

Chapter 4

Impact of SG non-payment

The economic impact of SG non-payment

4.1 The negative impacts of non-payment of the SG are pervasive and affect several distinct groups; employees, employers and the government.¹

Impact on employees

4.2 The adverse economic impact of SG non-payment on employees is stark. Employees miss out on SG entitlements, leading to a loss of retirement income. This in turn will lower their standard of living in retirement and potentially increase their reliance on the age pension.

4.3 The non-payment of SG is immediately reflected in the superannuation balance of an individual, however; in the long term it also robs an employee of the benefits of investment earnings and compound interest.²

4.4 For example, the Association of Super Funds of Australia estimated that for a 25 year old, a one-off loss of \$4000 in superannuation contributions could equate to a loss of over \$14 000 at retirement, in today's dollars.³

4.5 Similarly, Women in Super emphasised that even the late payment of SG has a lasting impact on superannuation balances due the loss of compound interest, an effect that should not be underestimated given the 40 to 50 year time horizon of superannuation.⁴

4.6 Submitters emphasised that the non-payment of SG essentially represents a non-payment of wages, in that SG is deferred wages earned by and therefore rightfully owed to an employee. For example, Mr Liam O'Brien, the Victorian Branch Assistant Secretary of the Australian Workers' Union, argued:

We believe super is deferred wages. It is an industrial right. It has a history embedded around the deferment of wage increases from when the scheme

1 For the purposes of this report, the term 'non-payment of SG' also refers to the delayed or underpayment of SG.

2 Cbus, *Submission 48*, p. 2. See also Council on the Ageing, *Submission 52*, p. 3; Construction, Forestry, Mining and Energy Union, *Submission 54*, p. 6.

3 Association of Super Funds of Australia, *Submission 30*, p. 4.

4 Women in Super, *Submission 45*, p. 3.

was first introduced. We very much see superannuation as an industrial right.⁵

4.7 Similarly, Chartered Accountants Australia and New Zealand emphasised that SG must be characterised as diverted salary and wages, not as an optional, employer provided fringe benefit:

This argument [over whether SG is an employer provided fringe benefit or foregone salary and wages] is not mere philosophical points of difference. A decision [on how to characterise SG] here has to be made because this drives when and how employers should have to make compulsory super contributions. It also impacts which employees will or will not receive the SG.⁶

4.8 CPA Australia also stated that the central tenet of the SG is that it is part of an employee's remuneration, and as such employees had the right to expect their SG to be paid in a timely manner, in the same way as their salary, wages or other elements of their remuneration were treated.⁷

4.9 Recognising SG as deferred salary of wages or as an important part of an employee's remuneration brings into the focus the seriousness of non-compliance and highlights the unjust nature of the problem.

4.10 According to the IGT, 'those most at risk [of SG underpayment] are lower to middle income individuals, the very people who are most reliant upon compulsory superannuation contributions and less able to make voluntary contributions to supplement their retirement savings.'⁸

4.11 In addition to loss of retirement income, the non-payment of SG impacts upon the nature of total and permanent disability payments and income protection insurance payments that are attached to superannuation.

4.12 Mr Kamal Farouque, a principal at Maurice Blackburn Lawyers set out a not uncommon scenario where individuals suffer a serious injury or health event and seek access to a disability or income protection insurance payment, only to find that due to SG non-payment, they are in fact ineligible for assistance under their superannuation fund policy's benefit.⁹ As Mr Farouque observed:

This obviously has a huge impact on those people and their dependents and devolves burden on the taxpayer because if you are not getting income

5 Mr Liam O'Brien, Victorian Branch Assistant Secretary, Australian Workers' Union, *Proof Committee Hansard*, 14 March 2017, p. 8.

6 Chartered Accountants Australia and New Zealand, *Submission 27*, pp. 2–3.

7 CPA Australia, *Submission 32*, p. 1.

8 Inspector-General of Taxation, *Submission 21*, p. 3.

9 Mr Kamal Farouque, Principal, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 14 March 2017, p. 8. See also National Foundation for Australian Women, *Submission 1*, p. 3.

protection insurance you are going to have to support yourself through some means and you are going to have to look to social security payments.¹⁰

4.13 The Textile, Clothing and Footwear Union of Australia (TCFUA) submission also contained information about this kind of scenario. It noted that even when an employer had entered into a payment arrangement with the ATO to pay outstanding SG, unless the ATO transferred the SG to the superannuation funds, employees were still not eligible for disability or income protection insurance payments from their funds.¹¹ The submission provided the following case study:

The employer was in arrears of superannuation contributions for approximately 3 years and had made a payment arrangement with the ATO... The employer eventually provided evidence of payments to the ATO, but the payments at that time still had not been transferred to the employees' super funds. During the period that the payments remained with the ATO, and not with the super funds, the employees did not have access to income protection insurance ordinarily available under the funds. One of the affected workers in their 50's, sustained an injury, but was unable to access benefits under the super funds income protection insurance policy as no super contribution had been made to the fund for the relevant period.¹²

4.14 The National Foundation for Australian Women noted that women are over represented among lower paid, part-time and casual employees, and that they are among the groups of workers most likely to be affected by the non-payment of SG.¹³

4.15 The submission from Women in Super emphasised that on average, Australian women retire with just over half of the superannuation savings of their male counterparts, and that more often than not, their superannuation balances are well below what is deemed necessary to provide a comfortable standard of living in retirement.¹⁴

Impact on business

4.16 Employers who do not pay SG entitlements to their employees may gain a competitive advantage over those employers who are compliant. This is because non-compliant employers are able to operate on lower overheads, in turn increasing the likelihood of higher profit margins.¹⁵

10 Mr Kamal Farouque, Principal, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 14 March 2017, p. 8.

11 Textile, Clothing and Footwear Union of Australia, *Submission 50*, pp. 17, 21.

12 Textile, Clothing and Footwear Union of Australia, *Submission 50*, p. 17.

13 National Foundation for Australian Women, *Submission 1*, p. 2. See also Women in Super, *Submission 45*, p. 2.

14 Women in Super, *Submission 45*, p. 2.

15 Inspector-General of Taxation, *Submission 21*, p. 3.

4.17 Anglicare Australia submitted that the practice of SG non-payment undermined competitive neutrality among employers and may ultimately drive down employment standards across the board.¹⁶

4.18 Similarly, the Australian Chamber of Commerce and Industry (ACCI) acknowledged that wilful non-payment constituted intentional unfair competition for complying businesses.¹⁷ The Construction, Forestry, Mining and Energy Union (CFMEU) also agreed with this position.¹⁸

4.19 The Australian Council of Trade Unions (ACTU) observed that although it did not have any data to analyse the extent of the impact, there would be differences in competitive position of employers who pay the SG entitlement and those who do not.¹⁹

4.20 ISA also recognised that employers not paying SG have a distinct competitive advantage over those that do, and that proper enforcement of the SG obligation would act to 'level the playing field' for business. ISA also commented that as the SG rate increases, so do the incentives for employers to avoid, minimise or exploit their SG obligations.²⁰ The submission from the IGT also noted that an 'uneven playing field' may lead to a domino effect in regard to propagating non-compliance.²¹

Impact on government

4.21 The non-payment of SG has significant impacts on government expenditure, not least because individuals who enter retirement with lower levels of superannuation will necessarily be more reliant on the age pension. As the ACTU set out in its submission:

The simple reality is that if older Australians have less in their superannuation balance at retirement, they will have both a greater entitlement to the Age Pension than had their balance been at a higher level. Further older Australians will draw down from that balance faster and/or their balances will be eroded in shorter time frames meaning more Australian will be reliant on [a] full pension that if the system had been operating at its most efficient and effective level.²²

4.22 In addition to the greater reliance on the age pension, the IGT observed two other negative impacts on government finances:

16 Anglicare Australia, *Submission 2*, p. 2.

17 Australian Chamber of Commerce and Industry, *Submission 49*, p. 4.

18 Construction, Forestry, Mining and Energy Union, *Submission 54*, p. 6.

19 Australian Council of Trade Unions, *Submission 51*, p. 12.

20 Industry Super Australia, *Submission 7.1*, p. 8.

21 Inspector-General of Taxation, *Submission 21*, p. 3.

22 Australian Council of Trade Unions, *Submission 51*, p. 12.

Government revenue in the form of tax may be lower due to superannuation funds' earnings being based on a lesser amount of SG payments having been made. There are also ATO costs in investigating and recovering unpaid SG. More importantly, in the long term, the Government will have to fund the retirement of those who do not have adequate retirement savings. Effectively, future generations will have to bear such costs.²³

4.23 Evidence from ISA indicated that SG underpayment for 2013-14 was estimated at \$5.6 billion. This implied a contributions tax loss of \$838 million in a single year, as well as a cumulative contributions tax loss over the forward estimates of approximately \$4 billion. In addition, ISA projected that by 2023-24 the annual contributions tax lost on unpaid SG will reach \$1.5 billion.²⁴

4.24 Furthermore, ISA asserted that based on current rates of SG non-payment, future impacts could entail a \$300 million loss in private retirement income drawdown and \$97 million more in age pension payments.²⁵

4.25 Cbus also noted the immediate and negative effect on the collection of government revenue through lost taxation and the subsequent strain on the federal budget.²⁶

Committee view

4.26 The committee notes that the Superannuation Guarantee forms a vital component of an employee's remuneration. The committee believes that compulsory superannuation can be categorised as deferred wages that rightfully belong to an employee.

4.27 The committee is aware that a failure to adequately detect and address SG non-compliance causes severe detriment to employees, to compliant employers, and to the government through additional reliance on the age pension.

4.28 As noted in chapter 3, ISA data indicated that employers failed to pay an aggregate amount of \$5.6 billion in SG contributions in 2013-14. This amount represents 2.76 million affected employees who each lost on average \$2025 from their superannuation balances in a single year. The committee is concerned that the individuals most at risk of the negative impacts of SG non-payment often come from the most vulnerable groups in Australian society.

4.29 Additionally, the committee is concerned that employers who comply with their SG obligations must compete against non-compliant employers with an unfair

23 Inspector-General of Taxation, *Submission 21*, p. 3.

24 Industry Super Australia, *Submission 7.1*, p. 8.

25 Industry Super Australia, *Submission 7.1*, p. 7.

26 Cbus, *Submission 48*, p. 2.

competitive advantage. Without an effective suite of enforcement mechanisms, compliant businesses may be incentivised to become non-compliant which would exacerbate the current situation.

4.30 Given the significant size of the fiscal impact of SG non-payment on the government in terms of lost government revenue and increased reliance on the age pension, the committee considers it reasonable for the government to consider stronger compliance activities to minimise the impact on its budgetary position. The committee believes it is in the best interests of the government to commit to further initiatives that effectively minimise the problem of SG non-payment and its negative impacts on Australian employees and compliant businesses. Examples of these initiatives can be found in chapters 5, 6 and 7.