

The Parliament of the Commonwealth of Australia

**ENFORCEMENT
OF THE
SUPERANNUATION GUARANTEE CHARGE**

SENATE SELECT COMMITTEE ON
SUPERANNUATION AND FINANCIAL SERVICES

April 2001

Commonwealth of Australia

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TERMS OF REFERENCE

On 22 September 1999 the Senate resolved that:

- (1) A Select Committee on Superannuation and Financial Services be appointed with effect on and from 11 October 1999, with the same functions and powers as the Select Committee on Superannuation appointed by resolution of the Senate on 5 June 1991, and reappointed on 13 May 1993 and 29 May 1996, except as otherwise provided in this resolution.
- (2) The committee inquire into matters pertaining to superannuation and financial services referred to it by the Senate and inquire initially into:
 - (a) prudential supervision and consumer protection for superannuation, banking and financial services;
 - (b) the opportunities and constraints for Australia to become a centre for the provision of global financial services; and
 - (c) enforcement of the Superannuation Guarantee Charge;and report on paragraphs (a), (b) and (c) by the last day of sitting in June 2000.*
- (3) The committee have power to consider and use for its purposes the minutes of evidence and records of the Select Committee on Superannuation appointed in the previous three Parliaments.
- (4) The committee consist of seven senators, three nominated by the Leader of the Government in the Senate, two nominated by the Leader of the Opposition in the Senate and one nominated by other parties or independent senators.
- (5) The nomination of the final member to be determined by agreement between the other parties and independent senators and, in the absence of agreement, duly notified to the President, the question of representation on the committee of other parties or independent senators be determined by the Senate.
- (6) The Senate, by subsequent resolution, appoint a member of the committee as its chair.

*On 8 June 2000 the Senate granted an extension of time in which to report to 7 December. On 6 November 2000, the Senate granted a further extension of time in which to report to 15 March 2001. On 6 March the Senate granted a further extension of time in which to report to 24 May 2001.

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GLOSSARY

A

ACTU	Australian Council of Trade Unions
AMWU	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (previously: Australian Manufacturing Workers' Union)
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ASFA	Association of Superannuation Funds of Australia
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office

E

EN	Employee Notification (of insufficient employer contributions)
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G

GST	Goods and Services Tax
-----	------------------------

I

IFF	Industry Funds Forum
IFSA	Investment and Financial Services Association
IT	Information Technology

N

NESB	Non English Speaking Background
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NFF National Farmers' Federation

P

PAYG Pay As You Go

R

REST Retail Employees Superannuation Pty Ltd

RSA Retirement Savings Account

S

SG Superannuation Guarantee

SGC Superannuation Guarantee Charge

SHAR Superannuation Holding Accounts Reserve

SI(S) Act *Superannuation Industry (Supervision) Act 1993*

T

TPD Totally and Permanently Disabled cover

EXECUTIVE SUMMARY

1. When the Senate established the Select Committee on Superannuation and Financial Services on 22 September 1999, with effect from 10 October 1999, the Committee was instructed to look at the enforcement of the Superannuation Guarantee Charge (SGC) as part of its terms of reference. While this inquiry was set up with a specific focus on the enforcement of the SGC, the range of evidence that the Committee received encompassed aspects of Superannuation Guarantee (SG) administration. These broader issues are reflected in the discussion and recommendations of this report.
2. The inquiry revealed mixed views on the current SG arrangements. Support for the thrust of Australia's overall superannuation system was noted. However, significant concerns were raised regarding the level of non-compliance where employers default on their SG responsibilities, leaving employees vulnerable to losing their superannuation entitlements.
3. The Committee heard concerns that the SG processes and requirements are overly complex, creating a burden of compliance for employers, superannuation funds and the Australian Taxation Office (ATO). The issue of education was also raised, including concerns that despite ATO efforts, levels of awareness among some employers and employees with regard to their superannuation rights and responsibilities remains low.
4. Consumer and industry groups expressed strong concerns regarding the ATO's apparent lack of activity in pursuing defaulting employers and addressing individual complaints. Concerns regarding the perceived harshness of the SGC penalty, and the manner in which it is applied by the ATO were heard. In addition to this, numerous groups questioned the adequacy of current resource levels in the ATO that are dedicated to SG, suggesting that more staff may be needed to more effectively manage compliance.
5. To address many of the problems arising from SG non-compliance, the Committee heard almost unanimous support for a move to more frequent SG payments. Industry, consumer and employer groups were mixed in their calls for how frequent payments should be, ie. quarterly or monthly. The main obstacle to monthly payments was considered to be some concern that this could cause an increase in the compliance burden for small business.
6. The Committee also received evidence on the risks for consumers with the current arrangements. This included calls, particularly from consumer groups, for more effective protection for employees who are subject to loss or erosion of their SG benefits through employer non-compliance or insolvency.
7. The Committee heard concerns from industry, employer and consumer groups regarding the significant growth in the size of the Lost Members Register,

problems for overseas and itinerant workers who are particularly vulnerable to being separated from their superannuation, the growth in unredeemed SG vouchers, and the misuse of the Superannuation Holding Accounts Reserve (SHAR).

8. Issues of equity also arose, including how SG entitlements can be eroded or lost for older working Australians and for casual, part time and Non English Speaking Background (NESB) workers due to the exploitation of loopholes in SG arrangements or over-prescription of requirements. The complex interaction of SG requirements and industrial awards, and definitional anomalies regarding those who are eligible for SG, and on what basis the SG should be calculated, were also raised as problems.
9. While not directly related to the administration and enforcement of the SG, broader issues were also discussed during this inquiry, including the adequacy of the SG and concerns that the present contribution level may not be high enough. Options for broader reforms of Australia's superannuation system, including the impact of proposed legislation on current arrangements, were also brought forward to the Committee.
10. The Committee considered all of the evidence it received during the inquiry, including numerous options for improvement that witnesses put forward. The Committee has made 16 recommendations aimed at improving the SG arrangements.

RECOMMENDATIONS

Recommendation 1—Chapter 2, para. 2.52

The Committee recommends that the ATO and the Department of the Treasury examine the severity of the current SGC penalty.

Recommendation 2—Chapter 2, para. 2.70

The Committee recommends that the ATO continue educating employers and employees in SG rights and responsibilities, with greater targeting of ‘at risk’ individuals and groups.

Recommendation 3—Chapter 2, para. 2.71

The Committee recommends that employers, employees and superannuation funds be given greater access to the ATO’s SG databases, where appropriate, and that the ATO increase its promotion of the availability of this information.

Recommendation 4—Chapter 3, para. 3.23

The Committee recommends that the ATO focus more attention on prosecuting employers who repeatedly default on their SG responsibilities.

Recommendation 5—Chapter 3, para. 3.24

The Committee recommends that employers be required to show details of their Superannuation Guarantee contributions on individual employees’ payslips.

Recommendation 6—Chapter 3, para. 3.58

The Committee recommends that the ATO and the Department of the Treasury explore options for enabling members, or their nominated representatives, to follow up on SG complaints and obtain more information on complaint action progress.

Recommendation 7—Chapter 4, para. 4.24

The Committee recommends that the requirement for compulsory SG contributions by employers, where it is not currently monthly, be varied to provide for quarterly payments.

Recommendation 8—Chapter 4, para. 4.53

The Committee recommends that:

- a) the ATO and APRA clarify the extent to which employers and/or others may be legally liable for employees' insurance cover lapsing due to late or non-payment of the SG; and
- b) the ATO and APRA act to enforce this.

Recommendation 9—Chapter 5, para. 5.29

The Committee recommends that the ATO, the Department of the Treasury and the Australian Securities and Investments Commission (ASIC) establish further mechanisms for coordination across government, industry and employer groups to address the problem of unclaimed monies.

Recommendation 10—Chapter 5, para. 5.51

The Committee recommends that the Government review the preservation rules for superannuation funds for non-Australian resident itinerant workers, in view of the impact this could have on limiting legitimate access to superannuation monies for those workers departing Australia.

Recommendation 11—Chapter 5, para. 5.76

The Committee recommends that the ATO and the Department of the Treasury review the current SG voucher system.

Recommendation 12—Chapter 6, para. 6.32

The Committee recommends that the current age limits and work tests that apply to SG contributions for individuals under 70 years be removed from the legislation.

Recommendation 13—Chapter 6, para. 6.49

The Committee recommends that the ATO re-examine the appropriateness of the current threshold level for SG eligibility for established itinerant vocations or professions.

Recommendation 14—Chapter 6, para. 6.68

The Committee recommends that the Department of the Treasury develop model rules or guidelines for award conditions to facilitate greater consistency between the Federal SG system and awards.

Recommendation 15—Chapter 6, para. 6.98

The Committee recommends that the pre 21 August 1991 notional earnings bases be removed from the *Superannuation (Guarantee) Administration Act 1992*.

Recommendation 16—Chapter 6, para. 6.99

The Committee recommends that for SG purposes, the notional earnings base, where there is an employer/employee relationship, should include income derived from commissions.

CHAPTER 1

INTRODUCTION

Background to the inquiry

1.1 On 22 September 1999, the Senate agreed to establish the Select Committee on Superannuation and Financial Services with effect from 11 October 1999. The Committee was given the same functions and powers as the previous select committees on superannuation, except that some further inquiry functions were added in relation to the financial services sector.

Terms of reference

1.2 The Committee's terms of reference included inquiring into matters pertaining to superannuation and financial services referred to it by the Senate and initially, inquiring into:

- (a) prudential supervision and consumer protection for superannuation, banking and financial services;
- (b) the opportunities and constraints for Australia to become a centre for the provision of global financial services; and
- (c) enforcement of the Superannuation Guarantee Charge.

1.3 This report relates to term of reference (c). The Committee has already reported on term of reference (b) and will report separately on the remaining term of reference.

1.4 The Committee was originally required to report by the last sitting day in June 2000. However, because the Senate has referred a significantly large number of bills to the Committee since its appointment, the Senate has granted the Committee a number of extensions for reporting on this inquiry, to 7 December 2000, then 15 March 2001, and finally to 24 May 2001.

Overview of the Superannuation Guarantee Charge

Objectives

1.5 The Superannuation Guarantee (SG) is a Commonwealth Government initiative that commenced with effect from 1 July 1992. It requires that employers pay a minimum level of superannuation for their employees. The SG payment must be paid at least annually, by 28 July each year. Currently, the level of SG contributions is calculated at eight per cent of an employee's notional earnings base. This has risen in recent years and, in accordance with Government policy, it will rise

again to nine per cent for 2002-03, and will stay at this level for subsequent years.¹ The Australian Taxation Office (ATO) is the primary body responsible for administering the SG. See **Table 1** for a breakdown of SG contributions since 1992.

Table 1: The minimum level of SG contributions before SGC applies

Payroll²

Year	\$1 million or less	Over \$1 million
1992-93 ³	3%	4%
1992-93 ⁴	3%	5%
1993-94	3%	5%
1994-95	4%	5%
1995-96	5%	6%
1996-97	6%	6%
1997-98	6%	6%
1998-99	7%	7%
1999-00	7%	7%
2000-01	8%	8%
2001-02	8%	8%
2002-03	9%	9%

Source: Michael Reid, *Supercalifragilisticexpianuation – A Plain English Guide to Australian Superannuation Arrangements*, Parliamentary Research Service: Background Paper Number 23, 1994, p. 17.

1.6 The Superannuation Guarantee was intended to be a mechanism for increasing national savings and retirement income by employer superannuation support. As a consequence, the SG was intended to increase the proportion of self-funded retirees.

1 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 23; and Australian Taxation Office, 'Employers Should Act Now on Superannuation Guarantee, *ATO Media Release – Nat 2000/86*, 25 July 2000.

2 An employer's charge percentage is determined by the employer's annual national payroll in its base year. The base year is the first income year commencing with the 1991-92 year in which the employer is an employer for a full year.

3 1 July 1992 to 31 December 1992.

4 1 January 1993 to 30 June 1993.

Components of the Superannuation Guarantee Charge

1.7 The Superannuation Guarantee Charge (SGC) is a financial penalty imposed by the ATO on employers who fail to meet their SG obligations. If an employer fails to pay the SG contribution in respect of an employee, or makes contributions below the minimum specified level, the employer is obliged to pay the SGC.

1.8 The SGC includes an interest component and an administrative component, and six separate penalties can be imposed by the ATO on employers as part of the SGC.⁵ Unlike the superannuation contributions it represents, the SGC is not a penalty that is tax deductible to the employer. The SGC penalty is calculated at 200 per cent of the amount of SG charge that was payable by the employer in the year.⁶

1.9 The nominal interest charge included in the SGC is designed to compensate for the compounding interest lost to the employee that has resulted from the employer not contributing superannuation in a timely manner on the employee's behalf.⁷

1.10 For defined benefit funds, an employer is able to meet his/her SG obligations where an actuary has provided a benefit certificate stating that the employer is not required to make SG contributions.⁸

Legislative framework

1.11 The *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992* set the legislative framework for the Superannuation Guarantee.⁹ The *Superannuation Industry (Supervision) Act 1993* (the SI(S) Act) was also established to ensure that superannuation funds are used for genuine retirement purposes.¹⁰

Statistics

1.12 The Australian Prudential Regulation Authority's (APRA) statistics show that in September 2000, there were 217,158 separate superannuation funds in Australia. This equated to 423,000 members of small funds with four members or less. Small funds comprise self-managed superannuation funds and small APRA managed funds.

5 Department of the Parliamentary Library, *Supercalifragilisticxiannuation – A Plain English Guide to Australian Superannuation Arrangements*, Background Paper No. 23 1994, p. 16.

6 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 40.

7 Committee Hansard, p. 649.

8 Submission No. 87, p. 11.

9 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 23.

10 Department of the Parliamentary Library, *Supercalifragilisticxiannuation – A Plain English Guide to Australian Superannuation Arrangements*, Background Paper No. 23, 1994, p. 16.

According to the ATO, self-managed funds account for around 95 per cent of all superannuation funds.¹¹

1.13 In the year to September 2000, employers contributed \$25.1 billion in superannuation contributions. While the trend has been for increasing contributions over past years, this represents a decrease of 22.9 per cent compared to the previous year, as three public sector funds received \$8.4 billion in exceptional employer contributions during the June 1999 quarter. Member contributions continued to grow strongly in the year to September 2000, increasing by 22.8 per cent to \$20.1 billion.¹² See **Table 2** and **Figure 1** (next page) for changes in employer and employee contributions in recent years.

Table 2: Employer and member SG contributions

\$million	1999-2000	1998-99	1997-98	1996-97	1995-96
Employer Contributions	25,532	31,214*	20,936	19,083	19,103
Member Contributions	19,691	16,131	13,014	9,927	8,186
TOTAL	45,223	47,345	33,950	29,010	27,289

Source: Australian Prudential Regulation Authority, *Superannuation Trends: September Quarter 2000*, Table 3, Internet site: <http://www.apra.gov.au/landS/Marketstats/istrends.htm> (accessed 9 March 2001).

* During the June 1999 quarter three public sector funds received \$8.4 billion in exceptional employer contributions.

1.14 By the end of September 2000, superannuation assets in Australia were at \$488.9 billion, representing a growth of 17.4 per cent during the preceding 12 months.¹³ Superannuation assets are forecast to double to around \$1,000 billion by 2010.¹⁴

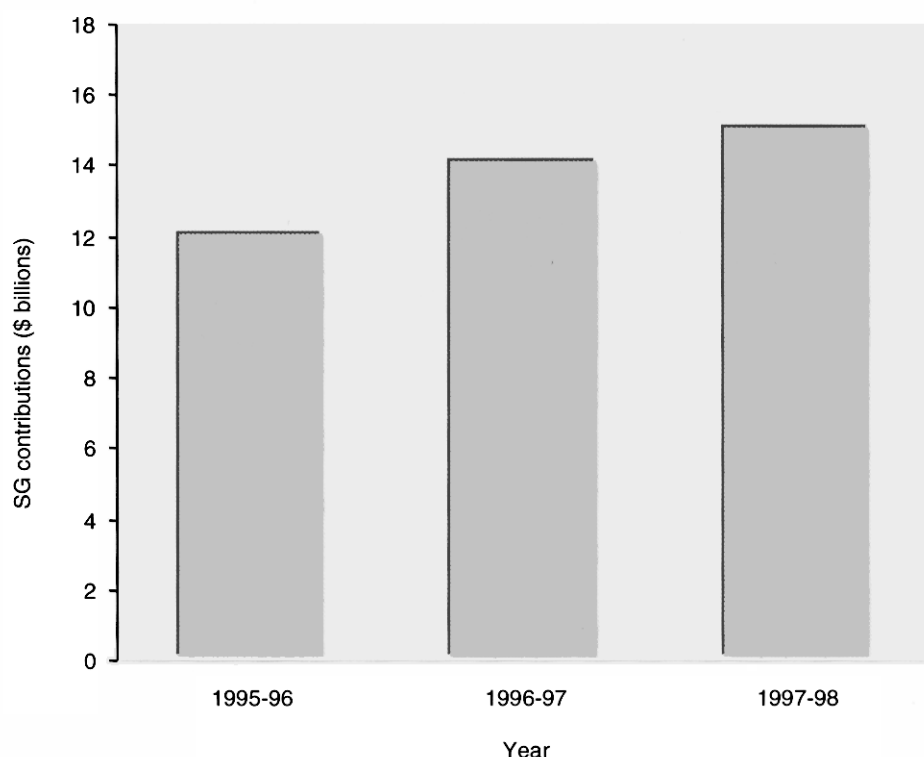
11 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 38.

12 Australian Prudential Regulation Authority, *Superannuation Trends: September Quarter 2000*, Internet site: <http://www.apra.gov.au/landS/Marketstats/Trends/SuperTrends200009.pdf> (accessed 9 March 2001).

13 Australian Prudential Regulation Authority, *Superannuation Trends: September Quarter 2000*, Internet site: <http://www.apra.gov.au/landS/Marketstats/Trends/SuperTrends200009.pdf> (accessed 9 March 2001).

14 Barrie Dunstan, 'Uncertainty Hanging Over Super', *The Australian Financial Review*, Thursday 30 March 2000, p. 33; Internet site: http://www.apra.gov.au/landS/Marketstats/super_stats.htm in Richard Calver, 'Superannuation: Drowning not Waving', *Reform*, Spring 2000, p. 8. (Submission No. 24 – tabled by National Farmers' Federation at the Committee's public hearing – 16 October 2000).

Figure 1: SG contributions from 1995-96 to 1997-98



Source: Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 25.

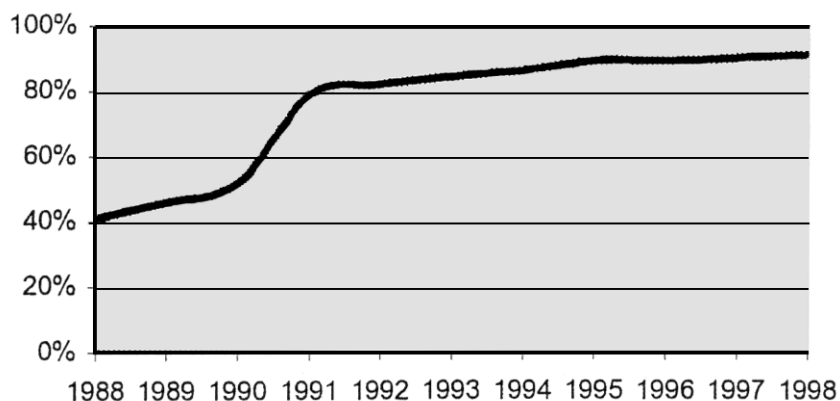
1.15 In September 2000, APRA estimated that approximately 91 per cent of all employees (including those who are exempt from SG) had superannuation coverage.¹⁵ This has grown from 41 per cent in 1988, and 79 per cent in 1991.¹⁶ At the same time, there were over 22 million separate superannuation account members.¹⁷ This equates to approximately seven million individual Australians covered by superannuation.¹⁸ See **Figure 2** (next page) for an illustration of the growth in employee superannuation coverage from 1988 to 1998.

15 Australian Prudential Regulation Authority, *Superannuation Trends: September Quarter 2000*, Internet site: <http://www.apra.gov.au/landS/Marketstats/Trends/SuperTrends200009.pdf> (accessed 9 March 2001).

16 Submission No. 7, p. 12.

17 Australian Prudential Regulation Authority, *Superannuation Trends: September Quarter 2000*, Internet site: <http://www.apra.gov.au/landS/Marketstats/Trends/SuperTrends200009.pdf> (accessed 9 March 2001).

18 Internet site: http://www.apra.gov.au/landS/Marketstats/super_stats.htm in Richard Calver, 'Superannuation: Drowning not Waving', *Reform*, Spring 2000, p. 8. (Submission No. 24 – tabled by National Farmers' Federation at the Committee's public hearing – 16 October 2000).

Figure 2: Employee superannuation coverage – 1988-98

Source: Submission No. 7, p. 12.

Conduct of the inquiry

1.16 The three terms of reference for the inquiry were advertised in the *Australian* and the *Australian Financial Review* on 26 October 1999 and again on 25 and 28 February 2000, inviting submissions from interested organisations and individuals. A number of organisations were also contacted directly seeking submissions.

1.17 The Committee received submissions from a number of organisations and individuals on various aspects of the three terms of reference. Some organisations commented on more than one of the three references, whilst others commented only on the reference relating to the SGC.

1.18 The Committee received 95 submissions in relation to term of reference (a) or terms of reference (a) and (c). A list of these submissions is at **Appendix 1**. Details of the submissions received in relation to term of reference (b) were listed in a separate report.¹⁹

1.19 The Committee conducted the inquiry into the three terms of reference concurrently, holding nine public hearings in the period May to October 2000. Although some issues relating to term of reference (c) were raised at many of the hearings, five hearings contained the principal discussion of the SGC. These hearings were conducted in Sydney, Melbourne and Canberra on 15 May 2000, 15 June 2000, 1 September 2000, 16 October 2000 and 17 October 2000. Details of all witnesses who gave evidence at the public hearings are at **Appendix 2**. A list of all tabled documents and exhibits is at **Appendix 3**.

19 See: Senate Select Committee on Superannuation and Financial Services, *The Opportunities and Constraints for Australia to Become a Centre for the Provision of Global Financial Services*, Parliament of the Commonwealth of Australia, March 2001.

1.20 As stated earlier in this chapter, due to an extraordinary number of inquiries into superannuation legislation that the Senate referred to the Committee during this period, finalisation of the report has been delayed until now.

1.21 In conducting the inquiry, the Committee noted the Australian National Audit Office (ANAO)'s recent performance audit on the administration of the Superannuation Guarantee by the ATO. This audit focussed on the ATO's performance in relation to risk management, including risk assessment, risk planning, risk treatment and performance monitoring strategies. The results of this audit, and the ATO's response to it, have been considered within this report.

Structure of the report

1.22 Although the inquiry was initially focussed on the SGC, the Committee found that many of the issues arising during the inquiry concerned broader matters associated with the SG arrangements.

1.23 Chapter 2 discusses enforcement of the SG, including the perceived adequacy of the current arrangements, the compliance burden these arrangements place on industry, and the role of education in increasing the awareness of the rights and responsibilities of employers and employees in relation to SG.

1.24 Chapter 3 examines issues of non-compliance and how effectively these are currently addressed. It looks at issues relating to the ATO's pursuit of defaulting employers, individual complaints from employees and appeal mechanisms available, the discretionary powers of the ATO in SG enforcement, and the adequacy of ATO resources that are dedicated to the task.

1.25 Chapter 4 discusses issues surrounding the frequency and timeliness of SG payments. This chapter also looks at ways of managing the risks associated with the current arrangements.

1.26 Chapter 5 looks at the growth in unclaimed and lost superannuation entitlements, specifically the ATO's Lost Members Register, issues around overseas and itinerant workers, unredeemed SG vouchers and the Superannuation Holding Accounts Reserve (SHAR).

1.27 Chapter 6 examines the equity of the current arrangements and identifies a number of other issues that relate to the SG. These include the adequacy of arrangements for people over 65 years, the impact on casual, part time and non-English speaking background workers, the interaction between SG legislation and industrial awards, and the definition of eligibility for SG. The overall adequacy of the SG and broader superannuation reforms relating to SG are also touched upon.

1.28 To enhance the report's readability, all of the chapters are structured in a similar way. Each chapter includes an introduction and conclusion, and discussion is centred around major issues raised, usually under the following sub-headings:

- *Background* to the issues;
- *Issues* raised during the inquiry;
- *ATO* or *Government response* to the issues;
- *Options* raised for addressing the issues; and
- *Committee response* – including recommendations.

Acknowledgments

1.29 The Committee is grateful to the many individuals and organisations that took the time to write to the Committee to express their views, make submissions and/or who gave evidence at the public hearings. Their cooperation and willingness to provide information to the Committee to assist in its inquiry was much appreciated.

1.30 The Committee is also grateful to Mr David Kehl from the Information and Research Service of the Department of the Parliamentary Library for not only assisting the Committee with progressing the inquiry, but also for providing technical advice on many aspects.

CHAPTER 2

ENFORCEMENT OF THE SUPERANNUATION GUARANTEE

Introduction

2.1 During the inquiry, the Committee received evidence regarding the perceived adequacy of the Superannuation Guarantee arrangements and areas of concern for industry and consumers that relate to the way that the SG is currently enforced. As discussed in this chapter, these issues relate to:

- the perceived *effectiveness of the SG arrangements*;
- the need to *reduce the compliance burden* on employers, particularly small business; and
- the need to increase the level of *education* of employers and employees regarding their rights and responsibilities in relation to superannuation contributions.

Effectiveness of the Superannuation Guarantee arrangements

2.2 The Committee took evidence on the current SG arrangements, including the quantum of monies collected, opinions on its effectiveness, and the ATO's response to these.

Background

Monies collected through the SG

2.3 A significant amount of money is collected through the SG. According to figures released by the ATO, outstanding superannuation payments are currently in the order of \$76 million. This relates to 60,400 employers.¹

2.4 SGC revenue is collected from employers by employees who have informed the ATO that their employer has made insufficient SG contributions, or by the ATO detecting SG shortfalls through audits and other compliance activities. According to the ATO, almost \$456 million has been collected in SGC revenue since 1993. Of this amount, the ATO has collected \$323 million in SGC monies. Of the revenue collected, the ATO has written off \$45 million as being uneconomical to pursue (ie. the employers were without assets).²

¹ Committee Hansard, p. 842.

² Additional material/correspondence provided by the ATO to update evidence previously provided..

Opinions on effectiveness

Australia's superannuation system praised

2.5 Australia's retirement income system, particularly its superannuation system, is widely regarded as one of the world's best. As outlined in a speech by Mr Kelvin Thomson MP, then Parliamentary Secretary to the Shadow Treasurer, many other countries including the United Kingdom and the United States consider Australia's three pillars superannuation policy to be world's best practice.³

2.6 The Australian superannuation system has been praised by academics in the United States. According to Daniel Mitchell and Robert O'Quinn from the United States' think tank - The Heritage Foundation:

Privatisation [of retirement incomes] has been a huge success in Australia: workers will be able to retire with higher incomes, the government has significantly reduced long-term budget pressures, and the economy will benefit by a dramatic increase in savings. Like other nations around the world, Australia recognised in the 1980s that replacing the government's tax-and-transfer old-age retirement scheme with a private retirement system based on mandatory savings was a win-win proposition. Because Australia is in many ways politically and demographically similar to the United States, American policy makers would be well advised to learn the lessons of Australia's successful reforms.⁴

SG compliance considered good

2.7 The Committee also heard that there is some evidence to suggest that compliance with the SG has also been good. In an audit commissioned by the ATO, which was completed in October 2000, the consultants Chant Link and Associates Pty Ltd found a high level of compliance with the SG amongst employers.

2.8 According to its survey, of all of the businesses surveyed in 1999, full compliance was found for 83 per cent for new businesses, 71 per cent for businesses in capital cities and 70 per cent for businesses in regional areas. Most of the remaining non-compliant employers in this study displayed partial compliance with the SG, with only one to three per cent being fully non-compliant.

Some improvement in compliance

2.9 The Committee was told that compared with the 1998 audit, the findings of the 1999 audit showed an overall improvement with respect to superannuation

3 Speech by Kelvin Thompson MP, then Parliamentary Secretary to the Shadow Treasurer, *Managing the Changes in Superannuation: Labor's Choice of Superannuation Fund Model*, 25 March 1998, p. 1.

4 Daniel Mitchell and Robert O'Quinn, 'Australia's Privatized System: Lessons for the United States', *Backgrounder No. 1149: The Heritage Foundation*, 8 December 1997, Internet site: <http://www.heritage.org/library/categories/regulation/bg1149.html>, p. 13 (accessed 9 March 2001).

contributions at the employee level.⁵ According to the Australian National Audit Office (ANAO) in its recent performance audit of the ATO's administration of the SG, the ATO's SG debt collection also improved between 1997-98 and 1998-99.⁶

Compliance has been good compared with other legislation

2.10 In addition to this, the previous Senate Select Committee on Superannuation examined aspects of the SG in its 15th report *Super Guarantee – Its Track Record*. In this report, the Committee found that the level of SG compliance compared extremely favourably with compliance of other tax legislation.⁷ The Committee also noted that the ATO then appeared to be methodically formulating strategies for targeting the causes of SG non-compliance.⁸

Concerns over non-compliance

2.11 Despite positive findings from the ATO's independent survey on SG compliance, the level of non-compliance has been criticised. In evidence to the Committee, the Association of Superannuation Funds of Australia (ASFA) noted that while the ATO has reported a high level of compliance of employers, the numbers of non-compliant employers impacts on a significant number of Australian workers. According to ASFA, these employees are those with the least access to the financial resources needed to pursue defaulting employers.⁹ See **Figure 3** (next page) showing a significant growth in the outstanding SG debt from 1995-96 to 1998-99.

Concerns with ATO enforcement

2.12 Media reports have also indicated that the ATO's ability to enforce compliance amongst employers remains the subject of speculation.¹⁰ In their view, Australian workers could be short by as much as \$400 million a year through sloppy administration and mismanagement by employers in relation to SG.¹¹

2.13 In support of this, the Committee heard from a number of employees and industry funds that the ATO appears to do little to monitor compliance. William M Mercer Pty Ltd, for example, informed the Committee that employees are currently not in a position to easily investigate any shortfall or non-payment of contributions by

5 Chant, Link and Associates, *1999 Superannuation Guarantee Audit Summary Report*, October 2000, p. 9.

6 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 17.

7 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 135.

8 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 149.

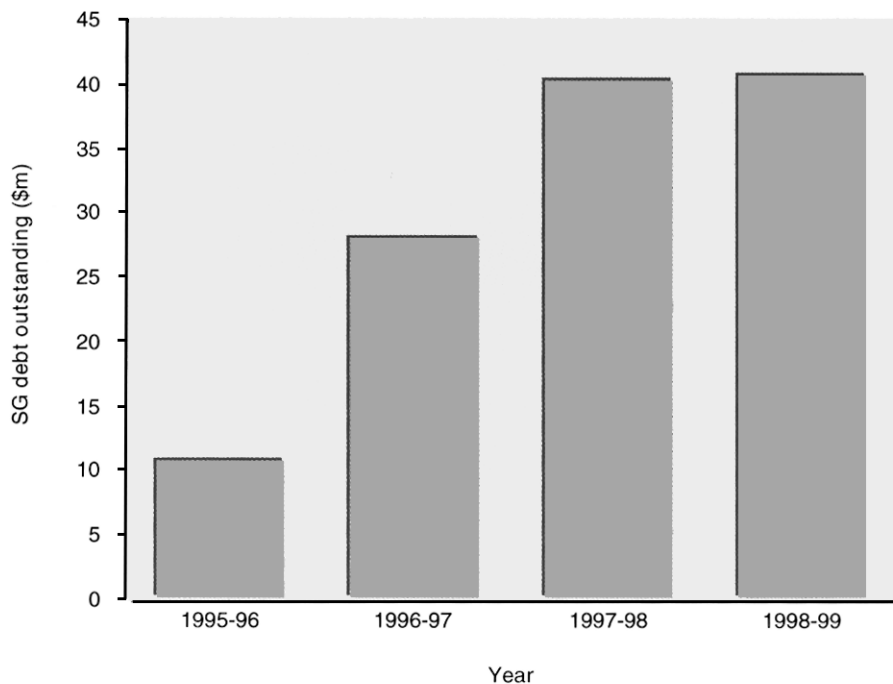
9 Submission No. 17, p. 4.

10 Ben Seeder, 'SG Contributions Slip Sliding Away', *Investor Weekly*, 21-27 August 2000, p. 12.

11 Simon Kearney, 'Bosses Fail to Pay out Full Benefits', *The Sunday Telegraph*, 4 June 2000, p. 21.

the ATO.¹² According to Mercer, it is inappropriate for superannuation funds themselves to monitor compliance, as funds are potentially unaware of the earnings base to be used and may be unaware of contributions the employees are paying to other funds.¹³

Figure 3: SG debt outstanding – 1995-96 to 1998-99



Source: Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 77.

ATO data criticised

2.14 Not only has the ATO's action been criticised, but so too its data regarding the level of SG compliance. In its submission to the inquiry, the National Farmers' Federation (NFF) pointed out that the sample used by the ATO for its 1998 and 1999 studies into SG included only one unnamed regional area.¹⁴

2.15 Separate from this inquiry, a House of Representatives Committee report in August 2000, *Numbers on the Run: Review of the ANAO Report No. 37 1998-99 on*

12 Submission No. 19, p. 9.

13 Submission No. 19, p. 9.

14 Submission No. 13, p. 23.

the Management of Tax File Numbers, also draws into question the validity and reliability of some of the ATO's data and systems.¹⁵

Effectiveness of SG questioned

2.16 In further evidence to the Committee, the NFF stated that, due to the complex rules in the SG area, the SGC seems to have facilitated a move to early retirement. As a consequence, the NFF asserted that the Government has failed in its overall objective to make superannuation effective by reducing reliance on the age pension.¹⁶

ATO response

ATO cannot quantify compliance cost

2.17 The ATO has been criticised for not being able to quantify the cost of compliance. In the hearings, the ATO responded by stating that this is due to the broad definition of compliance that the ATO use. According to the ATO, every phone call, every letter, every seminar or other interaction with a client that relates to SG is considered compliance activity, not simply prosecution or audit activity.¹⁷

ATO recognises more work needed

2.18 In evidence to the Committee, the ATO recognised that more work may be needed in some areas of the ATO's compliance strategy to improve enforcement of the SG. According to the ATO, it is currently undertaking an independent benchmark of compliance to pinpoint changing areas of risk. The ATO anticipates that this will provide a more accurate understanding of problem areas.¹⁸

Increasing measures to monitor compliance

2.19 The ATO also claim to be collecting more data to assist in monitoring compliance. The ATO told the Committee that it is now beginning to look at surcharge data, including information on taxpayers' file numbers and the amount of the employers' surcharge contributions. The ATO is now comparing this to other data holdings that the Commissioner of Taxation has, particularly around individuals' income tax. By comparing information on what employers are claiming in their tax returns for Superannuation Guarantee payments, the ATO claimed that it could get a better feel for compliance issues.¹⁹

15 This inquiry found major problems with data and systems quality in relation to the Tax File Number system. See: House of Representatives Standing Committee on Economics, Finance and Public Administration, *Numbers on the Run: Review of the ANAO Report No. 37: 1998-99 on the Management of Tax File Numbers*, August 2000.

16 Submission No. 13, p. 11.

17 Committee Hansard, p. 848.

18 Committee Hansard, p. 843.

19 Committee Hansard, p. 845.

Committee response

2.20 The Committee notes that Australia's superannuation system is respected internationally as one of the world's best retirement income systems. Despite this, the Committee heard mixed views on the success of the enforcement of the SG. While compliance levels appear to be relatively strong, particularly in comparison to compliance with other legislation, the Committee heard concerns from industry and consumers relating to the ATO's measures for enforcing compliance, the validity of ATO data on compliance and the overall effectiveness of the SG.

2.21 The Committee recognises the work that the ATO is doing in relation to SG, including its increasing efforts to monitor compliance through data matching. The Committee is also aware that the ATO recognises that more work is needed to improve employer compliance with SG. The Committee believes that the continued strength and success of Australia's superannuation system rests on maintaining a strong SG system with high levels of compliance and general confidence in the integrity of the system. The Committee will continue to monitor this issue.

Reducing the compliance burden

2.22 The Committee took evidence on compliance issues associated with the current SG arrangements. This includes the scope and profile of SG non-compliance, concerns expressed by employers and industry that the compliance burden is too great, the ATO's response, and options raised for improvements.

*Background*Average SG shortfall

2.23 According to the ATO's 1999 SG compliance survey, the average SG shortfall for members of superannuation funds due to non-compliance by employers was \$328 for employees in capital cities, \$302 for regional employees, and \$407 for employees in new business. In terms of employers defaulting, the average employer shortfall for capital city employers was \$3,128, for regional employers it was \$1,277, and for new employers it was \$1,328.²⁰

Profile of non-compliance

2.24 In evidence provided during the inquiry, the ATO stated that most non-compliance cases are caused by employers forgetting to pay SG for their employees rather than not having the money when it comes to writing the cheque.²¹ The Industry Funds Forum (IFF) offered other causes of SG non-compliance, including employers experiencing cash-flow problems, and employers going out of business.²²

20 Committee Hansard, p. 842.

21 Committee Hansard, p. 847.

22 Submission No. 5, p. 2.

Larger businesses more compliant

2.25 According to the ATO, the larger the turnover of employees, the better the employer's compliance with SG. The ATO attributed this to the automatic systems and procedures that these employers have in place. Accordingly, the ATO has found that it is generally the larger businesses that are more compliant than smaller businesses.²³ In line with this, the Australian Council of Trade Unions (ACTU) noted that retail or very small funds are most likely not to provide adequate follow-up of employers who fail to make contributions, thus contributing to non-compliance.²⁴

'Bad apples' are the same

2.26 In relation to non-compliance, the ATO informed the Committee that there is a strong correlation between employers who do not pay tax, or are late paying tax, and employers who are not paying SG. These 'bad apples' as the ATO describe them, are those who understand what their obligations are, but choose not to pay.²⁵

Issues

The burden of compliance too great for employers

2.27 In its submission to the inquiry, the NFF noted that employer compliance with SG requirements falls on top of many other obligations relating to awards, taxation administration, discrimination laws, workers' compensation, and occupational health and safety.²⁶ According to the employer groups such as the NFF, the SG rules are too complex, and the obligations imposed upon employers for maintaining records, onerous.

2.28 The NFF outlined to the Committee that employers are required to keep separate records for each employee detailing every transaction relating to the legislation.²⁷ Employers are also required to pay their SG obligations to various superannuation funds separately on behalf of each employee. Considering the large number of superannuation funds currently in existence, the WA Shearers noted that it is an onerous task for employers to draw numerous cheques on behalf of their employees.²⁸

23 Committee Hansard, p. 849.

24 Submission No. 29, p. 4.

25 Committee Hansard, p. 848.

26 Submission No. 13, p. 8.

27 G Wheeler, 'The Superannuation Guarantee Charge', *Commercial Issues*, Autumn 1993, p. 2, in Submission No. 13, p. 2.

28 Submission No. 14, p. 3.

Wasted effort

2.29 The Institute of Chartered Accountants in Australia commented that current procedures for fixing errors in relation to SG payments were too cumbersome, not well understood, and resulted in further benefits being lost. For example, where an employer discovered that he/she had underpaid contributions to a superannuation fund, the Institute commented that no option currently exists for the employer but to pay the SGC to the ATO.

2.30 According to the Institute, this sets a complicated process in train that increases work for everyone – the employer in filling out forms, the ATO in issuing SG vouchers to employees, employees in taking these vouchers to superannuation funds, and superannuation funds in redeeming these vouchers with the ATO. In the meantime, the member may be losing interest on the money and sometimes the SG vouchers may not even be redeemed.²⁹

Lack of coordination within ATO

2.31 In its recent performance audit, the ANAO identified a lack of coordination of audit activities between various business lines in the ATO. The ANAO noted that this might have been adding to the compliance burden for employers.³⁰

Bigger burden for small business

2.32 According to the Council of Small Business Organisations of Australia, the SG compliance burden falls more heavily on small business. This is because small employers cannot necessarily achieve the same economies of scale as large employers, who tend to downsize and outsource their labour requirements to reduce their on-costs. Lacking capital, many small labour intensive firms remain captive to these on-costs, despite still being in direct competition with those larger firms that are shedding them.³¹

2.33 Mr J. Porteus provided support for this position by noting in his submission that small companies are more vulnerable to periods of poor profits than larger companies and are therefore not always able to pay superannuation surcharge amounts by the required time. According to this evidence, in many cases decisions have to be made to delay payment of the SG for terminating employees to cover temporary low profit (or loss) situations.³²

29 Submission No. 79, p. 3.

30 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 35.

31 Submission No. 25, p. 1.

32 Submission No. 9, p. 2.

Balancing the burden

2.34 A number of organisations appearing before the Committee also called for greater balance in the responsibility placed on employers, employees and government in relation to superannuation funding. For example, the Australian Chamber of Commerce and Industry informed the Committee that businesses are currently bearing too much of the burden for administering the superannuation system. According to this organisation, employers have expressed frustration in being treated as de facto tax collectors without being given sufficient incentives to encourage or reward compliance.³³

ATO response

ANAO recommendation

2.35 In its audit report, the ANAO recognised the considerable workload and cost placed on business to maintain the SG requirements. To minimise this, the ANAO recommended that the ATO internally coordinate its audit activities to reduce the compliance burden for employers who may be subject to audit activity from various ATO business lines.³⁴ In response to this recommendation, the ATO informed the Committee that it has entered into new service level agreements to minimise the cost of compliance on superannuation funds and to highlight and address risk areas.³⁵

ATO's own compliance costs

2.36 When the ATO was questioned about its own administrative costs in administering and enforcing compliance with the SG, the ATO stated that it could not identify the time taken or cost incurred to resolve action from the initial discovery of non-compliance, as this depended upon a number of factors. The ATO claimed that the process could be lengthy and could involve a number of actions. These included obtaining information in writing from the employer, undertaking a field audit of the employer, prosecuting an employer if the information is not supplied, raising a default assessment if a statement has not been lodged, and undertaking legal recovery action if sufficient payments have not been made.³⁶

Options

Employers to pay superannuation funds directly

2.37 One option that was put forward to the Committee by a number of organisations such as the NFF, William M Mercer Pty Ltd, the Institute of Chartered Accountants in Australia and REST Superannuation included employers paying their

33 Submission No. 70, p. 4 (Attachment).

34 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 19.

35 Committee Hansard, p. 841.

36 Committee Hansard, p. 842.

SG contributions directly to the employee's superannuation fund, if past their due date. This is instead of going through the ATO.

2.38 This payment would include an interest component, and would be within a specified period, eg. one month of discovery. The NFF suggested a longer time period of 18 months³⁷ and Mercer suggested that notification could occur three months before the end of the financial year.³⁸ The Institute of Chartered Accountants in Australia suggested that the employer could be required to notify the ATO annually of any under-payments made during the previous year and of their correction. Payment of any penalties could be made at this time.³⁹

2.39 According to REST Superannuation, 99 per cent of employers would support this option as they claim to want as little contact as possible with the ATO.⁴⁰ The NFF claimed that making this change would be of particular benefit for small businesses.⁴¹

More electronic processing

2.40 Organisations such as the Australian Chamber of Commerce and Industry suggested in evidence to the Committee that the compliance burden for employers could be reduced with greater use of electronic processing.⁴² According to this organisation, this would include giving employers the option to transmit their SG data electronically to superannuation providers. The Institute of Actuaries informed the Committee that the superannuation industry and payroll providers are currently working on a transfer protocol to advance this key issue.⁴³

2.41 Contrary to this suggestion, the WA Shearers noted that introducing this option could create some equity problems, as electronic processing facilities may not be available in rural locations where many workers are.⁴⁴

2.42 In addition, Australian Bureau of Statistics' figures show that small businesses have lower adoption of Information Technology (IT) than larger businesses. For example, at June 2000, 69 per cent of businesses that employed less than five people had a computer, 50 per cent had Internet access and nine per cent had a Web site or home page. This compared with 85 percent, 65 percent and 24 percent respectively for business employing between five and 19 people, and 97 per cent, 83

37 Submission No. 13, p. 2.

38 Submission No. 19, p. 10.

39 Submission No. 79, p. 3; Submission No. 13, p. 2.

40 Committee Hansard, p. 74.

41 Submission No. 13, p. 2.

42 Committee Hansard, p. 71.

43 Submission No. 70, p. 2.

44 Committee Hansard, p. 71.

per cent and 46 per cent for businesses employing between 20 and 99 people.⁴⁵ See Table 3 for a summary of IT usage across small, medium and larger sized businesses. It should be noted that these figures are current to June 2000, and that this situation is fast moving with rapidly changing technologies and increased adoption of IT, particularly Internet usage.

Table 3: Business use of selected Information Technologies

Employment size	Number of businesses '000	Businesses with		
		Computers (%)	Internet access (%)	Web site or home page (%)
1-4 persons	415	69	50	9
5-19 persons	184	85	65	24
20-99 persons	36	97	83	46
100 or more persons	6	100	95	68
Total	641	76	56	16

Source: Australian Bureau of Statistics, *Business Use of Information Technology*, Catalogue No. 8129.0, 1999-2000, p. 9.

Reducing the SGC penalty

2.43 A number of organisations also suggested that penalties could be moderated or reduced where contribution shortfalls are minor and are corrected within the specified period.⁴⁶ The Institute of Chartered Accountants in Australia, the Council of Small Business Organisations of Australia and William M Mercer suggested that the SGC penalty could be either eliminated or limited to the \$50 and \$30 administrative fee.⁴⁷ Mr J. Porteus proposed that interest and administrative charges continue, but that interest should be reduced from 10 per cent to the annual rate of return achieved

45 Australian Bureau of Statistics, *Business Use of Information Technology*, Catalogue No. 8129.0, 1999-2000, p. 9.

46 Submission No. 14, p. 1.

47 Submission No. 79, p. 3; Submission No. 25, p. 2; Submission No. 19.

by institutional funds. Within this proposal, all charges would be tax deductible, regardless of when they are paid.⁴⁸

Extending SG deadlines

2.44 Particularly targeted at small business, Mr J Porteus recommended optional extended deadlines for payment of superannuation for those employers that need the extra time.⁴⁹

ATO to check financial statements

2.45 WA Shearers suggested that an alternative approach could be for the ATO to monitor compliance by routinely checking employers' annual financial statements to determine whether the amount claimed as a deduction for superannuation was correct (ie. equivalent to eight per cent of gross wages).⁵⁰

More responsibility for compliance with employees

2.46 Another suggestion put forward to the Committee by WA Shearers was to shift the responsibility for compliance with SG from employers to employees. According to this suggestion, employees should be responsible for making their own contributions, with their gross wage increased to provide them with the necessary funds. WA Shearers suggested that these new arrangements could be monitored by the ATO, with group certificates redesigned to allow employers to list the total amount paid to an employee in superannuation.⁵¹

Committee response

2.47 The Committee is concerned with the significant costs and efforts that businesses currently incur in complying with the SG arrangements as they presently stand. Of particular concern is the increased burden that small businesses incur due to their size and unique circumstances. The Committee notes that small businesses form a large proportion of Australia's business activity and the Committee is concerned that many small businesses may not be able to get the communication benefits and lower costs offered by current technologies.

2.48 Throughout the inquiry, the Committee heard a number of options to decrease the compliance burden for employers, ranging from reducing the SGC penalty, and streamlining SG payment processes, to effecting more fundamental change through shifting the responsibility for compliance from employers to employees.

48 Submission No. 9, p. 2.

49 Submission No. 9, p. 2.

50 Submission No. 14, p. 3.

51 Submission No. 14, p. 3.

2.49 The Committee believes that the severity of current SGC penalty needs to be examined, with consideration given to a number of suggestions put forward in this report. These include the need to ensure transparency is maintained.

2.50 The Committee notes that some efforts are currently being made by the ATO to reduce the compliance burden for employers by increasing internal efficiencies in the ATO. Also some progress is being made in the electronic processing area. However, the Committee feels that more work is needed by the ATO and the Department of the Treasury to adequately address a number of the issues raised.

2.51 While the Committee does not advocate a complete overhaul of current SG arrangements, the Committee believes that options should be explored for streamlining SG requirements for employers. The Committee acknowledges that streamlining could involve increased use of electronic processing and direct payment options, and that such measures could potentially result in significant cost savings for employers, funds and the ATO over time. The Committee is conscious, however, that many small businesses may not be in a position to take advantage of such developments at the current time, and believes that no mandatory streamlining measures should be introduced without consultation with, and an assessment of the impact on, small business.

Recommendation 1

2.52 The Committee recommends that the ATO and the Department of the Treasury examine the severity of the current SGC penalty.

Education

2.53 The Committee took evidence on the role that education plays in encouraging compliance and addressing non-compliance with the SG. This includes a discussion of the education needs of employers and employees in relation to SG, the degree to which those needs are adequately addressed at present, plus the ATO's response to concerns raised, and options for improvement.

Issues

Low level of understanding amongst employees

2.54 In evidence received during the inquiry, the Committee heard that there is a generally low level of awareness amongst employees regarding their rights and responsibilities, how to pursue lost money, how to use the Lost Members' Register, and how to access benefits.

2.55 Media reports have suggested that almost two out of every three Australians do not have basic knowledge about superannuation. According to the recent results of a national survey conducted by Plum Financial Services, half of the respondents did not know what the current compulsory Superannuation Guarantee contribution rate was, and one-third did not know the percentage of their salary that contributed to

superannuation. Forty per cent also found the information from their superannuation fund too difficult to understand.⁵²

2.56 Maurice Blackburn Cashman's submission to the inquiry outlined that very few employees are aware of their potential SG entitlement or the mechanism under which they can test it under the *Superannuation Guarantee (Administration) Act 1992*. According to this organisation, unless an employee goes to the ATO with the notification of non-payment, these people may never get tested. The NRMA also stated that the ATO should improve the level of information and assistance that is given to employees or ex-employees who pursue their entitlements through the ATO.⁵³ The Committee was informed that there is a huge and increasing number of employees who fall into this category.⁵⁴

More education needed for employers

2.57 According to evidence provided by the Institute of Actuaries, the NFF and the Australian Chamber of Commerce and Industry, many employers are not adequately aware of their SG responsibilities. They also are not aware of the SG requirements to obtain proper information, and of the penalties for not properly identifying contribution recipients. According to the ATO, high risk employers are often those who do not understand that they have to pay superannuation for casuals or part time workers, even if only employed for two or three weeks.⁵⁵

2.58 Evidence received by ACTU, the IFF and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU – previously the Australian Manufacturing Workers' Union) also indicate that employers are not generally aware of the priority that should be given to superannuation payments in the event of company insolvency.⁵⁶

Less awareness among small business

2.59 The Australian Chamber of Commerce and Industry noted that small businesses in particular have difficulty ascertaining which payments should be made to employees and how to calculate the superannuation percentage.⁵⁷ Supporting this, the NFF informed the Committee that many small businesses are not currently aware of their different responsibilities under SGC and award or contract arrangements.⁵⁸

52 'Australians Are Still Super Dumb', *SuperReview*, February 2001, p. 8.

53 Submission No. 18, p. 9.

54 Committee Hansard, p. 48.

55 Committee Hansard, p. 847.

56 Submission No. 29, p. 3; Committee Hansard, p. 60; Submission No. 22, p. 6; Committee Hansard, p. 355; also see: Gess Rambaldi, 'Entitlements: Long Arm of Law Falls Short', *The Australian Financial Review*, Thursday 10 February 2000, p. 19.

57 Submission No. 70, p. 2.

58 Submission No. 13, p. 2.

ATO's education strategies effective

2.60 Contrary to the above concerns, the ANAO found in its SG performance audit that the ATO has made effective use of a wide range of education strategies, involving publications, advertising campaigns and seminars, to educate employers about their obligations and employees about their SG entitlements.⁵⁹ The ANAO also considered that the ATO currently uses an appropriate range of delivery methods to provide clients with access to their education material, including telephone inquiry lines, faxes, and Internet publishing. The ANAO further noted that the ATO have been utilising strong professional relationships with superannuation industry stakeholders to educate employers and employees.⁶⁰

ATO response

ATO promoting education to employees

2.61 Within its risk-based approach to SG compliance, the ATO told the Committee that education of employers and employees is strongly promoted in its compliance strategy. The ATO commented that providing access to information is a key to greater compliance.⁶¹

Current activities directed at employees

2.62 In its evidence, the ATO noted that its approach is to encourage employees to take preliminary steps to find out some of the information themselves. Where particular industries or geographical areas are identified as being at high risk of non-compliance, the ATO informed the Committee that it uses community education within a compliance strategy for that entire region, be it within an industry or a general population.⁶²

2.63 According to the ATO, community education is provided in up to eight different languages, with mechanisms including radio programs, publications and access to a translating service to ensure the message gets across to a diverse community.⁶³ The ATO also told the Committee that it works with other agencies such as Centrelink, and community groups and schools to increase employee awareness in relation to superannuation.⁶⁴

59 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 15.

60 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 50.

61 Committee Hansard, p. 836.

62 Committee Hansard, p. 838.

63 Committee Hansard, p. 837.

64 Committee Hansard, p. 836.

Practical assistance for employers

2.64 To assist SG awareness amongst employers, the ATO informed the Committee that it provides employers with direct assistance as well as broader education. One of the mechanisms it uses is sending employers ‘SG calculators’ before the end of the financial year to help them calculate if they will have a shortfall for their Superannuation Guarantee. According to the ATO, mechanisms such as these have been very effective.⁶⁵

Options

Brochures to industry

2.65 The ANAO suggested that while it considered the ATO’s education campaigns to be wide ranging, enhancements could be made. The ANAO suggested that the ATO also consider the costs and benefits of providing current brochures and booklets to key industry participants, such as industry associations, and asking them to distribute these publications to members.⁶⁶ In evidence to the Committee, the ATO only partly addressed this by saying that it ‘utilises strong professional relationships with the superannuation industry to educate employers and employees.’⁶⁷

ATO promoting more access to information

2.66 In its evidence at the inquiry, the ATO also acknowledged the importance of education and suggested that providing superannuation funds and members with greater access to some of the ATO’s data could be beneficial to compliance. For instance, if employees had more information on when their employers made SG contributions on their behalf, and how much these amounts were, this could stop many complaints and inquiries with the ATO. Mr Leo Bator, Deputy Commissioner of Taxation, told the Committee:

Access to information is a key – we know that. We are suggesting that access to some of the data that we hold or the funds doing more to keep in contact with members might help.⁶⁸

Committee response

2.67 The Committee recognises the very important role that education should and does play in alerting employees and employers to their rights and responsibilities in relation to SG. The Committee understands that effective education is central to increasing compliance and it can benefit employees, employers, superannuation funds

65 Committee Hansard, p. 836.

66 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 51.

67 Committee Hansard, p. 841.

68 Committee Hansard, p. 852.

and the ATO by reducing administrative costs and preventing disputes before they arise.

2.68 The Committee notes the considerable efforts currently undertaken by the ATO in relation to education of employers and employees. The Committee supports a continuation of these efforts, but with greater targeting of those individuals and groups whose awareness of their SG rights and responsibilities are particularly poor. The Committee believes that this education should include increasing employers' awareness of their SG responsibilities in the case of insolvency. The Committee considers that the ATO should be tracking changes in these groups' awareness of their SG rights and responsibilities over time.

2.69 The Committee also supports greater access of ATO databases to employers, employees and funds, where appropriate, to increase information flows. This should include greater promotion of the availability of this information to these groups.

Recommendation 2

2.70 The Committee recommends that the ATO continue educating employers and employees in SG rights and responsibilities, with greater targeting of 'at risk' individuals and groups.

Recommendation 3

2.71 The Committee recommends that employers, employees and superannuation funds be given greater access to the ATO's SG databases, where appropriate, and that the ATO increase its promotion of the availability of this information.

Conclusion

2.72 The Committee heard mixed views on the adequacy of the current SG arrangements. Support for the thrust of Australia's overall superannuation system was noted. However, significant concerns were raised regarding the level of non-compliance existing where employers default on their SG responsibilities, leaving employees vulnerable to losing their superannuation entitlements.

2.73 The Committee also heard concerns that the SG processes and requirements are overly complex, creating a burden of compliance for employers, superannuation funds and the ATO, with particular pain felt by small business. Also raised was the issue of education, and concerns that despite ATO efforts, the level of awareness among some employers and employees with regard to their superannuation rights and responsibilities remains low.

2.74 The Committee considered all of this evidence and has made a number of recommendations aimed at: reviewing the SGC penalty, better targeting of education activities, and improving access to ATO databases to improve employers' compliance with the SG and to improve the SG awareness of employees and funds.

CHAPTER 3

ADDRESSING NON-COMPLIANCE WITH THE SUPERANNUATION GUARANTEE

Introduction

3.1 During the inquiry, the Committee received evidence relating to the ATO's approach to addressing employer non-compliance with the SG, and concerns that some consumer and industry groups have expressed with the effectiveness of this. As discussed in this chapter, the issues relate to:

- action taken to *pursue employers* who have defaulted on their SG obligations;
- action taken to *address individual complaints* on employer non-compliance and *appeal mechanisms* available to consumers;
- the *discretionary powers of the ATO* in the application of the SGC penalty; and
- the level of *ATO resources* dedicated to SG compliance, and whether or not this level is considered sufficient.

Pursuing employers

3.2 The Committee heard evidence on the ATO's actions with regard to pursuing employers in breach of their SG responsibilities, and the effectiveness of this approach in addressing non-compliance. Below is a discussion of concerns expressed by witnesses, the action and response of the ATO to these concerns, as well as options suggested for improvement.

Issues

ATO criticised for a lack of prosecutions

3.3 The Committee heard that a number of consumer and industry groups feel that the ATO does not currently do enough to pursue employers who have defaulted on their SG obligations. For example, in its submission to the inquiry, the Financial Services Consumer Policy Centre noted a lack of prosecutions made by the ATO and called for more scrutiny as to why the number of prosecutions had been so few.¹

1 Submission No. 26, p. 18.

3.4 ASFA also indicated that a more rigorous approach needs to be taken by the ATO towards complaints by employees regarding employer non-compliance. According to ASFA, the ATO appears to take legal action in very few cases.²

3.5 Maurice Blackburn Cashman outlined that a lack of prosecutions by the ATO can act as an incentive for non-compliance. Mr John Berrill, Partner, Superannuation and Insurance, stated at one of the hearings that:

... if at the end of the day, the employer knows that they are not going to be sued by the ATO for recovery of the money, what is the incentive to pay the guarantee shortfall if the employer 'sails close to the wind'?³

No prosecution strategy at time

3.6 The ANAO found in its recent performance audit of the ATO's administration of the SG that, at the time of the audit, the ATO had not developed a clear strategy for prosecuting employers who choose not to comply with their obligations. It called for an effective prosecution strategy to be developed to form part of the overall compliance strategy for SG avoidance.⁴

ATO response

ATO now has a prosecution strategy

3.7 In response to one of the ANAO's recommendations, the ATO informed the Committee that it has now developed a detailed a prosecution strategy, outlining principles, penalties and the process for implementation.⁵ The ATO also noted that it is now represented on various cross-line ATO business forums, including the prosecution group that is involved in national management of prosecutions and resources. This is in response to another ANAO recommendation to improve the administration of the SG.⁶

The ATO's prosecution action

3.8 In its evidence to the inquiry, the ATO identified that it has prosecuted 130 employers since 1997 for failing to comply with SG requirements, including failing to lodge SG statements or provide other necessary information to the ATO.⁷

2 Submission No. 17, p. 6.

3 Committee Hansard, pp. 49-50.

4 Committee Hansard, p. 650; also see the Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 14.

5 Submission No. 91 (Prosecution Strategy).

6 Committee Hansard, p. 837.

7 Committee Hansard, p. 837.

ATO does not support prosecution as best compliance method

3.9 In its evidence to the Committee, the ATO claimed that it did not feel that prosecution may always be the most appropriate method to address non-compliance. This is because prosecution can prove unsuccessful in small and isolated cases where the associated publicity could jeopardise the case and there could be a risk that the general community could be alienated.⁸

3.10 The ATO also contended that, in certain circumstances, prosecution can have devastating consequences for employers and employees without necessarily resulting in the recovery of the SG liability. In evidence to the Committee, Mr Leo Bator, Deputy Commissioner of Taxation, stated:

We do not resile from pursuing this course of action where we think it is appropriate. As a general principle however, we do not consider there is a benefit in liquidating corporate debtors or bankrupting individual debtors if they can demonstrate that they have the ability to meet their obligations over time. We are prepared to accept payment of a liability over time to ensure employers get their correct entitlements.⁹

Risk assessment approach

3.11 The ATO informed the Committee that its general approach to non-compliance is to continue to work with employers to try to rehabilitate them, including employers who have debts that have accumulated over a number of years. This is for the benefit of employees to get tax revenues and SG that is unpaid.¹⁰ The ATO has acknowledged that since the SG was introduced, it has focussed more on education strategies to encourage voluntary compliance than other stronger enforcement mechanisms. In one of the hearings, Mr Bator stated:

We accept that this may have resulted in fewer prosecutions than perhaps would have been the case had we adopted a different strategy at the outset.¹¹

Options

Compulsory arrears collection process

3.12 The Committee heard that having an effective arrears process is an important element in the recovery of unpaid Superannuation Guarantee contributions by superannuation funds. In the year to July 2000, the IFF identified that approximately \$92 million was collected in arrears for 12 industry funds surveyed. This related to almost half of a million members that were affected by employers falling into arrears during this period. Of the 863 employers who were taken to court by funds to recover

8 Submission No. 91 (Prosecution Strategy), p. 12.

9 Committee Hansard, p. 839.

10 Committee Hansard, p. 839.

11 Committee Hansard, p. 837.

their SG shortfalls in this year, the IFF informed the Committee that only 93 employers were found to have made honest mistakes.¹²

3.13 According to the IFF, the cost of arrears collection across the largest industry superannuation funds amounts to around \$2 million a year. Arrears collection for the Superannuation Trust of Australia alone is reported to amount to around one quarter of a million dollars per annum.¹³

3.14 The IFF also stated that the majority of funds do have arrears collection processes, but there is currently no legal requirement for this.¹⁴ As a result, a small number of employers seek funds that do not have an arrears collection process so that they can intentionally default on their SG obligations. According to the IFF, these employers may encourage their employees into these funds and choose against funds that have rigorous arrears collection processes. This not only disadvantages the employees who may not get their SG paid, but it disadvantages those superannuation funds that do take up the duties to ensure the employees are protected.¹⁵

3.15 The ACTU noted that an effective arrears process is a feature of most of the funds specified in awards. It should also be noted that all of the 67 superannuation funds that are covered by awards have compulsory arrears collection processes, but thousands of smaller self-managed funds existing may not. The IFF submitted that a compulsory arrears collection process ought to be a requirement for all complying funds.¹⁶

More information required from employers

3.16 Another suggestion made to the Committee was by the ANAO regarding employer information. In the hearings, the ANAO suggested that regular information could be provided to the ATO from employers indicating the amount of SG payment made over a defined period. This could accompany, or be part of, income tax statements or Business Activity Statements that are already being submitted to the ATO by employers.¹⁷

3.17 In terms of employers notifying their employees of the SG contributions, the ATO noted that a significant number of employers do advise their employees of their SG contributions already through payslips or income statements. In addition to this,

12 Committee Hansard, p. 355; Submission No. 58, pp. 1-2.

13 Committee Hansard, p. 355.

14 Submission No. 58, pp. 1-2; Ben Seeder, 'APRA Targets TWU over SG', *Investor Weekly*, 21-27 August 2000, p. 5.

15 Committee Hansard, p. 355.

16 Submission No. 29, p. 4.

17 Committee Hansard, p. 645.

the ATO commented that notification of SG contributions on termination of employment could be beneficial for compliance.¹⁸

Committee response

3.18 The Committee heard considerable criticism at the low level of action undertaken by the ATO in pursuing employers who default on their SG obligations, particularly in relation to an apparent lack of prosecutions. The Committee is concerned with the injustices and inequities that this seems to cause for employees and employers alike.

3.19 The Committee recognises recent action undertaken by the ATO to develop a prosecution strategy and implementation plan, in response to ANAO recommendations that this occur. The Committee also recognises the broad ‘risk management’ approach that the ATO has chosen to take to non-compliance, and that this has received support from the ANAO as an effective long-term strategy.

3.20 To facilitate greater equity across law-abiding employers and employees, the Committee considers that the ATO should take more action in relation to employers who continually default on their SG obligations. This may include increased attention to prosecutions in implementing its new prosecution strategy, and more effective targeting of high-risk employer groups.

3.21 The Committee also considers that there is a need for more information to be provided by employers to employees regarding the payment of SG contributions, such as through pay slips. This should improve the information flow to employees, thereby increasing employees’ awareness of whether their employers are complying with their SG responsibilities, and empowering employees to hold their employers more accountable. The Committee believes that this reporting could effectively be linked to the quarterly Pay As You Go (PAYG) system.

3.22 The Committee also heard suggestions for making arrears collection processes compulsory to increase compliance. The Committee acknowledges merit in the idea of a compulsory arrears collection process, but considers that this could be difficult to enforce, considering the number of non-award funds that could be involved. Also, the Committee feels that there could be problems with who would act on an individual’s behalf in collecting arrears, as industry funds have unions behind them. The Committee considers that focussing action on increasing prosecution action and reporting requirements would be more effective.

Recommendation 4

3.23 The Committee recommends that the ATO focus more attention on prosecuting employers who repeatedly default on their SG responsibilities.

18 Committee Hansard, p. 852.

Recommendation 5

3.24 The Committee recommends that employers be required to show details of their Superannuation Guarantee contributions on individual employees' payslips.

3.25 As discussed later in this report (Chapter 4, Recommendation 7), the Committee also suggests that greater consideration is needed to streamlining SG reporting with the PAYG system.

Individual complaints and appeal mechanisms

3.26 Another area of concern that the Committee took evidence on during the inquiry related to individual complaints and the appeal mechanisms available to employees who are subject to their employer's non-compliance with SG. The Committee received evidence relating to the numbers and types of complaints received, concerns of employees and industry that complaints are not effectively addressed, the ATO's response to issues, and options raised for reform which were suggested.

Background

Risk approach taken to compliance

3.27 In evidence to the Committee, the ATO outlined that Employee Notification (EN) of insufficient employer contributions is the primary mechanism provided for employees to inform the ATO of their employers' possible non-compliance with the SG requirements. According to the ATO, every formal complaint, or EN, relating to SG is actioned and loaded into the ATO's database. From here, the ATO tries to detect trends and patterns with compliance, so that complaints can be examined and addressed at a broader level (for example, with respect to the relevant 'industry' or geographical area).¹⁹

3.28 In its recent performance audit on SG, the ANAO noted that the ATO is moving away from following up individual employee complaints through ENs, toward a more risk-based approach where high-risk groups of employers are targeted and strategies such as reminder notices and telephone calls are used. This risk-based approach has been endorsed by the ANAO as a more effective use of resources that is more likely to lead to improvements in overall compliance levels. Despite this, the ANAO has recognised that this risk-based approach could result in problems for some employees whose individual complaints may not be actioned.²⁰

19 Committee Hansard, p. 837; Submission No. 7, p. 9.

20 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 67.

Numbers of complaints received

3.29 According to the ATO, 8,974 complaints, or ENs relating to employer non-compliance, were received by the Office during 1999-2000.²¹ Since late 1998, 20,260 ENs have been received, resulting in the ATO raising SG charges in respect of 8,110 employers, or 107,560 employees. From this, the ATO has identified a SG shortfall of \$61.5 million.²²

Types of complaints received

3.30 According to the ATO, the type of superannuation complaints received from employees relate to:

- perceptions that employers are not making superannuation contributions for employees;
- the ATO's apparent inability to 'guarantee' employees' superannuation;
- a perceived lack of information that the ATO provides to employees regarding progress of individual complaints; and
- any loss of superannuation entitlements for employees in instances where an employer becomes bankrupt or is placed into liquidation.²³

3.31 The ANAO noted in its audit report that of these types of SG complaints, the most common related to a perceived lack of communication from the ATO regarding the progress of an individual complaint submitted by an employee.²⁴

Issues

Little action on individual complaints

3.32 During the course of the inquiry, the Committee became aware of a number of case studies where there had been an apparent lack of action by the ATO in response to individual complaints. One case was the Chaucers Reception Centre in Melbourne, a company associated with JB & TM Catering, which recently went into liquidation, owing employees superannuation money. In introducing a private member's bill on the Superannuation Guarantee to the House of Representatives in October 2000, the Shadow Assistant Treasurer, Mr Kelvin Thomson MP, stated:

I am advised that JB & TM Catering have not paid Superannuation Guarantee since 1993 and that a number of their employees had contacted

21 Submission No. 91, p. 5.

22 Committee Hansard, p. 842.

23 Submission No. 91, p. 1.

24 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 59.

the Tax Office concerning this, but that the Tax Office had failed to recover any of their money.²⁵

3.33 In a number of other instances, the Committee became aware of individuals who have made formal complaints to the ATO and have received no vouchers, no correspondence nor any response from the ATO after a period of 12 months.²⁶ In evidence to the inquiry, Mrs Patricia A. King stated that, consequently, the Superannuation Guarantee appears to be a ‘guarantee’ in word only.²⁷

Complaints treated as a data collection exercise

3.34 In its submission to the inquiry, ASFA claimed:

The ATO position appears to be one of treating an employee notification of an employer’s non-compliant behaviour as an intelligence seeking exercise, rather than a complaint requiring a specific response.²⁸

3.35 In response to this, the Association called for a more rigorous approach by the ATO toward employee complaints.²⁹

3.36 Similarly, when Mr Kelvin Thomson MP presented his private member’s bill to the House of Representatives, he cited instances where employees who were affected by employer non-compliance were not satisfied by the ATO. According to him, these people had contacted the ATO and were told to contact the Department of Employment, Workplace Relations and Small Business (DEWRSB) because ‘the ATO only collects figures on non-compliance for statistical purposes’.³⁰

Employees want more transparency

3.37 During the course of the inquiry, organisations such as the NRMA, AMP and the Australian Consumers’ Association called for an improvement in the level of information and assistance provided to consumers by the ATO. The Australian Consumers’ Association claimed that it seemed unnecessarily difficult for consumers to track down under-payment or non-payment of the Superannuation Guarantee as it is hard for consumers to know if the ATO is investigating or has managed to collect the outstanding monies. These groups called for more transparency for consumers and an improvement in the reporting and collection mechanisms to both encourage

25 House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21572; also see Ben Seeder, ‘SG Contributions Slip Sliding Away’, *Investor Weekly*, 21-27 August 2000, p. 12.

26 House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21572.

27 Submission No. 2, p. 2.

28 Submission No. 17, p. 6.

29 Submission No. 17, p. 6.

30 House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21572.

compliance by employers and alert employees and their representatives to any possibility of long-term default.³¹

Employers are not required to provide information on SG

3.38 The Australian Society of Certified Practising Accountants (now CPA Australia) informed the Committee that as there is no requirement in the SG legislation for employers to report to employees on their superannuation contributions, employees cannot easily monitor their employer's compliance.³²

Only the ATO can act on individual complaints

3.39 In their evidence to the Committee, a number of industry and employer groups asserted that an effective avenue needs to be provided for employees to pursue inquiries regarding their employer meeting its SG requirements. According to the Institute of Actuaries, the only avenue currently available for employees is the ATO and it is widely claimed that this approach is not working well. This has been attributed either to a lack of information going to employees, or a lack of resources in the ATO.³³

System relies on individual complaints to detect non-compliance

3.40 The Committee heard that an underlying concern with SG enforcement is that the detection of non-compliance depends on individual complaints being made by employees about apparent shortfalls, or identification of employers through other means like regular SG surveys conducted by the ATO. In its evidence to the Committee, the ANAO noted that the ATO's task is made more difficult in this regard because there is no requirement under Superannuation Guarantee legislation for employers to provide a 'return' on SG payments made.³⁴

ATO not acting on complaints in a timely manner

3.41 The ANAO noted in its audit report that the ATO has committed to respond to clients within seven days of receiving a complaint, in accordance with the ATO's Taxpayer's Charter. While the ANAO found that the ATO's performance against key performance indicators was generally sound, it noted that at the time the audit was conducted, there was no formal reporting or monitoring of performance against this indicator.³⁵

31 Submission 18, p. 1; Committee Hansard, p. 677; Submission No. 31, p. 11.

32 Submission No. 20, p. 7.

33 Submission No. 79, p.3.

34 Committee Hansard, p. 641.

35 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 15.

ATO has an incomplete picture of compliance

3.42 In its audit, the ANAO also commented that the ATO's information on employer compliance was not complete. The ANAO recommended that the ATO should collect more data and improve its performance monitoring strategies, relating particularly to the amount of money involved with SG non-compliance, and the percentage of employees affected by employer SG non-compliance (in addition to the number of non-compliant obligated employers).³⁶

ATO response

ATO are taking measures to address complaints

3.43 In evidence to the Committee, the ATO cited a number of proactive and reactive measures it currently takes to facilitate compliance with the SG laws. According to the ATO, these proactive measures include:

- providing assistance to employers to make it easier and cheaper for them to comply with SG (including sending employers a 'SG calculator' at the end of the financial year to help them calculate if they will have an SG shortfall);
- providing software to producers;
- improving helpline services;
- providing education activities through community groups and other agencies; and
- increasing audit activity (including making contact with employees who are new or who have failed to comply with SG).³⁷

3.44 Reactive measures that the ATO highlighted to the Committee include:

- targeted compliance activities;
- desk audit questionnaires;
- outbound call centres (providing 10s of 1000s of phone calls to employers); and
- prosecutions.

3.45 In evidence at one of the hearings, Mr Leo Bator, Deputy Commissioner of Taxation, stated:

We are now in a position to monitor employers' compliance with SG better than we have ever been able to in the past. For example, we can now match an individual's salary and wages as returned in their income tax returns to

36 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor-General Audit Report No. 16: 1999-2000 Performance Audit, p. 15.

37 Committee Hansard, p. 836.

amounts that employers have paid to superannuation funds as reported through the surcharge system. So my message to employers would be that employers thinking of not complying with SG should be aware that we now have information at hand to determine whether they are in fact making the full payment that the law provides for in terms of SG for an employee.³⁸

Half of the complaints are not ‘real’

3.46 According to the ATO, around 40 to 50 per cent of the complaints that the ATO receive are unnecessary. This is because many complaints are made by employees who suspect that their employer has defaulted on their superannuation contribution, but in actuality, many of these employers have not. In most of these instances, the employee may have left the employ of the employer that he/she is complaining about. The ATO contested that much of this wasted effort could have been spared if the employee had asked a few simple questions of their employer, such as ‘Are you paying me superannuation?’ and ‘Who are you paying it to?’³⁹

Privacy Act prevents more open communication

3.47 With respect to the concern that many witnesses expressed to the Committee that the ATO fails to provide information to individuals on the progress of their complaints, the ATO attributed this to restrictions within the *Privacy Act 1988*. According to the ATO, the secrecy provisions in the Privacy Act stop officers of the ATO having any communication with third parties in relation to providing employees with information on action taken on complaints lodged.⁴⁰

ATO reluctant to change Privacy Act

3.48 The ATO suggested that providing more information to individuals on the progress of the ATO’s action on complaints could potentially disadvantage employers as it could put them at a commercial disadvantage in their regions. It could also result in situations where these employers were unable to get credit or where other employers might poach their employees, thinking that that employer was not able to meet their liabilities. The ATO also expressed some concern at the broader effect that changing the Privacy Act to allow more information to individuals in this respect could have.⁴¹

Response to ANAO recommendations

3.49 The ATO agreed with the ANAO’s recommendation for increased reporting, and has asserted that this issue has subsequently been addressed.⁴² Similarly, the

38 Committee Hansard, p. 836.

39 Committee Hansard, p. 851.

40 Submission No. 91, p. 1.

41 Committee Hansard, p. 839.

42 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 15.

ATO advised the Committee that it has also addressed the issue of data collection by establishing databases to record all complaints, and it has refined its performance measures, in accordance with the ANAO's recommendation.⁴³

Options

Increased employer communication

3.50 In evidence to the inquiry, the ANAO suggested that employers should take more duty of care to make sure that employees are aware that they have paid the correct superannuation contributions on their behalf. After all, the ANAO stated that employees should know where their money is. While the ANAO commented that there is likely to always be an irreducible minimum of complaints along this line (ie. people that are not aware of their contributions, or who are having problems with their employer), the Office contended that the number of unnecessary complaints could be decreased through greater education.⁴⁴

Requirement for more employer information

3.51 According to CPA Australia, the Government should give consideration to investigating the possible means by which employees could receive more information from their employers regarding payment of SG.⁴⁵ In this same vein, the Australian Consumers' Association called for more transparency for consumers and an improvement in collection mechanisms.⁴⁶

Employees pursuing own complaints

3.52 The Institute of Actuaries of Australia and William M Mercer Pty Ltd suggested alternative approaches to the current system which would enable employees, not just the ATO, to pursue their employers' non-payment of superannuation. These included setting up a new Superannuation Guarantee Tribunal,⁴⁷ widening the jurisdiction of the current Superannuation Complaints Tribunal, or including SG compliance within the ambit of existing authorities dealing with employees' claims of non-compliance with other basic conditions of employment.⁴⁸

Giving employees the right to legal action

3.53 The Financial Services Consumer Policy Centre suggested that the *Superannuation Guarantee (Administration) Act 1992* be amended to allow an

43 Committee Hansard, p. 841.

44 Committee Hansard, pp. 654-655.

45 Submission No. 20, p. 7.

46 Committee Hansard, p. 677.

47 Submission No. 19, p. 9.

48 Submission No. 79, p.3.

employee of an employer who has incurred a SG shortfall to bring civil court proceedings to recover these funds.⁴⁹ However, in its evidence to the Committee, ASFA suggested that giving employees the right to prosecute for SG non-compliance might not provide an entirely satisfactory solution. ASFA asserted that the costs of legal action to individuals, should they have standing under the legislation, would be prohibitive. ASFA commented that, should the legislation be changed to give individuals this standing, the combination of legal costs and the court's lack of willingness to adjudicate in respect of relatively small amounts, would probably result in no private action being taken or being possible.⁵⁰

Independent legal advice for consumers

3.54 In evidence provided during the hearings, the Australian Consumers' Association also offered support for a superannuation legal service or resource centre to provide consumers with independent legal advice about their superannuation. According to the Association, this centre could also act as a central mechanism through which consumers' concerns around superannuation could be put forward.⁵¹

Committee response

3.55 The Committee notes the significant frustration and concern that many employees have expressed at the apparent lack of response and information they receive from the ATO regarding their complaints about loss of superannuation monies caused by employer SG non-compliance.

3.56 To address this, the Committee considers that, where possible, more information should be provided to individuals, or their nominated representatives, regarding their complaints. Also, mechanisms should be made available to consumers to allow fuller pursuit of their complaints in relation to SG.

3.57 Furthermore, the Committee believes that options should be examined for greater member participation in following up on complaints lodged with the ATO. While respecting privacy considerations, the Committee also believes that the provision of greater information to consumers in relation to progress on addressing complaints should be examined.

Recommendation 6

3.58 The Committee recommends that the ATO and the Department of the Treasury explore options for enabling members, or their nominated representatives, to follow up on SG complaints and obtain more information on complaint action progress.

49 Submission No. 26, p. 352.

50 Submission No. 17, p. 6.

51 Committee Hansard, p. 677.

Discretionary powers of the ATO

3.59 During the course of the inquiry, the Committee collected a significant amount of evidence on the adequacy of the current penalties applying for employer breaches of the SG, and whether there could be room for varying the discretionary powers of the ATO in applying these. The Committee received information on the penalties imposed, the current ATO powers in applying these, also the concerns of witnesses, the response of the ATO, and options raised to address the concerns.

Background

Current ATO powers

3.60 Under current legislation, the Commissioner of Taxation can impose administrative penalties or pursue prosecution action against employers who breach their SG obligations. This ranges from failing to provide information to the ATO, failing to maintain SG records, falsifying or concealing the employer's identity or obstructing ATO officers in the performance of their duties.⁵²

SGC penalty

3.61 Employers must provide their SG contribution, on behalf of each employee, to a complying superannuation fund by 28 July after the end of the financial year. If this deadline is not met, the employer becomes liable to pay the SGC and must lodge a SG statement with the ATO by 14 August of that year. If an employer refuses or fails to provide statements or information, penalties could be imposed under subsection 59(1) of the *Superannuation Guarantee (Administration) Act 1992*. The SGC penalty is calculated at 200 per cent of the amount of SG charge that was payable by the employer in the year.⁵³

Most penalties automatic

3.62 Part seven of the SG legislation outlines six separate penalties that the ATO can impose on employers as part of the SGC. According to the Institute of Actuaries, the first five penalties are automatic and apply even if the relevant contributions were paid in full shortly after the due date. Only the sixth penalty is at the discretion of the ATO. The penalties are:

- \$50;
- \$30 for each employee where the correct contributions have not been paid;
- SGC based on the generally higher 'salary and wages' rather than ordinary time earnings income calculation;

52 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 40.

53 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 40.

- Interest must be added from the start of the relevant year rather than the date that the contributions should have been made (potentially an interest penalty of 13 months);
- The payment of SGC is not tax deductible; and
- Further penalties of up to twice the SGC apply for failing to keep records and certain other offences.⁵⁴

Limited ATO discretion

3.63 The ATO outlined in evidence to the inquiry that the current legislation does not give the Commissioner of Taxation any discretionary powers to allow superannuation payments to be made after the 28 July cut-off date. Nor is there any discretion to remit the nominal interest charge nor the administration charge imposed under the *Superannuation Guarantee Charge Act 1992*. However, the Committee heard that the Commissioner does have the discretion to remit part or all of the general interest charge applying to the late payment of established liabilities. The Commissioner can also remit all or part of the penalties applying for failure to provide a statement or information to the ATO, or failure to keep records.⁵⁵

Statistics

3.64 According to the ANAO, the SG Charge represents more than 80 per cent of all SG penalties imposed. The ANAO's audit report revealed that the value of the SGC imposed on employers has been steadily increasing over recent years, with some marginal decrease from 1997-98 to 1998-99. (The ANAO attributed this marginal decrease to the establishment of a central debt collection unit within the ATO).⁵⁶ See **Figure 4** (next page) for a graph showing the value of the SGC imposed over the past few years.

3.65 According to the ATO, the total late payment penalty general interest charged for 1999-2000 amounted to \$7.11 million. This was imposed on 7,874 employers.⁵⁷

Issues

Penalties are too harsh and inflexible

3.66 According to a number of witnesses, including the Institute of Actuaries of Australia, William M Mercer Pty Ltd, and WA Shearers, the current penalty system for non-compliance with SG is too inflexible and can lead to inappropriate outcomes

54 Submission No. 79, p. 2.

55 Committee Hansard, p. 835.

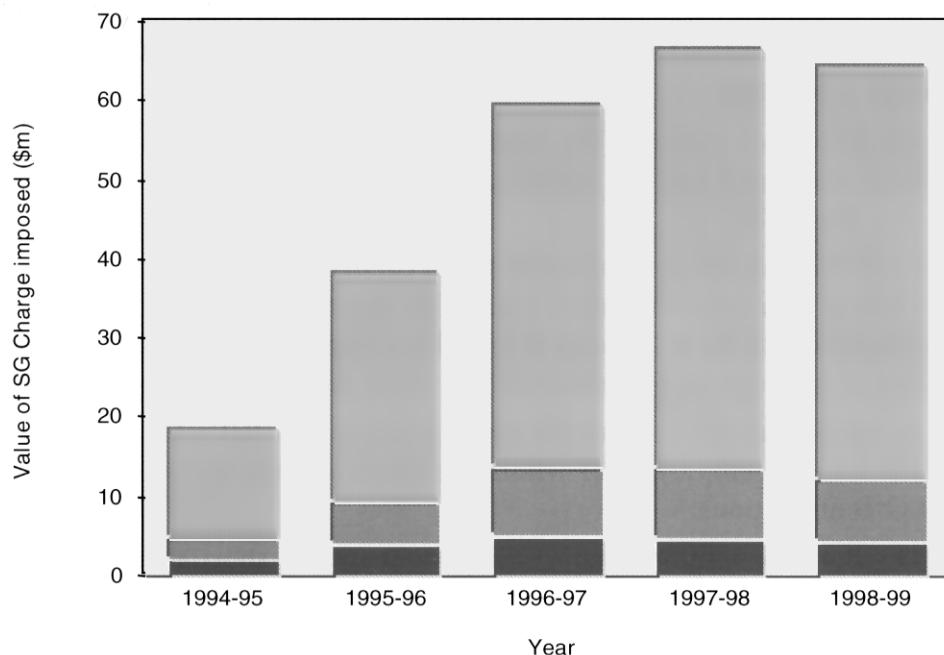
56 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor-General Audit Report No. 16: 1999-2000 Performance Audit, pp. 73, 76-78.

57 Submission No. 91, p. 5; and further additional material/correspondence provided by the ATO to update evidence previously provided.

in the case of minor administrative errors. Ms Jane Ferguson, Director of Public Affairs with the Institute of Actuaries of Australia, told the Committee:

The first automatic five penalties, in combination, are extreme for what might be a minor technical breach of the payment requirements. The calculations are also complex, particularly where most (but not all) of the required contributions were paid.⁵⁸

Figure 4: SG charge imposed in each year from 1994-95 to 1998-99



	1994-95	1995-96	1996-97	1997-98	1998-99
Contribution shortfall (m)	14.1	29.3	46.4	53.4	52.7
Interest (\$m)	2.6	5.6	8.6	8.9	7.9
Administration fee (\$m)	1.8	3.4	4.5	4.3	3.9
TOTAL (\$m)	18.7	38.4	59.5	66.7	64.5

Note: As a result of rounding, individual components made not add to totals.

Source: Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 74.

3.67 Similarly, AMP stated that current penalties in relation to late payments are harsh and provide a disincentive to employers to voluntarily disclose non-payments or

difficulties in paying. This is because, when an employer discovers it has unpaid superannuation contributions to fund, it cannot intervene and has to pay the SGC.⁵⁹

3.68 The Committee heard from witnesses that penalties are ‘unfair’, ‘too extreme’ for what might be described as minor technical breaches, and require ‘overly complex’ calculations, particularly where some (not all) of the contributions had already been paid.⁶⁰ Phillips Fox noted that current penalties for late payment of SG contributions are currently much more severe than any other type of taxation.⁶¹

Double payment issue

3.69 An issue that the Committee heard was a particular concern for employers relates to the double payment of the SG as part of the SGC. For example, if an employer is late with his/her SG payment, the employer has to pay the shortfall to the Commissioner of Taxation, plus an administration charge and a fine calculated at the rate of 10 per cent per annum on the shortfall. This fine is calculated from 1 July in the tax year in which the contribution is due, to the date on which the shortfall is paid.⁶²

3.70 The Committee heard that in many instances, employers might already have sent their late SG payments to superannuation funds at the time that the SGC is made out to them (including this SG amount). The employers often then find that the contributions they have already made to superannuation funds cannot be refunded, and they are still left with the SGC they have to pay to the ATO.⁶³

Causes inequity

3.71 In evidence to the Committee, WA Shearers asserted that the system is not equitable as an employer that has not made any payment is better off than an employer who has made the payment late. This organisation noted that there are cases where simply the provision of late payments (then incurring all of the SG charges) has forced contractors into bankruptcy.⁶⁴ In its recent audit of the SG, the ANAO recognised that some legislative options may need to be examined to overcome this.⁶⁵

ATO cannot exercise discretion

3.72 In evidence to the Committee, a number of organisations including the ANAO, AMWU, AMP, WA Shearing, IFF and the Australian Chamber of Commerce

59 Submission No. 31, p. 11.

60 Submission No. 9, p. 2; Submission No. 19, p. 11.

61 Submission No. 28, p. 1.

62 Submission No. 14, p. 2.

63 Committee Hansard, p. 714.

64 Submission No. 14, p. 2.

65 Committee Hansard, p. 646.

and Industry criticised the apparent lack of discretion that the Commissioner of Taxation is able to exercise in cases where an employer has breached its SG requirements.⁶⁶ According to Ms Ann Byrne, Convenor of the IFF:

The ATO cannot apply much judgement as to whether to pursue statutory penalties for non-compliant or delinquent employers. In most cases, penalties are appropriate, but in others, honest mistakes are made.⁶⁷

3.73 WA Shearers and the Australian Chamber of Commerce and Industry told the Committee that even where there are supposedly good reasons for lateness, and even where the payment is one day late (sometimes caused by postal errors),⁶⁸ the ATO cannot exercise discretion in applying the SGC.⁶⁹ These groups recognised that this can have a negative impact not only on the employer but employees affected.⁷⁰

ATO and Treasury response

Severity of penalties

3.74 In evidence to the Committee, the Department of the Treasury put forward the argument that ‘black and white’ penalties, such as are currently imposed with the SGC, can be beneficial. Mr Roger Brake, General Manager of the Department of the Treasury’s Retirement and Personal Income Division, stated before the Committee:

With the SG, my understanding is that there are sometimes fairly black and white penalties. If you are a day late with SG you get hit with the full SG charge and that can have benefits in encouraging compliance.⁷¹

3.75 Mr Leo Bator, Deputy Commissioner of Taxation with the ATO, told the Committee:

We acknowledge that decisions we take in relation to SG liabilities, which we consider to be just and economically sensible on an examination of all the circumstances, can lead to ...[negative]... perceptions. However, decisions made in relation to outstanding SG amounts are made in line with developed policy, which takes into account government policy intention and other matters... and are based on an examination of all of the information available.⁷²

66 Submission No. 22, p. 6; Submission No. 31, p. 11; Submission No. 14, p. 1.

67 Submission No. 5, p. 4.

68 Committee Hansard, p. 714.

69 Submission No. 70, p. 2; Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 17.

70 Submission No. 28, p. 2.

71 Committee Hansard, p. 827.

72 Committee Hansard, p. 840.

Application of penalties

3.76 In evidence to the Committee, the ATO reiterated that the Commissioner of Taxation does not have discretion to remit part or all of the general interest charge applying to the late payment of established liabilities and the penalties applying for failure to provide a statement or information to the ATO, or failure to keep records. The ATO stated, however, that it does work with funds and employers to overcome any potential double-jeopardy situation that may arise as a result of the operation of the law.⁷³

Options

Give the ATO broader discretionary powers

3.77 In the IFF's submission and its evidence at the hearing, the IFF suggested that the ATO should have greater flexibility to decide whether a penalty should be pursued or not. According to the IFF, this would involve the ATO liaising with relevant stakeholders, such as the employer, the superannuation fund, the employees and their unions if possible, to judge whether a penalty is appropriate.⁷⁴

Soften penalties

3.78 In evidence to the Committee, organisations such as Institute of Actuaries of Australia, William M Mercer Pty Ltd, Phillips Fox and AMP supported softening the penalties imposed under the SG. In particular, WA Shearers suggested that if the employer is only late in payment, the employer should not have to pay the Superannuation Guarantee contribution again to the ATO (ie. paying the same contribution twice), and that the interest component alone should be sufficient penalty.⁷⁵ Similarly, the IFF told the Committee that where an employer has made an honest mistake, the employer could just pay the interest that the employee has missed out on and make the payment to the superannuation fund.⁷⁶

Provide more transparent reporting mechanisms

3.79 In its submission, AMP contested that there should be more transparent reporting mechanisms for employers to demonstrate SG compliance. According to the AMP, this should act to both encourage compliance by employers and alert employees and their representatives of any possibility of long term default.⁷⁷

73 Committee Hansard, p. 835.

74 Submission No. 5. p. 3; Committee Hansard, p. 355.

75 Submission No. 14, p. 2.

76 Committee Hansard, p. 355.

77 Submission No. 31, p. 11.

Committee response

3.80 The Committee believes in equity of treatment for all taxpayers, and is concerned that any increase in the discretionary powers of the Commissioner of Taxation in the application of penalties could have a negative effect in this regard.

3.81 Having said this, the Committee understands the various arguments put forward highlighting problems with the current penalty regime for Superannuation Guarantee contributions, particularly the severity of these in instances where honest mistakes have occurred.

3.82 The Committee believes that a re-examination of the SGC penalty is necessary with a view to enhancing the appropriateness and ensuring the transparency of this. Recommendation 1 (in Chapter 2) calls on the ATO and the Department of the Treasury to do this.

ATO resources

3.83 Throughout the course of the inquiry, the Committee heard some concern from witnesses regarding the resourcing capacity of the ATO, and whether this is sufficient to allow it to effectively enforce the SG. The Committee received evidence on the ATO's resources and responsibilities relating to SG enforcement, concerns raised by witnesses, the ATO's response, and options presented.

Background

SG administration is the ATO's responsibility

3.84 The ATO is the primary body responsible for administering the SG. This responsibility includes administering compliance with the SG legislation and collecting the relevant charge from employers who fail to make required contributions to complying funds. In relation to the Superannuation Guarantee, the ATO also administers the reasonable benefits limits system, self managed funds, the Lost Members Register, unclaimed superannuation monies (where the States do not have the appropriate legislation) and the Superannuation Holding Accounts Reserve (SHAR).⁷⁸ In its audit report of the SG, the ANAO noted that on 1 July 1996, the ATO established the Superannuation Business Line to integrate most of its existing superannuation administration responsibilities into one organisational area. This was restructured in December 1997.⁷⁹

3.85 According to ATO estimates, SG administration costs totalled \$15.5 million for 1999-2000 with an average staffing level of 225 staff over this period. This

78 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 19.

79 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 27.

included around 20 staff devoted specifically to SG debt recovery and enforcement. This team recovered about \$44 million in unpaid SG in the 1999-2000 year.⁸⁰

Issues

ATO not sufficiently resourced to enforce SG compliance

3.86 In their evidence to the Committee, the IFF, WA Shearers and the APRA all contested that the ATO currently does not have the resources necessary to effectively enforce compliance. According to the IFF, the ATO has no way of knowing whether companies are fully compliant with the SG requirements, as they do not have the resources to monitor every employer. For example, certain media reports claim that the ATO cannot currently detect common infringements such as when companies have paid SG for some, not all, of their employees. According to the IFF, this would need in-house audits of companies, and the ATO would not have the resources to do more than 50 audits per year.⁸¹

3.87 Ms Ann Byrne, Convenor of the IFF, told the Committee:

I think that [the ATO] do not have enough resources to actually go out and monitor every employer. In our discussions with the ATO, they say that they do a range of surveys to try to identify industry sectors that may, in fact, be at fault. Then they concentrate on those industry sectors. Certainly, from my understanding – and you can ask the ATO this – they do not have a process by which they check every employer.⁸²

3.88 According to APRA, an apparent under-resourcing of the ATO in this area has been partly attributed to loss of staff and increased workload associated with the introduction of the Goods and Services Tax (GST).⁸³

ATO response

ATO restructuring to address issues

3.89 In its evidence to the Committee, the ATO stated that it only had finite resources in the area that deals with SG debt collection. As a consequence, the ATO noted some concern that the collection of smaller SG amounts have not received the same degree of attention in the context of the overall collection approaches of the ATO to date. To address this, the ATO stated that it is now setting up a specialised area to develop cost effective and efficient procedures to strengthen the ATO's

80 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 28; and further additional material/correspondence provided by the ATO to update evidence previously provided.

81 Committee Hansard, p. 362; Ben Seeder, 'SG Contributions Slip Sliding Away', *Investor Weekly*, 21-27 August 2000, p. 12.

82 Committee Hansard, p. 362.

83 Cited in Anne Lampe, 'Keep 'em Honest: Bar None in Super Reform', *Sydney Morning Herald*, 26 July 2000, p. 6 (Money Section).

recovery of outstanding SG amounts.⁸⁴ The Committee was informed that this would be a specialised collection area within the ATO's Superannuation Business Line.⁸⁵

New staff have led to new opportunities for the ATO

3.90 In evidence to the Committee, the ATO commented that it had recently lost a significant number of staff and has had to recruit from outside because of changes resulting from the introduction of the GST. Despite this, the ATO contested that these resource changes have not had a significant or negative impact on efficiency as these changes have given the organisation the opportunity to recruit staff with specific superannuation skills and knowledge, in many cases, from the superannuation industry.⁸⁶

Options

ANAO recommendations to increase efficiency

3.91 As part of the ANAO's audit of the SG, the ANAO made a number of recommendations to increase administrative efficiencies within the ATO. These recommendations included using more electronic (rather than manual) processing of SG forms.⁸⁷ Acting upon these recommendations, the ATO stated that it has since tried to improve efficiency by investigating computer system design to facilitate speedier processing.⁸⁸ In its evidence to the inquiry, CPA Australia noted its support for more electronic processing, but commented that there needs to be consultation with industry to ensure that such changes do not have an adverse effect upon small businesses and their advisers.⁸⁹

Contract out

3.92 In its evidence to the Committee, the Financial Services Consumer Policy Centre suggested that the ATO contract out the recovery of unpaid SG fund from employers.⁹⁰ REST Superannuation also suggested in its submission that the ATO could outsource the task of reuniting 'lost' members with their superannuation entitlements through the Lost Members Register.⁹¹

84 Committee Hansard, p. 839.

85 Committee Hansard, p. 839.

86 Committee Hansard, p. 845.

87 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor-General Audit Report No. 16: 1999-2000 Performance Audit, p. 65.

88 Committee Hansard, p. 841.

89 Submission No. 20, p. 5.

90 Submission No. 26, p. 18.

91 Submission No. 60, p. 1.

Committee response

3.93 The Committee notes the evidence it received from some witnesses questioning the ATO's capacity to effectively enforce SG at its current resource level. The Committee also notes the ATO's recent efforts to increase internal efficiencies through restructuring its business units, thereby addressing the recommendations put forward by the ANAO in its performance audit of SG.

3.94 To allow time for the ATO's internal efficiency measures to take effect, the Committee considers that it is not currently in a position to judge whether ATO's resource level is sufficient to enable effective enforcement of the SG. However, the Committee notes the existence of this issue and will continue to monitor it over time.

Conclusion

3.95 Consumer and industry groups expressed strong concerns to the Committee regarding the ATO's apparent lack of activity in pursuing defaulting employers and addressing individual complaints. The Committee also heard complaints that the SGC penalty is too harsh and should not be as rigidly applied as it is at present. Furthermore, numerous groups questioned the adequacy of current resource levels in the ATO that are dedicated to SG, and whether more staff are needed to effectively manage compliance.

3.96 The Committee heard these concerns and a wide range of options put forward by many groups for improving the ATO's response to non-compliance. The Committee considered this evidence and has made a number of recommendations aimed at: increasing the ATO's focus on prosecution activity for continually defaulting employers, requiring employers to include details of their SG contributions in employees' payslips, and exploring options for greater participation of members or their representatives in resolving SG complaints.

CHAPTER 4

FREQUENCY AND TIMELINESS OF PAYMENTS

Introduction

4.1 During the inquiry, the Committee heard evidence relating to the frequency of SG payments made by employers, and the ways in which the current requirements can contribute to employer non-compliance. The Committee also heard of the risks associated with the current arrangements, including the groups that are most vulnerable. The issues covered in this chapter relate to:

- the *frequency and timeliness of payments* – including current problems and suggestions for improvement; and
- *risks with the current arrangements* – including potential loss of death and disability insurance for employees, income protection for employees with potential loss of benefits, and the impact of company insolvency on the payment and recovery of outstanding SG.

Frequency of payments

4.2 The Committee took evidence on the issue of the frequency and timeliness of SG payments, including current requirements of employers, concerns raised by witnesses, options put forward for increasing payments, and the Government's response.

Background

Annual payments required

4.3 As discussed in Chapter 1, the entitlement to employer superannuation contributions arises under the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992*. The Superannuation Guarantee Administration Act mandates that employer superannuation contributions must be made annually - by 28 July of the year following the end of the year of income in which the salary and wages were earned. If this payment to a fund is not made, the employer must pay the Superannuation Guarantee Charge.¹

History of the requirement

4.4 As outlined by ASFA in its submission to the inquiry, the SG legislation originally contained provision requiring the employer to calculate each employee's

1 Submission No. 17, p. 3.

superannuation shortfall on a quarterly basis, although paid annually. Subsequent amendments to the legislation (1995 and 1996) removed this requirement.² The IFF highlighted in its submission that the legislation currently provides for more frequent payments, only the regulations call for annual payments.³

Issues

Annual payment of SG is causing a range of problems

4.5 The majority of witnesses who came before the Committee in relation to this inquiry criticised the current requirement for annual SG payments. Industry, employer and consumer groups commented that annual SG payments are too infrequent, and can financially disadvantage employees and cause other problems relating to the personal security of individuals' superannuation investments, and the administrative efficiency of the SG.

4.6 The following risks with the current arrangements were identified to the Committee during the inquiry:

- Potential loss of investment earnings for employees: REST Superannuation, IFF, NRMA, AMWU and the Queensland Furnishing Industry Superannuation Trust Pty Ltd noted that less frequent payments can lead to a significant reduction in account balances for employees when the benefit finally becomes payable, particularly where employees are young.⁴
- Potential loss of entitlements - insolvency: The ASFA outlined that less frequent payments can mean that any financial difficulties that employers may be experiencing, which could jeopardise the employer's ability to make superannuation contributions for their employees, cannot be detected until up to 12 months later (ie. after the SG payment is due). Even where an employee suspects that an employer has not been making contributions, the Committee was informed that the ATO cannot take any action until after 28 July, the final date for determination of the SGC.⁵ The IFF noted that it is very difficult in cases of company insolvency, if not impossible, for the superannuation fund to recover unpaid superannuation contributions.⁶
- Increased incidence of lost members: REST Superannuation and the AMWU told the Committee that less frequent payments can prevent superannuation funds from being told that the member has terminated employment until a significant period has passed after this date. During this time, the

2 Submission No. 17, p. 3.

3 Submission No. 5, p. 2.

4 Committee Hansard, p. 63; Submission No. 5, p. 2; Submission No. 18, p. 9; Submission No. 22, p. 6, Submission No. 42, p. 1.

5 Submission No. 17, p. 3

6 Submission No. 5, p. 2.

superannuation monies can be diminished if the employer continues to deduct insurance premiums for these members, still considering them to be employed. The Committee heard that this situation also adds to the difficulty in locating members through a lack of current information on the forms.⁷

- *Impact on disability and income protection insurance:* REST Superannuation, the ASFA and the IFF noted that less frequent payments can increase the chance of both casual and full time staff losing their insurance cover on account of insufficient funds in their account. This is because superannuation funds can continue to deduct insurance cover despite infrequent employer contributions.⁸
- *Complying employers can be commercially disadvantaged:* As highlighted by the IFF and Mr Kelvin Thomson MP, the Shadow Assistant Treasurer, in discussion of his private member's bill in October 2000, less frequent payments can commercially disadvantage employers who make their superannuation payments to the right amount and on time. This is in comparison with competitors, who may not make correct and timely payments and may not be detected or penalised by the ATO.⁹

Options

More frequent payments

4.7 The Committee heard general support amongst employer, employee and industry groups that the payment of SG should be made more frequent. CPA Australia, AMP, Corporate Super Association, Financial Services Consumer Policy Centre, Australian Consumers' Association, and AMWU all supported a general increase in frequency of payments.¹⁰

4.8 According to the IFF, 'annual payment of SG is the single greatest contributor to SG problems'.¹¹ AMP suggested that developments in electronic commerce and Internet banking in particular provide the opportunity for more consistent and regular payments thereby reducing the possibility of fraud and providing more immediate detection of defaults.¹² APRA stated that more frequent payments should not only provide benefits for employees, they should provide incentives for employers to meet their obligations, According to APRA, more frequent payments should also

7 Committee Hansard, p. 59; Committee Hansard, p. 63.

8 Committee Hansard, p. 63; Submission No. 17, p. 3; Submission No. 5, p. 2.

9 Submission No. 5, p. 2; Committee Hansard, p. 353; House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21570.

10 CPA Australia, 'Two Days Left to Pay Super Guarantee Warn CPAs', *CPA Australia Website*, 26 July 2000; Submission No. 31, p.11; Submission No. 32, p. 8; Submission No. 26, p. 18; Submission No. 5, p. 2; Committee Hansard, p. 677.

11 Committee Hansard, p. 367.

12 Submission No. 31, p.11.

strengthen the ATO's ability to monitor and regulate superannuation payments.¹³ The ANAO further agreed that moving to more regular payments of the SG should help reduce the incidence of non-compliance.¹⁴

Suggestion for quarterly

4.9 More specific calls for quarterly or monthly payments were also presented to the Committee. Those supporting quarterly payments included: the Australian Chamber of Commerce and Industry, Investment and Financial Services Association (IFSA), ASFA, APRA, Institute of Chartered Accountants in Australia, NRMA, HESTA, and WA Shearers. These organisations noted that alignment could occur with the PAYG system, whereby the PAYG system could be used to report on quarterly obligations and fines could be imposed through this reporting channel. According to the NRMA, this proposal could lessen administrative costs for the ATO.¹⁵

4.10 According to ATO research, approximately 86 per cent of employers pay SG on a quarterly basis or more regularly at present.¹⁶

Private member's bill

4.11 There also appears to be strong political support for a move to quarterly payments. On 30 October 2000, the Shadow Assistant Treasurer, Mr Kelvin Thomson MP, introduced the private member's bill - Superannuation Guarantee (Administration) Amendment Bill 2000, into the House of Representatives. This bill seeks to amend the *Superannuation Guarantee (Administration) Act 1992* to require all employers to remit the Superannuation Guarantee payments on a quarterly, rather than a yearly, basis. Under this bill, this frequency of payments would be the minimum and employers that currently pay more frequently would still be entitled to do so.

4.12 This private member's bill also makes provision for employers to remit advice to the ATO on a quarterly basis if they have a shortfall in their Superannuation Guarantee liability. This is to ensure that the ATO keeps a quarterly, not yearly, watch on companies' Superannuation Guarantee liability.¹⁷ In the Chamber when introducing the bill, the Shadow Assistant Treasurer cited broad industry support for it.¹⁸

13 Anne Lampe, 'Keep 'em Honest: Bar None in Super Reform', *Sydney Morning Herald*, 26 July 2000, p. 6 (Money Section).

14 Committee Hansard, p. 646.

15 Submission No. 28, p. 1; Submission No. 18, pp 1 and 9.

16 Committee Hansard, p. 847.

17 House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21570.

18 House of Representatives Hansard (Chamber), Monday 30 October 2000, p. 21572.

Suggestion for monthly

4.13 Support was also given by a variety of organisations for a move to more frequent, monthly payments. Those in support of monthly payments included: REST Superannuation, ASFA, IFF, ACTU, AMWU, Process Pack Pty Ltd, Goodman Fielder Limited, and Maurice, Blackburn, Cashman.¹⁹

Other suggestions

4.14 Other options were put before the Committee by Phillips Fox, IFF and CPA Australia who suggested that there should be requirements for monthly payments for all employers except for small business who should only need to provide quarterly payments.²⁰

4.15 Organisations such as William M Mercer, NFF and the Institute of Chartered Accountants in Australia considered that they would only support an increase in the frequency of payments if other reforms occurred, in recognition of increased work that this would create for employers. These suggested reforms ranged from changes to penalty arrangements for the SG,²¹ to broader reform of the taxation system affecting superannuation, including providing taxation incentives for employers for complying with superannuation requirements.²²

4.16 Goodman Fielder suggested that it would support any move to tighten up the payment period for SG, provided that this had provision for exceptional circumstances.²³ Broader superannuation reforms are discussed in more detail in Chapter 6.

4.17 The IFF highlighted the need to consider the timing of SG reforms to ensure that they are effective if introduced. Specifically, the IFF considered that any legislative changes to increase the frequency of SG payments should be introduced before any Choice of Fund legislation may be to ensure that employers do not use the Choice of Fund legislation as a device to circumvent their SGC obligations.²⁴ This suggestion is also discussed in more detail in Chapter 6.

19 Committee Hansard, p. 64; Submission No. 28, p. 1; Submission No. 17, p. 4; Submission No. 5, p. 2; Submission No. 29, p. 4; Submission No. 22, p. 6; Committee Hansard, p. 50.

20 Submission No 28, p. 1; Committee Hansard, p.367; Submission No. 20, pp 5-6.

21 Submission No. 79, p. 2; Submission No. 19, p. 10.

22 Submission No. 13, p. 22.

23 Submission No. 34, p. 2.

24 Submission No. 5, p. 3.

Government response

Government considering quarterly payments

4.18 In a television interview given by the Assistant Treasurer, Senator The Hon Rod Kemp, in December 2000, he stated:

The Government is consulting with all stakeholders on this particular issue and to see whether we could move to the principle of quarterly payments.

We are having discussions at present on this issue with all stakeholders and, after the completion of those discussions, the Government will, of course, consider its position.²⁵

ATO and Treasury examining issue

4.19 In the public hearings, the ATO stated that it was not in a position to comment specifically on proposals to increase the frequency of SG. Yet, the ATO did agree that smaller debts paid more frequently should prove beneficial to both the employer and the employee.²⁶ Officials of the Department of the Treasury informed the Committee that, in conjunction with the ATO, they are currently examining the issue of quarterly SG and what the benefits of that might be.²⁷

Cost of introducing changes

4.20 In response to the Committee's questioning, the ATO estimated that the cost of introducing quarterly payments could be significant for the ATO, ie. around 10 per cent. This is because employers would need to be educated about the changes, and systems changes would be needed to gear up for quarterly payments.²⁸

Committee response

4.21 The Committee heard strong, almost unanimous support for an increase in the frequency of SG payments, as a way of addressing a number of the dangers that currently exist for employees in the case of employer non-compliance. The Committee also heard many suggestions from a wide variety of groups that either quarterly or monthly reporting would be appropriate.

4.22 According to the ATO, around 86 per cent of employers already pay their SG payments quarterly or more frequently at present, so the Committee believes that introducing requirements for greater frequency in SG payments should not place a significant burden on the majority of employers.

25 Statement by Senator the Hon Rod Kemp in 'Concerns Employers Aren't Paying Compulsory Superannuation' from transcript for *The 7.30 Report*, 7 December 2000.

26 Committee Hansard, p. 852.

27 Committee Hansard, p. 825.

28 Committee Hansard, p. 847.

4.23 The Committee supports a move to compulsory quarterly reporting for SG, with provision for more frequent payments if required. The Committee considers that moving to quarterly payments would streamline reporting with new taxation reporting requirements (ie. PAYG). It is also in recognition of the current SG reporting requirements on employers, and the Committee's desire to not unduly add to any compliance burden for employers, particularly in the case of small business.

Recommendation 7

4.24 The Committee recommends that the requirement for compulsory SG contributions by employers, where it is not currently monthly, be varied to provide for quarterly payments.

Risks with current arrangements

4.25 As touched upon earlier in this chapter, risks exist with current SG arrangements that can impact on the security of an individual's superannuation investments. The Committee took evidence relating to risks associated with:

- death and disability insurance;
- income protection; and
- insolvency

4.26 The Committee took evidence on the rules and arrangements that give rise to these risks, concerns expressed by witnesses in relation to these risks, the ATO's response, and options suggested during the inquiry.

Background

4.27 Under current arrangements, superannuation funds may purchase temporary incapacity benefits for their members. The payment of temporary incapacity benefits is a recognised ancillary purpose under the Sole Purpose Test; this is contained in Section 62 of the *Superannuation Industry (Supervision) Act 1993*. REST Superannuation informed the Committee that superannuation funds consider the provision of this insurance to be an integral part of their fund's service.²⁹

4.28 SG payments are awarded the same priority as employee wages in the winding up of a company under the Corporations Law. Legally, these amounts rank ahead of all other unsecured amounts due to employees.³⁰ For example, employees' entitlements rank ahead of unsecured trade creditors and the ATO, but have a lower priority than the costs of the administrator or liquidator. Under section 556 of Corporations Law, if money is available to pay employee entitlements, it is paid in the

29 Committee Hansard, p. 65.

30 Submission No. 87, p. 1.

following order: wages and superannuation contributions, inquiry compensation, leave entitlements and retrenchment payments.³¹

Issues

Death and disability insurance

4.29 The ACTU and AMWU informed the Committee that, under current arrangements, it is possible for employees to lose their death and Totally and Permanently Disabled (TPD) insurance on account of late or non-payment of their superannuation contribution by their employer. These groups noted the potentially catastrophic effects that loss of cover can have for these individuals and their families, through no fault of their own.³²

4.30 Recognising that different funds have varying conditions that apply to their schemes, ASFA, IFF and REST Superannuation told the Committee that if insurance is lost, the member might need to re-apply and provide evidence of health. This means that the member may have difficulty ever getting cover again, as in many cases, employees are never more insurable than when they first join the fund. The Committee heard that this is particularly an issue for new members.³³

4.31 The Committee heard that loss of this insurance cover also occurs where employers make relatively infrequent (annual) payments to the funds. In AMWU's evidence before the inquiry, a letter by the HESTA Superfund was tabled noting that this situation applies mainly to casual workers. In these cases, the account balance of the employee is low and the fund continues deducting monthly insurance premiums from the account.³⁴ Where there are only annual deductions from employers, REST Superannuation also informed the Committee that there may be periods where the employee is not covered by insurance if they started employment before the employer began making contributions for them.³⁵

4.32 According to Maurice Blackburn Cashman, it is legally uncertain whether there is any mechanism for the recovery of full outstanding Superannuation Guarantee contributions owing to people whose employers default on their obligations. Mr John Berrill, Partner, Superannuation and Insurance, with Maurice Blackburn Cashman, commented that this uncertainty was 'a problem,' stating:

... under section 50 of the Superannuation Guarantee Act it says that the Tax Office can sue for recovery of the shortfall as a debt. The shortfall

31 Mark Tapley, 'Corporations Law Amendment (Employee Entitlements) Bill 2000, *Bills Digest No. 125 1999-2000*, Department of the Parliamentary Library, Internet site: <http://www.aph.gov.au/library/pubs/bd/1999-2000/2000BD125.htm> (accessed 19 February 2001).

32 Submission No. 29, p. 4; Submission No. 22, p. 6.

33 Committee Hansard, p. 63; Submission No. 17, p. 3; Submission No. 5, p. 2.

34 Submission No. 22, p. 4; Submission No. 39, p. 1.

35 Committee Hansard, p. 64.

calculation does not take into account ancillary or consequential losses such as death and disability benefits in superannuation. Therefore, it is legally uncertain as to whether there is any recovery mechanism at all for persons who, where their employer has not paid the superannuation guarantee, become disabled or die and there is a benefit that would otherwise have been payable had they been put into the fund.³⁶

4.33 In evidence to the Committee, Mr Berrill highlighted that this contrasts with provisions under the *Workplace Relations Act 1996*. Under section 178(6A) of this legislation, a mechanism is provided to allow employees to recover enough outstanding monies to put them back in the financial position that they would have been in had the benefits been paid. This includes ancillary benefits, such as death and disability benefits.³⁷

4.34 As reported in AMWU's evidence to the Committee, Mr N Wilkinson, the then Acting Chairman of the Superannuation Complaints Tribunal, stated that many members have substantial sums of money in their TPD cover. Mr Wilkinson was quoted as saying:

Most members under 50 have more money in their insured death benefit and TPD cover than in their account balance...[and]...Half the SG complaints lodged within jurisdiction involve an insured disability or death benefit.³⁸

Income protection

4.35 As touched on earlier this chapter, REST Superannuation informed the Committee that if an employee's employment terminates, the fund should stop paying insurance payments and the employee's insurance cover should cease. However, some funds, by the very nature of their set up, can continue to provide the cover and deduct the premiums.³⁹ This can erode the superannuation investment until the account balance is zero. Process Pack Pty Ltd noted that this is particularly a problem where industries have high turnover and poor portability of funds.⁴⁰

4.36 The Committee was informed that the erosion of benefits through automatic payments exist in relation to a number of insurance products, including income protection and life insurance. This is because these products tend to be tacked onto superannuation, rather than being additional to it, and some of these products have high premiums that can take two or three percent of the SG, which can be substantial. AMWU informed the Committee that members can opt out of taking some insurance

36 Committee Hansard, p. 49.

37 Committee Hansard, p. 49.

38 Reported in *Australian Super News*, CCH Issue 2, 24 February 2000, pp. 13-14, in Submission No. 22, p. 6.

39 Committee Hansard, p. 65.

40 Submission No. 33, p. 2.

products, and their monthly superannuation contributions would consequently be higher, but the level of member awareness of this is unclear.⁴¹

Insolvency

4.37 The Committee heard from organisations like AMWU that another significant risk posed under the current arrangements is that of employees losing their employer's superannuation contributions on account of insolvency. This was touched on earlier in this chapter.

4.38 As previously touched on in Chapter 2, evidence received to the Committee by ACTU, IFF and AMWU indicate that the priority given to superannuation payments in the liquidation of companies is not widely known. As a result, it is increasingly common to find superannuation contribution amounts outstanding by the insolvent company.⁴²

4.39 According to the AMWU, the frequency of payments affects the severity of this problem. With the current situation of annual payments, the Committee heard that when a company becomes insolvent, a large portion of the annual SG contributions that should have been directed to the employee's account can be misallocated and even used to prop up a failing company. In these cases, a full year's worth of contributions can be lost.⁴³

ATO response

ATO has little control over disability insurance issue

4.40 In evidence to the Committee, the ATO claimed that it does not have control over this issue of disability insurance, though it acknowledged the problems caused.⁴⁴

Clarifying scope of loss with insolvency

4.41 During the Committee hearings, the ATO stated that, in cases where the action of other creditors results in a bankruptcy liquidation of a debtor, the trustee liquidator will only pay superannuation monies if there are sufficient assets available after paying secured creditors. In evidence at one of the hearings, Mr Leo Bator, Deputy Commissioner of Taxation, stated:

Generally, once this stage is reached, it is unlikely that there will be sufficient assets to pay SG. In the main, SG liabilities could not be said to represent significant debts. They average in the order of \$4,000.⁴⁵

41 Committee Hansard, p. 61.

42 Submission No. 29, p. 3, Committee Hansard, p. 60; Submission No. 22, p. 6; Committee Hansard, p. 355; also see: Gess Rambaldi, 'Entitlements: Long Arm of Law Falls Short', *The Australian Financial Review*, 10 February 2000, p. 19.

43 Committee Hansard, p. 60.

44 Committee Hansard, p. 835.

Assessing risk areas

4.42 The ATO also stated that it is currently in the process of assessing what the risk areas are. Mr David Diment, Assistant Commissioner of Taxation, commented during one of the hearings that:

... because of the handover of those responsibilities from APRA was only a relatively short time ago, we are really in the process of scoping what the risk areas are. We are finding some interesting areas, as Leo said, around these of a super fund asset [used] to prop the business up and also some areas around marital breakdowns and the use of super by one party. So there is a whole range of issues that we are looking at, and we will come to an understanding of what the risk areas are.⁴⁶

Options

Change the frequency or payments

4.43 As discussed earlier this chapter, the Committee heard that increasing the frequency of SG payments was one method supported by a number of witnesses to address the risks for employees in relation to disability insurance, income protection and the impact of insolvency on SG contributions.

Change fund rules

4.44 With respect to income protection, Process Pack Pty Ltd suggested that the rules for SG should be changed in relation to a number of insurance products to prevent charges other than fund administration being deducted from the SG payments. For example, if the employee takes out the optional life assurance, Process Pack wanted employees to be made responsible for making the payments to cover that premium.⁴⁷

Increase awareness of the priority of superannuation

4.45 The IFF recommended that measures should be taken to increase awareness among companies of the priority that should be afforded superannuation payments in the event of companies winding up. The IFF suggested that the Government join industry in promoting this message to employers.⁴⁸

Committee response

4.46 The Committee notes concerns expressed regarding the potential loss of superannuation assets in the event of death, disability and company insolvency. In light of evidence received, the Committee believes that Recommendation 7, to

45 Committee Hansard, p. 839.

46 Committee Hansard, p. 855.

47 Submission No. 33, p. 2.

48 Committee Hansard, p. 355; Submission No. 5, p. 4.

increase the frequency of employers' SG payments, should go a considerable way to addressing the risks for employees with the current arrangements in relation to death and disability insurance, income protection and employer insolvency.

4.47 The Committee is concerned that employees should receive the full superannuation benefits that they are entitled to, and that these benefits should not be unwittingly eroded through other arrangements that the employee may not be fully aware of. While the Committee thinks that the provision of insurance products to employees is important and should be encouraged, the Committee believes that this should not be at the expense of employees' superannuation. The Committee considers that an examination into the appropriateness of the part funding of insurance products through SG contributions should occur.

4.48 While increasing the frequency of SG payments may lessen the pain for employees in the event of employer insolvency, the Committee recognises that instances are still likely to exist where insolvencies occur and employees lose benefits as a result. The Committee believes that there should be adequate protection for employees' entitlements to prevent or deal with such losses.

4.49 The Committee is aware of recent measures taken by the Government to increase consumer protection in cases of employer insolvency. With the passing of the *Corporations Law Amendment (Employee Entitlements) Act 2000*, for example, some protection has now been given to employees whose employers have entered into transactions with the intention of defeating the recovery of employees' entitlements.

4.50 The Committee also notes that the Government has recently introduced the Employee Entitlements Support Scheme, designed to provide a safety net for workers who lose their jobs due to insolvency. This scheme operates under administrative arrangements within the Department of Employment, Workplace Relations and Small Business, and provides Commonwealth funded protection for workers to cover unpaid wages, annual leave, pay in lieu of notice, redundancy pay and long service leave up to a maximum of \$20,000. The Committee notes, however, that not all accrued entitlements, such as outstanding superannuation contributions, can be paid out to employees through this scheme.⁴⁹

4.51 As discussed in Chapter 2, the Committee also considers it imperative that the level of education of employers be increased to raise awareness of their SG responsibilities in the case of insolvency. Recommendation 2 to increase education for employers and employees in SG is designed to address this.

4.52 The Committee notes that employees are particularly vulnerable to employer non-compliance with the SG as it is unclear whether the employer and/or others can be held legally liable if the employee's insurance cover lapses as a result of late or non-payment of the SG. The Committee is concerned to note that the current SG

49 Department of Employment, Workplace Relations and Small Business, *Employee Entitlements Support Scheme – Year One Activity Report*, January 2001, p. 1.

legislation is not specific in relation to this, and that legal liability may only apply where specific reference is made to insurance cover as part of the employer's SG obligations in either the trust deed, the employer contract or in the industrial award. Although there may be complications with how information is provided and how monies are allocated, the Committee considers that this is an important consumer protection issue and that the legal liability of employers and/or others needs to be clarified and effectively enforced.

Recommendation 8

4.53 The Committee recommends that:

- a) the ATO and APRA clarify the extent to which employers and/or others may be legally liable for employees' insurance cover lapsing due to late or non-payment of the SG; and**
- b) the ATO and APRA act to enforce this.**

Conclusion

4.54 The Committee heard almost unanimous support for a move to more frequent SG payments to address many of the problems arising from SG non-compliance. Industry, consumer and employer groups were mixed in their calls for how frequent payments should be, ie. quarterly or monthly. The main obstacle to monthly reporting was considered to be some concern that this could cause an increase in the compliance burden for small business.

4.55 The Committee also received much evidence on the risks for consumers with the current arrangements, including calls, particularly from consumer groups, for more effective protection for employees subject to loss or erosion of their SG benefits through non-compliance of employers or company insolvency.

4.56 The Committee considered all of this evidence and has recommended an increase in SG payments from annual to quarterly payments, and clarification of the extent to which employers and/or others may be legally liable for employees' insurance cover lapsing due to the late or non-payment of the SG by employers. The Committee also recommended greater enforcement of this by the ATO and APRA.

CHAPTER 5

UNCLAIMED AND LOST SUPERANNUATION ENTITLEMENTS

Introduction

5.1 During the inquiry, the Committee heard evidence about the growing problem of unclaimed and lost superannuation entitlements, and how this impacts on employees, fund administrators and the ATO. The Committee heard which groups are most vulnerable to being separated from their benefits, plus suggested improvements, including ways in which members and benefits can be reunited. This chapter covers a discussion of:

- the *Lost Members Register*: what is it, who is on it, problems identified and suggestions to address these;
- the groups most vulnerable to being separated from their superannuation entitlements – i.e. *overseas and itinerant workers* - why they are vulnerable, identified problems and suggested solutions;
- *unredeemed SG vouchers* – how many are there, why they are growing, particular issues and proposals to address these; and
- the *Superannuation Holding Accounts Reserve (SHAR)* – what it is, identified problems and suggested solutions.

Lost Members Register

5.2 The Committee took evidence relating to the Lost Members Register, including what it is and how it works, concerns expressed at its increasing size, underlying problems and reasons for its growth, the ATO's response to criticisms, and options put forward by witnesses for improvements.

Background

What is the Lost Members Register?

5.3 The ATO manages the Lost Members Register. It is a register of people who have become 'separated' from their superannuation funds. 'Lost' members are those who cannot be contacted or for whom superannuation accounts have remained inactive. The ATO criteria stipulate that superannuation monies are only considered

‘lost’ once the account holder is 65 or more and has not claimed missing superannuation amounts.¹

5.4 Funds that cannot trace a member after two years are required to report the member’s details to the ATO. At this stage, the monies are deemed ‘unclaimed’ and the ATO refers these members to their superannuation fund. While the ATO keeps a list of these monies, the monies stay within the member’s fund earning a rate of return (and paying fees and charges) until such a time as the member is deemed to be ‘lost’.² After this time, the ‘lost’ monies are transferred to the States and held in consolidated revenue.³

How much money is in it?

5.5 The Committee was informed that the amount of funds in the Lost Members Register is considerable, and growing. While the official figure from the ATO at June 2000 was \$4.5 billion, the Australian Consumers’ Association informed the Committee this figure could be as high as \$6.9 billion as at August 2000.⁴

Issues

Too many on Lost Members Register

5.6 The Committee heard that there is much concern at an apparent increase in ‘lost’ members. The Financial Services Consumer Policy Centre informed the Committee that in June 2000, the estimated number of accounts in the Lost Members Register was 3.1 million, out of a total of 16.8 million superannuation accounts in Australia.⁵ This increased from 2.3 million in December 1999.⁶ Within the Lost Members Register, the Committee was told that several of these accounts can belong to the same person.

5.7 The amount of ‘lost’ monies that have been transferred to the States over the past few years has dramatically increased. At July 1998, lost monies in the States were around \$38,439,119; at July 1999, this had increased to \$69, 305,001; and at July 2000, the figure was \$122,758,743.⁷

1 Mark Fenton-Jones, ‘Lost and Found Super Nudges \$4bn’, *Sydney Morning Herald*, 21 June 2000, p. 7 (Money Supplement).

2 Mark Fenton-Jones, ‘Lost and Found Super Nudges \$4bn’, *Sydney Morning Herald*, 21 June 2000, p. 7 (Money Supplement).

3 ‘Super Lost But Not Forgotten’, *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

4 Committee Hansard, p. 677.

5 Submission No. 26, p. 16.

6 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 38.

7 Additional material/correspondence provided by the ATO to update evidence previously provided.

Being 'lost' financially disadvantages the employee

5.8 According to media reports, the average account balance in the register in June 2000 was \$2,000, but account balances were as high as \$100,000. In many cases, reports suggest that lost members might never be reunited with their superannuation funds.⁸

5.9 Even for those 'lost' members who become reunited with their funds, the Committee heard that these people could be financially disadvantaged in the process. For example, while the 'lost' money should actually be earning a rate of return for its member, media reports give examples of the balance of these funds being eroded by fees and insurance cover payments which are made from the account. The Committee was informed that consolidation of multiple 'lost' accounts would minimise this, and would give the fund member more financial control in monitoring their superannuation investment.⁹

Increased work

5.10 The Committee was also informed that lost accounts create administrative problems and unnecessary waste. For example, the growing size of the Lost Members Register creates increased work for the ATO in relation to maintaining the register and matching and reuniting members with their funds. The Committee also learned that the increasing size of the register creates extra work and hassles for superannuation funds. According to media reports, reducing the size of the register should minimise the work of these groups in this regard.¹⁰

Poor data on employees contributes to this

5.11 The Committee heard that one of the factors compounding the growth in the Lost Members Register is the quality of information supplied by employers to superannuation funds when opening an account for a new employee. In its submission to the inquiry, ASFA outlined that many entries to the Lost Members Register arise from fund administrators approaching the employer for additional information only to find that the employee has moved on and the information is no longer available.¹¹

Definition issue

5.12 The definition of who is a 'lost' member and how the register is activated also appears to be part of the problem.¹² ASFA informed the Committee that, under the legislation, no distinction is made between 'inactive' members and 'lost' members.¹³

8 'Super Lost But Not Forgotten', *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

9 'Super Lost But Not Forgotten', *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

10 'Super Lost But Not Forgotten', *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

11 Submission No. 17, pp. 4-5.

12 Committee Hansard, p. 677.

5.13 Mr Damien Hill, Administration Manager with REST Superannuation, noted that while there may be potentially millions of accounts that remain genuinely ‘lost’, there are large numbers of lost members that are simply inactive. In evidence to the Committee, he stated:

You have highlighted the issue of inactive members and that, by legislation, they are considered to be lost when it has certainly been our experience that we know where ... a lot of them are. We send them statements, they read the statements and they give us a call or whatever. They are not lost but, because they are inactive, they are considered to be. We think that is a significant definitional issue with the current legislation.¹⁴

Inaction from ATO and State Governments

5.14 The Committee heard there is a general perception that, beyond maintaining a register of accounts, the ATO and State Governments do little to reunite the superannuation funds with their lost owners once they are ‘lost’. In its evidence to the Committee, NRMA even expressed concern that these funds could be treated as a windfall for the ATO and State Governments, who may be in a better position than the trustee to identify and contact the member concerned.¹⁵

Lack of coordination

5.15 The Financial Services Consumer Policy Centre also commented that there appears to be a lack of coordination across the ATO, industry associations and funds themselves in relation to their separate activities to contact lost account holders.¹⁶

SHAR exacerbates the problem

5.16 ASFA suggested that the presence of the SHAR has exacerbated the growth in the Lost Members Register, as employers have been using the register inappropriately to minimise the information they need to collect for employees. ASFA told the Committee that while the SHAR was designed to be for short term and itinerant employees where contributions are small, many employers use it more generally. This is because there is no penalty for employers providing incomplete information in the SHAR, unlike with the Lost Members Register. According to ASFA, this also means that there is also no incentive for employers to maintain adequate records of their employees.¹⁷

13 Submission No. 17, p. 6.

14 Committee Hansard, p. 69.

15 Submission No. 18, p. 6.

16 Submission No. 26, p. 16.

17 Submission No. 17, p. 5.

ATO response

Concern with growth in lost members

5.17 In evidence to the Committee, the ATO also expressed concern at the size of the Lost Members Register. Mr Leo Bator, Deputy Commission of Taxation, stated during one of the public hearings:

We are concerned that the Lost Member Register is ballooning in terms of the number of people on it, and we feel that superannuation funds need to play a greater part in ensuring that members do not become lost in the first instance.¹⁸

Increasing activity to address this

5.18 The ATO claimed that it is focussing increasing effort to address the problem of lost members through improving the information on the register. This includes the use of Tax File Numbers to identify lost members. According to the ATO, during 1999-2000, legislation was introduced to allow the use of Tax File Numbers for matching purposes to assist in reuniting lost members with their retirement income. In that same year, 29,850 lost members were reunited, compared with 9,700 in the preceding year.¹⁹

Electronic commerce

5.19 The ATO stated that it is also trialing new, innovative methods to provide superannuation funds with access to the Lost Member Register to identify 'lost' members against the new members being received.²⁰ This involves the use of electronic commerce as funds are now provided with electronic access to the Lost Members Register, which enables them to conduct bulk or individual searches on behalf of fund members who may have lost money. In evidence to the Committee, Mr Bator from the ATO stated:

The electronic solution is seen as an effective means of reuniting lost members with their super accounts and will also enable searches to be conducted to identify amounts held for members in SHAR or unredeemed SG vouchers held for members.²¹

Options

Penalties for lack of information

5.20 ASFA suggested increased financial penalties for employers who do not keep a mandated amount of information available about each of their employees. This

18 Committee Hansard, p. 841.

19 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 38.

20 Committee Hansard, p. 841.

21 Committee Hansard, p. 841.

penalty could be equivalent to the SG contribution, with 10 per cent interest that would be available for employees should they be identified through the Lost Members Register. ASFA contended that this should encourage employers to seek adequate information about their employees at the time of engagement, and could have beneficial flow-on effects in the administration of the Social Security Benefits and Income Tax legislation.²²

Annual round up

5.21 The Australian Consumers' Association and Financial Services Consumer Policy Centre recommended an annual round up of lost funds, or other measures to inform consumers of how they can access the superannuation funds that they may have forgotten about. This could also help raise awareness of lost accounts.²³ Suggestions put forward by these groups include developing a high profile event (eg. 'Lost Money Week'), involving a coordinated effort between government agencies, industry and community groups on a regular date each year.²⁴

Increased use of data matching

5.22 REST Superannuation suggested that the ATO increase its activity in relation to data matching through using technologies such as: electronic electoral rolls, electronic white pages and Australia Post redirection information. Cross-matching with the States' births, deaths and marriages figures was also suggested.²⁵ ASFA also recommended greater use of ATO databases, such as the Lost Members Register, by superannuation funds to help funds identify lost members. This would be an extension of the current ATO trials.²⁶

Review reporting requirements

5.23 In evidence to the Committee, ASFA also recommended a review of reporting requirements for employers. The aim of this would be to ensure that only genuine 'lost' member cases (rather than 'inactive' members) are placed on the register.²⁷

More frequent SG contributions

5.24 ASFA also suggested that moving to more frequent Superannuation Guarantee contributions should partly address the lost member issue. Increasing payments should result in an increase in the quality of data that the employer supplies,

22 Submission No. 17, p. 5.

23 Committee Hansard, p. 677.

24 Submission No. 26, p. 16.

25 Submission No. 60, p. 1.

26 Submission No. 17, p. 7.

27 Submission No. 17, pp. 6-7.

as it minimises the situation where the employer is seeking details of an employee after termination of employment some 12 months down the track.²⁸

Committee response

5.25 The Committee considers that the growth of the Lost Members Register is a concern that needs to be addressed. The Committee acknowledges the efforts of the ATO to address this problem through increased use of data matching and electronic commerce. The Committee supports these efforts by the ATO and encourages these activities to continue.

5.26 The Committee also recognises that there is currently a problem in the definition of what constitutes a ‘lost’ member as opposed to simply an ‘inactive’ one. The Committee notes the ATO’s claims that it is addressing this issue and will monitor progress and resolution of this.

5.27 The Committee also believes that an increase in the frequency of SG contributions by employers should facilitate some decrease in the numbers of lost members by improving the quality of information provided by employers (see Recommendation 7).

5.28 On a broader level, the Committee considers that greater coordination is needed across government, industry and employer groups to address the problem of unclaimed monies. This not only relates to the superannuation industry, but also to the banking and insurance industries, where accounts are opened and are forgotten or discontinued. The Committee believes that more information sharing across these groups and greater coordination of effort should address this issue (this is partly addressed by Recommendation 3).

Recommendation 9

5.29 The Committee recommends that the ATO, the Department of the Treasury and the Australian Securities and Investments Commission (ASIC) establish further mechanisms for coordination across government, industry and employer groups to address the problem of unclaimed monies.

Overseas and itinerant workers

5.30 The Committee received evidence relating to overseas and itinerant workers, and how they are particularly affected by the current SG arrangements. Evidence included the current rules and eligibility requirements for these workers, concerns raised by witnesses regarding problems these arrangements cause for overseas workers and their employers, and options raised for improvements.

28 Committee Hansard, p. 63.

Background

Current arrangements - eligibility

5.31 In its submission to the inquiry, officials from the Department of the Treasury outlined the current eligibility requirements for SG contributions. They stated that employers are required to make SG contributions on behalf of non-residents working in Australia. The only exemptions to this are for certain non-resident senior executives, and non-residents who entered Australia to work on the 2000 Olympic and Paralympic Games. Overseas and itinerant workers can cover a range of employees, including backpackers; seasonal workers (such as fruit pickers); and short, medium and long term professional workers, such as executives.

Monies to remain in Australia

5.32 Currently, if an employee does not qualify for an exemption from the SG, Australian employers must make SG contributions on the employee's behalf to an Australian superannuation fund. The accrued superannuation benefit then must remain in an Australian fund until retirement, after the employee's preservation age of between 55 and 60, even if it is only a few hundred dollars.²⁹

Bilateral negotiations

5.33 According to the Department of the Treasury, the Commonwealth Government has entered into bilateral negotiations with several countries to include provisions within social security agreements for exemptions. These exemptions limit employers from making SG contributions on behalf of non-resident employees seconded to Australia where those employees are covered by an equivalent scheme in the other country.

5.34 The Department of the Treasury also noted that formal negotiations have commenced with Austria, Canada, Chile, Croatia, Finland, the Netherlands, Norway, Portugal, Spain, Switzerland and the United States in relation to exemptions. While a number of these negotiations are quite advanced, the Committee was informed that it is not possible to determine when the first successful agreements may be concluded.³⁰

Reciprocal agreements to transfer benefits

5.35 In addition, on 25 June 1997, the Assistant Treasurer announced that the Australian Government would be prepared to enter into bilateral negotiations with other countries to facilitate reciprocal agreements for the transfer of superannuation benefits by non-residents on permanent departure from Australia. However, Australia is yet to be approached by another country.³¹

29 Submission No. 79, p. 3.

30 Submission No. 87, p. 2.

31 Submission No 31 to the Committee's inquiry into term of reference (b), p. 1; Submission No. 87, p. 7.

Issues

Problems for employees – lost accounts

5.36 The Committee heard that the requirement for an employee's accrued superannuation benefit to remain in an Australian fund until retirement can lead to many lost and forgotten accounts for overseas and itinerant employees. This is because these workers may have only worked in Australia for a short period of time, across a number of jobs (eg. seasonal work), and then have returned to their country. In many cases, these employees are unlikely to keep track of their superannuation accounts until maturation, often occurring decades later.³² Issues relating specifically to casual and part time workers are discussed in more detail in Chapter 6.

Monies are inaccessible

5.37 Witnesses argued that, at present, employers of expatriate staff are required to contribute to the Superannuation Guarantee system for those staff but that those monies are then not portable back to their home countries, nor are they available until retirement. Without an express exemption, similar contributions may have to be made by expatriate employees to the Medicare scheme without the contributors becoming eligible to claim.

5.38 As discussed in the Committee's report on term of reference (b) relating to the provision of global financial services, representatives from Broken Hill Pty Ltd (BHP) advised the Committee that:

One of the major issues that BHP has is dealing with retirement plans when employees come to Australia...Due to the operation of Australian income tax, fringe benefits tax and the superannuation guarantee charge laws, Australian companies are compelled to contribute to Australian complying superannuation funds and no foreign superannuation funds in respect of expatriates working in Australia....

... Foreign executives with benefits in Australian complying funds are subject to preservation rules. So if you have an executive coming out here at age 35, working in Australia for eight years and then going back to, say, the US, this is obviously a real problem, because they cannot take their benefits until a minimum age of 55 years...So this is a disincentive for expatriates working in Australia and it complicates the administration of benefits for foreigners who leave Australia.³³

Problem for employers – more costly

5.39 Unless the employee qualifies for one of the exemptions, the Committee was informed that the Australian employer must pay SG into an Australian superannuation

32 Submission No. 79, p. 3.

33 Committee Hansard, pp. 579–80.

fund on behalf of the employee.³⁴ The employer cannot get a deduction for contributions made to the employee's home superannuation fund. In many cases, the employer is also subject to fringe benefits tax on those contributions. Therefore, in many cases it is more costly for an employer to employ overseas workers in terms of superannuation.³⁵

Compliance burden

5.40 The Australian Chamber of Commerce and Industry stated in its submission that most or virtually all of the payments made by employers with respect to short-term residents provide no contribution at all to their retirement incomes. Therefore, employers are incurring substantial labour costs to no end.³⁶

5.41 According to the National Farmers' Federation, the compliance burden for employers of itinerant workers is also greater because an employee can only claim the tax-free threshold from one employer, and if the employee is itinerant, it is sometimes quite difficult to choose that. The burden of compliance also increases when there are a large number of members with small amounts of money, as it is more difficult and costly for the employer to keep track of all of this information.³⁷

Options

Employers contributing to overseas funds

5.42 The Institute of Actuaries of Australia provided a number of suggestions to overcome some of the problems faced by itinerant overseas workers and their Australian employers. The suggestions included:

- allowing tax deductible employer contributions to bona-fide overseas superannuation funds;
- allowing transfers from Australian funds to bona-fide overseas superannuation funds. The Institute suggested that this could be subject to appropriate conditions, such as: the fund being in their country of permanent residence, a permanent departure declaration being completed and a qualifying period of residence applying in relation to the home country;
- widening of the SG exemption criteria; and
- allowing a higher minimum benefit subject to preservation on permanent departure overseas.³⁸

34 Submission No. 79, p. 3.

35 Submission No. 79, p. 3.

36 Submission No. 70, p. 2.

37 Committee Hansard, p. 732.

38 Submission No. 79, p. 3.

Increase portability

5.43 Further suggestions to address these problems were put forward by William M Mercer Pty Ltd.³⁹ These included:

- extending the exemption from Superannuation Guarantee to employers participating in their employer's superannuation fund overseas;
- allowing greater access to preserved benefits for those leaving Australia permanently;
- allowing a longer period in which to transfer an overseas benefit into Australia on a free basis;
- varying the tax treatment on benefits transferred to Australia so that the tax can be met from the benefit itself; and
- allowing greater flexibility to employers to provide superannuation for their overseas employees through an Australian superannuation fund without potentially significant tax penalties on the fund.⁴⁰

Taxation treatment

5.44 Also included in the Committee's report on Australia as a global financial services centre, the International Banks and Securities Association of Australia drew the Committee's attention to the need to address expatriate tax issues 'efficiently and sympathetically'. This is especially with regard to the 'poor management of the SG in respect of expatriates' and the Medicare surcharge.⁴¹

Qualifying period

5.45 The Institute of Actuaries of Australia also suggested that a qualifying period should apply before an employer's obligations to provide contributions for non-residents comes into operation. A period of around one year was suggested.⁴²

Committee response

5.46 The Committee notes the concerns raised by witnesses regarding current superannuation arrangements applying to non-Australian resident itinerant workers, including problems for employees in accessing these monies, and the increased costs and efforts for employers, funds and government agencies to maintain and administer these arrangements.

39 These suggestions are also included in the Committee's report on term of reference (b).

40 Submission No 4, to the Committee's inquiry into term of reference (b), p. 8.

41 Submission No 2, to the Committee's inquiry into term of reference (b), p. 4 and Committee Hansard, p. 206.

42 Submission No. 70, p. 2.

5.47 The Committee notes suggestions put forward by witnesses, including the introduction of a qualifying period before an employer's obligations to provide contributions for non-residents comes into operation. In order to prevent inequities arising whereby foreign workers become cheaper than locals to employ due to different SG requirements, the Committee is hesitant to support this suggestion. Instead, the Committee considers that the Government should investigate further options for reducing the compliance burden for employers as outlined in Chapter 2.

5.48 The Committee notes the action that the Government is currently taking in relation to pursuing exemptions for certain classes of overseas employees from superannuation contribution requirements. The Committee supports this as an appropriate medium-term measure.

5.49 In its inquiry into the Taxation Laws Amendment (Superannuation Contributions) Bill 2000, the Committee found general agreement that the establishment of bilateral and reciprocal agreements for the transfer of superannuation benefits by non-residents on permanent departure from Australia was an appropriate response by Government. However, it was universally acknowledged, including by the ATO, that the process of obtaining these agreements was slow, and that other, or interim, measures might be needed to address these issues in a timely manner.⁴³

5.50 The Committee also notes the Government's efforts to tighten the preservation rules for superannuation funds by closing the option for non-Australian residents to access any superannuation they have accrued in this country on their final departure from Australia.⁴⁴ The Committee is concerned that this action could worsen rather than address the issues raised. The Committee believes that the Government should review its position in relation to this policy, in recognition of the impact this could have on reducing employees' accessibility to these superannuation funds.

Recommendation 10

5.51 The Committee recommends that the Government review the preservation rules for superannuation funds for non-Australian resident itinerant workers, in view of the impact this could have on limiting legitimate access to superannuation monies for those workers departing Australia.

Unredeemed SG vouchers

5.52 The Committee took evidence relating to unredeemed SG vouchers. This included evidence on the process for claiming vouchers and numbers of unclaimed vouchers that currently exist, plus concerns expressed by consumers and industry with the growth in vouchers and the problems this causes. Evidence was also received on

43 See the Senate Select Committee on Superannuation and Financial Services Committee, *Report on the Taxation Laws Amendment (Superannuation Contributions) Bill 2000*, December 2000.

44 Statement by the Hon Peter Costello MP, Treasurer, *Savings: Choice and Incentive*, 13 May 1997, p. 5.

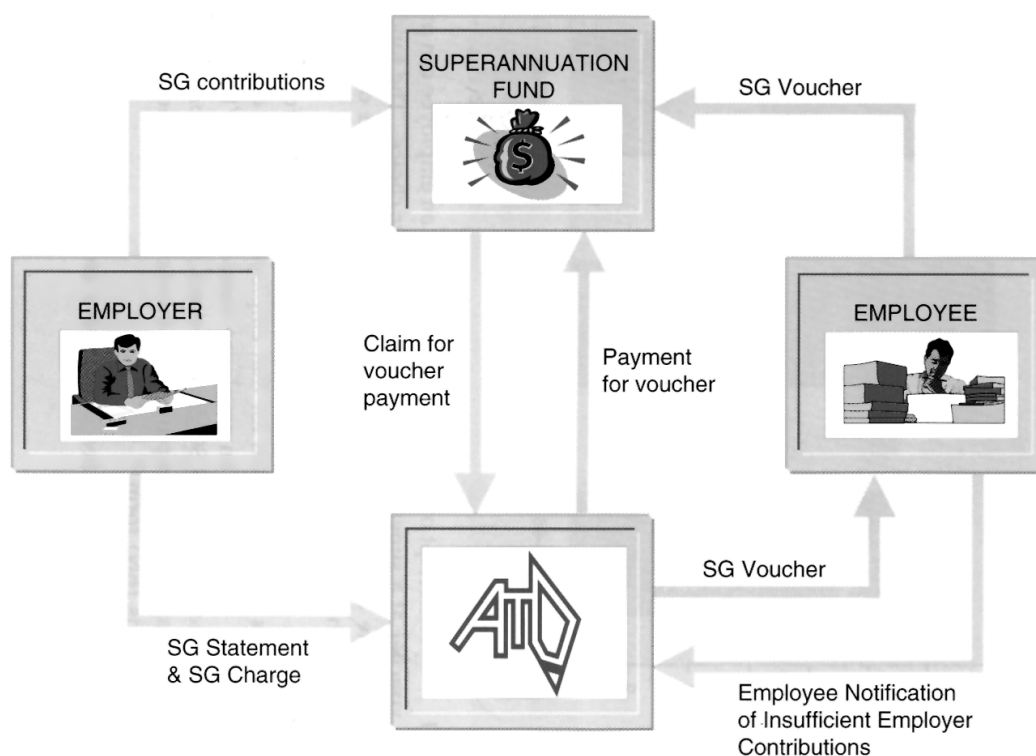
the ATO's response to criticism, and options put forward by witnesses for improvements.

Background

Process – SG vouchers

5.53 The ANAO's audit of the ATO's administration of the SG outlined that, if an employer pays the SGC to the ATO, the ATO forwards to each affected employee a voucher for the amount of SG contributions owed. This includes interest charged at the rate of 10 per cent per annum on contributions owed. Once issued, the employee can redeem the voucher by depositing it with a superannuation fund of their choice.⁴⁵ See **Figure 5** for a flow chart of the SG process.

Figure 5: SG processes



Source: Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 26.

45 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55.

5.54 Under the legislation, IFSA told the Committee that superannuation funds are required to give a statement each half-year of all of the unclaimed benefits being paid out of the fund. The statement is given to the recipient of the unclaimed money – usually the State or Territory where the trustee is incorporated or situated.⁴⁶

Numbers of unredeemed vouchers

5.55 As at 4 April 2001, the number of SG vouchers issued by the ATO totalled 802,766, with a value of \$266 million. At this point in time, the value of unclaimed vouchers was \$96 million (403,273 vouchers), which is equal to approximately 36 per cent of the total value of vouchers issued. The value of claimed vouchers was approximately \$170 million (399,493 vouchers), which is equal to 64 per cent of the total value of vouchers issued.⁴⁷ See **Table 4** for the number and value of unclaimed and claimed SG vouchers since 1992, broken down by year of issue.

Table 4: Unclaimed and claimed SG vouchers by year of issue: 1992-2001 (at 4 April 2001).

Year	Number of unclaimed vouchers	Total value \$	No. of claimed vouchers	Total value of claimed vouchers (\$)
1992	0	0	0	0
1993	477	62,494.04	475	168,544.52
1994	8,734	1,302,341.24	12,203	3,980,678.37
1995	20,030	3,462,559.06	27,649	9,177,095.22
1996	39,654	7,531,228.90	55,659	19,526,823.12
1997	74,414	14,613,682.08	77,215	29,289,822.27
1998	63,949	12,930,625.91	75,844	36,251,408.22
1999	79,269	18,206,890.96	76,180	32,092,478.61
2000	81,354	25,395,822.50	65,643	34,259,170.51
2001	35,392	12,620,115.12	8,625	4,537,557.19
Total to date	403,273	96,125,759.81	399,493	169,283,588.60

Source: Additional material/correspondence provided by the ATO to update evidence previously provided.

46 Submission No. 27, p. 20.

47 Additional material/correspondence provided by the ATO to update evidence previously provided.

Amounts of vouchers

5.56 In October 2000, the ATO claimed that there were about 201,000 unclaimed vouchers for amounts less than \$100.⁴⁸

Issues

Number of vouchers increasing

5.57 The Committee was informed that one of the apparent failings of the SG system is the increasing number of unredeemed superannuation vouchers issued by the ATO. The ANAO audit of SG revealed that the number and total value of unredeemed SG vouchers has increased significantly since the introduction of SG in 1992. According to the ANAO, the cumulative value of outstanding SG vouchers increased by more than 100 per cent each year from 1994-95 to 1997-98.⁴⁹ More recently, the ATO noted a slower increase of 36 per cent from 1998-99 to 1999-2000 (from \$67.4 million to \$92 million).⁵⁰ See **Figure 6** (next page) showing the cumulative increase in unredeemed vouchers in recent years.

Problem for employees

5.58 The Committee heard that the large number of outstanding vouchers is a problem for employees. This is because an employee does not earn interest on the funds associated with a voucher until that voucher is redeemed. Also, if an employee does not redeem the voucher within 10 years, the employee's entitlement to the amount of the voucher lapses.⁵¹

Against government objectives

5.59 The ANAO also stated that a large value of unredeemed SG vouchers impacts negatively on one of the key objectives of SG, that is, to reduce the reliance of individuals on the aged pension to fund their retirement.⁵²

48 Committee Hansard, p. 842.

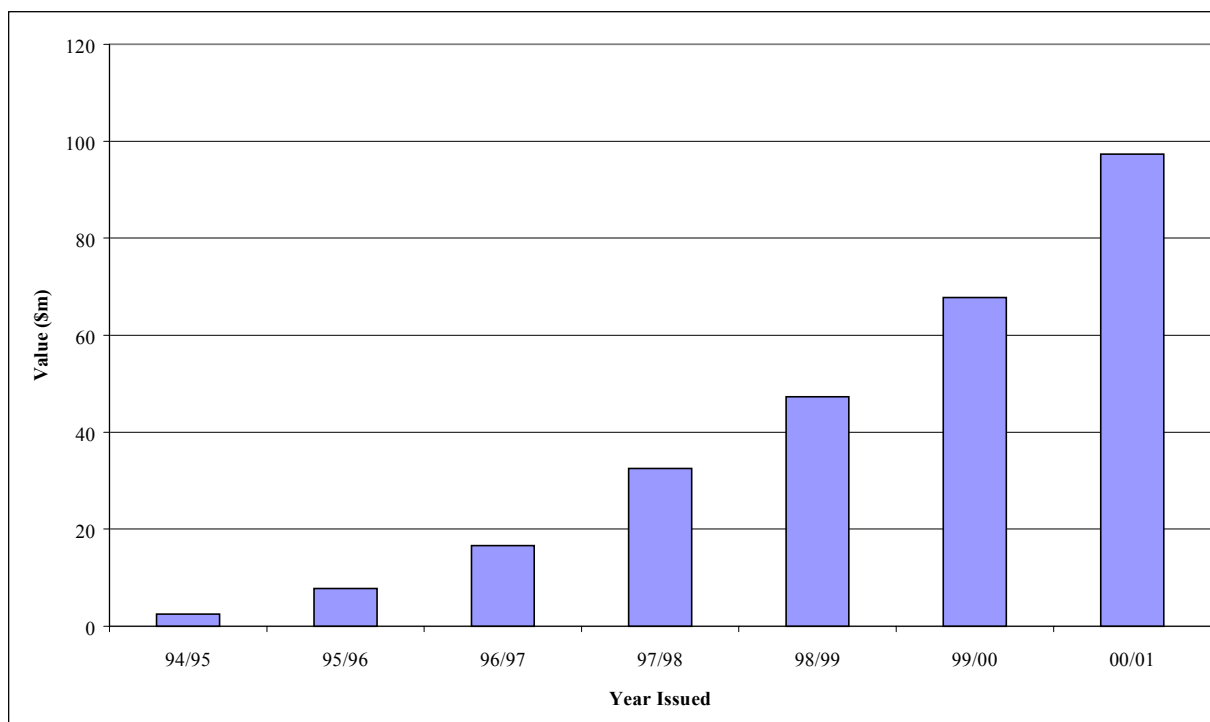
49 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55.

50 Additional material/correspondence provided by the ATO to update evidence previously provided.

51 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55; Submission No. 20, p. 6.

52 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 16.

Figure 6: Cumulative value of unredeemed SG vouchers: 1994-95 to 2000-01 (as at April 2001)



Source: Additional material/correspondence provided by the ATO to update evidence previously provided.

Note: These figures are cumulative, that is the 1995/96 figure includes all vouchers issued prior to 30 June 1996, the 1996/97 figures includes all voucher issued prior to 30 June 1997 and so on.

Lack of understanding

5.60 ATO research in 1996 suggested that one of the main reasons for vouchers being unredeemed was a lack of understanding amongst many voucher recipients. At this time, the ATO found that 50 per cent of voucher recipients were not able to understand either what the voucher represented or what they were to do with it.⁵³

5.61 In evidence to the Committee, CPA Australia agreed that the voucher system is not widely understood and is failing to meet its policy objective of employees receiving the rightful SG entitlements.⁵⁴

No central register of unclaimed benefits

5.62 IFSA expressed some concern that there is currently no central register of unclaimed money amounts that consumers can access. IFSA contended that this

53 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55-56.

54 Submission No. 20, p. 6.

makes it difficult for consumers to locate any unclaimed benefits as records rest with the States and Territories and are not accessible under the member's address.⁵⁵

ATO response

More vouchers being redeemed

5.63 In its summary of SG statistics, the ATO noted a general increase in the value of vouchers being redeemed. As at April 2000, the ATO claimed to have redeemed \$169 million worth of vouchers since 1992. Of this total, \$32 million of the redeemed vouchers related to vouchers issued in the 1999 calendar year. The ATO noted that the value of redeemed vouchers relating to the 1998 calendar year was the highest at \$36 million. This compared with \$29 million redeemed for vouchers issued in 1997, \$19 million for vouchers issued in 1996, and nine million for vouchers issued in 1995. See **Table 4** (following paragraph 5.55) for further detail.

5.64 The ATO drew attention to the fact that the total number of SG vouchers issued has continued to increase each year since the inception of the SG (thus showing that the ATO is collecting the SGC on behalf of employees). According to the ATO, the general increase in redeemed vouchers can be attributed to the public recognising the value of SG vouchers and the importance of contributing to their superannuation.⁵⁶

Measures by ATO to address issue

5.65 The ATO outlined a number of measures it is currently using to reduce the number of unredeemed vouchers. These include matching the Tax File Numbers of unredeemed voucher holders to the surcharge data reported by superannuation funds, and writing to voucher holders advising that they will credit monies to the nominated superannuation account unless advised otherwise. The ATO has also been using electronic commerce options to encourage voucher holders to deposit their vouchers into superannuation funds.⁵⁷

5.66 Other measures outlined by the ATO included amending the information supplied when the voucher is sent to the employee, and sending letters and making phone calls to employees with unredeemed vouchers.⁵⁸ The ANAO noted that, despite the ATO's measures, there has continued to be a significant increase in the value and number of unredeemed vouchers.⁵⁹

55 Submission No. 27, p. 20.

56 <http://assist.ato.gov.au/content.asp?doc=/content/Corporate/taxstats9798.htm> in Submission No. 15, pp. 2-3; and further additional material/correspondence provided by the ATO to update evidence previously provided.

57 Committee Hansard, p. 842.

58 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55-56.

59 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 55-56.

Options

Review of voucher system and transfer of funds

5.67 In its evidence to the Committee, CPA Australia called for a full review of the current voucher system and consideration of alternative mechanisms. This could include granting the Commissioner of Taxation greater discretionary powers to transfer monies into an appropriate superannuation vehicle when an individual has consistently failed to claim a voucher. The ANAO also suggested that the ATO should examine this issue, and included it as a recommendation in its recent audit.⁶⁰ (As previously stated, the ATO supported this.)

Offset lost superannuation entitlements

5.68 An option put forward by the NRMA was that where the ATO cannot find the member/executor for unclaimed funds, the funds should be used to help offset lost employee superannuation entitlements.⁶¹

Data matching

5.69 Another suggestion put forward by the CPA Australia was that greater use of ATO data be made by superannuation funds to match SG vouchers with individuals.⁶² In its evidence to the Committee, the ANAO noted that efficiencies could be achieved through use of other data matching systems or resources, thus enabling superannuation payments to be made directly to the fund as opposed to going through the voucher system.⁶³ The NRMA supported a greater use the Tax File Number system to achieve this.⁶⁴

Central register of unclaimed benefits

5.70 IFSA suggested that the ATO establish and keep a register of all unclaimed benefits including within the States or Territories where benefits are held. The Institute asserted that this should make it easier for consumers to access their own unclaimed benefits.⁶⁵

Reducing the SGC penalty

5.71 ASFA suggested a lessening of the SGC penalty for employers who pay their SG quarterly shortfall to a superannuation fund in the following quarter. By reducing the need for the ATO to receive the employee component of the SGC and thus issue a

60 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 57.

61 Submission No. 18, p. 1

62 Submission No. 20, p. 6.

63 Committee Hansard, p. 646.

64 Submission No. 18, p. 1

65 Submission No. 27, p. 20.

voucher, ASFA considered that ATO administrative costs would be reduced along with future volumes of unclaimed voucher credits and ‘returned unclaimed’ vouchers.⁶⁶

Committee response

5.72 The Committee notes the large number of concerns raised by industry, employers, and consumer groups relating to the growth in unredeemed SG vouchers. The Committee notes that at present, the numbers of vouchers that are unclaimed actually exceed the numbers that are claimed, amounting to in excess of \$96 million in unclaimed monies, or 36 per cent of the total value of vouchers issued. The Committee believes this is unsatisfactory. The Committee notes the many wide-ranging options put forward to address these concerns.

5.73 The Committee believes that a number of the issues relating to unredeemed vouchers tie in with other issues already discussed in this report, and that the recommendations already put forward by the Committee in this report should go some way to addressing this. These recommendations include:

- increased education for employers and employees on SG rights and responsibilities (Recommendation 2);
- a review of SG penalties for employers (Recommendation 1); and
- increased coordination across government, employers and industry (Recommendation 9).

5.74 Specifically addressing the administration of vouchers, the Committee supports a review into the ATO’s SG voucher system. The Committee recognises that the current system is complicated and it not only leads to unclaimed and lost monies for employees, it tends to increase the burden of compliance for employers and funds. The current system also appears to be time and resource intensive for the ATO to maintain.

5.75 The Committee considers that a review of the SG voucher system could also encompass an examination of a number of the options presented above.

Recommendation 11

5.76 The Committee recommends that the ATO and the Department of the Treasury review the current SG voucher system.

SHAR

5.77 The Committee received evidence relating to the Superannuation Holding Accounts Reserve (sometimes referred to as the Small Holding Accounts Reserve),

66 Submission No. 17, p. 4.

including what the SHAR is, concerns with the misuse of and disadvantages with the system, the ATO's response to these concerns, and options for improvement.

Background

What is the SHAR?

5.78 The SHAR is an account that was established by the ATO in 1995 to enable employers to deposit small amounts of superannuation for employees. It collects, on behalf of employees, small contributions from employers who are unable to find a superannuation fund willing to accept their small contribution. According to ASFA in its submission to the inquiry, the SHAR was originally intended to be used by employers of short-term and itinerant employees where there is no certainty of ongoing work and no ongoing employer superannuation contributions.⁶⁷

Monies in SHAR increasing

5.79 The ATO informed the Committee that in October 2000, the current balance of SHAR was around \$46 million.⁶⁸ According to the ATO, this increased by 35 per cent from 1998-99 to 1999-2000.⁶⁹

Intended closure of SHAR

5.80 In its 1997-98 Budget Measures, the Government announced its intention to close the SHAR. In Budget Paper No 2 for that year, it stated:

The introduction of Retirement Savings Accounts (RSAs) from 1 July 1997 will obviate the ongoing need for the Government administered Superannuation Holding Accounts Reserve (SHAR)... The Reserve has not been able to pay out any monies in excess of contributions due to high administrative costs.

5.81 According to this measure, the ATO would continue to administer the SHAR in the short-term to facilitate the transfer of funds from the Reserve to RSAs or directly to contributors where appropriate.⁷⁰

Issues

Employers misusing the SHAR

5.82 The Committee heard that an unintended consequence of the SHAR is that employers have been using it inappropriately. To save themselves effort, some employers appear to be making bulk payments of contributions on behalf of all employees into the SHAR, rather than finding a suitable fund for their employee

67 Submission No. 17, p5.

68 Committee Hansard, p. 841.

69 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 38.

70 The Department of the Treasury, *Budget Paper No. 2: Budget Measures*, 1997, p. 145.

superannuation contributions.⁷¹ Other employers appear to use the SHAR to avoid obtaining employee details, as deposits may be made to the SHAR using minimal employee information.

This disadvantages employees

5.83 Media reports suggest that as a consequence of the SHAR being misused, affected employees are disadvantaged as they receive no interest on the SHAR deposit. They also can quickly lose track of their superannuation entitlements, and they can ultimately lose their entitlements completely by having them transferred to Consolidated Revenue.⁷²

Few penalties and little enforcement by the ATO

5.84 ASFA outlined to the Committee that no significant penalties currently apply for employers who put incomplete information in the SHAR and who do not maintain accurate records. The Committee heard that the only financial penalty occurs with a loss of tax deductions for contributions made in excess of \$1,200 for a single employee in a single financial year. According to ASFA, there is also no real incentive for employers to use the SHAR correctly by finding an appropriate fund for their contributions.⁷³ Although employers using the SHAR are required to sign a declaration that they have unsuccessfully attempted to find a superannuation fund willing to accept their funds, ASFA commented that there is little evidence of the ATO enforcing this rule.⁷⁴

ATO response

ATO strategies

5.85 In order to reduce the balance of funds in the SHAR, the ATO claimed that it has undertaken strategies such as offering help to superannuation funds to match lost members and unclaimed vouchers. This has involved writing to employers who have repeatedly used the SHAR, providing them with a list of superannuation funds willing to accept small amounts and advising them of the advantages of using a superannuation fund versus the SHAR. It has also involved giving funds the ability to search the Lost Members Register, the SHAR database and the unredeemed SG voucher database electronically.⁷⁵

71 'Super Lost But Not Forgotten', *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

72 'Super Lost But Not Forgotten', *Sydney Morning Herald*, 13 September 2000, p. 6 (Money Section).

73 Submission No. 17, p. 5.

74 Submission No. 17, p. 6.

75 Committee Hansard, pp. 841-851.

Limited success in addressing this

5.86 In its evidence to the Committee, the ATO admitted that its efforts to encourage employers to use superannuation providers rather than the SHAR has had limited success to date. It suggested that a major factor in this is that some funds will not accept small contributions.⁷⁶

Options

Introduce administrative surcharge

5.87 ASFA recommended the introduction of an administrative surcharge on employers who use the SHAR system. According to ASFA, this could both assist to reduce inappropriate usage of the SHAR and could fund ATO resources to ensure that there is only appropriate usage.⁷⁷

Closing the SHAR

5.88 As stated above, the Government has announced its intention to close the SHAR to address problems of high administrative costs.

Committee response

5.89 The Committee notes problems currently associated with the SHAR for both employers and employees. The Committee considers that measures need to be taken to address this issue, and the related issues of growth in the Lost Members Register, and the ongoing problem of unredeemed SG vouchers. In the view of the Committee, its recommendations for increased access to data (Recommendation 3) and employer education (Recommendation 2) should go part way to addressing this.

5.90 The Committee notes the Government's reported intention to close the SHAR in the 1997-98 Budget Measures. While the Committee acknowledges that issues with the SHAR need to be addressed, the Committee is concerned that this measure could potentially have unintended consequences, including some change or growth in the Lost Members Register. The Committee would like to see an examination of the impact of closure of the SHAR should the 1997 announcement proceed to legislation, and an examination of the adequacy of alternative deposit accepting facilities for superannuation contributions.

Conclusion

5.91 The Committee heard many concerns from industry, employer and consumer groups relating to the quantum of unclaimed and lost superannuation entitlements. This includes the significant growth in the size of the Lost Members Register, problems for overseas and itinerant workers who are particularly vulnerable to being

76 Australian Taxation Office, *Commissioner of Taxation – Annual Report 1999-2000*, p. 38.

77 Submission No. 17, p. 6.

separated from their superannuation, the growth in unredeemed SG vouchers and the misuse of the SHAR.

5.92 The Committee heard these concerns and noted that a wide range of options have been put forward by witnesses for decreasing the number of unclaimed and lost entitlements. The Committee has made recommendations to address this including: establishing mechanisms for increased coordination between government, industry and employer groups to reunite members with their entitlements, and reviewing the SG voucher system.

CHAPTER 6

EQUITY AND OTHER ISSUES

Introduction

6.1 During the inquiry, the Committee heard evidence relating to the equity of the existing Superannuation Guarantee arrangements, including the groups that are most vulnerable to employer non-compliance, and the different treatments of employees that can occur due to different requirements imposed by industrial awards and federal SG legislation. The Committee also heard evidence relating to other issues such as the definition of an eligible employee and how this affects equity, the adequacy of the SG, and proposals put forward by witnesses for broader superannuation reforms.

6.2 In particular, this chapter covers a discussion of the following:

- *arrangements for older workers* – i.e. current arrangements for this group, why this group is particularly vulnerable, and options for addressing this;
- *impact on casual, part time and non-English speaking employees* – i.e. why these groups are vulnerable and options for improvement;
- *interaction between SG legislation and industrial awards* – i.e. highlighting differences between employer requirements in relation to SG legislation and industrial awards, how this can impact upon equity across employees, and suggestions posed for addressing this;
- *definition of an ‘eligible employee’* – i.e. outlining difficulties with the definition, including how this can create inequities and confusion, plus options for improvement;
- *the adequacy of the SG* – i.e. some discussion of how adequate the current SG system is perceived to be; and
- *broader reforms* – including proposed changes to superannuation that also involve changes to the current tax, insurance and social security systems. This also includes the possible impact of other reform legislation that is currently before Parliament.

Arrangements for older workers

6.3 The Committee received evidence relating to the SG arrangements for older Australians, including what the rules are, concerns to do with equity and flexibility, the Government’s response to concerns, and options for improvement.

Background

Age Limits

6.4 The current rules for SG contributions stipulate that age limits and work tests apply to ensure that superannuation is used in providing for retirement, and not for estate planning purposes. SG contributions must be made if workers are less than 70 years old. Award-related contributions must also be made regardless of the employee's age. Other contributions can be made if a work test of 10 hours per week is satisfied up until the age of 70.

Work test

6.5 APRA stated in Superannuation Circular No.I.A.1 *Contribution and Benefit Accrual Standards for Regulated Superannuation Funds, September 1998* that trustees must be satisfied that the member is gainfully employed for a minimum of 10 hours each week. In this publication, APRA also stated that the trustee of a fund must make reasonable attempts to keep itself informed about the member's ongoing employment status, such as through monthly monitoring. If the trustee cannot ascertain the member's ongoing employment status, APRA's rules stipulate that the member is taken to be not gainfully employed.¹

Cash benefits for over 65s

6.6 The Department of the Treasury outlined in its submission that a superannuation fund must generally cash benefits for a member between 65 and 70 years of age, who is no longer employed for 10 hours per week, or who is a member over 70 years of age and no longer employed for 30 hours per week. However, post age 65, SG and award contributions must remain in the fund until these contributions cease being made or are no longer liable to be paid.²

Government policy – increased age limit

6.7 In a media release issued in May 1999, the Assistant Treasurer, Senator the Hon Rod Kemp, announced that the Government increased the age at which individuals are allowed to contribute to a regulated superannuation fund from 65 to 70 years. Consistent with this, the Government also increased the exemption age for the SG arrangements from 65 to 70 years of age. This was to address the concern that the previous age restrictions on superannuation contributions were unnecessarily restrictive and discriminated against those individuals choosing to remain in the workforce for a few years beyond the normal retiring age.³

1 Submission No. 40, p. 5.

2 Submission No. 87, p. 1; Submission No. 27, p. 18.

3 Speech by Senator the Hon Rod Kemp, Assistant Treasurer, *Government's Approach to Superannuation*, Brisbane, 28 May 1999, p. 3., Internet site:
<http://www.treasurer.gov.au/assistanttreasurer/speeches/atasp12.asp> (accessed 9 March 2001)

Issues

Funds not being paid properly

6.8 The Committee heard that one of the criticisms with the current SG arrangements for older Australians appears to be a lack of cross checking and communication from the employer to the superannuation fund relating to superannuation being paid for these employees. The NFF told the Committee during the inquiry that, while the employer is obligated to report to their fund on a monthly basis, many funds are actually receiving these monies without checking what the employer has done. The NFF told the Committee that there are even instances where employers have paid money on a quarterly basis straight into consolidated revenue, and, according to the Superannuation Guarantee Act, they are perfectly entitled to do so. As a result, the NFF noted that these employees may never receive their entitlements.⁴

Employees missing out on SG

6.9 ASFA told the Committee that there are difficulties with the practical application of the regulation that requires that benefits not be paid for people aged 65 who are working more than 10 hours each week. This is because an increasing number of people in this age group should be covered by SG, but they are not being covered because they are being employed for blocks of time on project or locum work, rather than on a smooth weekly basis. This includes people such as consultants and ministers of religion.

6.10 In his submission to the inquiry, Mr John Teasdale reiterated that individuals caught by these requirements could have their employment flexibility significantly reduced if they want to qualify for SG. He further stated that the requirement for people over the age of 70 to work a minimum of 30 hours per week before they can make superannuation contributions amounts to age discrimination.⁵

Administrative inefficiencies

6.11 Concerns were expressed to the Committee regarding the currently prescriptive requirements that relate to SG entitlements for people over 65. These processes have been claimed to be complicated and time consuming, particularly as they relate to the issuing and collection of SG.⁶ Industry representatives stated that the rules relating to compulsory cashing of benefits for people who have reached age 65 are complex, inequitable, difficult to apply and not suitable for the modern workforce.⁷

4 Committee Hansard, p. 733.

5 Submission No. 24, p. 1.

6 Committee Hansard, p. 825.

7 Submission No. 40, p. 5.

Over monitoring

6.12 William M Mercer Pty Ltd and IFSA suggested that the current level of monthly monitoring that is required by APRA to check the number of hours a week that members over 65 are working is unnecessary.⁸ They claimed that this level of monitoring is not only costly, but also serves to divert trustees from more important issues affecting the management of the fund as a whole.⁹ Witnesses considered that this particular requirement does not improve the security of members' benefits and is unlikely to have a significant impact on government revenue.¹⁰

Monthly monitoring disadvantaging employees

6.13 Not only was monthly monitoring seen to be unnecessary, ASFA told the Committee that this can lead to erroneous determinations that gainful employment had ceased.¹¹ As monthly communication with members is not always possible (due to holidays, changes of address, and so on), trustees can risk redeeming the investment of members who continue to satisfy the legislative requirements for remaining in the fund. This can lead to members faced with the cost of reinvestment, members experiencing gaps in their insurance cover, and trustees forced to redeem members' investment without their instructions.¹²

Danger of forced redundancy

6.14 ASFA informed the Committee that the current rules could lead to coercion from employers to reduce hours of paid work and use retirement savings. As a result, this age group is seen to be vulnerable where 'voluntary' redundancy schemes are used.¹³

Conflict in government policy

6.15 The Committee also heard that, in practice, the current arrangements provide a disincentive for people to defer their retirement. According to ASFA, the age-limit rules work against the Government's declared intention to allow a longer period in which to accumulate an adequate retirement income.¹⁴ William M Mercer Pty Ltd joined ASFA in claiming that the age-limits for SG conflict with other areas of government policy in which deferral of retirement is encouraged.¹⁵

8 Committee Hansard, pp. 91-92.

9 Submission No. 27, p. 19.

10 Submission No. 19, p. 2.

11 Submission No. 27, p. 18.

12 Submission No. 27, p. 19.

13 Submission No. 40, p. 4.

14 Submission No. 40, p. 5.

15 Committee Hansard, p. 826; Submission No. 40, p. 5; Submission No. 19, p. 2.

Government response

Need for balance

6.16 In evidence to the Committee, the Department of the Treasury stated that the public policy rationale for rules limiting contributions after various ages is to achieve a balance to ensure that tax concessions afforded through superannuation have the objective of enhancing retirement incomes and reducing reliance on the age pension. According to the Department of the Treasury, it is government policy that people who are no longer fully in the work force should draw down their superannuation benefits at some stage.¹⁶

6.17 In one of the October hearings, Mr Roger Brake, General Manager of the Retirement and Personal Income Division of the Department of the Treasury stated:

I guess you can debate what the appropriate ages are, but we think it is very important that those rules are in place.¹⁷

APRA rejected criticism

6.18 AMP claimed that APRA has rejected the industry's contentions, on no less than five occasions, that there are problems with the current system of monthly trustee checking. In APRA's defence, IFSA stated that APRA have done as much as they can in terms of flexibility in reading the law by dedicating significant energy, effort and time into examining this issue. Despite this, IFSA informed the Committee that APRA has created a very impractical and costly regime.¹⁸

Response to work test changes

6.19 APRA advised the Committee that it did not see the work test requirements for people over 70 as a matter involving prudential supervision and noted that any changes to the current arrangements would not create any supervisory concerns for APRA.¹⁹

Options

Protective mechanisms

6.20 ASFA suggested that effective protection measures should be examined to stop employers forcing redundancy on 'vulnerable' employees or unfairly reducing the number of hours they work. To address this, ASFA recommended that:

- payment should be in the form of an income stream; and

16 Committee Hansard, pp. 825-826.

17 Committee Hansard, p. 826.

18 Submission No. 31, p. 5.

19 Submission No 88, p. 5.

- the combined superannuation and part time salary should not exceed the full time salary immediately prior to the phasing in period.

6.21 According to ASFA, this should limit the loss of retirement savings and should complement the ability of people over age 65 to continue to make contributions to superannuation funds while in part time employment.²⁰

Less frequent monitoring

6.22 A number of groups suggested that there should be less frequent monitoring of requirements for people over 65.²¹ As part of this, William M Mercer Pty Ltd, AMP and IFSA recommended annual monitoring. These organisations commented that this monitoring could be combined with a requirement that employees notify trustees if their employment ceases. A re-examination of the policy and legislation was also suggested.²²

Partial access to superannuation

6.23 ASFA supported the option of partial access to superannuation for members to support phased retirement over three to five years. This was envisaged to be without undue effect on final superannuation payouts, provided that this was confined to those aged 60 or over. ASFA noted that this would require some amendment to the Superannuation Industry (Supervision) Regulations (SIS), which currently state that a person must be aged at least 55 and retired from the workforce, or retired because of permanent incapacity, to get access to superannuation.²³

6.24 This view was supported by the House of Representatives Standing Committee on Employment, Education and Workplace Relations in its report *Age Counts – an inquiry into issues specific to mature-age workers*. In this report, the Committee examined more flexible options for mature-age workers and recommended amendments to the SIS Regulations to allow workers over 60 to access their superannuation funds as a supplement to reduced wages if they wished to partially retire.²⁴

Tax incentives

6.25 The Australian Chamber of Commerce and Industry suggested that a special tax schedule for people over 65 should be established to provide incentive for them to

20 Submission No. 40, pp. 4-5.

21 Submission No. 19, p. 2.

22 Submission No. 27, p. 19; Submission No. 31, p. 5; Submission No. 19, p. 2; Committee Hansard, pp. 91-92.

23 Submission No. 40, p. 4.

24 House of Representatives Standing Committee on Employment, Education and Workplace Relations, *Age Counts – an inquiry into issues specific to mature-age workers*, June 2000, p. xxvi.

stay in the work force. This would be in addition to retirement income, and would apply to individual's own retirement savings not their government funded benefits.²⁵

Committee response

6.26 The Committee strongly supports equity for all Australians and is concerned that the current superannuation rules appear to disadvantage older Australians by making them more vulnerable to employer SG non-compliance, and by limiting their flexibility to determine the appropriate age for their retirement.

6.27 The Committee feels that the effect of the current arrangements on older Australians is contrary to the intent of a range of legislation at both the Commonwealth and State/Territory levels that aims to protect individuals from age discrimination. The Committee also notes that the Human Rights and Equal Opportunity Commission and the Council on the Ageing have recently called for a strengthening of Commonwealth age discrimination legislation, especially with regard to employment discrimination and superannuation where age limits are set on who can contribute to superannuation funds.²⁶

6.28 The Committee is concerned about the onerous reporting and monitoring requirements applied to employees over 65 years. The Committee believes that the current level of monthly monitoring not only puts an unnecessary administrative burden on business, it disadvantages older employees and reduces their flexibility to remain in the workforce.

6.29 The Committee also has some sympathy for those over 70 who are required to work a minimum of 30 hours per week before they can make superannuation contributions. The Committee believes that contributing to superannuation after the age of 70 should be voluntary. The Committee believes that this should give flexibility to individuals over 70 while at the same time, not create a situation where other fund members could effectively be subsidising the retirement of individuals who may already have received superannuation pay-outs. The Committee recognises that this is a complex area and, while 70 may be a reasonable age limit for compulsory SG contributions at present, the Committee considers that this may need to be reviewed over time.

6.30 The Committee believes that the current system should be made more flexible so that employment need not be a prerequisite for individuals contributing to superannuation. The Committee believes that the work test that currently applies should be examined, with a view to removing the link between employment and superannuation contributions for this age group.

25 Submission No. 70, pp. 4-5.

26 Chris Sidoti, *Launch of Age Matters: A Report on Age Discrimination*, Council on the Ageing, Melbourne, 18 July 2000, Internet site:
http://www.hreoc.gov.au/news_info/speeches/human_rights/sp_15.html (accessed 19 February 2001).

6.31 Given the Government's support for the removal of age discrimination in the work place, including in relation to Commonwealth public sector employment, the Committee considers that some of the current measures that exist in terms of the age limits and work tests in relation to SG are discriminatory and should be removed from the legislation.

Recommendation 12

6.32 The Committee recommends that the current age limits and work tests that apply to SG contributions for individuals under 70 years be removed from the legislation.

Impact on casual, part time and non-English speaking employees

6.33 The Committee took evidence relating to the groups that are most vulnerable to employer non-compliance, including casual, part time and those from Non English Speaking Backgrounds (NESB). This section discusses the situation that applies for these workers, concerns raised, the ATO's response and options suggested.

Background

Increase in casual workforce

6.34 The Committee was also informed that in recent years there has been a significant growth in the casual workforce. Statistics reveal that in 1984, 15.8 per cent of workforce were casuals, and in 1988 it was 17.6 per cent. This rose to 26.1 per cent in 1996 and 26.4 per cent in August 1999.²⁷

Threshold

6.35 The NFF informed the Committee that employers do not have to pay SG for employees earning less than \$450 per month.²⁸ For those earning between \$450 and \$900 per month, the Government's policy is to introduce an 'opting out' measure, enabling employees, with their employer's agreement, to choose to receive wages and salary in lieu of employer SG contributions.²⁹ (The 'opting out' issue is discussed later in the chapter.)

27 Minister for Employment Workplace Relations and Small Business, 'Job Security in Australia', January 2000, in Submission No. 13, p. 30.

28 Committee Hansard, p. 732.

29 Speech by Senator the Hon Rod Kemp, Assistant Treasurer, *The Government's Approach to Superannuation*, Brisbane, 28 May 1999, p. 4, Internet site: <http://www.treasurer.gov.au/assistanttreasurer/speeches/atasp12.asp> (accessed on 17 January 2001).

*Issues*Part time workers vulnerable to non-compliance

6.36 According to the ATO's 1999 survey of SG compliance, the groups of employees most likely to be affected by non-compliance were contractors and part time/casual employees, females and those employed in regional areas.³⁰ Considering the size of this workforce, the IFF suggested that this could amount to a total of tens of millions of dollars in superannuation entitlements that are not getting back to employees.³¹

6.37 According to Mr Peter Armstrong in his submission to the inquiry, this is caused by employers bypassing their SG obligations by entering into quasi-employment relationships with people in low paid positions, and structuring their finances in certain ways to avoid SG and workers' compensation. This includes exploiting the threshold by paying employees \$449 per month instead of \$450.³²

NESB also vulnerable

6.38 The Committee heard that NESB employees who are poorly paid are also very vulnerable to their employer not paying the SG for them. Maurice Blackburn Cashman informed the Committee that many of these employees are concerned that, if they query their employer about their SG entitlements, then they could either lose their job or no longer be given work. In a system where there is a lot of reliance on the employee to report non-compliance to the ATO, many of these workers are ignorant of their entitlement or afraid of coming forward and, therefore, the problem does not come to the attention of the ATO.³³

Some industries more vulnerable

6.39 The Committee was informed that some industries are more affected by this than others. For example, 46 per cent of employees in the retail industry are currently casual employees in comparison with lower rates experienced in other industries, according to REST Superannuation.³⁴

6.40 WA Shearers noted that, in the shearing industry also, it is very common for shearers to have many employers who would be earning over \$450 in aggregate, yet no-one is making SG payments for them. According to this group, there are instances

30 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 71; also see CPA Australia, 'Two Days Left to Pay Super Guarantee Warn CPAs', *CPA Australia Website*, 26 July 2000.

31 Committee Hansard, p. 363.

32 Committee Hansard, p. 48; Submission No. 4, p.1.

33 Committee Hansard, p. 50.

34 Committee Hansard, p. 69.

of employers paying SG for their employees out of moral obligation although they are not technically required to do so.³⁵

Erosion of benefits for multiple accounts

6.41 According to the NFF, employers of casuals often insist on making only one payment for employee superannuation at the end of the financial year, and they do not communicate with employees about exactly how much money is paid or which fund it is being directed to.³⁶ Consequently, young casual workers may have up to a dozen different superannuation accounts. The Committee heard that this disadvantages these employees as they can be subject to large erosion of benefits by fees and charges due to the small amounts in these many accounts.³⁷ It also makes them more vulnerable to the loss of SG entitlements through employer insolvency, and potential loss of disability insurance through non-payment.³⁸

ATO response

Lack of awareness

6.42 The ATO noted that the high-risk cases for SG non-compliance are sometimes those where employers do not understand that they have to pay superannuation for casuals or part time workers. In many of these cases, the Committee heard that these employers think that they do not have to pay if the employees are with them for only two or three weeks.³⁹

Options

Change thresholds

6.43 A number of witnesses recommended a re-examination of the threshold for eligibility for SG. The NFF noted that the 15th report of the then Senate Select Committee on Superannuation, *Super Guarantee: Its Track Record*, recommended that \$450 threshold be lowered, but that the Government at the time did not agree to this. Arguments have also been put forward by the NFF that higher thresholds would reduce the small amounts problem and administrative burden of deducting contributions for lower paid workers, especially itinerant workers.⁴⁰ Another

35 Committee Hansard, p. 717.

36 Mark Fenton-Jones, 'Lost and Found Super Nudges \$4bn', *Sydney Morning Herald*, 21 June 2000, p. 7 (Money Supplement).

37 Submission No. 13, p. 27.

38 'Casual Workers Grown Old, Too' *Superfunds*, February 2001, p. 7; Anne Lampe, 'Keep 'em Honest: Bar None in Super Reform', *Sydney Morning Herald*, 26 July 2000, p. 6 (Money Section).

39 Committee Hansard, p. 847.

40 Submission No. 13, p. 27.

suggestion put to the Committee, by individuals like Mr Peter Armstrong, was that the threshold be removed altogether.⁴¹

Frequency of payments

6.44 As discussed in some detail in Chapter 4, many witnesses suggested that increasing the frequency of Superannuation Guarantee contributions would go some way to addressing this issue.

More education

6.45 As discussed in detail in Chapter 2, increasing the awareness among ‘high risk’ employers and employees of their rights and responsibilities with regard to the SG requirements was suggested as another way of addressing the problems raised.

Committee response

6.46 The Committee recognises that casual, part time and Non English Speaking Background workers are particularly vulnerable to not getting rightful access to their SG. The Committee is also aware that, if anything, this problem is growing, considering the increase in the size of the casual workforce, and the growth in non-compliance with the SG.

6.47 The Committee notes that a number of the recommendations it has put forward in this report should go a considerable way toward addressing particular problems for this group, including increasing the frequency of payments (Recommendation 7) and enhancing employer/employee education (Recommendation 2).

6.48 In addition to these recommendations, the Committee considers that an examination of appropriateness of the current threshold level is needed for workers in established itinerant vocations or professions. The Committee recognises that this issue was raised in an earlier report by a predecessor to this Committee, and that that report recommended a change to the SG threshold from \$450 per month to a quarterly amount of less than \$1,350. This recommendation was not accepted.⁴² It appears that, a number of years later, the issue is still with us. As the Committee does not consider that it has received enough information in this inquiry to indicate what the appropriate level is that the threshold should now be, the Committee calls on the ATO to re-examine the issue.

41 Submission No. 4, p. 1.

42 Senate Select Committee on Superannuation, *Super Guarantee: Its Track Record*, 15th report, February 1995, p. v (Recommendation 6.1).

Recommendation 13

6.49 The Committee recommends that the ATO re-examine the appropriateness of the current threshold level for SG eligibility for established itinerant vocations or professions.

Interaction between SG legislation and industrial awards

6.50 The Committee took evidence relating to the complex interaction between SG legislation and industrial awards. This section looks at the rules that exist; inconsistencies between these requirements and the inequities and confusions this causes; the ATO's response to these concerns; and options for improvement.

Background

History of award superannuation

6.51 In 1985, the Government reached an agreement with Australia's chief labour organisation, the Australian Council of Trade Unions, to seek a universal three per cent contribution for each employee to a superannuation fund in lieu of a general wage increase through the award system. In 1986, the Industrial Relations Commission endorsed this agreement and incorporated this employer mandate into all future labour contracts.⁴³

Superannuation entitlements offered through awards

6.52 Through the *Workplace Relations Act 1996*, the AMWU informed the Committee that the Industrial Relations Commission can now make minimum rates awards governing superannuation.⁴⁴ These awards can be at either the State or Commonwealth level. The inclusion of superannuation entitlements in awards means that an employee, or his or her union, can pursue outstanding SG contributions through a Magistrates Court or a Federal Court.⁴⁵

Often awards are the only mechanism

6.53 In many cases, awards are the only mechanism that employees have to directly pursue recovery of these monies. ACTU commented that if not for awards, employees whose superannuation contributions are not paid must rely on the ATO to pursue the employer, a process that can take a long time, if it happens at all.⁴⁶

43 Daniel Mitchell and Robert O'Quinn, 'Australia's Privatized System: Lessons for the United States', *Backgrounder No. 1149: The Heritage Foundation*, 8 December 1997, Internet site: <http://www.heritage.org/library/categories/regulation/bg1149.html> (accessed 9 March 2001), p. 5.

44 Committee Hansard, p. 58.

45 Submission No. 29, p. 4.

46 Submission No. 29, p. 4.

Issues

Inconsistencies between SG requirements and awards

6.54 The NFF and AMWU informed the Committee that, at present, employers might have different superannuation obligations under Commonwealth SG requirements compared with their own State or Federal industrial awards. These differences include:

- The superannuation fund used: An employer paying superannuation into complying superannuation fund which is not the nominated fund could satisfy the SG legislation requirements but not award requirements.
- Paying the SGC: An employer who pays the SGC instead of the SG contribution may not be discharged from providing superannuation obligations under the award.
- Exemptions: An award could contain exemptions from superannuation coverage for certain types of employees, but these exemptions may not apply for SG purposes. Conversely, the SG may not require contributions for particular employees (e.g. those earning less than \$450 per month) but specific awards may require these contributions.⁴⁷
- SG calculations: Different calculations can be required to determine the employer's superannuation contributions under the SG scheme compared with awards. Under awards, the employee's earnings base is often based on flat dollar amounts compared with a percentage level of earnings that are required under the SG scheme. Also differences can exist with the treatment of overtime between industrial awards and the SG system, namely whether overtime forms part of Ordinary Time Earnings for casuals, thereby being subject to Superannuation Guarantee contributions.⁴⁸
- Timing of payments: The SG scheme currently requires annual SG payments, whereas awards can require more frequent payments, for example, monthly or quarterly.⁴⁹ The ANAO noted that if awards requiring employers to pay their SG contributions monthly or quarterly were removed, an increase in employers paying yearly could be expected.⁵⁰

Differences between State awards

6.55 AMWU highlighted to the Committee the issue of some inequity existing across the States. As many awards are State awards, the Committee heard that regulations can be quite different across the States, for example, the age at which SG

47 Submission No. 13, p. 27.

48 Submission No. 13, pp. 17-18.

49 Submission No. 22, p. 4; Submission No. 13, p. 7.

50 Committee Hansard, p. 649.

contributions should end. REST Superannuation noted that under the SG legislation, employer contributions stop at age 70, but for many awards, there are no age limits on this.⁵¹ This can lead to different outcomes for employees. Because this is an issue, AMWU considered that this problem is likely to exist despite any action that the Commonwealth may take.⁵²

Employers not aware of obligations

6.56 The Committee also heard from the NFF that a number of businesses, particularly small businesses, are not aware that the payment of the SGC does not extinguish the separate civil liability created by award or contract of employment obligations.⁵³

ATO response

ATO aware of complexity

6.57 In evidence to the Committee, the ATO noted that it was aware of concerns regarding the complexity caused by the interaction between SG legislation and industrial awards.⁵⁴

Options

Uniform standards across awards

6.58 REST Superannuation commented that the difference between the States, where different legislation operates, should be addressed as this creates a large disparity in employee entitlements.⁵⁵

Move responsibility to the States

6.59 The NFF suggested that superannuation be removed from the jurisdiction of the federal tribunal and from the industrial tribunals. According to the NFF, the SGC should stand as the sole safety net component of the contract of employment with respect to superannuation.⁵⁶

Retain industrial awards

6.60 AMWU recommended that the network of industrial awards governing superannuation needs be maintained as a further bulwark against employer non-

51 Committee Hansard, p. 76.

52 Committee Hansard, p. 59.

53 Submission No. 13, p. 2.

54 Committee Hansard, p. 835.

55 Committee Hansard, p. 76.

56 Submission No. 13, p. 2.

compliance.⁵⁷ ACTU agreed, stating that the involvement of the Industrial Relations Commission is imperative to ensuring protection of members' interests. This organisation also suggested increased regulation over areas such as disclosure, fees and charges and consumer education.⁵⁸

Increase the rights of unions

6.61 AMWU suggested an augmentation of union rights to enforcing employer superannuation compliance through allowing unions to enter an employer's premises (and other places where employment and superannuation records are kept) to inspect and copy documents and records that pertain to workers' entitlements.⁵⁹ AMWU suggested that union officials and site representatives should be given the right to interview employees regularly so that they can ensure that their entitlements are being met in a timely and correct fashion. According to AMWU, these rights should be set out clearly in relevant legislation, such as the *Workplace Relations Act 1996*.⁶⁰

Committee response

6.62 The Committee notes the complexity of the interaction between State and Federal awards and SG legislation and the problems this creates, including inequities across employees and increased non-compliance, confusion and administrative problems for employers.

6.63 To some extent, the Committee considers that some of the other issues raised by witnesses should be partly addressed through the Committee's recommendations for increased education to employers regarding their SG rights and responsibilities (Recommendation 2), and increased frequency of SG payments (Recommendation 7).

6.64 The Committee supports moves to ensure greater consistency across State and Federal awards, as is currently the case with Corporations Law. The Committee notes, however, that this is a constitutional issue and that awards cannot be simply overridden at the Federal level.

6.65 The Committee notes that there is currently a bill before Parliament, the Workplace Relations and Other Legislation Amendment (Superannuation) Bill 1998. If enacted, this would remove superannuation as an allowable matter from Federal awards. In the bill's second reading speech, the Hon Peter Reith MP stated:

The bill will mean that businesses and employees would no longer be forced to have their superannuation rights and obligations governed by duplicate layers of regulation – the existing layer of regulation created by the award system will be subsumed by rights and obligations under the superannuation

57 Submission No. 22, p. 6.

58 Submission No. 29, p. 4.

59 Submission No. 22, p. 6.

60 Submission No. 22, p. 6.

guarantee legislation. This measure will reduce compliance costs, minimise complexity and simplify administration.⁶¹

6.66 The Committee believes that if this bill goes through, it should work towards achieving greater consistency, thereby simplifying arrangements and addressing inequities across consumers. However, the Committee notes that some rights and protection for consumers in relation to superannuation are currently afforded through industrial awards. The Committee would not like to see the removal of superannuation from awards having a possible negative impact on SG compliance and consumer protection.

6.67 To increase consistency between industrial awards and Federal SG arrangements, including facilitating greater consistency in respect to consumer protection, the Committee supports the development of model rules or guidelines for award conditions. The Committee believes that this could be done irrespective of whether the Workplace Relations and Other Legislation Amendment (Superannuation) Bill goes forward.

Recommendation 14

6.68 The Committee recommends that the Department of the Treasury develop model rules or guidelines for award conditions to facilitate greater consistency between the Federal SG system and awards.

Definition of ‘eligible employee’

6.69 The Committee took evidence relating to the definition of eligibility for SG contributions. This section includes a discussion of the current definition, concerns with this, the ATO’s response to concerns, and options for improvement.

Background

Definition used

6.70 The *Income Tax Assessment Act 1936* outlines that contributions to a superannuation fund are deductible to an employer only if made in respect of an ‘eligible employee’. An ‘employee’ means a person who is employed by an employer, and is neither a resident of Australia engaged in the business of the employer or a non-resident engaged in producing assessable income for the employer.

61 The Hon Peter Reith MP, Minister for Employment, Workplace Relations and Small Business, Workplace Relations and Other Legislation Amendment (Superannuation) Bill 1998 *Second Reading Speech*, Internet site: <http://search.aph.gov.au/search/ParlIn.../Second+reading+speech&action=view&WC>, (accessed 19 February 2001).

The definition of ‘eligible employee’ was recently amended to make it clear that a taxpayer and an eligible employee cannot be the same person.⁶²

6.71 The ATO notes that the legislation was originally designed around employers contributing on the basis of the earnings of an individual employee. The earnings bases were not set out in the original bill but were introduced as a result of negotiations at the time of the passage.⁶³

Issues

Different definitions exist

6.72 CPA Australia noted that the definition of ‘eligible employee’ that exists for SG purposes is significantly different from other operational definitions of ‘employee’ that employers need to consider, for instance, for PAYG purposes. For example, the Committee heard that eligibility for SG is not merely based on being an employee. Certain types of contractors are eligible to receive SG based on the ‘labour component’ of their contract.

6.73 Further, the Committee was informed that certain categories of employees are expressly barred from receiving the SG. These include those employed for domestic or private work for less than 30 hours per week, part time workers under the age of 18 and those earning under \$450 per month.⁶⁴ According to the ANAO, this ‘unique’ and ‘convoluted’ definition of employee creates considerable confusion for employers and can lead to SG non-compliance.⁶⁵

Inconsistent information from the ATO

6.74 In its audit, the ANAO also found that the confusion regarding the definition of an ‘eligible employee’ has been exacerbated by conflicting advice provided by the ATO and its operational staff. While the ATO has issued a number of SG Rulings aimed at clarifying particular aspects of the SG legislation, it appears that there was a period where ATO staff were not using the correct SG ruling as a reference when providing advice to clients. This was found to impact negatively on employer compliance with the SG legislation.⁶⁶

62 Liang P Leow and Shirley Murphy, *2000/2001 Australian Master Superannuation Guide*, CCH Australia Limited, 2000, pp. 139-140.

63 Committee Hansard, p. 835.

64 Submission No. 20, p. 6.

65 Submission No. 20, p. 6.

66 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, p. 61.

*ATO response*Response to ANAO

6.75 In response to the ANAO's criticism that ATO staff had been providing incorrect advice on the definition of an eligible employee for SG purposes, the ATO stated that this was not a widespread problem, and that it has taken measures to address this.⁶⁷

*Options*Re-examine definition

6.76 CPA Australia recommended that a simplified and fairer definition of SG eligibility should be developed that is easy for employers to comply with, and more closely aligned to definitions of employee used in income tax and related law. CPA Australia suggested that this could involve extending coverage of the SG to currently exempt employees, such as part-timers under the age of 18, certain contractors and those earning under \$450 per month.⁶⁸

ATO addressing this

6.77 In response to this, the ATO stated that its Superannuation Business Line is currently developing a new ruling on who is an employee for Superannuation Guarantee purposes.⁶⁹

Committee response

6.78 The Committee understands that the current definition of 'eligible employee' not only causes confusion for employers, but inequities across consumers in attaining their superannuation contributions.

6.79 The Committee agrees with suggestions put forward during the inquiry that this definition should be re-examined. The Committee notes that the ATO claims to be addressing this issue. The Committee intends to monitor progress on this to ensure that a satisfactory resolution is reached.

Notional earnings base

6.80 Although it was not an issue specifically raised by witnesses during the inquiry, the Committee considered the issues surrounding the notional earnings base, and how this relates to SG. This section discusses the background, concerns, and options to this issue.

67 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office*, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit, pp. 61-62.

68 Submission No. 20, p. 6.

69 Committee Hansard, p. 841.

Background

What is the notional earnings base?

6.81 The minimum level of employer superannuation support under the *Superannuation Guarantee (Administration) Act 1992* is calculated as a percentage of an employee's notional earnings base. The employee's notional earnings base is the amount of earnings of the employee. The relevant notional earnings base is usually specified in the superannuation fund trust deed; a law of the Commonwealth, a State or Territory; an industrial award; or a workplace agreement.

6.82 The earnings base of an employee for Superannuation Guarantee purposes depends on a number of factors. These include whether the employer was contributing to a superannuation fund for employees in accordance with a law of the Commonwealth, a State or a Territory, or under an industrial award, occupational superannuation arrangement or superannuation schemes immediately before 21 August 1991.

Definitions

6.83 For the purpose of the legislation, an industrial award is an industrial award or determination made under a law of the Commonwealth, a State or Territory, or an industrial agreement approved or registered under such a law. An occupational superannuation arrangement means any arrangement which imposes an obligation on an employer to provide superannuation support for an employee (e.g. an employment contract), and a superannuation scheme means a scheme covered by the governing rules of a superannuation fund or a defined benefit superannuation scheme.

How the notional earnings base is calculated

6.84 An employee's notional earnings base under the *Superannuation Guarantee (Administration) Act 1992* is generally the higher of:

- ordinary time earnings; and
- the measure of earnings of the employee used in an award, law, occupational superannuation arrangement or superannuation scheme under which the employer's superannuation obligation is determined.

It should be noted that ordinary time earnings does not currently include overtime or commission payments.

6.85 However, employers who were using a lower measure under an existing obligation immediately before 21 August 1991, when the Superannuation Guarantee regime was announced, may be able to continue to use that base.

Effect of this situation

6.86 The effect of the current rules is that an earnings base which is less than ordinary time earnings is acceptable for Superannuation Guarantee purposes only if:

- it is specified in an award; or
- the employer was contributing for any employee on that base immediately before 21 August 1991 and the base has not since been reduced; or
- it is specified in a law which was operative before 21 August 1991, and the base has not since been reduced; or
- the employer is contributing in accordance with the agreement referred to in Order No 292 of 1992 of the Coal Industry Tribunal of NSW or is contributing to the Seafarers' Retirement Fund, and the base has not since been reduced.

Issues

Employee losing entitlements

6.87 The Committee understands that the ability of an employer to use an earnings base that is less than ordinary times earnings can be a cause for concern, as the employee covered by this provision receives a level of superannuation support lower than would have ordinarily occurred. This can result in that employee receiving a lower superannuation entitlement on retirement.

6.88 The Committee also understands that this arrangement may seem highly inequitable, particularly where the employee commenced working after 21 August 1991. For example, why should that employee have a reduced superannuation entitlement due to an operation of arrangement that commenced prior to them commencing work?

6.89 This arrangement can also be seen as inappropriate now that nearly 10 years have progressed since this provision was enacted. Questions have been asked, such as for how much longer will employees affected by this provision be receiving lower superannuation contributions as a result?

Problems for employers and the ATO

6.90 Finally, the Committee was informed that the fact that different earnings bases (essentially definitions of income) apply to different people can make compliance very difficult for both employers and the ATO.

ATO response

Origin of earnings bases

6.91 In evidence given at one of the public hearings, Mr Leo Bator, Deputy Commissioner of Taxation, stated:

I noted from reading some of the earlier reports to this committee that the legislation was originally designed around employers contributing on the basis of the earnings of an individual employee. The earnings bases set out

in the legislation were not in the original bill but were introduced as a result of negotiations at the time of its passage.⁷⁰

Options

Amend the legislation

6.92 One option that could be considered is whether the *Superannuation Guarantee (Administration) Act 1992* could be amended so that ordinary time earnings is the notional earnings base, thereby abolishing the retention of pre 21 August 1991 notional earnings bases. The Committee understands that this proposal may be opposed by employers that support current arrangements who would have higher superannuation liabilities as a consequence of moving earnings bases to ordinary times earnings.

Phase in previous earnings bases

6.93 Another option that could be considered is to phase out over, for example, three to five years, the pre 21 August 1991 earnings bases. It should be noted though that this could further complicate the *Superannuation Guarantee (Administration) Act 1992*.

Committee response

6.94 The Committee is aware of the rationale for having pre 21 August 1991 notional earnings bases. This issue was covered in some detail in a report by the Committee, *Super Guarantee Bills*, Second Report of the Senate Select Committee on Superannuation.⁷¹

6.95 Nonetheless, the Committee considers that the time has come when the usefulness of this provision has to be questioned. This is particularly in light of its negative impact on the fund member's superannuation entitlement at retirement, and the compliance burden on employers and the ATO in determining whether a particular employee will be covered by a pre 21 August 1991 notional earnings base. As a result, the Committee considers that the pre 21 August 1991 notional earnings bases should be removed.

6.96 The Committee understands that employees in certain industries, such as mining, receive lower SG employer contributions because their income is based on the pre 21 August 1991 level. With the introduction of the superannuation surcharge, it is an anomalous situation that these employees are being assessed for the surcharge without receiving SG on their ordinary time earnings.

70 Committee Hansard, p. 835.

71 Senate Select Committee on Superannuation, *Super Guarantee Bills*, Second Report, AGPS, Canberra, 1992, see especially pp. 76–77.

6.97 The Committee also understands that, in some industries, such as car and real estate sales, where a substantial proportion of earnings is derived from commission on sales, SG is not always paid on this portion of their income. This is despite the legitimate belief that such commission income is part of ordinary time earnings.

Recommendation 15

6.98 The Committee recommends that the pre 21 August 1991 notional earnings bases be removed from the *Superannuation (Guarantee) Administration Act 1992*.

Recommendation 16

6.99 The Committee recommends that for SG purposes, the notional earnings base, where there is an employer/employee relationship, should include income derived from commissions.

Adequacy of the SG

6.100 Although not directly associated with administration or enforcement of the SG, the Committee received evidence relating to the adequacy of the current SG level. This section looks at the adequacy debate, including background to the issues, concerns raised and options posed.

Background

Current level of SG contributions

6.101 As outlined in Chapter 1, the current level of SG contributions is calculated at eight per cent of an employee's notional earnings base. This has risen in recent years and is set to rise again, to nine per cent, for 2002-03.⁷²

Issues

Elements of the adequate debate

6.102 According to the Australian Retirement Funds' Chief Executive, there are four elements in the adequacy debate, as reported in the media. These are: whether the age pension should be retained; that nine per cent contributions are not enough; that any increase in contributions must be compulsory; and that Australia should 'bite the bullet' on this issue as soon as possible.⁷³

72 Australian National Audit Office, *Superannuation Guarantee – The Australian Taxation Office, The Auditor- General Audit Report No. 16: 1999-2000 Performance Audit*, p. 23; Australian Taxation Office, 'Employers Should Act Now on Superannuation Guarantee, *ATO Media Release – Nat 2000/86*, 25 July 2000.

73 Barrie Dunstan, 'Uncertainty Hanging Over Super', *The Australian Financial Review*, 30 March 2000, p. 33.

6.103 Media reports have suggested that underlying the adequacy debate is some uncertainty of investment market returns in the future after a decade or more of double-digit returns. These reports have indicated that any long term projections of superannuation funds' assets available to finance future retirement incomes depend largely on the underlying assumptions of investment returns as well as rates of contribution.⁷⁴

SG level not enough

6.104 In reports to the media, ASFA has estimated that an individual on annual weekly earnings who relies solely on Superannuation Guarantee contributions, and who works for 30 years, would retire with an income of only \$19,000 per year. By way of comparison, as at November 2000, full time adult ordinary time earnings (seasonally adjusted) were \$41,631 per year, or \$44,278 for males and \$37,346 for females.⁷⁵ According to Ms Philippa Smith, ASFA's Chief Executive:

The level of adequacy [of superannuation savings] may itself vary with income, longevity, ability to stay in the workforce and a range of other factors, but it is widely agreed that 9 per cent [superannuation guarantee] is not enough.⁷⁶

6.105 In line with this, a recent national survey by Plum Financial Services has revealed that over half of survey participants were concerned that they were not financially prepared for their retirement.⁷⁷

People opting for early retirement

6.106 There have also been suggestions that because of inadequacies of superannuation incomes upon retirement, people may be opting out of self-funded retirement and investment through superannuation. Economists point out that Australia has suffered the largest fall in the employment rate of males aged 55-59 of any country in the Organisation for Economic Cooperation and Development (OECD). According to media reports, this suggests that households are tailoring their affairs to qualify for the pension.⁷⁸

74 Barrie Dunstan, 'Uncertainty Hanging Over Super', *The Australian Financial Review*, 30 March 2000, p. 33.

75 Australian Bureau of Statistics, *Average Weekly Earnings*, Catalogue No. 6301.0, November 2000.

76 Reported in John Breusch, 'Super priority 'Should Be on What is Sufficient'', *The Australian Financial Review*, 24 March 2000, p. 72.

77 'Australians Are Still Super Dumb', *SuperReview*, February 2001, p. 8.

78 Alan Mitchell and Paul Cleary, 'We May Invest, But We Don't Save', *The Australian Financial Review*, 25 July 2000, p. 3.

Options

Higher contribution levels

6.107 ASFA has recommended that superannuation contributions should be raised to up to 15 per cent. Chief Executive, Ms Phillippa Smith, has stated that a superannuation level of 15 per cent would more adequately allow for a self-reliant retirement, while 12 per cent would make retirement more tolerable. In media reports, ASFA has called for a bipartisan approach to superannuation legislation changes.⁷⁹

6.108 Similarly, the ACTU has supported increasing employer-funded superannuation contributions for workers to 15 per cent, or around double the present minimum. In media reports, Mr Greg Combet, the ACTU Secretary, acknowledged that any move to a 15 per cent employer contribution was a long-term campaign.⁸⁰ Former Prime Minister, Mr Paul Keating, also supported a rise in contributions to 15 per cent at a conference of major superannuation funds in March 2000.⁸¹ In 1995, there was a proposal for employee co-contribution comprising three per cent government and three per cent employee contribution. This was abandoned in 1997.

Remove contribution tax

6.109 In a recent newspaper article, ASFA suggested that one way of improving adequacy would be to remove the 15 per cent contribution tax, which would add a \$55,000 lump sum or \$2,500 a year in retirement income for someone on average weekly earnings.⁸²

Committee response

6.110 The Committee notes that there are many concerns in the community regarding the adequacy of SG contributions. As this issue is intrinsic to the whole issue of Australia's retirement income policy, it is beyond the role of the Committee to present a view on this issue within this report.

6.111 The Committee notes that the Commonwealth Government has recently asked the Productivity Commission to start a scheduled national competition policy review of the Superannuation Industry (Supervision) Act and related legislation.⁸³ The Committee considers that the adequacy of the SG is one issue that could be examined by the Productivity Commission in that context.

79 John Stensholt, 'Call to Boost Super Payments', *The Australian Financial Review*, 7 March 2000, p. 10.

80 Stephen Long and Chelsey Martin, 'Unions Want Employer Super Doubled', *The Australian Financial Review*, 28 June 2000, p. 8.

81 Barrie Dunstan, 'Kemp Backs 9pc Super Target', *The Australian Financial Review*, 30 March 2000, p. 6; 'Labor is Super's Only Hope, Says Keating', *The Australian Financial Review*, 28 March 2000, p. 10.

82 Barrie Dunstan, 'ASFA Warns of Aged 'Underclass'', *Australian Financial Review*, 22 February 2001, p. 29.

83 Barrie Dunstan, 'Super Review Ordered', *Australian Financial Review*, 9 February 2001, p. 59.

Broader reforms

6.112 The Committee is also aware that any reforms to the SG arrangements need to be seen in the context of broader reform of superannuation. Evidence was received on the impact of proposed legislative change to the current SG arrangements and suggested improvements to these arrangements. These issues are discussed in this section.

Options

Taxation reform

6.113 In its submission to the inquiry, the NFF called for broader taxation incentives linked to superannuation, including providing tax incentives to employers for complying with superannuation requirements.⁸⁴ The NFF argued that the superannuation system should be simplified by moving the levying of taxation to the benefit stage only.

6.114 According to the NFF, the current rules are confusing as they mean that superannuation is taxed at the contribution stage, the entity stage and the benefit stage with inconsistent taxation policy being applied at all three levels. The NFF asserted that having taxation regimes apply to the SGC and the termination payments surcharge adds so much complexity to the arrangements that superannuation funds must now spend up to five per cent of their income to simply prepare their income taxation returns in accordance with the law.⁸⁵

6.115 According to Mr Richard Calver, Director of Industrial Relations with the National Farmers' Federation:

... the entire structure of the taxation of superannuation should be overhauled. The principal change in superannuation taxation should be to tax only benefits so those income streams are favoured over lump sums. This change in focus should not increase the overall taxation burden of superannuation because of the clear link between properly targeted tax concessions and self-sufficiency in retirement.⁸⁶

Increase SG contributions through less tax

6.116 One of the options put forward by ASFA was that Government should abolish the 15 per cent contributions tax in exchange for employees contributing a further one per cent of their salary to superannuation. The NFF expressed concern with this suggestion, noting that it may have problems in terms of constitutionality (i.e. how

84 Submission No. 13, p. 22.

85 Richard Calver, 'Superannuation: Drowning not Waving', *Reform*, Spring 2000, p. 8 (tabled by the NFF at the Committee's 16 October 2000 hearing).

86 Richard Calver, 'Superannuation: Drowning not Waving', *Reform*, Spring 2000, p. 8. (tabled by the NFF at the Committee's 16 October 2000 hearing).

employees could be required to produce the monies) and equity (i.e. this may not benefit everyone in the same way).⁸⁷

Reforms linked to health insurance

6.117 In his individual submission to the inquiry, Mr Greg Lisk, suggested that health insurance and superannuation savings systems should be more closely intertwined. He stated that the features of such a savings and investment system could include:

- compulsory employee-funded superannuation health contributions made to complying superannuation funds, with employees being entitled to make additional voluntary contributions;
- superannuation health contributions would be free of income, contribution and contribution surcharge tax;
- a discrete superannuation health account would be opened for each superannuation plan member and would be invested in the normal manner by each superannuation plan;
- each member's superannuation health account balance would be preserved until death, after which time, the account balance would be transferred to immediate family members' accounts; and
- at any stage, the employee would be able to cash all or part of their superannuation health account balance to purchase approved services, provided by approved service providers.

6.118 Mr Lisk asserted that such a system would be important to inject consumer price pressure into the provision of health services, and would empower Australians by providing them with a choice as to what type and level of health services they wish to purchase.⁸⁸

Impact of other legislation

Choice of fund

6.119 Legislation is currently before Parliament to provide consumers with choice of superannuation fund. The bill, entitled Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998, was passed by the House of Representatives in February 1999 and is currently subject to further debate in the Senate. In light of this proposed legislation, the IFF highlighted the need to consider the timing of SGC reforms to ensure that they are effective if introduced.

87 Committee Hansard, p. 737.

88 Submission No. 62, pp. 2-3.

6.120 As highlighted in an earlier chapter of this report, the IFF considered that any legislative changes to increase the frequency of SG payments should be introduced before any Choice of Fund legislation is introduced. This is to ensure that employers do not use the Choice of Fund legislation as a device to circumvent their SGC obligations.⁸⁹

Opting out

6.121 As discussed earlier in the report, the Government is in the process of introducing an 'opting out' measure for employees earning between \$450 and \$900 per month (or \$1,800 over two months where the person is under 18 years of age). This measure would enable employees, with their employer's agreement, to choose to receive wages and salary in lieu of employer SG contributions.⁹⁰ Under this proposal, employees would be able to negotiate with their employer to opt out of SG arrangements on commencement of employment or once annually thereafter. Employees would be able to opt back into superannuation arrangements at any time and any decision to opt out must be initiated by the employee.⁹¹

6.122 During the inquiry, WA Shearers commented that this policy would defeat the objectives of occupational superannuation, which are to reduce the burden on the Australian taxpayers by increasing the number of self-funded or partly self-funded retirees.⁹² The NFF claimed it would only support for this policy on the proviso that it did not increase the administrative burden for small business.⁹³

Committee response

6.123 The Committee notes that there are a number of suggestions that have been raised for reforming aspects of Australia's superannuation system. Although the proposed reforms are broader than the SG issues that the Committee is covering in this report, the Committee considers that an examination of these broader issues is important and should occur.

6.124 In the Committee's view, the Productivity Commission's review into the Superannuation Industry Supervision Act and related legislation should include an examination of these broader reforms.

89 Submission No. 5, p. 3.

90 Speech by the Hon Rod Kemp, Assistant Treasurer, *The Government's Approach to Superannuation*, Brisbane, 28 May 1999, p. 4, at <http://www.treasurer.gov.au/assistanttreasurer/speeches/atasp12.asp> (accessed on 17 January 2001).

91 The Hon Peter Costello MP, Treasurer, *Savings: Choice and Incentive*, Australian Government Printing Service, 13 May 1997, p. 26.

92 Submission No. 14, p. 3.

93 Submission No. 13, p. 4.

Conclusion

6.125 The Committee heard many concerns about inequities that arise from the current SG arrangements, including loss of SG entitlements for older working Australians and for casual, part time and Non English Speaking Background workers due to the exploitation of loopholes or over-prescription of requirements. The Committee also heard about inequity created by the interaction of SG requirements and industrial awards. Definitional anomalies regarding those who are eligible for SG and on what basis the SG should be calculated were also raised as problems.

6.126 Industry and employer groups also spoke on the adequacy of the SG and concerns that the present contribution level may not be high enough. Many options for broader reforms of aspects of Australia's superannuation system, including the impact of proposed legislation on current arrangements, were also brought forward to the Committee.

6.127 The Committee considered all of the evidence and has made a number of recommendations, including: removing the age limits and work tests that apply to SG contributions; examining the appropriateness of the SG eligibility threshold; developing model rules or guidelines for award conditions; removing the pre-21 August 1991 notional earnings bases from SG legislation; and including income derived from commissions in the notional earnings base for SG purposes.

Senator John Watson
Committee Chair

APPENDIX 1

SUBMISSIONS RECEIVED

1. Mr Peter Williams, WA
2. Mrs Patricia A. King, NSW
3. Mr Dan Scheiwe, Queensland University of Technology, QLD
4. Mr Peter Armstrong, VIC
5. Industry Funds Forum (IFF)
6. Australian Consumers' Association (ACA)
7. Australian Taxation Office (ATO)
8. The Institute of Chartered Accountants in Australia
9. Mr Jeremy Porteus, WA
10. Care Incorporated, Financial Counselling and Consumer Credit Legal Service
11. Australian Securities and Investments Commission (ASIC)
12. Consumer Credit Legal Service Inc
13. National Farmers' Federation (NFF)
14. WA Shearing Contractors Association (Inc)
15. NFF (Supplementary Submission)
16. Australian Association of Permanent Building Societies
17. Association of Superannuation Funds of Australia (ASFA)
18. NRMA
19. William M. Mercer Pty Ltd
20. Australian Society of Certified Practising Accountants (Now CPA Australia)
21. Ms Fiona Ogilvy-O'Donnell, VIC
22. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU)

23. Australian Prudential Regulation Authority (APRA)
24. Mr John Teasdale, SA
25. Council of Small Business Organisations of Australia Ltd (COSBOA)
26. Financial Services Consumer Policy Centre (FSCPC)
27. Investment & Financial Services Association (IFSA)
28. Phillips Fox Actuaries and Consultants
29. Australian Council of Trade Unions (ACTU)
30. Institutional Analysis Pty Ltd
31. AMP
32. Corporate Super Association
33. Process Pack Pty Ltd
34. Goodman Fielder Limited
35. Mr Shawn Fracchia, ACT
36. Westpac Banking Corporation
37. Puzzle Financial Advice P/L
38. Towers Perrin
39. AMWU (Supplementary Submission)
40. ASFA (Supplementary Submission)
41. Mr Shawn Fracchia, ACT (Supplementary Submission)
42. Queensland Furnishing Industry Superannuation Trust (QFIST)
43. Mr Geoffrey Heaton, QLD
44. Association of Independent Retirees Inc, SA
45. Industry Fund Services Pty Ltd
46. Puzzle Finance Advice P/L (Supplementary Submission)
47. Mr Gary Lanham, Minter Ellison, QLD
48. Ms Carmel Reading, QLD

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49. Institute of Actuaries of Australia
 50. Tasplan Super
 51. The Institute of Chartered Accountants in Australia (Supplementary Submission)
 52. ACTU (Supplementary Submission)
 53. De Santis Management Agency
 54. Australian Conservation Foundation
 55. Puzzle Finance Advice P/L (Supplementary Submission)
 56. Ms Carmel Reading, QLD (Supplementary Submission)
 57. Mr Pat Hannan, QLD
 58. IFF (Supplementary Submission)
 59. Towers Perrin (Supplementary Submission)
 60. REST Superannuation
 61. Tasplan Super (Supplementary Submission)
 62. Mr Greg Lisk, NSW
 63. Deloitte Touche Tohmatsu
 64. ASFA (Supplementary Submission)
 65. Phillips Fox, Actuaries and Consultants (Supplementary Submission)
 66. Insurance Council of Australia Ltd (ICA)
 67. Hotel Motel & Accommodation Association of Queensland (HMAA Queensland)
 68. Confidential
 69. Confidential
 70. Australian Chamber of Commerce and Industry
 71. Confidential
 72. Financial Planning Association of Australia Ltd (FPA)
 73. APRA (Supplementary Submission)

74. First Samuel Limited
75. ATO (Supplementary Submission)
76. Department of the Treasury
77. The Institute of Chartered Accountants in Australia (Supplementary Submission)
78. Investment Initiative
79. Institute of Actuaries (Supplementary Submission)
80. Australian National Audit Office (ANAO)
81. Superannuation Complaints Tribunal
82. ACA (Supplementary Submission)
83. Confidential
84. Confidential
85. Mr Daryl Dixon, Writer and Consultant, ACT
86. Association of Financial Advisers
87. Department of the Treasury (Supplementary Submission)
88. APRA (Supplementary Submission)
89. Law Employees Superannuation Fund (LESF)
90. APRA (Supplementary Submission)
91. ASIC (Supplementary Submission)
92. Australian Competition & Consumer Commission
93. ATO (Supplementary Submission)
94. Confidential
95. Confidential

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT PUBLIC HEARINGS

Monday, 15 May 2000, Sydney

Australian Mutual Provident Society Ltd

Mr Kevin Casey, Senior Strategy and Technical Adviser
Mr Gerald Naughton, Senior Investment Manager

Association of Superannuation Funds of Australia

Dr Michaela Anderson, Director, Policy and Research
Ms Philippa Smith, Chief Executive Director

Financial Services Consumer Policy Centre

Mr John Berrill, Partner Superannuation, Martin Blackburn Cashman
Mr Chris Connolly, Director
Mr Khaldoun Hajaj, Researcher

Australian, Food, Metals, Engineering Printing and Kindred Industries Union

Mr Barry Terzic, National Research Officer

Retail Employees Superannuation Trust

Mr Damian Hill, Administration Manager
Mr Elliott Sabbah, Operations Manager

Phillips Fox Actuaries and Consultants

Mr Michael Rice, Managing Director

Investment and Financial Services Association

Miss Lynn Ralph, Chief Executive Officer
Ms Annabelle Kline, Senior Policy Manager

Tuesday, 16 May 2000, Sydney

Australian Stock Exchange

Ms Rosemary Kennedy, National Manager, Interest Rates Markets
Mr Michael Roche, Executive General Manager, Strategic Planning and
Corporate Relations

Australian Centre for Global Finance, Treasury

Mr Leslie Hosking, Chief Executive Officer
Miss Maryanne Mrakovic, General Manager

Australian Financial Markets Association

Mr Kenton Farrow, Chief Executive
Mr John Rappell, Director Research and Policy

Dr George Gilligan

Prof Gordon de Brouwer

Vanguard Investments Australia Ltd

Mr Jeremy Duffield, Managing Director

Skandia Assurance and Financial Services

Mr Johan Hofvander, Regional Manager, Asia-Pacific
Mr Ross Laidlaw, Country Manager

International Banks and Securities Association of Australia

Mr Robert Webster, Executive Director

Friday, 9 June 2000, Melbourne*Superannuation Complaints Tribunal*

Mr Graham McDonald, Chair
Ms Nicole Cullen, Deputy Chairperson
Mrs Margaret McDonald, Director

Osborne Associates

Mr Bradley Treadwell, Managing Director

Insurance Council of Australia Ltd

Mr Philip Maguire, Deputy Chief Executive
Ms Joan Fitzpatrick, Member International Committee for General Insurance
Mr Vincent McLenaghan, Chairman, International General Insurance Committee

Reserve Bank of Australia

Mr Ric Battellino, Assistant Governor, Financial Markets
Dr Robert Rankin, Head of International Department

Finance and Treasury Association

Mr Anthony Michell, Technical Manager, Policy, Research and Professional Development

Australian Banking Industry Ombudsman

Mr Colin Neave, Banking Ombudsman

J B Were & Son

Mr Terrence Campbell, Executive Chairman

Ms Priscilla Boreham, Corporate Counsel
Ms Lisa Gay, General Counsel

Australian Securities and Investment Commission

Mr Alan Cameron, Chairman
Ms Delia Rickard, Director, Office of Consumer Protection
Ms Jillian Segal, Commissioner
Mr Shane Tregillis, National Director Regulation

Australian Accounting Standards Board

Mr Keith Alfredson, Chairman

Thursday, 15 June 2000, Melbourne

Australian Council of Trade Unions

Ms Linda Rubinstein, Senior Industrial Officer

Industry Funds Forum

Ms Ann Byrne, Convenor
Ms Anne-Marie Darke, Executive Member

Corporate Super Association

Mr Mark Cerche, Chairman
Mr Nicholas Brookes, Secretary

Institute of Chartered Accountants of Australia

Mr David Coogan, Chairperson, Superannuation Taskforce
Mr Richard Rassi, Partner Deloitte Touche Tohmatsu

William M Mercer Pty Ltd

Mr Wayne Walker, Executive Director
Mr John Ward, Manager, Research and Information

Ms Fiona Ogilvy-O'Donnell

Towers Perrin

Mr Kenneth Lockery, Principal

CPA Australia

Mr Bradley Pragnell, Superannuation Policy Adviser

Association of Independent Retirees Inc

Mr Alan Beaton, President, South Australian Division and National Councillor

Friday, 16 June, 2000, Brisbane*Puzzle Finance Advice Pty Ltd*

Mr Bruce Baker, Director

Mr Gary Lanham

Mr Mervyn Whimp

Hairdressers Association Superannuation Fund

Mrs Yvonne Bell, Consultant to Fund

Mr Jeffrey Osborne, Director (Trustee Company)

Mrs Carmel Reading

Law Employees Superannuation Fund

Mr Peter Short, Chairman

Mr Ray Rinaudo, Director

Voyager Resort Ltd

Mr Geoff Heaton, Company Secretary and Resort Manager

Mr Dan Scheiwe

Mr Paul Henderson

Friday, 14 July, 2000, Canberra*Australian National University*Prof Peter Drysdale, Head Australia-Japan Research Centre and Acting
Director Asia Pacific School of Economics and Management

Prof Anthony Milner, Dean, Faculty of Asian Studies

*The National Office for the Information Economy, Department of
Communications, Information, Technology and the Arts*Dr Rodney Badger, Deputy Chief Executive Officer NOIE and
Executive Director Information Technology

Mr Phillip Malone, Acting General Manager, E-Commerce

Mr Gregory Piko, Acting General Manager, Information and
Communications Industry DevelopmentMr Brenton Thomas, Acting General Manager, Consumer and
Competition Branch*Namoi Cotton Cooperative (teleconference)*

Mr Andrew Lennon, Risk Manager

The Broken Hill Proprietary Co Ltd (teleconference)

Mr Ian Edney, Vice President Taxes

Mr Alistair Mytton, Manager, Corporate Tax Advisory

Australian Principals' Centre

Mr Nicholas Thornton, Chief Executive Officer

Australian Greenhouse Office

Dr David Harrison, Special Adviser, Emission Trading

Dr Gary Richards, Manager, National Carbon Accounting System

Mr Stephen Moran, Director, Climate Section, Department of Foreign Affairs and Trade

Securities Institute of Australia

Ms Penelope Le Couteur, Managing Director

Mr Darren Davis, National Policy Adviser

Department of the Treasury

Mr Blair Comley, General Manager, Indirect Tax Division

Mr Bruce Paine, General Manager, Business Entities and International Tax Division

Mr Gary Potts, Executive Director, Markets Group

Mr Michael Willcock, General Manager, Financial Markets Division

Mr Leslie Hosking, Chief Executive Officer, Axiss Australia

Australian Taxation Office

Mr James Killaly, Deputy Commissioner, Large Business and International

Friday, 1 September 2000, Canberra*Australian National Audit Office*

Mr Peter White, Executive Director, Revenue Branch

Mr Norman Grimmond, Senior Auditor Performance Audit Services Group

Financial Planning Association of Australia

Mr Con Hristodoulidis, Senior Manager, Public Policy

Mr Maurice Pinto, Chairperson, Superannuation and Retirement Incomes Committee

Australian Consumers Association

Ms Louise Petschler, Senior Policy Officer, Financial Services

Australian Taxation Office

Mr David Diment, Assistant Commissioner, Superannuation

Institute of Actuaries of Australia

Dr David Knox, President

Ms Jane Ferguson, Director Public Affairs

Ms Christa Marjoribanks, Member, General Insurance Practice Committee

Australian Institute of Criminology

Dr Adam Graycar, Director

Dr Peter Grabosky, Director of Research

WA Shearing Contractors Association (teleconference)

Mr Neville Munns, Secretary

Monday, 16 October 2000, Canberra*Care Incorporated*

Mr David Tennant, Director

National Farmers Federation

Mr Richard Calver, Director, Industrial Relations

Australian Association of Permanent Building Societies

Mr Jim Freemantle, Chairman

Mr Jim Larkey, Executive Director

First Samuel Ltd

Mr Anthony Starkins, Managing Director

Association of Financial Advisers

Mr John Hibberd, President

Mr Dugald Mitchell, Consultant

Tuesday, 17 October 2000, Canberra*Australian Securities and Investments Commission*

Mr Sean Hughes, Director, Deposits, Investment, Superannuation and Consumers

Mr Peter Kell, Coordinator, Office of Consumer Protection

Ms Angela Longo, Senior Lawyer

Ms Delia Rickard, Office of Consumer Protection

Mr Malcolm Rodgers, Director, Regulatory Policy

Australian Prudential Regulation Authority

Mr Roger Brown, Senior Manager, Rehabilitation and Enforcement

Mr Keith Chapman, General Manager, Specialised Institutions Division

Mr Leslie Phelps, Executive General Manager, Specialised Institutions Division

Mr Darryl Roberts, General Manager, Policy Development and Statistics

Department of the Treasury

Mr Roger Brake, General Manager, Retirement and Personal Income Division

Mr Raphael Cicchini, Manager, Superannuation Unit, Retirement and Personal Income Division

Ms Jan Harris, General Manager, Consumer Affairs Division
Mr William Keown, Acting General Manager, Financial Institutions
Division
Mr David Maher, Analyst, Financial Institutions Division
Mr Michael Rosser, Manager, Investor Protection Unit, Financial
Markets Division
Ms Karen Witham, Manager, Superannuation and Insurance Unit,
Financial Institutions Division
Mr Michael Willcock, General Manager, Financial Markets Division

Australian Taxation Office

Mr Leo Bator, Deputy Commissioner of Taxation
Mr David Diment, Assistant Commissioner of Taxation

Australian Competition and Consumer Commission

Mr Allan Asher, Deputy Chairman
Mr Carl Buik, Director, Consumer Protection

(Hansard transcripts of these hearings were tabled on 22 March 2001 when the Committee presented its report on term of reference (b) - 'the opportunities and constraints for Australia to become a centre for the provision of global financial services'.)

APPENDIX 3

TABLED DOCUMENTS/EXHIBITS

1. ASFA submission on Financial Services Reform Bill. May 2000 – tabled by Ms Philippa Smith, CEO, ASFA, 15 May 2000, Sydney.
2. Correspondence from Hesta Super Fund to Barry Terzic, AMWU, dated 12 May 2000 relating to Superannuation – Process Pack – tabled by Mr Barry Terzic, National Research Officer, AMWU, 15 May 2000, Sydney.
3. Extract from Workplace Relations Act 1996 – tabled by Mr Barry Terzic, National Research Officer, AMWU, 15 May 200, Sydney.
4. Correspondence to APRA, dated 20 August 1999 and correspondence from APRA, dated 9 September 1999 relating to monitoring gainful employment for members over age 65 – tabled by Ms Lynn Ralph, CEO, IFSA, 15 May 2000, Sydney.
5. Opening statement by Mr Les Hosking, Chief Executive Officer, Australian Centre for Global Finance and fact sheets about the Centre – tabled by Mr Les Hosking, CEO, Australian Centre for Global Finance, 16 May 2000, Sydney.
6. *AFMA 1999 Australian Financial Markets Report – Overview* – tabled by Mr Kenton Farrow, Chief Executive, Australian Financial Markets Association, 16 May 2000, Sydney.
7. *IBSA 1999 Annual Report* – tabled by Mr Robert Webster, Executive Director, International Banks and Securities Association of Australia, 16 May 2000, Sydney.
8. *'Disclosure Model'* – tabled by Ms Ann Byrne, Convenor, Industry Funds Forum, 15 June 2000, Melbourne.
9. The following documents, issued by the Queensland Department of Justice and Attorney-General were tabled by Mr Baker, Puzzle Financial Advice Pty Ltd, 16 June 2000, Brisbane:
 - Enduring Power of Attorney
 - Powers of Attorney Act 1998
 - Advance Health Directive
 - Statutory Health Attorney
 - Enduring Power of Attorney – long form.
10. *Law Employees Superannuation Fund (LESF), Annual Report to Members for the year ending 30 June 1999* – tabled by Ms Carmel Reading, 16 June 2000, Brisbane.

11. A document issued by the Hotel Motel & Accommodation Association of Queensland entitled ' Important notice to members – EPAS superannuation 28/9/98' – tabled by Mr Geoff Heaton, 16 June 2000, Brisbane.
12. Report prepared for ASIC by Phillips Fox Actuaries and Consultants, *Financial Products and Intermediary Remuneration*, 10 November 1999 – provided by ASIC in response to questions taken on notice at the public hearing in Melbourne on 9 June 2000.
13. A document entitled, 'An IOSCO Technical Committee Release: International Securities Regulators Issue New Economy Bulletin, Sydney Australia 19 May 2000', provided by ASIC in response to questions taken on notice at the public hearing on 9 June 2000.
14. Response by Ms Yvonne Bell, Hairdressers Association Superannuation Fund, to questions taken on notice at the public hearing in Brisbane on 16 June 2000, relating to names of trustees and the court involved.
15. A document entitled, 'National Bandwidth Inquiry – Report of the Australian Information Economy Advisory Council', provided by National Office of Information Economy in response to questions asked at the public hearing on 14 July 2000.
16. Four discussion papers, 'Establishing the Boundaries', 'Issuing the Permits', 'Crediting the Carbon' and 'Designing the Market', provided by the Australian Greenhouse Office in response to questions asked at the public hearing on 14 July 2000.
17. Final Report from the Centre for International Economics Canberra and Sydney, which was commissioned by the Australian Greenhouse Office, provided by the Australian Greenhouse Office in response to questions asked at the public hearing on 14 July 2000.
18. Australian Institute of Criminology brochure outlining the Institute's function, aims and programs, tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.
19. Australian Institute of Criminology brochure No. 56 - *Superannuation Crime* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.
20. Australian Institute of Criminology brochure No. 132 - *Fraud & Financial Abuse of Older Persons* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.
21. Australian Institute of Criminology brochure No. 139 - *Substitute Decision Making and Older People* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.
22. Chant Links & Associates, *1999 Superannuation Guarantee Audit Summary Report*, provided by the Australian Taxation Office and received as an exhibit to the inquiry on 3 October 2000.

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23. Brochure entitled *Code of Ethics & Rules of Professional Conduct*, provided by the Financial Planning Association and received as an exhibit to the inquiry on 3 October 2000.
 24. National Farmers' Federation publication *Reform*, Spring 2000, provided by Mr Richard Calver, NFF, during the public hearing on 16 October 2000.
 25. Article entitled *Disclosure paper on the current commission disclosure issue in Australia*, provided by Mr John Hibberd, Association of Financial Advisers at the public hearing on 16 October 2000.
 26. Policy/discussion paper entitled *Distribution Disclosure or Commission? Bias and Conflict of Interest Examined*, provided by Mr John Hibberd, Association of Financial Advisers at the public hearing on 16 October 2000.
 27. *Australian Competition and Consumer Commission - Overview of consumer protection functions*, October 2000, tabled by Mr Allan Asher, ACCC, at the public hearing on 17 October 2000.
 28. *Approval of external complaints resolution schemes*, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 29. *A User's Guide to ASIC*, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 30. *ASIC more than a corporate watchdog*, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 31. *Educating Financial Services Consumers*, discussion paper tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 32. *Submission to the Review of the Code of Banking Practice*, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 33. *Submission to the Parliamentary Joint Committee on Corporations and Securities inquiry into fees on electronic and telephone banking*, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.
 34. Documents provided by the ACCC in response to questions taken on notice at the public hearing on 17 October 2000.
 - *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance* for the period ending 30 June 2000;
 - *Debit and credit card schemes in Australia. A study of interchange fees and access.* Reserve Bank of Australia, Australian Competition and Consumer Commission, October 2000;
 - ACCC submissions – First, Second and Third - to the Financial System Inquiry (Wallis Inquiry) 1996 and 1997.

