

# **Senate Select Committee on Superannuation and Financial Services**

## **Main Inquiry Reference (c)**

**Submission No. 28**

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Select Committee on Superannuation and Financial Services  
Parliament House  
Canberra ACT 2600

Dear Senators,

### **Enforcement of the Superannuation Guarantee Charge**

We are pleased to provide a few comments relating to this legislation.

Most Australian companies comply with the Superannuation Guarantee (SG) legislation. However, there are a few areas where it could be changed, thus improving member security.

#### Timing

At present, employers are not required to make contributions until after the end of the financial year. As superannuation funds do not need to provide their statements for a further six months (assuming that the fund has a June 30 review date), there is a considerable delay before members are aware of non-payment by their employer.

We recommend that SG contributions be treated similarly to PAYE payments. SG payment will then be made monthly (except by small businesses which will pay quarterly).

We note that most large employers regard it as standard practice to make contributions monthly. Therefore, the majority will not regard this change as onerous. While the superannuation industry generally recommends quarterly payments, we consider that the change to monthly is desirable.

Advancing the due date will lead to higher earnings for members and smoother cash-flows for employers. Furthermore, where companies are experiencing financial difficulties, they will no longer be able to defer SG contributions without their employees' awareness.

At present, the penalty for late payment of SG contributions is far more severe than for any other type of taxation. If payment is required to be made at the same frequency as PAYE amounts, it would be reasonable to align the SG with the PAYE penalties.

### Discretion

The ATO has no discretion when employers breach the SG legislation. This ensures a high level of compliance but it does lead to unfair treatment in some circumstances. A case study of a client of ours is worth noting.

Due to a company re-structure, an organisation transferred all but one staff to a new entity. The original company retained an office cleaner (not required by the new entity) who continued to work and was paid a wage on which PAYE was collected. She retired in June 1999 and the SG payments were sent to the superannuation fund in July 1999.

As the (small) retirement benefit had already been paid, the institution would not accept the cheque. The grounds stated were that the person was no longer a member. The employer contacted the ATO on 18 August (the earliest opportunity) asking whether the contribution could be paid direct as an employer ETP. However, it was provided with a statement to complete setting out the non-deductible amount to be forwarded to the ATO! As you know, this includes an administration fee and interest calculated at a punitive rate.

In cases such as these, where there is no intention to penalise the member, we consider that discretion should be allowed.

### Choice of Fund

The government has proposed that employees be able to choose their own superannuation fund. Employers must pay contributions into a complying fund and, under current law, will need to be satisfied that the fund chosen by an employee is complying.

We consider that this places an unreasonable burden on employers and suggest the following alternative arrangement:

1. APRA maintains a list of all complying public-offer superannuation funds and industry funds on its web-page. Employers should be able to make contributions into these funds as their default fund without fear of being in breach of the SG legislation.
2. Where APRA subsequently names one of the above funds as being non-complying, the onus should be on the trustee (or the appointed administrator, where applicable) to inform employers that they need to select a different fund. No penalty should be incurred by the employer by being in technical breach of the SG in these cases.
3. Where a member selects their own fund, the employer should be able to rely on a compliance certificate provided by the member. APRA should determine the criteria for providing such a certificate. Once again, no penalty should be incurred by the employer by being in technical breach of the SG in these cases.

We trust that these comments will be helpful.

Yours sincerely,

**Michael Rice**  
Managing Director

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