2020 amends the Income Tax Assessment Act 1997 and the Superannuation Guarantee Administration Act 1992 and provides for a one-off amnesty to encourage employers to rectify historical non-compliance with their SG obligations. The SG Amnesty was available for a six-month window and ended on 7 September 2020.

- In the May 2021 Budget, the Government announced it would remove the $450 monthly threshold below which employees were not entitled to be paid super. This will reduce the compliance burden on business because there will be no need to calculate the threshold for each employee based on their monthly earnings. It will therefore remove a key driver of confusion about how much super an employee is entitled to.

However, ISA considers that more can be done. To comprehensively address the problem of unpaid super, the Government should take the following action:

- Mandate payment of super on pay day
- Ensure that consequences for employers who do not pay super are a deterrent
- Facilitate other actors to assist in recovery of unpaid super
- Extend the Fair Entitlements Guarantee to cover SG contributions.

Mandate payment of super on pay day

The most effective solution is to amend the law so that employers are required to deposit SG contributions into employee accounts at the same time as they pay the employee's salary. This is a simple change that will address the three main causes of unpaid super identified in this report. It is also consistent with Recommendation 5 of the 'Superbad' Inquiry which was to amend the law to require SG to be paid at least monthly, and preferably in alignment with regular pay cycles. Data from funds support this proposal showing that where employers pay super more frequently, the incidence of non-payment is significantly lower.

Paying super on pay day will assist those employers with poor business practices by streamlining, and therefore simplifying, the administration process for payment as both activities will occur at the same time. It will also reduce the temptation for employers to use the cash for other purposes, a practice that creates the real possibility of under- or non-payment of SG when the time comes for payment because the money is not available. Paying super on pay day will also allow payments to be more closely tracked by both the employee and the ATO. As noted above, ISA research suggests about half of workers believe that when super entitlements are recorded on their pay slip it means they have actually been paid. In addition to making it difficult to monitor SG compliance, quarterly payments have the additional disadvantage of delaying the compounding impact of returns and interest on the growth of account balances.

We expect that more frequent real-time data on payment of super will also assist the ATO with proactive monitoring and compliance activities, enabling it to act sooner when it identifies non-payment.

Finally, we note that some industry funds have proactively implemented a policy of encouraging employers to make more regular contribution payments – monthly rather than quarterly – so that investment earnings can begin as soon as possible, and SG non-compliance can be identified and addressed sooner.

Consequences for employers who do not pay super must be a deterrent

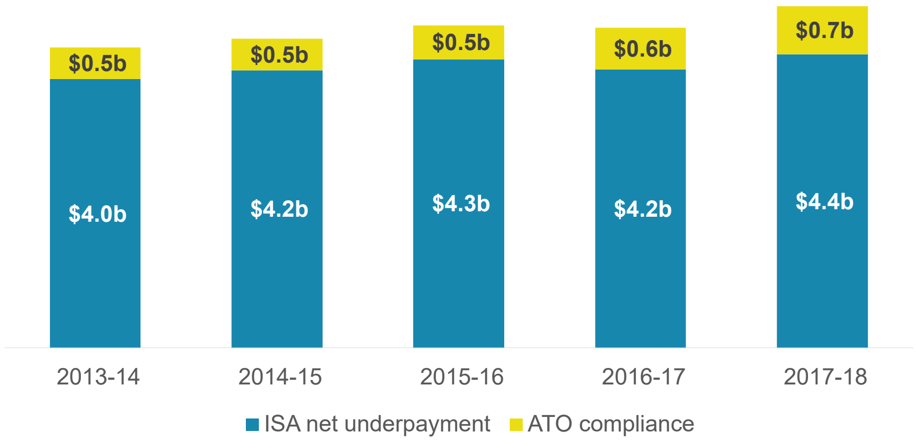
There should be a much more rigorous application of the existing enforcement regime by the ATO. The ATO has access to the data necessary to identify if an employer has not complied with the law and powers to issue directions to employers and impose sanctions and penalties. Yet, as noted earlier in this report, data made available by the ATO shows that it has been reluctant to apply Part 7 penalties in full. Furthermore, what penalties it has applied are not widely visible to employers, and so are not seen as a deterrent. The ATO should make greater use of the available penalties and sanctions to ensure that they have a deterrent effect.

The ATO should also adopt the practice of publicising its enforcement action. Other government agencies, such as ASIC, actively publicise their enforcement actions – through media releases and regular public reports – so that the community understands the consequences of breaking the law. The ATO should adopt a similar approach and so ensure that fear of detection and penalty is a real deterrent for employers looking to avoid paying super.

Facilitate other actors to assist in recovery

While some progress has been made by the ATO in recent years to recover unpaid super through compliance activities, the ATO has, on average, only recovered 12 per cent of unpaid super between 2013-2014 and 2017-2018.

Chart 12: Amount recovered through ATO compliance measures and remainder of ISA estimated underpayments from 2013-14 to 2017-18



Source: ISA analysis of 2 per cent sample file and ATO super guarantee gap analysis,[16] 2013-14 to 2017-18.

Other relevant agencies – such as the Fair Work Ombudsman, and third parties such as unions and funds – should be given greater scope to work with the ATO to recover unpaid super.

It is costly and complex for an employee to sue an employer for unpaid super. Some industry funds devote considerable resources to preventing and collecting unpaid super. They proactively remind employers that super is due to be paid and chase employers for payment when it is not paid. They also engage Industry Funds Services (IFS) to assist with recovery. Over the past two decades, IFS has recovered more than $1.3 billion in unpaid super for members. This work would be even more effective if trustees were given unambiguous standing to take action to recover unpaid super on behalf of their members. This could be achieved by allowing the ATO to delegate an agent, such as a fund or a service provider to a fund, to recover unpaid super on application and also by allowing the ATO to share data with funds.

ISA also recommends that the right to be paid the superannuation guarantee be included as part of the National Employment Standards. This will make it enforceable as an industrial entitlement for all workers and the Fair Work Ombudsman could sue for unpaid super.

Extend the Fair Entitlements Guarantee to cover SG contributions

The Fair Entitlements Guarantee is a legislative safety net for the recovery of unpaid entitlements such as wages and annual leave in the event that an employer becomes insolvent. As noted previously, insolvency is a leading cause of unpaid super and the data show total amounts of unpaid super due to insolvencies can be significantly higher than unpaid wages.

The Fair Entitlements Guarantee does not cover super contributions. Nor did the predecessor of the Fair Entitlements Guarantee, the General Employee Entitlements and Redundancy Scheme. But the previous scheme did fund three months of voluntary super contributions. The Fair Entitlements Guarantee should be extended to, at a minimum, cover unpaid super. This would be consistent with the treatment of other employee entitlements. This change would also be consistent with the findings of the Superbad inquiry, which recommended that the Government undertake an assessment of the fiscal and legislative impacts of expanding the Fair Entitlements Guarantee to cover unpaid super.

Conclusion

While there has been some action by government to address the problem of unpaid super, more is needed to ensure that all Australian workers receive their super. Progress to address this problem has been unacceptably slow and employees continue to pay the price: $5 billion in unpaid super in 2018-2019, and never less than $4.5 billion in each of the last six years.

The causes of unpaid super identified in this report – poor business practices by employers and insolvency, poor visibility of super contributions by employees and ineffective deterrence – are not surprising. The single most effective solution would be for super to be paid at the same time as wages. The visible presence of a proactive and feared regulator would also send a clear message to employers that those who chose not to pay super will be found out and will face serious consequences.

It remains an accepted fact by our lawmakers that many Australians do not receive their mandated employer superannuation contributions, regardless of what is printed on their payslip. Parliament has known about this problem for too long. The best solution is to mandate payment of super with wages. It's time the parliament acted.

ISA urges the government to consider the recommendations in this report to ensure that Australian workers are not robbed of their super.

Acknowledgements

ISA would like to thank the following organisations who assisted with this report. The recommendations expressed in this report are not necessarily reflective of the views expressed by the organisations who contributed to the research.

AustralianSuper, CareSuper, Cbus, Hostplus, Spirit Super, Industry Funds Services

Australian Taxation Office

Business NSW

Maurice Blackburn Lawyers, Segelov Taylor Lawyers

United Workers Union, Unions NSW, Victorian Trades Hall Council, Young Workers Centre, Migrant Workers Centre, The Shop Distributive and Allied Employees' Association

Appendix A: Methodology

The ISA methodology for estimating unpaid superannuation at a national level uses the Australian Taxation Office (ATO) 2 per cent confidentialised unit record files for 2013-14 to 2018-19. These files contain detailed information on both personal income taxes and superannuation contributions.

To calculate the rate of super guarantee paid compared to what should have been paid it is necessary to:

1. Isolate records in the ATO dataset for people who should receive the super guarantee;
2. Remove from this group potential defined benefit members to avoid counting these individuals as being underpaid;
3. Create an estimate of ordinary time earnings (the superannuation guarantee base) from the salary and wage data on the ATO individual tax return for those remaining, and adjust for the maximum superannuation guarantee contribution base; and
4. Adopt conservative cut-outs for apparent underpayments which provide a margin of error for the imprecision in the overtime adjustment, and which allows for the lagged quarterly payment of the super guarantee.

The following sub-sections discuss how these estimates have been constructed. The sensitivity analysis for alternative methodologies is given in Industry Super Australia and CBUS (2016).[17] The conclusion from this sensitivity analysis was that the ISA methodology is robust and considerably better than previous published estimates.

The superannuation guarantee population

To isolate the superannuation guarantee population, we exclude:

1. People who are under 20 years of age, which is as close to under 18 as the data allows;
2. Those with salary and wages under $5,400 as an approximation for the $450 per month super guarantee threshold; and
3. People who look like they may be members of defined benefit schemes.

The records on the ATO file represent 14.63 million people in 2018-19. The exclusions noted above reduce the super guarantee population represented in this analysis to 10.16 million individuals.

Defined benefit members

The ATO 2 per cent confidentialised unit record file does not contain information that would allow us to identify defined benefit members. However, since the publication of the last unpaid super report, the ATO has released the ATO Longitudinal Information Files (ALife). The ALife dataset provides approved researchers with access to high quality de-identified longitudinal tax data in a secure environment for public policy research.

While ISA does not have access to the ALife dataset, the ATO does publish population counts for each data item contained in the file on the ALife website[18] to facilitate benchmarking of the sample file to population estimates. The relevant fields for our purposes are 'Notional taxed contributions' and 'Defined benefits contributions' which are used for calculating excess contributions tax and Division 293 tax.

We use information on the number of people reporting notional contributions, along with some additional aggregate information provided by the ATO, to remove records from the 2 per cent file to account for defined benefit members. This was not possible in previous ISA reports. We assign a likelihood that a record may be a defined benefit member based on whether they have no (or low) mandated employer contributions as defined in the next section, their occupation (for example whether they are in an occupation that could be covered by a DB scheme such as managers, professionals and clerical and administrative workers), and their observed member contribution rates (certain schemes such as the Public Sector Superannuation Scheme require member contributions of between 2 and 10 per cent). We then rank records based on this likelihood and remove the required number of records to hit aggregate state, 5-year age band, and broad wage-band benchmarks.

Employer contributions

The Member Contribution Statement (MCS) portion of the ATO 2 per cent sample file aggregates all employer contributions, both voluntary salary-sacrifice contributions and those covered by the superannuation guarantee and enterprise agreements, into a single field. However, the individual tax return portion of the file has a separate field for salary-sacrifice contributions based on reportable employer superannuation contributions provided by employers on payment summaries. This allows us to calculate superannuation contributions covered by the superannuation guarantee and enterprise agreements which we denote as mandated employer contributions to differentiate these from employer contributions that are inclusive of voluntary salary-sacrifice contributions.

Prior to 1 January 2020, it was legal for employers to use salary-sacrifice contributions to meet superannuation guarantee obligations. Although legal during the period of analysis, it is morally questionable for employers to do so as this results in a reduction in an employee's total remuneration – most likely without their knowledge. For this current analysis, we use mandated employer contributions, defined as employer contributions minus salary-sacrifice contributions, in the numerator when calculating the superannuation guarantee rate.

Estimating ordinary time earnings from the ATO salary and wage data

The minimum superannuation obligations an employer must pay on behalf of their employee is based on their ordinary time earnings (OTE), up to the maximum super contribution base. The ATO guidelines to employers for calculating ordinary time earnings can be found on the ATO website.[19]

The main thing to note for our purposes is that the following payments are included in salary and wages in the individual's tax return, but are not included in OTE for the purposes of calculating superannuation entitlements:

- Overtime hours over and above the ordinary hours stated in an award or agreement
- Casual employee overtime payments
- Bonuses and annual leave loading in respect of overtime
- Termination payments for unused annual leave, long service leave or sick leave.

The ATO does not collect OTE data for employees. It is therefore necessary to estimate this based on salary and wages as reported in the individual's tax return.

The current methodology uses pooled data from the 2013-14, 2015-16 and 2017-18 ABS Surveys of Income and Housing to construct estimates of the wedge between ordinary time earnings and salary and wages for wage earners. We then estimate a Probit model of the probability of an individual having an OTE wedge based on the log of their real wage, the ratio of superannuation contributions to gross wages, and their occupation at the 1-digit level to be consistent with the ATO data. We do this separately for males and females in 5-year age groupings to allow the coefficients to vary across cohorts. Finally, we calculate the proportion of males and females in each age grouping by occupation who have an OTE wedge and the mean wedge as a proportion of salary and wages.

We then estimate the probability of an individual on the ATO 2 per cent file having an OTE wedge based on the coefficients estimated in the previous step. For each gender, age and occupation cohort, we estimate the number of individuals with an OTE wedge based on the proportions calculated in the previous step and then apply an OTE adjustment based on the mean gender-age-occupation OTE wedge to those records with the highest probability of having an OTE wedge.

This approach differs slightly from the methodology used in previous reports, which applied an OTE adjustment to all wage earners. Analysis of the pooled Survey of Income and Housing data indicates that around one-quarter of males and just under 15 per cent of females had an OTE wedge, and that this proportion can vary by age and occupation. Applying a uniform adjustment to all wage earners raises the apparent SG contribution rate for individuals who do not receive overtime payments as part of their employment.

Adopting conservative cut-outs

It is the case that our adjustment for overtime is broad and imprecise, and that data on the 2 per cent file includes some perturbation. Given this imprecision, we adopt a conservative threshold of 75 basis points below the legislated superannuation guarantee rate when measuring non-compliance. For most of the period of analysis, the superannuation guarantee was 9.5 per cent. Thus, individuals with mandated employer contributions below 8.75 per cent (8.5 per cent in 2013-14) are treated as not being fully compliant in the current analysis. In 2018-19, we estimate that 29 per cent of all super guaranteed contributors were underpaid their SG entitlements based on their estimated ordinary time earnings.

We also conduct sensitivity analysis for different cut-outs. These are present in Table 1 below.

Table 1: Sensitivity analysis for different cut-outs

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
8.25%* cut-out						
SG gap ($b)	4.22	4.36	4.50	4.51	4.80	4.70
Per cent underpaid	24.7%	24.3%	25.3%	23.8%	24.3%	23.2%
8.75%* cut-out (base case)						
SG gap ($b)	4.51	4.64	4.84	4.81	5.13	5.04
Per cent underpaid	31.1%	30.4%	32.3%	29.6%	30.1%	29.0%
9.25%* cut-out						
SG gap ($b)	4.71	4.91	5.18	5.09	5.45	5.38
Per cent underpaid	40.2%	42.1%	45.9%	40.8%	41.8%	40.7%

Source: ISA analysis of 2 per cent sample file, 2013-14 to 2018-19.

Differences between ISA and ATO estimates

The ISA estimates of unpaid superannuation are higher than the ATO's estimates of the superannuation gap.[20]

Table 2: Estimated super guarantee gap

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
ISA estimates ($b)	4.51	4.64	4.84	4.81	5.13	5.04
ATO gross estimates ($b)	3.43	3.38	3.25	2.97	3.16	

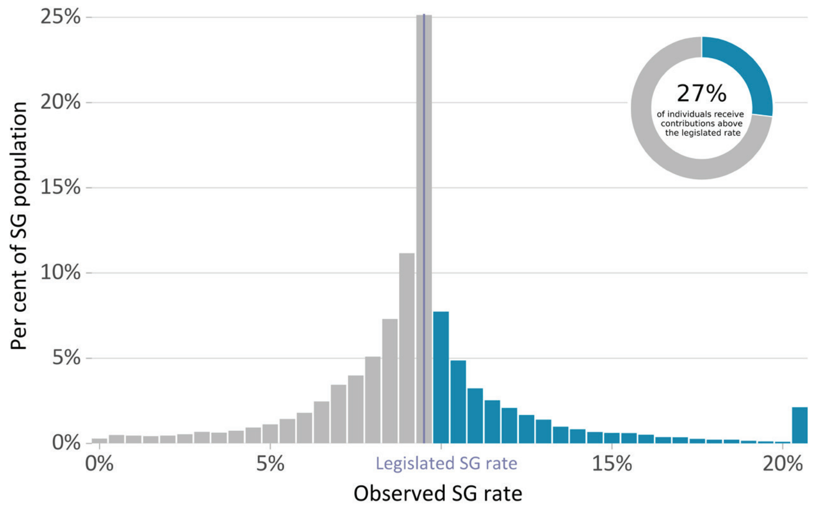
Source: ISA analysis of 2 per cent sample file, 2013-14 to 2018-19, and ATO website, 'Trends and latest findings'.

The ATO adopt a 'top-down' approach to estimate the superannuation gap based on aggregate wage data from the ABS and reported super guarantee amounts from super funds. In contrast, ISA adopt a 'bottom-up' approach based on detailed individual unit record data from personal income tax returns and Member Contribution Statements.

A potential source of difference between the two approaches relates to the treatment of mandated employer contributions above the legislated superannuation guarantee rate for employees covered by more generous superannuation schemes. For example, politicians and public servants covered by the Public Sector Superannuation accumulation plan (PSSap) receive superannuation contributions equal to 15.4 per cent of their OTE base, academics can have contribution rates of up to 17 per cent, and many employees in certain sectors such as the finance sector receive superannuation contributions above the legislated rate.

Chart 13 below shows the distribution of the ratio of mandated employer contributions to gross wages. This is prior to applying the OTE adjustment described above so as to provide the most conservative estimate possible of the proportion of wage earners receiving superannuation contributions above the legislated SG rate. In 2018-19, more than a quarter of individuals were covered by agreements that paid superannuation contributions of 50 basis points or more above the legislated rate of 9.5 per cent. We adopt a conservative cut out of 50 basis points above the legislated SG rate to account for differences in timing between SG payments and wages, but do not use the full 75 basis points as used in estimating underpayment because OTE impacts are only in one direction.

Chart 13: Distribution of mandated employer contributions



Source: ISA analysis of 2 per cent sample file, 2018-19.

It is not clear to what degree the ATO adjust reported super guarantee amounts to remove contributions above the legislated SG rate as their methodology does not detail any adjustments.[21] Not adequately accounting for this would have the effect of underestimating the size of the superannuation gap because excess contributions by employees on more generous schemes (for example, politicians and public servants on 15.4 per cent and academics on 17 per cent) can be used to offset underpayment of SG entitlements for other employees. Using the 2 per cent confidentialised unit record files, we estimate that in aggregate around 6-7 per cent of mandated employer contributions are in excess of the legal requirement (adopting the same conservative 50-basis-point threshold referred to above).

In Table 3 below, we adjust the ATO's estimates of 'reported super guarantee' contributions (item 6.1 in Table 2 of their methodology section) to account for payments above the legal requirement. Doing so increases their estimate of the 'gross gap' from $3.2 billion to $6.6 billion.

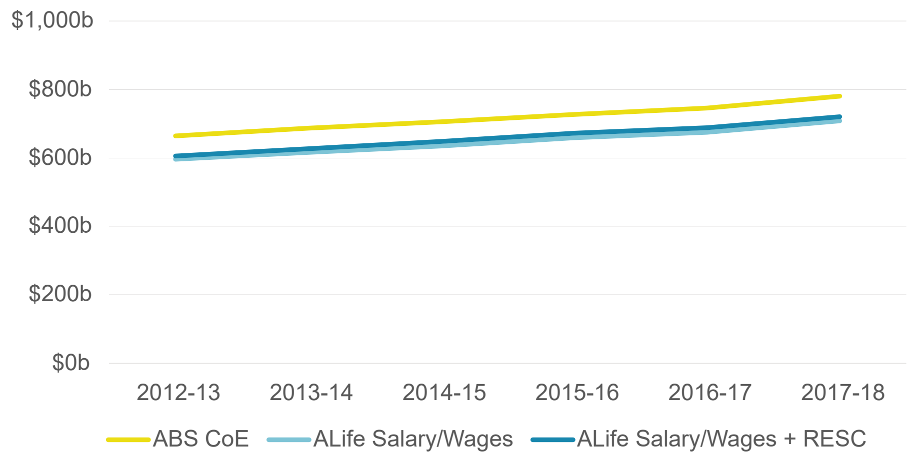
Table 3: ATO estimates of the super guarantee gap, with adjustments

Step	Description	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18
1	COE salary and wage data ($m)	664,879	686,956	706,091	727,219	745,665	780,121
2	Shadow economy uplift (1.2%) ($m)	7,979	8,243	8,473	8,727	8,948	9,361
3	Earning not subject to super guarantee ($m)	149,412	149,128	151,654	154,076	157,071	159,738
4	Apply industry AWOTE or AWE ratios ($m)	502,014	523,917	540,568	560,516	574,825	605,500
5.1	Multiply by statutory rate (%)	9.00%	9.25%	9.50%	9.50%	9.50%	9.50%
5.2	Amount that should be paid ($m)	45,181	48,462	51,354	53,249	54,608	57,523
5.3	Add back defined benefit ($m)	4,128	4,452	4,390	4,351	4,141	4,054
5.4	Theoretical liability ($m)	49,310	52,914	55,744	57,600	58,749	61,576
6.1	Reported super guarantee (including defined benefits) ($m)	46,124	49,486	52,366	54,349	55,777	58,416
6.2	Gross gap estimate ($m)	3,186	3,428	3,377	3,251	2,972	3,160
6.3	Compliance outcome ($m)	432	474	475	507	630	721
6.4	Net gap estimate ($m)	2,754	2,954	2,903	2,743	2,342	2,440
6.5	Gross gap (%)	6.5%	6.5%	6.1%	5.6%	5.1%	5.1%
6.6	Net gap (%)	5.6%	5.6%	5.2%	4.8%	4.0%	4.0%
6.1 *	Reported super guarantee (excluding defined benefits) ($m)	41,996	45,034	47,976	49,998	51,636	54,362
6.1.1	SG contributions more than 50bp above legal requirement (%)	7.1%	7.1%	6.6%	6.4%	6.4%	6.3%
6.1.2	Capped super guarantee ($m)	39,007	41,829	44,799	46,821	48,338	50,954
5.2	Amount that should be paid (exluding defined benefits) ($m)	45,181	48,462	51,354	53,249	54,608	57,523
6.2 *	Revised gross gap estimate ($m)	6,174	6,633	6,555	6,428	6,270	6,569

Source: ATO website, 'Methodology' and ISA analysis.
Note: This reconciliation assumes that the ATO has made either no adjustment or a small adjustment to account for employer contributions above the legislated requirements. As stated in the text above, it is not clear from the ATO methodology document as to what adjustment has or has not been made.

The revised ATO estimates are still above ISA estimates using a 'bottom-up' approach, including when less-conservative cut-outs are used (see Table 1). There are two additional explanations for this. The first is that the ATO use ABS estimates of Compensation of Employees (salary and wages) from the National Accounts rather than salary and wages from income tax data. The ABS estimates of aggregate salary and wages are higher than that reported in personal income tax returns (see Chart 14). The second is that the ATO include an additional uplift factor to account for the shadow economy. In this report, we have not sought to update our estimates to account for non-lodgers or the cash economy so that our estimates remain conservative to act as a buffer against any impression in the OTE adjustments and lagged quarterly payments, and because as we do not have reliable data on these components. Accounting for these two factors brings the revised ATO estimates in line with the ISA approach.

Chart 14: ABS estimates of aggregate wages vs aggregate wages in income tax returns



Source: ATO website, 'Methodology'; ALife ATO Longitudinal Information Files.

The above discussion demonstrates that the ISA estimates are indeed conservative. Failing to adequately account for mandated employer contributions above the legislated SG rate can lead to an underestimation of the size of the SG gap.

Endnotes

1 The Superannuation Guarantee (Administration) Act 1992 sets out employer obligations for paying compulsory superannuation for employees

2 Super Scandal: Unpaid super guarantee 2016-2017 (Industry Super Australia, 2019); and Unpaid Super: Getting worse while nothing is done (Industry Super Australia, 2018). See also Overdue: Time for action on unpaid super (Industry Super Australia/Cbus Report, 2016)

3 Superannuation Guarantee Cross Agency Working Group, March 2017, Senate Economic References Committee, May 2017, Productivity Commission January 2019, Senate Economics References Committee, November 2019 (ongoing) and Retirement Income Review, July 2020

4 Senate Economics References Committee, Superbad: Wage theft and non-compliance of the superannuation guarantee, May 2017, p 49

5 ASIC, Insolvency statistics: External administrators' reports July 2018-June 2019, December 2019, p 45 (at the date of publication ASIC has not published a subsequent report)

6 Retirement Income Review, Final Report, July 2020, p 304

7 ATO, draft PS LA2021/D1 Remission of additional superannuation guarantee charge, July 2021

8 ATO website, 'Our process when investigating your enquiry'

9 Auditor General Report No. 39, Promoting Compliance with Superannuation Guarantee Obligations, 2014-15

10 Superannuation Guarantee (Administration) Act 1992 Section 59(1)

11 Senate Economics Legislation Committee, Super Guarantee Compliance, Answers to Questions on Notice, Australian Taxation Office, June 2021, BET 230

12 See Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019

13 ATO, draft PS LA 2021/D1, Remission of additional superannuation guarantee charge, July 2021

14 Senate Economics References Committee Inquiry into the unlawful underpayment of employees' remuneration, Answers to Questions on Notice, Australian Taxation Office September 2020 Department/Agency: ATO Question: W4 Topic: Unpaid superannuation complaints

15 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Vol 1, February 2019, p 3

16 ATO website, 'Trends and latest findings'

17 Overdue: Time For Action On Unpaid Super (Industry Super Australia and CBUS December 2016).

18 ALife ATO Longitudinal Information Files

19 ATO website, 'List of payments that are ordinary time earnings'

20 ATO website, 'Trends and latest findings'

21 ATO website, 'Methodology'

Industry Super Australia