



Australian Government

The Treasury

UNPAID SUPERANNUATION GUARANTEE PACKAGE

Impact Analysis
The Treasury

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Abbreviations

Acronym or term	Meaning
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
DSP	Digital Service Provider
EN	Employee Notification
FEG	Fair Entitlement Guarantee
ICT	Information and communications technology
MAAS	Member Account Attribute Service
MATS	Member Account Transaction Service
OTE	Ordinary Time Earnings
SGA Act	Superannuation Guarantee (Administration) Act 1992
SGC Act	Superannuation Guarantee Charge Act 1992
SME	Small and Medium-Sized Enterprise
STP	Single Touch Payroll

Executive Summary

Unpaid superannuation has significant negative impacts on individuals, by reducing superannuation savings and delaying retirement. In 2019-20, more than \$3.3 billion in Superannuation Guarantee (SG) entitlements remained unpaid and owing to eligible employees.

The Australian Taxation Office (ATO) is responsible for administering the SG scheme, including following up with employers where SG obligations go unpaid and administering the SG charge. However, due to the design of the SG system (including the frequency with which employers are required to pay SG, the operation of the SG charge, and limitations with the ATO's IT capabilities to identify unpaid SG), many SG obligations remain unpaid for extended periods of time. This causes significant issues when employers enter liquidation without having paid their SG obligations.

During the 2022 election campaign, the Government made a public commitment to set unpaid superannuation recovery targets for the ATO which would be made public and reported on annually. In this Impact Analysis (IA), Treasury has considered options that would implement the setting of unpaid superannuation recovery targets for the ATO, alongside more comprehensive policy and administrative changes that would address the structural drivers of unpaid superannuation outlined above.

Three options were considered in this IA to implement the Government's election commitment and address the problem of unpaid SG:

Option 1: Maintain the status quo (no change).

Option 2: Investment in ATO data matching.

Option 3: Require SG to be paid alongside an employee's salary and wages (on payday).

A range of impacts of these options were considered including fewer instances and quicker recovery of unpaid SG, regulatory costs and Government expenses.

Given the issue of unpaid SG is driven by structural issues within the SG system and the SG gap has remained steady for several years, maintaining the status quo under Option 1 is unlikely to lead to a material improvement in the incidence of unpaid SG. As such, informed by this IA, Treasury recommends Option 2 and 3 be progressed. Together, these options present the best opportunity to address the structural drivers of unpaid SG. Compared with maintaining the status quo, these options would give the ATO greater oversight over SG entitlements and a timelier ability to follow up instances of unpaid SG. Importantly, these options would reduce the risk of employers accruing large unpaid SG debts and reduce the SG gap, ensuring that employees are receiving the entitlements they are owed and improving their retirement outcomes. In addition to these options, two new interim unpaid SG recovery targets would be implemented along with new improved unpaid SG recovery measures and targets.

Limited consultation has been undertaken on these options. This is due to the market sensitivity of the options presented, and the risk of unacceptable market advantage that consultation prior to public announcement would pose. However, many stakeholders have expressed their public support for the recommended options. An extensive post-decision consultation would be required should the recommended options be agreed by Government. This consultation would consider the impact of the changes on employers, superannuation funds, payroll providers and superannuation clearing houses.

The implementation of Option 2 and 3, and interim and improved targets, would enable the Government to achieve their election commitment, and ultimately improve retirement outcomes.

Background

During the 2022 election campaign, the Government made a public commitment to set unpaid superannuation recovery targets for the ATO which would be made public and reported on annually. The key intent of this election commitment was to reduce the amount of employer SG obligations either not paid or underpaid to employee superannuation accounts each year.

This IA has been prepared by Treasury to analyse options to address the issue of unpaid SG in preparation for consideration of these potential options by the Government for inclusion in the 2023-24 Budget. The options analysed would implement the setting of unpaid superannuation recovery targets for the ATO, alongside more comprehensive policy and administrative changes that would address the structural drivers of unpaid superannuation.

This IA has been finalised by Treasury prior to the Government making an initial decision to implement these options. The analysis is intended to inform the decision of Government to implement the options outlined which would involve Government expenditure and amendments to legislation.

If the Government proceeds with the recommended options Treasury would undertake further consultation and analysis on these proposals to inform future major decision points which may include detailed policy design, further Government expenditure and the development of legislation.

The Superannuation Guarantee (SG)

The SG was introduced on 1 July 1992 with the enactment of the *Superannuation Guarantee (Administration) Act 1992* (SGA Act) and the *Superannuation Guarantee Charge Act 1992* (SGC Act).

An employee's SG entitlement is calculated based on the employee's ordinary time earnings (OTE) for a given period multiplied by the SG rate.

OTE refers to the amounts earned for 'ordinary hours of work', which does not include payments related to overtime hours worked (for example, allowances and loadings only referable to overtime hours) and some forms of leave, such as parental leave.

Currently the SG rate is 10.5 per cent and is legislated to rise by 0.5 percentage point per year until it reaches 12 per cent on 1 July 2025. Some employees receive superannuation contributions above the SG rate from their employers, such as those negotiated through enterprise agreements.

Some workers are not covered by the SG including self-employed people, employees who are under 18 and work less than 30 hours per week, and people who do work of a private or domestic nature for less than 30 hours per week.¹

Under legislation, employers are required to pay SG entitlements to an employees' superannuation account on at least a quarterly basis. Some superannuation funds, awards and contracts require superannuation to be paid more regularly (for example, monthly) than the minimum quarterly requirement.

¹ Retirement Income Review (2020).

Administration of the SG

The administrative arrangements for the operation of the SG system are set out in the SGA Act. The Commissioner of Taxation is responsible for the day-to-day administration of the SGA Act, and the ATO has a range of compliance responsibilities under it. These responsibilities include:

- educating employers and employees about their SG responsibilities,
- monitoring employer compliance with the SG obligations,
- the receipt and redistribution of the SG charge (the penalty paid by employers which do not comply with their SG obligations), and
- investigating employers for possible breaches of their SG obligations.

Unpaid SG

What is unpaid SG?

Employers have an obligation under the SGA Act and the SGC Act to pay the correct SG entitlements on behalf of their eligible employees.

If an employer does not pay the correct SG entitlements to an employee's nominated fund by the quarterly payment due date, they may be liable for the SG charge, payable to the ATO. At this stage under superannuation law unpaid SG becomes a tax liability to the Commonwealth.

The SG charge is made up of three components:

- the shortfall amount (that is, SG owing calculated based on salary and wages)
- nominal interest to compensate the employee for lost earnings in their superannuation fund (currently set at a rate of 10 per cent per annum) and
- an administration fee (currently \$20 per employee, per quarter).

How is unpaid SG recovered?

As part of the SG charge collection process, the ATO negotiates with employers to come up with mutually satisfactory outcomes. This can include agreeing to enter a payment arrangement with the employer. If an agreement is unable to be reached, or if an agreement is reached but the payment arrangement defaults, the ATO will assess whether further negotiation with the employer is necessary, or whether the taxation compliance history of the employer dictates that they should proceed to stronger action.

From there, the ATO can use its administrative powers to issue director penalty notices and seek court ordered penalties. The ATO can issue director penalty notices to hold employers to account when they do not meet their superannuation obligations. They can also seek court-ordered penalties in the most egregious cases of non-payment, including up to 12 months jail for employers who are repeatedly caught but fail to pay SG liabilities.

What happens if an employer identifies unpaid SG?

Where an employer identifies that they have underpaid SG to an employee after the quarterly due date they need to:

- calculate the SG charge amount they owe and make the payment to the ATO, and

- lodge an SG charge statement with the ATO.

The due date for payment of the SG charge and lodging of the statement is one calendar month after the quarterly SG due date. The ATO then forwards the shortfall amount and nominal interest component of the SG charge to the employee's superannuation fund.

What happens if an employee identifies unpaid SG?

Where an employee identifies that they have been underpaid SG after the quarterly due date they can lodge an enquiry (known as an employee notification or EN) with the ATO. When an employee lodges an EN with the ATO, the ATO will commence an investigation on their behalf.

The ATO will then update the employee on the progress of their complaint through a series of letters. The letters will generally advise the employee on the progress the ATO has made with the investigation of their unpaid superannuation complaint and what steps are being taken to recover the unpaid SG from their employer.

Further, the Government announced in 2022 that it will legislate to include a right to the SG within the National Employment Standards (NES) which will give Australian workers the power to pursue their unpaid SG as a workplace entitlement. The inclusion of SG in the NES was recommended by the 2022 Senate Economics References Committee, *'Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration'*.

What happens if the ATO identifies unpaid SG?

The ATO completes self-initiated, proactive SG compliance where they manually analyse data to identify high-risk employers (employers most likely to have unpaid SG). Where the ATO identifies that an SG obligation has been unpaid, they will contact the employer to review their records and advise them to submit an SG charge statement.

If an employer either contests that the obligations have been unpaid or otherwise does not comply, the ATO will undertake an SG audit and raise an SG charge assessment with additional penalties for not lodging the SG charge statement by the due date. The employer will then pay any SG charge accrued to the ATO who will remit the shortfall and nominal interest components recovered to the employee.

1. What is the problem you are trying to solve?

1.1 Defining the problem of unpaid SG

The SG gap

The SG gap is a measurement of the total amount of the SG owed to employees that has not been paid by their employer. The unpaid SG gap is an estimate of the difference between the amount of SG that is paid and what would have been paid if every employer was fully compliant with their obligations. The ATO has measured the gap ‘top-down’, using economy-wide data to provide a national figure. The top-down measurement does not indicate the number of employees affected or the average amount of superannuation lost per person.

As shown in Table 1, latest ATO estimates put the SG gap at 5.9 per cent in 2019-20 before ATO compliance activities (the gross SG gap), or at 4.9 per cent after compliance activities (the net SG gap). Over six years from 2014-15 to 2019-20, the gross SG gap has fallen from 6.9 per cent (\$3.9 billion) to 5.9 per cent (\$4.0 billion). The net SG gap has fallen from 6.0 per cent (\$3.4 billion) to 4.9 per cent (\$3.4 billion) in this period.²

Table 1. Superannuation Guarantee gap, 2014–15 to 2019–20³

	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20
Gross gap (\$ million)	3,901	3,885	3,519	3,968	4,198	4,045
Amendments (\$ million)	516	577	744	858	851	672
Net gap (\$ million)	3,385	3,308	2,775	3,110	3,348	3,374
SG paid (\$ million)	52,882	54,926	56,521	59,274	62,270	65,583
Theoretical SG liabilities (\$ million)	56,267	58,234	59,296	62,384	65,618	68,957
Gross gap (per cent)	6.9	6.7	5.9	6.4	6.4	5.9
Net gap (per cent)	6.0	5.7	4.7	5.0	5.1	4.9

² Australian Taxation Office (ATO) (2022), *Superannuation Guarantee Gap Latest estimates and trends*, available at: [www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/superannuation-guarantee-gap/?page=3#Latest estimates and trends](http://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/superannuation-guarantee-gap/?page=3#Latest%20estimates%20and%20trends).

³ Ibid.

ATO recovery efforts

The ATO releases a report annually of its recovery efforts for the financial year. In 2021-22,⁴ the ATO:

- Reported receiving 19,600 employee complaints of unpaid superannuation, and that 30,800 employers came forward to make a voluntary disclosure of unpaid superannuation.
- Raised a total of \$1,059 million⁵ in SG charge liabilities:
 - \$380 million through voluntary employer disclosures; and
 - \$1,125 million through ATO compliance action.
- Finalised approximately 17,300 SG cases, resulting in around \$550 million in SG charge liabilities and \$215 million in part 7 penalties raised.
 - 15,200 cases were because of employee notification complaints raising \$495 million in SGC liabilities.
 - 2,100 cases were because of other ATO initiated reviews raising \$55 million in SGC liabilities.
- Distributed \$645.4 million of superannuation entitlements to individuals or superannuation fund accounts. This includes SG amounts collected for liabilities raised arising from employee complaints, ATO initiated compliance activities and employer voluntary disclosures.

A large portion of SG debts raised by the ATO are deemed unrecoverable. Unpaid SG is primarily accrued by micro and small enterprises, many of which have become insolvent. As at 28 February 2022, of the \$1.89 billion in collectable SG charge debt raised by the ATO against employers, \$1.40 billion was owed by micro enterprises with an annual turnover of less than \$2 million, and \$0.45 billion was owed by small and medium enterprises (SMEs) with annual turnover greater than \$2 million and less than \$250 million.⁶ An additional \$1.14 billion of SG charge debt was subject to insolvency.

1.2 Impacts of unpaid SG

Who is most likely to not pay the SG?

Productivity Commission analysis of ATO data found that lower-skilled services industries had the highest incidence of unpaid SG. In 2016-17, 7 per cent of all accommodation and food services employers were subject to ATO action for unpaid SG compared with an average of 1.8 per cent of employers across all industries. These cases made up 17 per cent of all unpaid SG cases.⁷

The ATO's analysis of ATO and third-party data found small and micro businesses were most likely to have unpaid SG. Of the businesses audited by the ATO for unpaid SG, 92 per cent had a turnover of under \$10 million.⁸ Only 14 per cent of these audits were on employers with more than 30 employees. Smaller employers with between 30

⁴ ATO (2022), *Super guarantee – annual employer compliance results*, available at: [Super guarantee - an...~https://www.ato.gov.au/Business/Super-for-employers/Super-guarantee---annual-employer-compliance-results/](https://www.ato.gov.au/Business/Super-for-employers/Super-guarantee---annual-employer-compliance-results/)

⁵ This includes the total amount of \$1,125 million raised from ATO compliance actions and employer disclosures of unpaid super, less adjustments for amendments and objections.

⁶ Unpublished ATO data.

⁷ Productivity Commission (2018), *Superannuation: Assessing Efficiency and Competitiveness*.

⁸ Australian National Audit Office (ANAO) (2022), *Addressing Superannuation Guarantee Non-Compliance*.

and 11 employees accounted for 34 per cent of employer audits, and 44 per cent of total audits were conducted against employers with 10 or fewer employees.

Australian National Audit Office (ANAO) analysis of ATO data found that the three most high-risk industries, accommodation and food services, construction and retail trade accounted for 25 per cent of all ATO SG compliance activity in 2017-18.⁹ This share declined to around 14 per cent in 2020–21.

Who is most likely to be impacted by unpaid SG?

The analysis by the Retirement Income Review in 2020 on ATO compliance activity found that employees were more likely to have unpaid SG if they were:

- working for businesses with annual turnover of less than \$2 million, which account for most cases of SG underpayment,
- working in the accommodation and food services, and construction industries, which were over-represented in SG non-compliance relative to their proportion of total employment,
- on lower incomes, and
- working for insolvent businesses, which were responsible for about half of superannuation debt, especially those engaging in 'phoenix activity'.¹⁰

In 2018, the Productivity Commission found that data on the employees who lodged an SG underpayment notification with the ATO were typically younger and had lower income than the working population more broadly. For example, nearly 50 per cent of employees reporting underpayment were aged under 34 years, compared with the rate of 38 per cent for all employees. Further, 76 per cent of employees reporting underpayment earned under \$60,000, compared with 66 per cent for all employees.¹¹

What are the impacts of unpaid SG?

Lower retirement savings

Unpaid SG can result in lower retirement outcomes for individuals due to the loss of SG contributions and the associated foregone compounded earnings.

Cameo modelling from the Retirement Income Review shows that a lower-income, younger employee who is not paid the SG for two years experiences a larger decrease in their superannuation balance and retirement income than an older worker who is not paid the SG for the same period.¹² This is because the younger employee misses out on the benefits of compounding returns.

The Productivity Commission report found that unpaid SG was a significant source of erosion on individuals' superannuation savings. Cameo modelling completed by the Productivity Commission indicated that a person whose employer does not pay 50 per cent of due contributions during the early years of the person's career (while they are aged 21 to 25) would have a retirement balance 7.6 per cent (\$63,000) lower than a peer who received all their contributions.¹³

⁹ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

¹⁰ Retirement Income Review (2020).

¹¹ Productivity Commission (2018), *Superannuation: Assessing Efficiency and Competitiveness*.

¹² Retirement Income Review (2020). Table 3D-5.

¹³ Productivity Commission (2018), *Superannuation: Assessing Efficiency and Competitiveness*.

Longer working lives

Where SG remains unpaid or underpaid, despite ATO efforts to recover amounts, some individuals may work longer to make up for these amounts lost during their working life.¹⁴ This is particularly the case where a business becomes insolvent, and amounts cannot be recovered.

Figures from the Australian Securities and Investments Commission (ASIC) reported by the Senate Economics References Committee showed that in 2018-19 nearly 48 per cent of insolvencies involved unpaid SG contributions.¹⁵ A large portion of SG debts raised by the ATO are deemed unrecoverable with the ATO Annual Report stating that in 2021-22, \$1.2 billion of SG charge debt was subject to insolvency.¹⁶

Loss of insurance cover

In 2022 the Senate Economics References Committee reported that a consequence of unpaid SG is that some employees can become ineligible for certain insurance cover such as disability or income protection as some insurance policies require members to make regular SG contributions.¹⁷

Inequity between compliant and non-compliant employers

Unpaid SG can allow non-compliant employers to benefit at the expense of compliant employers, as non-compliant employers can use unpaid amounts to artificially bolster the profitability of their business. The Senate Economics References Committee reported that unpaid SG “raises competition issues where those firms that have deliberately underpaid workers have acquired an economic advantage over their competitors who have done the right thing and paid the correct entitlements.”¹⁸

Underpayments also may assist marginal or insolvent businesses keep afloat by enabling them to use employees' entitlements for cash flow. Where SG payments are delayed to prolong a business' life, this ultimately comes at the detriment of employees whose SG is left unpaid, and other businesses who are competing in the market with non-compliant employers.

1.3 Visibility of unpaid SG

ATO

Detecting non-compliance

The ATO cannot independently identify incidences of unpaid SG at scale and primarily rely on Employee Notifications (ENs). This means the ATO's compliance is mainly reactive (responding to ENs), rather than proactive (identifying unpaid SG and raising debts).

The ATO does not have the digital infrastructure required to easily match SG data it receives from employers through Single Touch Payroll (STP) to the data reported from superannuation funds through the Member Account Transaction Service (MATS). Employers and superannuation funds report information to the ATO using different

¹⁴ Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*.

¹⁵ Ibid.

¹⁶ Commissioner of Taxation Annual Report 2021-22.

¹⁷ Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*.

¹⁸ Ibid.

software, different reporting criteria, and on different timeframes. Therefore, to action compliance cases and determine SG debts, the ATO must manually match these two large reporting data sets. This process is time consuming, difficult to scale and not optimally effective in identifying non-compliance.

Timeliness

Employers have until 28 days after the end of quarter for the money to be received in an employee's superannuation account. If this timeframe is not met, the employer has an additional 28 days to lodge an SG statement with the ATO and either pay the SG charge amount or enter a payment plan. This means that there is effectively a two-month delay before the ATO can contact an employer about unpaid SG. This can mean that an employer may have become insolvent by the time the ATO makes contact about outstanding SG obligations.

It is difficult for the ATO to identify and recover unpaid SG in a timely manner before an employer becomes insolvent and any amounts are unrecoverable due to the length of time it takes for incidents to be identified. Currently, employers are required to make SG contributions at least quarterly, superannuation funds then confirm receipt of these contributions to the ATO. The delay between the payment of wages and SG, and limitations on ATO visibility of these transactions creates significant issues for ATO enforcement, increasing the risk that the employer will become insolvent, and the SG debt becomes non-recoverable before the ATO can intervene.

Employees

Detecting non-compliance

To identify unpaid SG, 28 days after the end of the quarter (the due date) employees must check with their fund(s) to determine whether their SG contributions were paid late or were unpaid. They then must report this to the ATO who can act on their behalf to recover these amounts. This places the onus on the employee to monitor and report SG non-compliance.

Payslips vs SG due date

While an employee's SG entitlements for the pay period are required by law to be listed on the employees' payslip, the employer is not legally required to make the SG contribution to the employee's superannuation fund until 28 days after the end of the quarter. This can cause confusion for employees as the SG entitlements is listed on their payslip, they believe the SG contribution has also been made to their superannuation fund. Further, the SG entitlements listed on the employee's payslip will usually be for a pay period, but the amount paid to their superannuation fund can be an aggregated amount for the quarter.

Superannuation funds

Under the current reporting structure, superannuation funds may not have oversight over which pay periods an employees' SG contributions relate to. This occurs when SG contributions are made on a quarterly basis, and the accompanying data provided by the employer to the superannuation fund does not include information on the pay period and/or the accompanying data contains errors.

2. Why is Government action needed?

2.1 Why is Government intervention needed?

Unpaid SG will not be resolved without Government intervention

The Government is the only entity who can pursue unpaid SG

The ATO are the only entity empowered by the SGA Act to pursue unpaid SG on behalf of all employees. For unpaid SG to be recovered it must be raised by the ATO as a tax, known as the SG charge. The raising of the SG charge then allows the ATO to recover these amounts from employers.

Further, due to privacy rules, only the ATO can collect information from employers and superannuation funds to identify that SG is unpaid.

Therefore, Government intervention is required to make changes to the recovery process to address unpaid SG.

Voluntary SG compliance by employers is not increasing significantly over time

Since estimates of the SG gap were first calculated in 2014-15, voluntary compliance has only increased by 1 percentage point over the six years to 2019-20 (a reduction in the gross SG gap from 6.9 to 5.9 per cent). This effectively means only 1 percentage point more of total SG is being paid voluntarily than six years ago. This suggests that without Government intervention, voluntarily compliance will not improve at a rate significant enough to reduce incidents of unpaid SG in the foreseeable future.

This is despite significant improvements in technology available to businesses to manage their affairs, such as STP. This suggests that more innovative compliance approaches are needed to address SG non-compliance.

The ATO face significant barriers to reduce the incidence of unpaid SG.

The net SG gap remaining after ATO compliance activities has declined from 6.0 per cent in 2014-15 to 4.9 per cent in 2019-20. While this potentially shows an improvement in ATO recovery mechanisms, there is still a large amount of SG remaining unpaid in the system. For the ATO to have a more significant impact on reducing the incidence of unpaid SG they need to be able to commence their compliance actions from a higher base (more voluntary compliance) and to have additional resources, either through staff or improved systems, to be able to recover unpaid SG.

Policy and administrative settings are contributing to unpaid SG

Key reports have found that the only way to reduce unpaid SG is through changes to Government policy and compliance. In 2018, the Productivity Commission found that delayed and unpaid SG was a significant source of erosion on individuals superannuation savings and that “given this leakage effectively occurs before a fund has a member’s contributions, there is little funds can do to rectify it.” As a result, the Productivity Commission argued that the issue of unpaid SG was deemed to be primarily about policy and the compliance framework.¹⁹

¹⁹ Productivity Commission (2018), *Superannuation: Assessing Efficiency and Competitiveness*.

In 2022, the Senate Economics References Committee found that in many industries underpayment is “deliberate and systematic, and often normalised.”²⁰

The introduction of STP has not been fully effective in increasing the visibility of unpaid SG

The 2018 Productivity Commission report highlighted that the implementation of the 2019 Superannuation Guarantee Integrity package, which included the extension of STP to all employers, was an important policy change. The Productivity Commission stated that “regular data on SG obligations and SG contributions received for all employees ... will enable the ATO to identify non-compliant employers and take action to recover unpaid SG contributions much more effectively than it is currently able to.”²¹

However, the ANAO report and Senate Economics References Committee report, both released in 2022, had contradictory findings on the effectiveness of these changes:

- The Senate Economics References Committee reported that despite the introduction of STP which theoretically improves ATO visibility, the ATO “does not have accurate visibility of the extent of unpaid superannuation.”²²
- The ANAO reported that the SG Taskforce (2018 to 2021) “partly achieved the planned outcomes ... but it did not achieve several of its objectives associated with the usage of STP and other data.”²³

Without Government intervention, inequities will persist

There are market inequities between compliant and non-compliant employers

Reports show that compliant employers are currently disadvantaged by non-compliant competitors.²⁴ Often, this is because some employers use the quarterly payment requirements and lack of ATO visibility over SG non-compliance to not pay their employees’ SG entitlements to ease cash flow pressures. Government interventions, such as increasing the frequency of SG payments or increasing the visibility for the ATO, would enable the Government to address these structural issues which contribute to these inequities.

Low-income employees are most likely to be impacted by unpaid SG

The cohorts most likely to be impacted by unpaid SG are lower income employees.²⁵ The Retirement Income Review found that those with lower incomes in working life, have lower retirement savings. This means that lower income employees who also have unpaid SG have significantly lower retirement outcomes than other cohorts. Government interventions which reduce the incidence of unpaid SG would address the compounding impacts that unpaid SG has on lower income earners’ retirement outcomes.

²⁰ Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration*; Senate Economics References Committee (2017),

²¹ Productivity Commission (2018), *Superannuation: Assessing Efficiency and Competitiveness*.

²² Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration*.

²³ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

²⁴ Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration*; Senate Economics References Committee (2017), *‘Superbad – Wage theft and noncompliance of the Superannuation Guarantee’*.

²⁵ Retirement Income Review (2020).

2.2 What capacity does the Government have to intervene?

The Government has the capacity to intervene in a few key ways including through policy and legislative changes, administrative and reporting changes, and investments in ATO capabilities.

Policy and legislative changes

The Government has responsibility for several acts and regulations, including the SGA Act and the SGC Act, and could introduce legislation to change policy settings which would improve voluntary SG compliance and ATO visibility of unpaid SG.

Administrative and data reporting changes

As the Government have responsibility for several acts and regulations, including the SGA Act and the SGC Act, and for setting the statutory obligations of the ATO. Changes to administration and data reporting requirements could improve visibility of SG liabilities and payments for employees, superannuation funds and the ATO.

Investments in ATO to recover unpaid SG

The Government could provide the ATO with additional funding to increase the recovery of unpaid SG. For example, funding could be provided to increase the manual compliance efforts of the ATO, to increase the speed at which it assesses employee notifications and self-initiated audits. This could increase the recovery of unpaid SG.

2.3 What are the objectives of Government action?

Addressing the problem of unpaid SG, Government action would have two primary objectives, each with two related measures by which to assess performance against these objectives:

1. Increase the amount of SG being paid by employers on time and in full.
 - 1.1. Measure 1: Increase the proportion of employers complying with their SG obligations without intervention. In 2019-20 employers paid approximately 94.1 per cent of their SG contributions as required without ATO intervention.²⁶
 - 1.2. Measure 2: Create an improved gross SG gap measure based on higher quality data. Reduce this gap over the following 5 to 10 years.
2. Increase the recovery capabilities of the ATO by enabling more timely, efficient, and proactive compliance approaches.
 - 2.1. Measure 1: Increased proportion of SG recovered in a timely manner, including increased amounts of SG distributed as a proportion of SG raised in a recent financial year, and an increased proportion of SG charge raised and distributed within 12 months. The ATO currently reports data on SG charge activities each year and would be able report these as new additional measures.

²⁶ Commissioner of Taxation Annual Report 2021-22.

2.2. Measure 2: Increase the proportion of compliance cases that are proactively identified by the ATO compared to those commenced through ENs or other activities.

As the ATO currently has limitations on ATO estimation of the SG gap, and as some measures have yet to be reported, appropriate benchmarks and targets for these measures would need to be considered. Once improved data is available for analysis assessments can be made on the capabilities for their improvement.

3. What policy options are you considering?

3.1 Option 1 – Status Quo

This option would involve no changes to policy settings.

3.2 Option 2 – Investment in ATO data matching

Under Option 2, the ATO would be granted funding to develop capabilities to automatically match SG contributions data, which would enable the ATO to have near-real time visibility of SG positions for employees and employers by June 2024. The ATO would invest in creating a new unified database which matches STP data from employers and MATS data from superannuation funds at scale. This database would provide a single source showing the near-real time recorded SG position for employers and employees, helping the ATO to improve its capabilities to identify instances and patterns of late or underpayment of the SG as the non-compliance occurs.

Option 2 is a non-regulatory approach that would increase employer compliance with their SG obligations without the need for new legislation or regulatory arrangements. It would place relatively less regulatory impost on employers than the existing SG compliance regime. The legal obligations, administration and frequency employers are required to pay their employee's SG would be uninterrupted.

The matched data sets would be available to support client interactions during SG compliance audits from June 2024 onward. The matched data sets would underpin new support tools reducing need for manual analysis.

The data would be used to identify historical non-compliance and facilitate earlier intervention through employer nudges. Trends of incorrect reporting would be identified, and the ATO would work with stakeholders to identify opportunities to improve the quality of reporting from either funds or employers.

Enabling the ATO to undertake earlier interventions and process unpaid SG cases in a more timely and efficient way is particularly important. In 2021-22, 37.5 per cent of SG charge debt (\$1.2 billion) held by the ATO was accrued by employers in insolvency.²⁷

Enabling data matching would also improve measurement of the current SG gap and enable the government to set improved SG recovery targets in line with its election commitment. Establishing a near-real time view of SG compliance would also be necessary to deliver on the ANAO's recommendation for the ATO to set targets for SG related measures including the SG gap.²⁸

3.3 Option 3 – SG on payday

Option 3 would involve amending the SGA Act and the SGC Act from 1 July 2026 to:

- Increase the payment frequency of the SG by employers to their employees' nominated superannuation fund from a quarterly model to a payday model, where SG amounts are required to be paid the same day employees are paid their wages and salaries; and

²⁷ Commissioner of Taxation Annual Report 2021-22.

²⁸ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

- redesign the calculation of the SG charge to align it with this more frequent payment schedule.

The redesigned SG charge, including Part 7 penalties in the SGC Act, would move to a tiered approach whereby tax and penalties levied against the employer would increase over time as SG amounts remain unpaid. Changes to the calculation of the SG charge would ensure the charge is proportionate to the more frequent payday model.

Requiring employers to pay SG on payday would result in SG charge liabilities accumulating on unpaid SG amounts sooner creating stronger disincentives for employers to leave SG amounts unpaid. Requiring timelier payment of SG, aligned with payment of wages and salaries, would improve visibility of SG payments for the ATO and employees. Enhancing visibility would further disincentivise non-payment and underpayment of SG and improve capabilities of the ATO to identify and recover unpaid SG.

To implement the SG on payday reform, the Commissioner of Taxation may be granted some flexibility to remit or reduce the redesigned SG charge under very discrete circumstances, for example where an employer has been impacted by a natural disaster. Allowing limited flexibility would be consistent with the Commissioner's flexibility available in other areas of the law.

This reform would commence on 1 July 2026 to enable the ATO, payroll service providers and superannuation funds to make necessary system changes to accommodate the increased frequency of payment. This timeframe would also allow digital service providers (DSPs) time to upgrade their payment software and allow businesses to adjust their cash flow strategies to account for more frequent SG payments.

Establishing a near-real time view of SG compliance through Option 2 would be necessary for the ATO to effectively support the proposed policy reforms for SG on payday. The ATO would require the improvements to ATO data matching capabilities outlined in Option 2 to take advantage of the improved timeliness of SG reporting with increased SG payment frequently under Option 3. If Option 3 was progressed without implementing Option 2, the ATO would require a separate technological solution to adapt to SG on payday which may not result in identifying unpaid SG in a timely way. Without such improvements the ATO's ability to collect and manage data would be less effective in materially reducing instances of unpaid SG. The amount of data that would be reported to the ATO would increase without concordant increase in the ATO's capacity to match, process and use this data in compliance activities.

3.4 Other options considered

Increase the payment frequency of the SG to monthly

Under this option, employers would be required to pay SG entitlements to their employees on at least a monthly basis. This would align the payment of SG with requirements for the payment of salary and wages, which under the *Fair Work Act 2009* must be paid at least monthly. This option could address some of the SG visibility issues by allowing employees to confirm if they have received their SG entitlement at least monthly.

However, this option has not been considered as an option for this IA as it is deemed to be very similar but less effective than a shift to requiring SG on payday included as Option 3. While either option would increase the frequency of SG payments, in comparison to the increase to the shift to SG on payday a requirement to pay SG monthly would not address the more significant complexity and visibility issues that currently occur. SG entitlements would still appear on employees pay slips when their wages are paid, while some employees would still not actually receive their SG until a later date after the end of the month. A shift to monthly SG would only partially address the issue of unpaid SG as there would still be a considerable delay between when SG is paid, and when a missed or partial payment could be identified by the employee or the ATO.

Provide funding to the ATO to increase their debt collection activities

Under this option the Government could provide the ATO with additional funding to increase their manual compliance efforts in recovering unpaid SG debts. Specifically, funding could be provided to the ATO to increase the speed at which employee notifications or self-initiated audits are assessed.

While increased ATO funding for current activities could potentially increase the recovery of unpaid SG, it would likely be costly to create material improvements given existing constraints and would not address the structural issues (payment frequency and visibility) that are driving the incidence of unpaid SG. Increasing voluntary compliance (stopping unpaid SG accruing in the first place) and improving ATO data capabilities would be more effective ways of reducing the amount of unpaid SG in the system.

Funding for ATO debt collection activities has not been assessed in this IA given that Option 2, investment in ATO data matching, would be a more robust non-regulatory option which would achieve a similar result in improving the ATO's capabilities while additionally addressing underlying issues with the visibility of unpaid SG amounts to the ATO.

Include superannuation in the Fair Entitlements Guarantee

Under this option the Government could consider including superannuation in the Fair Entitlements Guarantee (FEG). Under the FEG employees which have been left with an unpaid employment entitlement due to their employer being insolvent or bankrupt can be reimbursed some of these entitlement by the Government, provided certain conditions are met. While the FEG covers unpaid entitlements such as wages, annual leave and redundancy pay it does not cover superannuation. The inclusion of superannuation in the FEG was recommended by the Senate Economics References Committee.²⁹

This option has not been considered in this IA as while including superannuation in the FEG may result in a greater number of employees receiving unpaid SG amounts it would not address the structural issues (payment frequency and visibility) that are driving the incidence of unpaid SG. Further, the 2017 *Superannuation Guarantee Non-compliance* report by Superannuation Guarantee Cross Agency Working Group recommended against expanding the FEG to include superannuation because of administrative complexity, the significant costs to government, and because the FEG had been designed to cover more immediate entitlements such as wages and leave.³⁰

²⁹ Senate Economic References Committee (2022), *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*.

³⁰ Superannuation Guarantee Cross Agency Working Group (2017), *Superannuation Guarantee Non-compliance*.

4. What is the likely net benefit of each option?

4.1 Option 1 – Status Quo

Option 1 maintains the status quo, where the current prevalence of unpaid SG and the constraints on the ATO's SG recovery activities would continue.

Continued prevalence of unpaid SG

The problems identified in Section 1 would continue to persist without intervention. Through the maturation of the superannuation system, employees may engage more with their superannuation to identify underpayments of the SG. However, they would still encounter existing issues of difficulties in reconciling unpaid amounts due to infrequent payment periods, limited capabilities of the ATO, and unpaid SG amounts being held by insolvent employers where debts cannot be recovered. Disincentives for employers to voluntarily come forward about unpaid SG amounts would still exist due to the punitive nature of the SG charge, and a lack of discretion available to the Commissioner of Taxation.

The SG gap may incrementally improve over time with current SG recovery arrangements, but structural issues will limit the ability for the gap to significantly close due to the manual and resource intensive nature of SG recovery, unless other improvements are made to identify unpaid amounts.

Continued slow recovery of unpaid SG

Continued reliance on self-disclosure by employers and employees to the ATO of unpaid superannuation amounts will mean an ongoing time lag in SG recovery, perpetuating negative impacts to retirement balances. Those employees that do not notify the ATO or notify after an extended period will have a limited ability to recover overdue SG amounts.

Summary of Option 1

This option places no additional requirements on participants of the superannuation system or Government and therefore has no additional compliance cost. However, retirement balances will continue to be negatively impacted by less SG payments and a loss of compounding earnings over time. This option has been used as the benchmark for considering the costs and benefits of other options.

4.2 Option 2 – Investment in ATO data matching

Option 2 would provide funding for the ATO to upgrade their data matching infrastructure. The ATO would be granted \$27 million in funding to develop capabilities to automatically match SG contributions data reported by employers and superannuation funds. This option would afford the ATO greater visibility of the superannuation compliance landscape and enable sophisticated data analysis, including new ways to measure the SG gap.

Impact 1: Fewer incidences of unpaid SG

Option 2 would enable the ATO to initiate more proactive compliance cases. Automatic data matching would lead to fewer instances of unpaid SG going undetected and more instances of unpaid SG being recovered by the ATO. Most employee notifications are submitted after an employee leaves employment, resulting in a significant period for which SG has not been paid, reducing the likelihood of recovery, and therefore adversely impacting an employee's retirement outcomes. Through improved data matching the ATO would also be able to identify instances of unpaid SG sooner and finalise more cases before larger debts accumulate and/or amounts become unrecoverable, for example when employers become insolvent.

While this option will provide the ATO with greater visibility of the SG system, and therefore enable a more targeted compliance regime, this investment will not directly impact some of the underlying causes of unpaid SG. Moreover, the ATO will continue to face challenges in successfully matching SG contributions data as the amounts recorded as wages and SG may continue to be paid for different time periods.

This option is likely to have a material impact on the incidences of unpaid SG, but a **minor impact** in reducing the overall SG gap, as the ATO's ability to intervene will continue to be limited by the infrequency of SG payments.

The impact of investments in ATO digital infrastructure on the incidence of unpaid SG is unquantifiable due to the degree of uncertainty around the level of additional unpaid SG which could be detected and recovered, and uncertainties around the behavioural impact on employers. To the extent that this option reduces the unpaid SG gap, the amount of SG which would be paid to employees that would have otherwise gone unpaid under 4 potential scenarios is given by

Table 2 below.

Table 2. Scenarios for improvements in the SG gap (\$ million)³¹

SG impact scenario	Gross SG gap	Increase in SG paid
Status quo (2019-20)	4,045	nil
2 per cent reduction	3,964	81
5 per cent reduction	3,843	202
10 per cent reduction	3,641	405
15 per cent reduction	3,438	607

As outlined in Section 1.1, the ATO finalised 17,300 unpaid SG cases in 2021-22 resulting in \$550 million in unpaid SG (SG charge liabilities) recovered by the ATO, an average of around \$32,000 per case. If the \$27 million investment in Option 2 improved the number of finalised cases by 15 per cent, assuming each case returned \$32,000 from the employer in each case, this could result in \$81 million in additional SG being paid each year.

³¹ Treasury analysis of ATO data SG gap data for 2019-20.

Using the most recent estimate for the gross SG gap published by the ATO for 2019-20, this is equivalent to a 2 per cent reduction in the SG gap.

Employees

Any increase in the amount SG paid into employee superannuation accounts because of fewer instances of SG remaining unpaid would in turn have compounding effects in an employee's superannuation account, delivering higher superannuation balances.

Employers

Employer compliance with SG obligations is expected to increase under this option. As employers become aware that the ATO have greater visibility to proactively manage outstanding amounts of SG, they will likely prioritise paying their employees' SG entitlements before the quarterly due date to avoid non-compliance penalties.

The ATO will also have capacity to identify and contact more employers, who would incur unpaid SG penalties. The ability to target and action newer and smaller debts would improve payment by employers. Timely visibility of an employer's SG position would enable the ATO to identify instances and patterns of underpayment or non-payment of SG and support earlier interventions with employers to address reporting, calculation, or payment issues and ensure they understand their future obligations.

Data suggests that any improvement to the rate of recovery of unpaid SG would have the greatest impact on micro businesses and SMEs. Micro enterprises and SMEs (annual turnover less than \$250 million) owed \$1.85 billion (98 per cent) of the \$1.89 billion in collectable SG charge debt owed to the ATO by non-compliant employers as at 28 February 2022.³²

As outlined in Section 1.2, currently there are potentially market competition and profitability advantages for employers which do not pay their employee's SG entitlements in full, and do not have SG charge liabilities raised. If SG charge liabilities are raised and recovered by the ATO more efficiently because of improved data matching capabilities such non-compliant employers would have a reduced competitive advantage over employers who are consistently complying with their SG obligations.

Superannuation funds

An increase in contributions received by superannuation funds would grow the pool of assets they manage, as well as the size of the overall superannuation system. As individual member balances grow with additional contributions, total fee revenue may increase with percentage-based investment and administration fees. Whether superannuation funds would increase the fixed component of their administration fees is uncertain, while funds may face increased complexity in managing a larger pool of assets and potential higher costs, the increased scale might also allow funds to access a greater range of investment opportunities with higher investment returns.

Impact 2: Quicker recovery of unpaid SG

As outlined in Section 1.3, current limitations on the data infrastructure of the ATO are constraining the efficiency with which the ATO can create and action unpaid SG cases. Employee notifications can be submitted after an employee leaves employment, resulting in a significant period for which SG has not been paid.

³²Unpublished ATO data.

Once the automatic SG matching system is operational for use in support of the ATO’s SG compliance audits, processes to recover unpaid SG will become more targeted, efficient, and timely. Automatic data matching will reduce the administrative burden on the ATO, improving their response time to employee-initiated complaints.

However, the delay between the payment of wages and SG would still create significant issues for the timeliness of ATO enforcement which would not be addressed through Option 2.

As the investment in data matching in Option 2 would address ATO data capability constraints, but not underlying issues of delays in SG payment it would have a **moderate impact** on the pace of recovery of unpaid SG.

Employees

Where SG contributions are recovered and deposited into a superannuation account sooner, retirement outcomes will improve through increased balances and compounding returns as investment time horizons increase.

Employers

Data quality improvements would allow the ATO to engage sooner and more frequently with employers. Employers would increasingly be contacted by the ATO in a timelier manner because of unpaid SG being identified through data reconciliation, not employee complaints. Overtime, as employers would be contacted closer to the event where SG was not paid, larger SG charge debts would be prevented from accruing, including penalties.

Due to the quicker recovery of unpaid SG amounts, employers would accrue smaller and more manageable debts, increasing the likelihood they will be able to repay the necessary amounts to the ATO. This is particularly so for inadvertent non-compliance where employers have accidentally underpaid SG entitlements.

Australian Taxation Office

The ATO will have greater ability to proactively identify unpaid SG by employers. In addition to increased efficiency, the ATO will also benefit from improved community confidence and trust in SG administration. Key benefits to the ATO from being enabled to recover unpaid SG sooner are outlined in Table 3.

Table 3. Benefits to the ATO from quicker recovery of unpaid SG

Outcome	Detail	Benefit
Increased data availability to facilitate greater use and innovation	<ul style="list-style-type: none"> Better identification of unpaid SG and increased ability to be proactive in taking action against employers. Unpaid SG is identified and acted upon sooner. 	Improved efficiency in ATO processes
Improved service delivery and administration of the SG within the ATO and externally	<ul style="list-style-type: none"> ATO staff can access improved tools and data leading to a reduction in manual analysis and improved data matching. Long term, conducting cases based on a higher quality of data and matching is expected to result in less cases being overturned through complaints or review activities. 	Improved efficiency in ATO processes
Increased government & community confidence and trust in SG administration	<ul style="list-style-type: none"> The ATO will be able to provide parameters on which to base improved SG targets, meeting government election commitments. The ATO will be able to identify increased incidences of non-compliance, to form the basis of improved risk identification and mitigation strategies. 	Improved reputation of the ATO

Impact 3: Regulatory costs

This option would have an average annual regulatory save of \$0.4 million over 10 years. Broadly, this option increases the capability of the ATO to proactively identify unpaid SG amounts. This reduces the burden on employees needing to actively reconcile and initiate a claim with the ATO. The burden on individuals initiating a complaint with the ATO for unpaid superannuation would reduce due to automation and a streamlined user experience. The decision-making process for employees to pursue unpaid SG would be simplified when they are aware that the ATO are actively monitoring non-compliance.

This option would effectively defer the responsibility to detect unpaid SG and initiate compliance action from the individual to the ATO, potentially reducing the number of employee-initiated complaints each year. Under automatic data matching unpaid SG cases will be proactively identified more often, reducing the burden on employees to initiate a complaint. Employees would still engage with the ATO during their investigations. This burden would remain the same as the status quo.

Superannuation funds and DSPs may make some minor changes to their products to ensure that employers have appropriate guidance in calculating, reporting and paying SG as a result of data quality issues identified by the ATO, but this would be expected to have minimal impact. This is due to Option 2 largely involves providing additional resourcing to the regulator. However, some consequential changes are expected for participants in the superannuation industry. Specifically, industry bodies, unions and consumer groups have actively campaigned to improvements in recovery of unpaid SG. Updates to these communications are expected.

The regulatory impacts in summarised in Table 4 consider 1,530 APRA³³ regulated funds would be affected and make minor updates to their communications, along with 87 DSPs which currently operate payroll products which meet the ATO's SuperStream requirements.³⁴ Further assumptions on regulatory costs can be found in *Appendix C – Calculation of Regulatory Costs*.

Table 4. Regulatory burden estimate (RBE) (\$million)

Average annual regulatory costs over the next 10 years				
Change in costs	Individuals	Business	Community organisations	Total change in cost
Total, by sector	(0.5)	0.1	-	(0.4)

Impact 4: Government expenditure

To develop enhanced data matching capability, the ATO would require \$27.0 million in funding to upgrade existing legacy systems. The ATO would develop a digital system to match STP and MATS data at scale to support the ATO to undertake compliance activity.

The ATO will need also need to ensure they continue to complete employee notifications in a timely manner while this new system is being developed. A breakdown in these costs is in Table 5.

³³ Australian Prudential Regulation Authority (APRA) (2023), *Annual superannuation bulletin*, available at: www.apra.gov.au/annual-superannuation-bulletin.

³⁴ ATO (2023), *SuperStream Certified Product register*, available at: softwaredevelopers.ato.gov.au/SuperStream-certifiedproductregister. SuperStream transmits money and information consistently across the superannuation system between employers, funds, service providers and the ATO. With SuperStream money and data are sent electronically in a standard format, with data linked to the payment by a unique payment reference number. SuperStream is the way employers must pay employee SG contributions to superannuation funds.

Table 5. ATO expenditure (\$ million)

	Item	2023-24
ATO Expenditure	Project Costs	11.2
	ICT	15.8
	Total	27.0

Summary of Option 2

As outlined in Table 6, Option 2 would address current limitations on the ATO's ability to match SG related data from employers and funds having a minor benefit on reducing overall instances of unpaid SG and a moderate benefit on the timeliness of recovery of unpaid SG.

Option 2 would improve the visibility of employer and employee SG positions enabling the ATO to recover SG in more cases, recover amounts more efficiently and disincentivise employer non-compliance with their SG obligations. However, as the ATO would still face issues with the infrequency of SG payments, it would have a minor impact in reducing the overall SG gap.

Option 2 is expected to improve the ATO's visibility of SG payments and therefore reduce the instances of unpaid SG occurring. The impact that this will have on SG compliance is unquantifiable due to uncertainty around additional unpaid SG which could be recovered and the behavioural impact on employers.

To the extent that this option reduces the unpaid SG gap, the amount of SG which would be paid to employees that would have otherwise gone unpaid under 4 scenarios is outlined in Table 2. For example, if the \$27 million investment in Option 2 improved the number of finalised ATO compliance cases by 15 per cent this could result in an additional \$81 million of SG contributions paid each year. As shown in Table 2, using the most recent estimate for the gross SG gap published by the ATO for 2019-20, this is equivalent to a 2 per cent reduction in the SG gap.

Table 6. Summary of Option 2 impacts on unpaid SG

Impact	Impact level
1. Fewer incidences of unpaid SG	Minor benefit
2. Quicker recovery of unpaid SG	Moderate benefit

Table 7 below summarise the costs and benefits of improved data matching by the ATO. These are aggregate dollar impacts over 10 years. It is expected that there would only be upfront regulatory costs for superannuation funds and DSPs in the first year. Employees would experience a regulatory save of \$5.5 million over the 10 years, denoted by the parentheses below. Expenditure for the ATO is for the 2023-24 Financial Year.

Table 7. Summary of Option 2 other impacts (\$ million)

Impact	Group	Type of impact	Impact
3. Regulatory costs	Superannuation funds	Administrative costs	0.6
	Digital service providers	Administrative costs	0.1
	Employees	Automation of manual process	(5.5)
4. Government expenditure	ATO	Implementation costs	27.0

4.3 Option 3 – SG on payday

Option 3 would require employers to pay their SG obligations at the same time as salary and wages. Alongside changes to the SG charge to operationalise this change, this would improve timely payment of SG obligations and enable quicker recovery of unpaid amounts.

Impact 1: Fewer instances of unpaid SG

Changing the SG payment frequency to align with wages would address a major underlying issue identified in Section 1 leading to under and non-payment of the SG. This Option would address the visibility issues created by unaligned transactions, SG debts in insolvency and cash-flow management strategies which all drive higher rates of unpaid SG.

The change would most impact employer segments more likely to underpay SG. As outlined in Section 4.2, micro businesses and SMEs are most likely to have unpaid SG. These employer segments are also most likely to pay the SG less frequently than wages. In 2021-22, 69 per cent of micro-businesses, and 46 per cent of SMEs paid SG quarterly.³⁵ Comparatively, only 13 per cent of Government and 15 per cent of large-market employers paid SG quarterly.

As this option will address the underlying issue of delays in receiving SG contributions, particularly for key employer segments, it will have a **substantial impact** on reducing the incidence of unpaid SG by requiring employers to meet their SG obligations at every pay cycle and creating stronger disincentives to leaving SG unpaid.

The impact this will have on SG compliance is unquantifiable due to uncertainty around the level of additional unpaid SG which could be recovered and the behavioural impact on employers. To the extent this option reduces the amount of SG which goes unpaid can be considered under the 4 scenarios given by

Table 2. For example, if the \$201.6 million investment in Option 3 improved the SG gap by 5 per cent, as shown in Table 2 this would result in additional \$202 million of SG contributions paid each year.

Employers

The requirement to pay the SG alongside wages would involve the redesigned SG charge. Aligning the SG charge with an SG on payday will provide bigger disincentives for employers to neglect paying the SG, as the charge will accrue more frequently. Further changes to the SG charge structure, including increased ATO flexibility in remitting the redesigned SG charge in discrete circumstances such as in the case of natural disasters, will ensure that employers are incentivised adequately but fairly to pay their SG obligations on time.

Employers which may not previously have been compliant with their SG obligations will be required to manage the cash flow impacts of paying the SG more contemporaneously on an ongoing basis, rather than finding they cannot meet their SG obligations at the end of the quarter.

As outlined in Section 1.2, currently there are potentially market competition and profitability advantages for employers which do not pay their employee's SG entitlements in full, and do not have SG charge liabilities raised. If SG charge liabilities are raised and recovered by the ATO more efficiently because of improved timeliness of identification such non-compliant employers would have a reduced competitive advantage over employers which are consistently complying with their SG obligations.

³⁵ Treasury Analysis of ATO data, 2022.

Employees

Through more frequent SG contributions, employees may see an increase in their retirement income, because of improved compliance with SG obligations by employers.

Impact 2: Quicker recovery of unpaid SG

This option will allow the ATO to recover unpaid SG sooner, as the instances of unpaid SG could be identified sooner than after the end of the quarter. This would have a moderate impact on the speed at which SG could be recovered, noting this impact would be higher if combined with investments in the ATO to alleviate constraints in their data matching capabilities. If Option 3 is implemented without improvements in ATO data matching capabilities outlined in Option 2, the ATO may still have issues for the timeliness of ATO enforcement.

As the investment in data matching in Option 3 would address issues with the timeliness and mis-matched timing of ATO data raised in Section 1.3, but not underlying issues with data matching constraints, it would have a **moderate impact** on the pace of recovery of unpaid SG.

Employees

Due to the current infrequent minimum payment frequency of the SG, businesses often enter liquidation before any outstanding SG debts are identified and recovered. While the ATO is committed to reducing this gap and successfully raises over \$1 billion of SG charge against non-compliant employers each year, there remains \$3 billion of unpaid debt outstanding as at 30 June 2022.³⁶ At this time, \$1.2 billion of this SG charge debt was levied against insolvent employers. These metrics would be expected to improve with more frequent SG payments, making it easier to identify and distribute unpaid SG to individuals before the employer's debt becomes unserviceable.

Through more frequent SG contributions, employees will see an increase in their superannuation balances at retirement because of more timely action taken by the ATO to address underpayment. Employees may also receive their unpaid SG sooner as the SG charge would be brought forward from a quarterly basis.

Employers

This option would reduce the likelihood of employers accruing large SG debts. Currently, employers who choose to pay SG quarterly are able accrue large debts before the employee or the ATO can identify the issue. These employers may become insolvent before the debt can be recovered. This can be a common occurrence where financially constrained employers use their employees' SG as a cash-flow management strategy to remain solvent. The Senate report '*Superbad – Wage theft and non-compliance of the Superannuation Guarantee*' heard evidence that paying superannuation alongside wages could help businesses to manage their cash flow (See *Appendix A: Previous reviews and reports*).³⁷

Employers who are non-compliant with their SG contributions obligations would be penalised by the ATO under the SG Charge on a more frequent basis, due to both changes to the SG charge and the improvements to the ATO's capacity in unpaid SG identification and compliance activities. More frequent payments would allow the ATO, employers and employees to identify and recover smaller debts as they arise and before employers become insolvent, increasing the likelihood of recovery.

³⁶ Commissioner of Taxation Annual Report 2021-22.

³⁷ Senate Economics References Committee (2017), '*Superbad – Wage theft and non-compliance of the Superannuation Guarantee*'.

This option will reduce disincentives for employers which have mistakenly underpaid SG to delay or avoid self-identifying or rectifying the underpayment. The redesigned SG charge would remove harsher penalties to employers that have paid some of their liability late and have not lodged an SG charge statement, compared to employers that have not paid their liability at all but have lodged an SG charge statement.

Australian Taxation Office

This option would improve the ATO’s capability to undertake SG compliance activities. Aligning the payment of the SG with wages would allow the ATO to identify debts sooner and recover larger amounts. Earlier identification will result in more efficient debt collection.

Currently, the ATO cannot reliably match SG payment data provided by superannuation funds to wage data provided by employers at scale. Matching the data sets is a resource-intensive exercise as the SG amounts listed do not align with pay cycles reported through STP. Under this option, employees and the ATO would be able to confirm that the SG entitlement listed on an employee’s payslip correspond to the amount received by their nominated superannuation fund. Any discrepancies between the entitlement and the amount paid could be resolved contemporaneously, ensuring that workers are remunerated what they are owed.

Impact 3: More frequent SG contributions

Under Option 3, employers who currently pay SG less frequently than wages would need to increase the frequency with which they pay SG.

Table 8 shows ATO data from the 2021-22 financial year (FY2022) for the aggregate amounts of SG paid by employers with different levels of frequency for their payments of SG and wages. In FY2022, \$16.2 billion in SG was paid quarterly, of which \$4.4 billion was paid by employers who paid wages weekly and \$5.4 billion by those which paid wages fortnightly.

Table 8. Total SG paid by employer frequency of SG and wage payments (\$ millions, FY2022)³⁸

Employer SG cycle	Employer wage payment cycle ³⁹				
	Weekly	Fortnightly	Monthly	Unknown	Total
Weekly	947.0	7.7	5.4	17.3	977.4
Fortnightly	214.6	20,085.6	100.5	108.8	20,509.5
Monthly	12,891.7	16,906.6	10,915.2	2,625.4	43,339.0
Quarterly	4,443.7	5,384.7	2,643.1	3,773.7	16,245.2
Unknown	211.5	695.2	29.9	133.4	1,070.0
Total	18,708.5	43,079.9	13,694.2	6,658.5	82,141.1

The employer SG-wages payment frequency category with the highest aggregate amount of SG were employers with a fortnightly cycle for both SG and wages, which totalled \$20.1 billion. The second highest was for employers

³⁸ Treasury analysis of ATO data for the 2021-22 financial year, 2023.

³⁹ For each employer the number of payments to identify ‘Employer wage payment cycle’ as below:

- Weekly: 4 to 5 payments per month
- Fortnightly: 2 to 3 payments per month
- Monthly: 1 payment per month
- Unknown: ad hoc wage cycle or more than 5 payments per month

with monthly SG cycles and fortnightly wage cycles at \$16.9 billion. Overall, \$32.1 billion in SG payments were paid by employers with same or greater SG cycle frequency than wages.

If the SG was required to be paid with at least the same frequency as wages, employers paying SG less frequently than wages would be required to pay SG more frequently. As outlined in Table 9, if implemented in FY2022 this would have affected \$42.5 billion in SG payments, accounting for 56 per cent of all SG paid. This is predominantly made up of SG amounts paid by employers who pay SG monthly and wages either weekly (\$12.9 billion) or fortnightly (\$16.9 billion).

Table 9. Estimated amount of SG impacted by SG on payday (\$ millions, FY2022)⁴⁰

SG cycle	Wage cycle	Total SG paid in FY2022
Fortnightly	Weekly	214.6
Monthly	Weekly	12,891.7
Monthly	Fortnightly	16,906.6
Quarterly	Weekly	4,443.7
Quarterly	Fortnightly	5,384.7
Quarterly	Monthly	2,643.1
Quarterly	Unknown ⁴¹	3,773.7
Total		46,258.2

Additional to this estimate, employers for which either the SG cycle or wages cycle was unknown contributed \$7.5 billion in SG, 5 per cent of SG paid in FY2022. An unknown proportion of this amount would be affected by the change to the frequency of SG payments requiring the SG to be paid as frequently as wages.

Employers who pay wages more frequently than they are mandated to by the *Fair Work Act 2009*, a modern award or enterprise agreement may choose to change payment patterns of wages to the minimum frequency to avoid any potential cash flow issues because of this change. However, the risk of this occurring is low as SG is a small part of remuneration and the total amount of SG entitlement obligations will remain unchanged. Further, the *Fair Work Act 2009*, modern awards and enterprise agreements will limit the extent to which this is possible.

Employees

Treasury estimates that employees in at least 71 per cent of jobs (13.4 million) were held with employers who did not pay SG with the same or greater frequency than wages in 2021-22. Of these jobs, 51 per cent were held by males.

Through more frequent SG contributions, employees may see an increase in their superannuation balances through increased earnings in the financial year they are contributed. Portions of these employee SG payments would be paid into their accounts sooner than they currently are, giving these amounts more time to experience compounding returns in the fund.

As outlined in Table 10, the amount of returns which could be expected to be experienced on SG contributions made in FY2022 are estimated to be \$1.2 billion, based on an assumed rate of return on investment of 7.22 per

⁴⁰ Treasury analysis of ATO data, 2023

⁴¹ For this estimation it is assumed that all employers which paid SG quarterly in 2021-22 for which wage cycle was unknown would need to pay SG more frequently, given that wages are legally required to be paid at least monthly. The impact is assumed to be uncertain for other employers for which either the wage cycle was unknown, or the SG cycle was unknown.

cent⁴² on SG amounts after the contributions tax of 15 per cent is paid.⁴³ If the change to require SG to be paid on payday were implemented for FY2022, estimated returns on SG contributions would increase by around 12 per cent or \$136.8 million to \$1.3 billion.

Table 10. Estimated impact of increased compounding (\$ millions, FY2022)⁴⁴

SG cycle	Wage cycle ⁴⁵	SG after tax	Current estimated returns on SG	Additional returns if SG paid with wages
Fortnightly	Weekly	182.4	6.5	0.1
Monthly	Weekly	10,958.0	370.0	27.1
Monthly	Fortnightly	14,370.6	485.2	24.9
Quarterly	Weekly	3,777.1	103.5	33.4
Quarterly	Fortnightly	4,577.0	125.4	37.0
Quarterly	Monthly	2,246.7	61.6	14.3
Total		36,111.9	1,152.2	136.8

Superannuation funds

The increase in frequency of SG payments would result in a higher level of funds under management for superannuation funds at earlier points during the financial year. As funds under management increase, superannuation funds can lower their administrative costs through economies of scale in operating expenses. Members in larger funds also benefit from access to alternative assets such as infrastructure and private equity, that have historically provided stable and strong returns, where management costs are typically higher.

A higher frequency of contributions being paid into superannuation funds assists trustees in making long-term investment decisions and to manage their liquidity risks. APRA-regulated superannuation funds have a duty to consider expected cash-flow requirements, liquidity of investments, and the ability of the fund to discharge its liabilities. The guaranteed cash flows from more frequent SG contributions would provide a cash buffer and help strengthen overall liquidity for all types of superannuation funds.

Superannuation funds would also have greater total assets because of the increased compounding effect estimated in the section above to be \$137 million for FY2022. Superannuation funds and service providers to those funds would be expected to benefit from increased revenue from fees levied on these amounts of around \$0.6 million per year, based on an assumed annual fee rate of 0.42 per cent.⁴⁶

⁴² Treasury analysis of APRA (2023) *Annual superannuation bulletin June 2022*. The rate of return on investment is assumed to be the equal to the 10-year average annualised rate of return for APRA-regulated entities with more than 4 members.

⁴³ Analysis assumes the total amount of SG in each category is paid through equal instalments with the given frequency (i.e. quarterly involves 4 payments per year, monthly 12, fortnightly 26). Analysis only covers SG amounts for which employer SG cycle and wage cycle are known. This analysis does not take into account related changes in employee balances because of LISTO co-contributions made by Government, SG amounts which become excess concessional contributions, early releases, benefits or Division 293 Tax.

⁴⁴ Treasury analysis based on ATO and APRA data.

⁴⁵ Only employers for which both SG and wages cycles in 2021-22 were known are included in these estimates.

⁴⁶ Treasury analysis of APRA (2023) *Annual superannuation bulletin June 2022*. Assumed annual fee rate estimated as the ratio of total fees to total assets held by APRA-regulated funds in June 2022.

Given superannuation funds held \$3.3 trillion in total assets as at June 2022, the increase in the frequency of \$42.5 billion in SG payments and a potential increase in annual returns of \$137 million would be unlikely to have a significant impact on the complexity of fund operations.

Employers

Employers that do not currently pay SG with the same frequency as wages and salaries will be required to change their payment practices. Based on 2021-22 data, this would result in at least 56 per cent of SG paid each year needing to be paid more frequently. In 2021-22, at least 88 per cent of employers (around 697,000 employers) did not pay SG with the same or greater frequency than wages and would be required to make more frequent SG contributions under Option 3 (see Table 11).

Of the employers expected to be impacted, around 94 per cent of employers would be either SMEs or micro businesses. SMEs or micro businesses also paid 55 per cent of the amount of SG which would be impacted. The impacts may be greater for smaller employers, given that they are currently most likely to pay SG less frequently than pay day, even though payment frequency and reporting requirements would be consistent between employers of different sizes and market segments.

Conversely, many employers, especially large businesses, would not be required to change their SG payment frequencies as they already pay SG as frequently as wages. Around 51 per cent of Government and 33 per cent of large-market employers paid SG at least as frequently as wages in 2021-22.

Table 11. Proportion of employers impacted by SG on payday by segment (per cent, FY2022)⁴⁷

Employer segment	Change needed	Uncertain impact ⁴⁸	No change needed
Micro businesses	89	3	8
Small and medium enterprises	87	3	10
Not for profit	88	3	10
Large-market employer	62	5	33
Government	33	16	51
Overall	88	4	9

Businesses that need to increase the frequency of their SG payments may have impacts on their cash-flow positions within each financial quarter. Employers who currently use funds within a quarter which would otherwise be expended on their employees' SG entitlements will likely need to make more substantial adjustments to pay these entitlements. Some of these businesses may experience increased cash-flow pressures and increased costs, at least in the short-term when the change is introduced. However, a 3-year lead in time before commencement of the change will provide employers time to prepare. Further, as there is currently a lack of data on the extent to which cash-flow practices would be sensitive to such changes it has not been possible to quantify these impacts.

As outlined in Section 1.2, unpaid SG can allow non-compliant employers to benefit at the expense of compliant employers, as non-compliant employers can use unpaid amounts to artificially bolster the profitability of the

⁴⁷ Treasury analysis of ATO data, 2023

⁴⁸ The impact is assumed to be uncertain for employers for which either the wage cycle was unknown, or the SG cycle was unknown.

business. Where SG payments are delayed to prolong a business' life, this ultimately comes at the detriment of employees whose SG is left unpaid, and other businesses who are competing in the market with non-compliant employers. While some micro and SMEs are likely to experience cashflow challenges, marginal businesses that cannot meet SG obligations in a timely way should be aware of the potential for re-allocation of labour resources to more productive businesses, particularly in the context of a tighter labour market.

Impacts would be mitigated by introducing flexibility in how the ATO administers the SG charge, to avoid unduly punishing employers for minor non-compliance or where late payments are made due to circumstances beyond their control.

Impact 4: Regulatory costs

This option has an average annual regulatory over cost over 10 years of \$136.0 million. There is expected to be a significant upfront regulatory cost, as 697,000 employers will be required to adhere to this change. This includes employers being aware and familiarising themselves with new requirements and making necessary changes to payroll and cashflow. However, once these changes are made it is expected that there would be no additional regulatory burden in future years, as the SG on payday would become a 'business as usual' transaction for employers. There would be a minor regulatory save for individuals as the identification of unpaid SG amounts by the ATO will be faster reducing the time an individual spends reconciling their superannuation payments. Further assumptions on regulatory costs can be found in *Appendix C – Calculation of Regulatory Costs*.

Employers

Employers would be required to fund any implementation costs including potential updates to STP reporting and to the Superannuation Contributions Standard which specifies the data that accompanies contribution payments to funds. For employers needing to pay SG more frequently there may be a regulatory burden in adjusting the related changes in reporting SG through STP, changing their arrangements with DSPs and superannuation clearing houses, and potentially higher expenditure on these services.

In the last 20 years, there have been significant improvements in digital payment and payroll reporting software, allowing employers to make and receive payments and data in near real-time. This option would draw on these technological improvements, requiring employers to make SG payments to their employees on the same day that they pay their wage and salary entitlements.

Complimentary changes to STP reporting to enable improved ATO oversight of SG payments will also impact employers. This may involve new reporting fields, existing voluntary fields becoming mandatory, harsher penalties for incorrect reporting and requirements to report in shorter timeframes.

A lead in time from announcement to commencement date will allow businesses who currently pay quarterly, the majority of which are SMEs or micro businesses, time to upgrade payment software and adjust cash flow strategies to account for more frequent SG payments. Changes to improve flexibility in how the ATO administers the SG Charge will also help mitigate impacts on small businesses. These changes would enable the ATO to potentially show discretion in cases where small businesses are having compliance difficulties due to factors outside their control.

Further, there is already digital infrastructure in place that can be leveraged which would limit the regulatory burden on employers. The continued rollout of STP is making it easier for employers to comply with their SG obligations. STP reduces the regulatory burden on business and transforms compliance by aligning payroll functions with regular reporting of taxation and superannuation obligations.

Digital service providers

Changing the frequency of SG payments would require significant work for DSPs which produce and maintain the systems used by employers and superannuation funds to record, report and process SG contributions. DSPs are also likely to need to undertake software updates to match any required changes to STP reporting. This will be mitigated by involving DSPs in a co-design process with Government in developing the policy and administrative changes, including potential changes to reporting requirements and systems. Providing 18-months in lead time between the planned legislating of the changes in late 2024 and the start date of 1 July 2026 will also mitigate negative impacts on DSPs.

For SMEs, where payroll software is already used, costs would initially be borne by DSPs who would need to update payroll systems to adjust for the increased payment frequency. These costs are likely to be passed on to employers as users of this software to meet their obligations. Employers who do not currently use sophisticated payroll software will potentially face increased administrative costs for adopting new payroll systems. Funds would be required to update their superannuation accounts and contributions reporting to the ATO which may be costly and resource intensive.

Like Option 2, approximately 87 DSPs (those who choose to be listed) will be impacted by this change. The regulatory costs include DSPs familiarising themselves with the new requirements for SG on payday, and making the changes outlined above to implement this change. However, given the role of DSPs is to provide software that allows employers to meet their legal payroll and reporting obligations, they are regularly required to update their processes and platforms for regulatory change in line with their market function.

Superannuation funds

Under this option, superannuation funds will need to process a higher volume and more frequent SG contributions to member's accounts. Currently, once a fund receives a contribution they match the payment with internal data to allocate amounts to a members account which can take 1 to 3 days. Funds rely on a feed of data from their bank, normally daily, to identify and match payments to their internal data (by SuperStream Payment Reference Numbers). Where it cannot be matched, or there are errors in the contributions data, it may take up to 28 days from when the fund receives the payment before it may be returned to the employer.

There will need to be updates to superannuation fund data and reporting systems, particularly required changes to the system that flows superannuation contributions information through to the ATO via MATS. Superannuation funds would be required to fund any implementation costs including potential updates to STP reporting and to the Superannuation Contributions Standard which specifies the data that accompanies contribution payments to funds.

Superannuation clearing houses

The operations of superannuation clearing houses would be impacted by increasing frequency of payments, and adjustments to the SG charge. The vast majority of employers use a clearing house to make SuperStream compliant SG contributions. Formal reporting on the rate of compliant and non-compliant SuperStream contributions to APRA finished in 2019, with the rate of non-compliant contributions being 2.5 per cent, approximately half of the SG gap.⁴⁹ Employers may not engage with a clearing house directly as they may connect to one through their payroll software. Employers may also be using a portal operated by a superannuation fund or payroll providers partnered with a clearing house.

⁴⁹ ATO (2019), *SRF711.0 quarterly report*, available at: <https://www.ato.gov.au/misc/downloads/pdf/qc56074.pdf>.

There are currently 7 commercial clearing houses offering integrated data and payment clearing solutions which meet the ATO's SuperStream requirements.⁵⁰ Some of these services are offered by major banks while others are entities primarily or solely conducting clearing house activities. Most of these services do not require employers to pay transaction fees for each payment. These clearing houses advise maximum processing times for employer contributions of between 2 and 5 days.⁵¹

Employers with 19 or fewer employees, or an annual aggregated turnover of less than \$10 million, can access the free ATO's Small Business Superannuation Clearing House service. Around 260,000 employers made payments through the Small Business Superannuation Clearing House in the 2021-22 financial year, 67 per cent of which had fewer than 5 employees.⁵²

Payment by employers to clearing houses can be via BPAY or electronic funds transfer (EFT) in most cases, with some clearing houses also allowing direct debit and credit card payments. Once the funds have cleared in the clearing house's account, it is then matched to the employer's payment. The clearing house then disperses the relevant amounts and data to the various funds for each employee, with payments made by EFT Direct Credit.

The institutions managing these services may need to upgrade their systems to reduce the time taken to process payments to enable their clients (employers) to be compliant with the new regulations. Otherwise, employers may incur SG charge if amounts are not received by superannuation funds within required timeframes. Clearing houses may need to consider moving to faster payment systems to reduce their processing and payment times. These operations may need to migrate to real-time New Payments Platform services currently operating for payments between consumers and businesses through services such as Osko.⁵³ Clearing house managers may also be required to improve the speed of their matching and allocation processes and their update system capacity for increased frequency of transactions.

Clearing houses may be required to reduce the amount of time they hold employer superannuation contributions, potentially involving changes to their operating revenue models. Superannuation clearing houses may run on an investment model where, rather than charging fees to employers, contributions paid by employers are invested to earn returns before being transferred to the appropriate superannuation funds. Regulatory costs and reductions in investment revenue due to reduced holding times may be passed on to employers through higher service fees.

Additional service fees charged to employers would be lessened for smaller employers by the availability of the Small Business Superannuation Clearing House. Currently, 94 per cent of employers have less than 20 employees⁵⁴ and therefore would be able to utilise this service and avoid any additional fees. Many employers are also offered free clearing house services through their default fund, which could be another way to avoid additional fees.

To avoid any adverse outcomes, there may need to be a higher level of regulation placed on clearing houses to protect the interests of employers in maintaining compliance with the reforms.

⁵⁰ ATO (2023), *SuperStream Certified Product register*, available at: softwaredevelopers.ato.gov.au/SuperStream-certifiedproductregister. LUCRF Pty Ltd Clearing House had been closed at the time of this IA.

⁵¹ Treasury web review of clearing house operator offerings and product disclosure statements. Limited data is available on commercial clearing house activities.

⁵² Treasury analysis of ATO data, 2021-22.

⁵³ The New Payments Platform is an open access infrastructure developed by the Reserve Bank of Australia and industry to enable electronic payments with near real-time funds availability to the recipient.

⁵⁴ Australian Bureau of Statistics (2022) (ABS), *Counts of Australian Businesses, including Entries and Exits*.

Given the impost on clearing houses that will be required to implement Option 3, close collaboration and engagement with these stakeholders would be essential in finalising the design of changes to the frequency of SG payments, payment timeframes and the operation of the SG charge. The post-decision consultation strategy is outlined in Section 5.

The ATO does not have direct visibility of transactions made through clearing houses, and there is no regulation mandating the time in which payments should be processed. While this market is largely unregulated, most clearing houses process payments within three business days. Additionally, with the introduction of the New Payment Platform, delays in transfers are expected to continue to decrease.

Other financial intermediaries

Financial intermediaries, such as banks, which process SG contribution payments between employers and superannuation funds (and other intermediaries) may also need to invest in changes to adjust to a higher frequency of superannuation contribution transactions. However, these impacts on other financial intermediaries are likely to be minimal given the small scale of SG payments in comparison to the high volume of day-to-day transactions they facilitate.

Summary

The estimated average regulatory impacts over the next 10 years are summarised in Table 12. Further assumptions on regulatory costs can be found in *Appendix C – Calculation of Regulatory Costs*.

Table 12. Regulatory burden estimate (RBE) (\$ million)

Average annual regulatory costs over the next 10 years				
Change in costs	Individuals	Business	Community organisations	Total change in cost
Total, by sector	(0.5)	136.5	-	136.0

Impact 5: Government expenditure

Australian Taxation Office

The ATO require funding to both design and implement this option, including to:

- Consult on the changes to reporting requirements for employers, DSPs, and superannuation funds.
- Improve data migration systems to ensure more timely data transfer between the ATO, funds and employers
- Undertake the necessary infrastructure improvements to accommodate the significant increase in reporting data associated with the payday frequency.
- Communicate upcoming changes to stakeholders both through face-to-face and digital platforms.
- Provide support to affected stakeholders during the implementation and rollout.

As a rough order of magnitude, the ATO would be expected to require expenditure of around \$200 million to support the SG on payday reforms. This estimate has been based on the actual costs the ATO has incurred for delivering projects with similar complexity, scope and components.

As outlined in Table 13, this cost estimate includes \$13.2 million in the 2023-24 financial year for the ATO to conduct consultation and co-design on implementation solutions. This process would be necessary to calculate a more specific estimate of the ATO expenditure required. For the purposes of estimating impacts, Option 3 is assumed to involve a mid-point estimate of \$93.4 million in each of the following 2 financial years for the ATO to administer the reforms.

Table 13. ATO expenditure (\$ million)

	2023-24	2024-25	2025-26	2026-27
ATO Expenditure	13.2	93.4	93.4	0.0

Treasury

As outlined in Table 14, Treasury requires \$1.6 million in funding to:

- Undertake 2 periods of public consultation.
- Manage the drafting and preparation of the legislation required to give effect to the package (across multiple primary and secondary legislative documents).
- Respond to an expected high number of requests from the public and key stakeholders regarding the changes (given the far-reaching application of the measures across the economy).
- Manage the implementation of the package which will include working with the ATO to ensure all implementation deadlines are met.
- Manage any emerging policy or administrative issues that may arise over the implementation period that require a Government response.

Table 14. Treasury expenditure (\$ million)

	2023-24	2024-25	2025-26	2026-27
Treasury expenditure	1.1	0.5	0.0	0.0

Summary of Option 3

As outlined in Table 15, Option 3 would address current limitations on the recovery of unpaid SG relating to infrequent payment timeframes. Option 3 would have a more substantial benefit of reducing overall instances of unpaid SG and a moderate impact on the timeliness of recovery of unpaid SG.

The impact that Option 3 will have on SG compliance is unquantifiable due to uncertainty around additional unpaid SG which could be recovered and the behavioural impact on employers. To the extent that this option reduces the unpaid SG gap, the amount of SG which would be paid to employees that would have otherwise gone unpaid under 4 scenarios is outlined in Table 2. For example, if the \$201.6 million investment in Option 3 improved the SG gap by 5 per cent, as shown in Table 2 this would result in additional \$202 million of SG contributions paid each year.

Table 15. Summary of Option 3 impacts on unpaid SG

Impact	Impact level
1. Fewer incidences of unpaid SG	Substantial benefit
2. Quicker recovery of unpaid SG	Moderate benefit

Table 16 below summarise the costs and benefits of aligning the payment of SG to the same day as wages. These are aggregate dollar impacts over 10 years. It is expected that employees would receive a benefit of around \$1.4 billion in an increased compounding returns as shown in impact 3. It is expected there would only be upfront regulatory costs for employers, clearing houses, superannuation funds and DSPs in the first year. Employees would experience a regulatory save of around 5.5 million over the 10 years, denoted by the parentheses below.

Due to the large quantity of employers required to make system changes (697,000) this would directly increase aggregate regulatory costs for employers by \$1,221.0 million. However, the regulatory impacts to each individual employer are expected to be mitigated by the continued improvements of digital infrastructure and the lead time before more frequent SG obligations would commence on 1 July 2026.

Total government expenditure is denoted over the four years, with any future spending on Option 3 to be a decision of Government.

Table 16. Summary of Option 3 impacts (\$ million)

Impact	Group	Type of impact	Impact
3. More frequent SG payments	Employees	Increased compounding of returns	1,368.4
	Superannuation funds	Increased fee revenue	5.7
	Employers	Cash-flow adjustments	Unquantifiable
4. Regulatory costs	Employees	Automation of manual process	(5.5)
	Employers	System upgrades	1,221.0
	Clearing houses	System upgrades & fee structure changes	0.3
	Superannuation funds	System upgrades	5.7
	Digital service providers	System upgrades	10.4
	Employers	Understanding new regulations	126.8
	Clearing houses	Understanding new regulations	0.0
	Superannuation funds	Understanding new regulations	0.2
	Digital service providers	Understanding new regulations	0.1
	5. Government expenditure	ATO	Implementation costs
Treasury		Implementation costs	1.6

5. Who did you consult and how did you incorporate their feedback?

Design of Options 2 and 3 were heavily influenced by stakeholder insights, recommendations, and engagement on the issue of unpaid SG. Feedback on options to address unpaid SG has been collected through multiple public reviews including:

- *Superannuation Guarantee Non-compliance*, Superannuation Guarantee Cross Agency Working Group (March 2017)
- *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, Senate Report (May 2017)
- *Superannuation: Assessing Efficiency and Competitiveness*, Productivity Commission Inquiry Report (December 2018)
- *Retirement Income Review* (July 2020)
- *Addressing Superannuation Guarantee Non-Compliance*, Australian National Audit Office (April 2022)
- *Systematic, sustained and shameful*, Senate Report (May 2022)

Stakeholders in these forums and others have been overwhelmingly in support of the principle of SG being required to be paid on payday. These stakeholders include superannuation funds, consumer representatives, unions, and employee groups. See Table 17 for a summary of views.

Table 17. Stakeholder views on SG on payday

Stakeholder	Support?	Stakeholder comments
Industry Super Australia	Yes	<ul style="list-style-type: none"> • “It will make it easier for workers to keep track of their super and harder for bosses not to pay it.”⁵⁵ • “Paying super with wages would level the playing field for all employers, stopping the unfair commercial advantage exploitative bosses get by not paying their workers’ full entitlements.”⁵⁶
CBUS Super	Yes	<ul style="list-style-type: none"> • “Payment of Superannuation Guarantee contributions should be aligned with payment of wages. This would enable non-payment and underpayment to be identified more quickly and improve member engagement with superannuation more generally.”⁵⁷

⁵⁵ ABC (2021), *Workers' superannuation used to prop up small businesses struggling with cashflow. Should it?*, available at: <https://www.abc.net.au/news/2021-10-29/workers-superannuation-is-being-used-to-prop-up-small-businesses/100577450>.

⁵⁶ Industry Super Australia (2022), *Government urged to stop the \$77 million Tasmanian super rip off*, available at: <https://www.industrysuper.com/assets/FileDownloadCTA/Government-urged-to-stop-the-77-million-Tasmanian-super-rip-off.pdf>.

⁵⁷ CBUS (2020), Submission to Senate Economics References Committee (2022), *Unlawful underpayment of employees' remuneration*.

Stakeholder	Support?	Stakeholder comments
Australian Institute of Superannuation Trustees (AIST)	Yes	<ul style="list-style-type: none"> “[SG on payday] will provide greater transparency to members that their entitlements are being paid and permit the ATO to more easily reconcile superannuation data reported by funds through the Member Account Transaction Service with payroll data reported via Single Touch Payroll.”⁵⁸
Super Consumers Australia	Yes	<ul style="list-style-type: none"> “Super Consumers Australia supports a change in the law to require employers to pay super alongside wages ... Single touch payroll has reduced reporting burdens for businesses and made it easier for them to process super along with wage payments.”⁵⁹
Council of Small Business Organisations Australia (COSBOA)	No	<ul style="list-style-type: none"> “changing the payment cycle for superannuation would be an unfair burden on businesses ... the idea would increase the administrative burden for employers and would be difficult for businesses that have built a routine of quarterly payments. “We don’t agree to payday payment... it could increase non-payments,”⁶⁰
Australian Council of Trade Unions (ACTU)	Yes	<ul style="list-style-type: none"> “Superannuation should be paid at the same time as wages, with the date of the payment recorded on pay slips.”⁶¹
Shop, Distributive and Allied Employees’ Association	Yes	<ul style="list-style-type: none"> “The quarterly nature of superannuation payments provides an increased likelihood of both deliberate and unintentional superannuation underpayments.”⁶²
CPA Australia	Yes	<ul style="list-style-type: none"> “A move to real-time payment of SG with an appropriate transition period may also help to address non-payment. That is, aligning the payment of SG with an employer’s pay cycle.”⁶³
Council on the Aging (COTA)	Yes	<ul style="list-style-type: none"> “Recommendation: 4. Key principles guiding the payment of the SG should be: <ul style="list-style-type: none"> – The right of the employee to receive their SG payment into their superannuation account as they earn it, preferably on the same cycle as wage payments are made to the individual;”⁶⁴

Reforming the SG charge is necessary to administer and enforce an SG on payday framework under Option 3. While there are limited stakeholder comments on reforming the SG charge, stakeholders such as COSBOA, who do not support SG on payday, have commented that the ATO “should take a much stricter and more proactive approach to imposing penalties on those who do not meet their Superannuation Guarantee obligations.”⁶⁵

In assessing Options 2 and 3, Treasury consulted closely with the ATO as the administrator of the SG compliance framework. This was crucial in ensuring the proposed changes support the policy intent of reducing the incidence and improving recoverability of unpaid SG.

⁵⁸ AIST (2022), 2022-23 October Pre-Budget submission.

⁵⁹ CHOICE (2022), *What to do if your employer doesn’t pay your super*, available at:

<https://www.choice.com.au/money/financial-planning-and-investing/superannuation/articles/unpaid-super>.

⁶⁰ Sydney Morning Herald (2019), *‘A nightmare’: Funds push for tougher action to stop unpaid super*, available at:

<https://www.smh.com.au/business/small-business/a-nightmare-funds-push-for-tougher-action-to-stop-unpaid-super-20190819-p52jgc.html>.

⁶¹ ACTU (2018), Submission to Senate Economics Legislation Committee, *Inquiry into Treasury Laws Amendment (2018 Measure No.4) Bill 2018*.

⁶² Shop, Distributive and Allied Employees’ Association (2020), Submission to Senate Economics References Committee (2022), *Unlawful underpayment of employees’ remuneration*.

⁶³ CPA Australia (2017), Submission to Senate Economics References Committee (2017), *‘Superbad – Wage theft and noncompliance of the Superannuation Guarantee’*.

⁶⁴ COTA (2017), Submission to Senate Economics References Committee (2017), *‘Superbad – Wage theft and noncompliance of the Superannuation Guarantee’*.

⁶⁵ Senate Economics References Committee (2017), *‘Superbad – Wage theft and noncompliance of the Superannuation Guarantee’*.

The market sensitivity of the proposed changes to the SG system means there has been limited ability to consult on Option 3 policy details either publicly or confidentially before the major decision to proceed with the policy in the 2023-24 Budget. Consulting with a limited number of stakeholders on the specifics of the SG on payday reform involved in Option 3 would have afforded unacceptable market advantage, allowing some businesses advanced opportunities to develop implementation strategies, begin digital infrastructure investments and/or hire staff to complete these roles in an already tight labour market. The competitor advantage would be particularly relevant in the commercial clearing house industry, where almost all superannuation payments are made through 7 competitors. Restricting confidential consultation to one of these clearing houses would both limit the quality of the consultation and unfairly disadvantage competitors. As such, post-decision consultation for detailed feedback on implementing recommended options would be most appropriate for this proposal.

Post-decision consultation

Given the involvement from employers, superannuation funds, clearing houses, and DSPs that will be required to implement Option 3, close collaboration and engagement with these stakeholders would be essential in finalising the design of these changes.

Subject to the decision of Government, a consultation period could include the release of a public consultation paper and roundtable meetings held by Treasury and the ATO with interested stakeholders. The consultation period could focus on how Options 2 and 3 would be implemented to achieve the key objectives, whilst also limiting regulatory burden on affected stakeholders.

The consultation could focus on 3 key topics which would inform the design of the unpaid SG package. Targeted policy design considerations for these topics are included in Table 18.

Table 18. Treasury’s proposed consultation considerations

Consultation topics	Targeted policy design considerations
Increasing the payment and reporting frequency of the SG to align it with an employees’ payday	<ul style="list-style-type: none"> • Impacts on the calculation of an employee’s SG in an SG on payday environment. • Feasible payment processing timeframes for employers and financial intermediaries, including clearing houses. • The impact of shorter timeframes on clearing houses and other financial intermediaries including any changes to regulatory structures. • Impacts on business structures and strategies.
Automatic ATO compliance systems	<ul style="list-style-type: none"> • Changes to reporting requirements for employers, financial intermediaries including clearing houses and superannuation funds. • Ongoing engagement between the ATO and stakeholders.
Changes to the SG charge	<ul style="list-style-type: none"> • Flexibility in the application of the SG charge. • Changes to the calculation of the SG charge. • Administration of the SG charge.

To effectively administer the unpaid SG package, changes would be required to the infrastructure that underpins the SG system, including those that impact external stakeholders. Clearing houses will be essential in ensuring that SG contributions are deposited into an employee’s superannuation fund in a shorter timeframe than the existing 28-day period after the end of the quarter. As such, extensive consultation with clearing houses among other stakeholders will inform the policy design for payment processing times of employee contributions. Policy design considerations will include the changes required to ICT infrastructure, technological limitations, reporting systems and business strategies that will be required to accommodate the shorter payment timeframe.

6. What is the best option from those you have considered?

Outcomes of consultation

There is widespread stakeholder support for Government action to address the incidence of unpaid SG. From public reports and statements, the majority of stakeholders for which views are known support Option 3.

Extensive consultation post-Budget announcement is planned with stakeholders, including superannuation funds, employers, DSPs and clearing houses. This will include the release of a public consultation paper and will be supported by roundtables with stakeholder representatives. Stakeholders are integral to the delivery of the unpaid SG package to ensure it is fit for purpose and does not impose any undue burdens on stakeholders.

Recommended options – 2 and 3

Treasury recommends Options 2 and 3 be considered by the Government in the form of an unpaid SG package as together this will have a significant impact on addressing the underlying drivers of unpaid SG. Alternatively, if the status quo were to be maintained, there will likely minimal improvement in the unpaid SG gap. In this scenario, the issue of unpaid SG would continue to persist, and the gap would potentially grow in line with a maturing superannuation system.

Addressing unpaid SG

Together, Options 2 and 3 will reduce unpaid SG in the superannuation system. These options will do this by addressing the several underlying causes of unpaid SG being:

- Lack of visibility of SG payments
- Delay in receipt of SG payments

Implementing Options 2 and 3 would improve the ability for employees, employers, the ATO and superannuation funds to recognise unpaid SG in the system, in addition to reducing the likelihood of it occurring in the first place.

Options 2 and 3 have the cumulative effect of increasing the transparency of unpaid SG. These options will further disincentivise the non-payment of SG; empower individuals to raise the issue of unpaid SG early with the ATO; and improve ATO capabilities to claw back superannuation where it remains unpaid.

Investments in an SG package would enable the Government to ensure workers are paid their superannuation entitlements and that compliant employers are not disadvantaged by non-compliant competitors.

Frequency of SG contributions

Under Option 3 the increase in frequency of SG payments would impact approximately \$46.3 billion in SG payments, impacting around 13.4 million employee positions held with 700,000 employers (based on 2021-22 data). While this may have adverse impacts on employer cash-flows it would have positive impacts on employee superannuation balances and superannuation funds. While these effects would be most substantial on smaller businesses, it is justified given instances of unpaid SG most frequently involve smaller businesses such that the

benefits from addressing the issue of unpaid SG would outweigh the potential adverse impacts of the change in frequency on employers.

Regulatory costs

As summarised in Table 19, Option 2 is a deregulatory option and would shift the burden away from employees needing to actively engage with the ATO to investigate unpaid SG amounts. The capacity to match STP and MATS data sets automatically would allow the ATO to better engage with employers and employees, informing them of their SG obligations and entitlements as well as allowing the ATO greater scope to recover unpaid SG.

However, this in isolation would have a lesser impact on unpaid SG than additionally pursuing Option 3. While regulatory costs for Option 3 are high in comparison to the status quo, there are substantial benefits to pursuing both Options 2 and 3 due to the impacts they have on reducing unpaid SG and increasing equity by improving retirement outcomes for lower income employees. It will also see employers who are already compliant not disadvantaged by practices of non-compliant employers, and greater discretion from the Commissioner of Taxation for inadvertent non-compliance. These options also result in a positive deregulatory benefit for individual employees.

An additional benefit to pursuing these options together is the enhanced ability for the ATO to identify and recover unpaid SG in a timelier manner before an employer becomes insolvent and any unpaid SG amounts are non-recoverable. Option 3 will leverage existing digital reporting systems. Recent changes to SG coverage by abolishing the \$450 per month threshold for eligible employees has been positively received and caused no major issues implementation issues with employers. With the legislated increase in the SG rate to 12 per cent by 1 July 2025, there is a potential for greater unpaid SG obligations to accrue as the burden on employers to meet higher SG amounts increases. Accordingly, only pursuing Option 2 would leave employees entitled to this legislated increase but with less protection against unpaid SG than they could otherwise have by also pursuing Option 3.

Table 19. Summary of Regulatory Costs (\$ million)

Options	Regulatory Costs
Option 2 – Investment in ATO Data Matching	(0.4)
Option 3 – SG on Payday	136.0
Total	135.6

Government expenses

Table 20 summarises the overall Government expenditure involved in implementing Options 2 and 3 as the unpaid SG package.

Table 20. Summary of Government Expenses (\$ million)

Options	Government Expenses
Option 2 – Investment in ATO Data Matching	31.6
Option 3 – SG on Payday	201.6
Total	\$233.2*

*Implementing Options 2 and 3 at the same time will allow for a number of design and implementation processes to be completed concurrently. This will result in a lower expense to Government than implementing these options separately.

7. How will you implement and evaluate your chosen option?

Policy evaluation and performance

As outlined in Section 2.3, there would be two primary objectives for Government policy in addressing unpaid SG:

1. Increase the amount of SG being paid by employers on time and in full.
2. Increase the recovery capabilities of the ATO by enabling more timely, efficient and proactive compliance approaches.

The primary metric to track the success of the unpaid SG package in meeting both objectives would be movements in the net SG gap, as calculated and reported by the ATO.

Improvements to ATO systems would mean ATO methodology to calculate the SG gap would be more accurate and contemporaneous. This would enable the ATO to deliver the ANAO report *Addressing Superannuation Guarantee Non-Compliance* recommendation to set targets for the SG gap.⁶⁶ From 1 July 2026, improvements in the SG gap would reflect any changes following the commencement of the unpaid SG package reforms.

Employer SG compliance measures

The SG gap calculation enables estimation of both the proportion of SG contributions paid without ATO intervention and the gross SG gap which were both outlined in Section 2.3 as measures for assessing whether there has been an increase in employers paying SG on time and in full. These measures would be monitored for improvement against relevant benchmarks to evaluate performance of Options 2 and 3 once implemented.

ATO recovery capability measures

As outlined in Section 2.3, Options 2 and 3 would be evaluated against measures for ATO recovery capabilities. The ATO currently reports 3 performance targets related to amounts of unpaid SG recovered and amounts held as debts each financial year. These include:

- Value of SG charge for the financial year, both raised (including penalties and interest) and collected.
- Value of SG entitlements distributed to individuals and funds during the financial year.
- Value of SG charge debt holdings, both on hand and irrecoverable at law or uneconomical to pursue.

While the ATO currently reports data on SG charge activities each year, to evaluate the timeliness of SG recovery the unpaid SG package would involve the ATO introducing two new interim unpaid SG recovery targets:

- SG distributed as a proportion of SG raised: The proportion of SG charge liabilities raised for a financial year which has been collected and distributed to individuals or funds.

⁶⁶ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

- SG Charge raised and distributed within 12 months: The value of SG charge liabilities raised, then collected and distributed to individuals or funds within 12 months.

The ATO also publishes metrics on its service commitments related to the timeliness in processing unpaid SG cases against set targets monthly.

To evaluate performance of Options 2 and 3 against the objective outlined in Section 2.3, the proportion of compliance cases that are proactively identified can be measured from data the ATO publishes on the number of cases initiated based on employee complaints (ENs) and those initiated by the ATO. These metrics would be expected to improve as the unpaid SG package is implemented, as employer compliance improves and the ATO has improved visibility of the SG system.

Improvements in the ATO’s data matching capabilities would also allow the ATO to establish new measures and targets across the SG system. These improved targets would provide useful insights into employer compliance with SG obligations and the efficacy of the ATO’s capability to identify unpaid SG.

Implementation

The ATO is well placed to deliver the preferred solution and has existing committees and governance arrangements which will be used to monitor and assure successful delivery. Transitional arrangements for impacted stakeholders would be managed through close consultation on final design parameters and long lead times for policy commencement.

Implementation risks and considerations

Table 21 details the implementation challenges associated with this proposal, including their likelihood, consequences, and management.

Table 21. Implementation risks – likelihood, consequences, and management

Implementation risk	Likelihood	Consequences	Management
Unforeseen barriers to developing and processing system changes required e.g., undue costs or unforeseen issues with building systems	Low	Delay in reducing the unpaid SG gap, resulting in lower superannuation balances at retirement. Possible non-implementation of the policy.	Proactively managed by close consultation with stakeholders in designing final policy parameters.
Stakeholders not meeting implementation timeframes	Medium	Delay in reducing the unpaid SG gap, resulting in lower superannuation balances at retirement.	Close consultation with stakeholders on final design of the policy parameters and requirements to ensure it can be implemented within set timeframes. Ongoing conversations with stakeholders throughout the implementation process.
Interaction with other superannuation reforms	Medium	Delay in reducing the unpaid SG gap, resulting in lower superannuation balances at retirement. Package not meeting policy intent.	Ensure other reforms consider implementation of the unpaid SG package.

The ATO would be responsible for implementing and delivering the Government system upgrades required to operationalise this package. A detailed implementation plan is available in the ATO’s First Pass Business Case, developed in conjunction with the Digital Transformation Agency.

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Appendix A: Previous reviews and reports

'Enforcement of the superannuation guarantee charge', Senate Select Committee on Superannuation and Financial Services, 2001

In April 2001, the Senate Select Committee on Superannuation and Financial Services tabled its report into the enforcement of the Superannuation Guarantee Charge.

The report recommended increasing the payment frequency of the SG from annually to quarterly. The committee reported that the annual frequency was contributing to employer non-compliance and the following risks:

- Loss of investment earnings for employees
- Loss of entitlements due to employer insolvency
- Loss of disability or income protection insurance and
- Disadvantages for complying employers, compared to non-compliant competitors.

Shortly after this report, the SG payment frequency was increased to quarterly by the Government. The changes came into effect from 1 July 2003.

'Superannuation Guarantee Non-compliance', Superannuation Guarantee Cross Agency Working Group, 2017

The Superannuation Guarantee Cross Agency Working Group (the 'Working Group') was established in December 2016 to report to the then Government on the operation, administration and extent of non-compliance in the SG system in Australia.

The Working Group identified two key barriers to maintaining or improving SG compliance:

- The ATO did not have any visibility over an employer's SG obligations to their employees.
- The ATO only received information on SG payments received by superannuation funds on an annual basis.

The Working Group reported that a significant reduction in the amount of unpaid SG charge could be achieved by some improvements in the effectiveness of Commissioner and insolvency practitioner recovery powers, or by the introduction of measures that would reduce the capacity or further increase the personal disincentives for employers to incur SG charge liabilities.

The Working Group suggested that improvements to data visibility should be the main priority, after which increases to the payment frequency of the SG could be reviewed.

'Superbad – Wage theft and non-compliance of the Superannuation Guarantee', Senate Economics References Committee, 2017

On 1 December 2016 the Senate referred an inquiry to the Superannuation Guarantee to the Senate Economics References Committee (the Committee). The Committee released its report, *'Superbad – Wage theft and*

noncompliance of the Superannuation Guarantee' on 2 May 2017, including 32 recommendations intended to address the rate of SG non-compliance.

The Committee linked unpaid superannuation to loss of retirement income, lowering standards of living and increasing reliance on the age pension. The Committee concluded that the current approach of the ATO in identifying and addressing SG non-compliance was inadequate. Importantly, the Committee made the following recommendations:

- Recommendation 2: The Committee recommended that the ATO prioritise its work on calculating and publishing an accurate, reliable estimate of the SG gap.
- Recommendation 5: The Committee recommended that the Government strongly consider introducing amendments to the SGA Act to require SG to be paid at least monthly, and preferably in alignment with regular pay cycles.
 - Relatedly, the Committee found that the current technological solutions available to businesses regarding payroll and other related activities mean that a more frequent schedule of SG payments would not place an undue administrative burden on businesses.
- Recommendation 7: The Committee recommended the Government review the definition of Ordinary Time Earnings for the purposes of SG obligation calculations and undertake an examination on the wider implications of any potential changes.
- Recommendation 8: The Committee recommended the Government consider further initiatives that will assist small business employers in managing their cash flow responsibly in order to provide them the best possible chance of fulfilling their SG obligations.
- Recommendation 16: The Committee recommended that the Government review the SG charge regime and its management by the ATO to ascertain whether it is adequate, with a view to increasing penalties for deliberate and repeated acts of non-compliance by employers.

The Committee concluded that these proposed recommendations would improve the retirement outcomes for Australians and ensure that SG-compliant employers are not disadvantaged by their non-compliant competitors.

'Superannuation: Assessing Efficiency and Competitiveness', Productivity Commission, 2018

The Productivity Commission released the report *Superannuation: Assessing Efficiency and Competitiveness* in December 2018. Relevant findings from the report were:

Finding 6.1: Several proposed policy changes will promote Superannuation Guarantee payment compliance.

- Single Touch Payroll being extended to small employers (with less than 20 employees) from 1 July 2019.
- Funds being required to report contributions to the ATO at least monthly.
- The ATO having stronger powers to penalise non-compliant employers and recover unpaid superannuation contributions.

The report found that recent policy initiatives had improved the situation, but current policy settings were inevitably making slow progress by treating the symptoms and not the structural cause. The report stated that

“The new regime for employers and funds to report to the ATO (with some important as-yet unlegislated elements) is needed to make monitoring and enforcement simpler and effective.”⁶⁷

The report argued that the proposed SG compliance measures will make it “much easier for the ATO to detect unpaid contributions” and that “it would be worth considering any necessary policy improvements to address the issue of unpaid contributions once the proposed policy initiatives are in place.”⁶⁸

Finding 6.2: The superannuation system, primarily due to its policy settings, does not minimise the unnecessary and undesirable erosion of member balances.

The report found that delayed and unpaid SG was a significant source of erosion on individuals’ superannuation savings. The report noted that “given this leakage effectively occurs before a fund has a member’s contributions, there is little funds can do to rectify it.” As a result, the Productivity Commission argued that the issue of unpaid SG was deemed to be primarily about policy and the compliance framework.⁶⁹

‘Retirement Income Review’, 2020

The Retirement Income Review (the Review) was a report commissioned by the then Government for an independent panel to review the retirement income system. The review was published in 2020.

The Review reported that unpaid SG was typically experienced by lower-income employees, particularly in the accommodation and food services, and construction industries; and employers with an annual turnover of less than \$2 million. The impact of unpaid SG was generally worse for younger employees as they missed out on the benefits of compounding interest.

The Review found that facilitating employees and the ATO to identify underpayment more quickly would help people get the SG to which they are entitled. The Review also found that paying the SG at the same time as wages would make it easier for employees to monitor SG compliance, however also identified that it may create cash flow issues for employers.

The Review also looked at the impact of expanding the earnings base that attracts the SG. The Review found that “such a change would equalise the SG received per dollar of earnings between employees, regardless of their working arrangements. This would boost the superannuation balances and retirement incomes of about 20 per cent of employees, particularly those in mining, manufacturing and construction jobs, who typically receive a greater proportion of their earnings as overtime.” “For employees in these industries, the forgone SG on overtime significantly reduces both their potential superannuation balances at retirement and their retirement incomes.” However, the Review also asserted that this may have significant labour market impacts in sectors where overtime represents a large share of remuneration.

‘Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration’, Senate Economics References Committee, 2022

On 13 November 2019, the Senate referred an inquiry into the causes, extent and effects of unlawful non-payment or underpayment of employees’ remuneration by employers and measures that can be taken to address the issue.

⁶⁷ *Superannuation: Assessing Efficiency and Competitiveness*, Productivity Commission 2018.

⁶⁸ Ibid.

⁶⁹ Ibid.

The committee tabled its report 'Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration on 30 March 2022. The report found that in many industries underpayment is 'deliberate and systematic, and often normalised' and made 19 recommendations to address these issues. Importantly, the committee made the following recommendations:

- Recommendation 9: The committee recommends that the Australian Government consider bringing forward amendments to the Superannuation Guarantee (Administration) Act 1992 to:
 - require SG payments to be aligned with the payment of wages,
 - require SG payments to be made on every dollar earned to achieve simplicity and ease of compliance, and
 - consider an incremental implementation strategy, similar to that used for the rollout of STP, to ensure small businesses are adequately prepared for changes to the timing of SG payments.
- Recommendation 13: The committee recommends that the Australian Government review all current compliance and recovery activities related to unpaid SG contributions, including:
 - determining which cases should remain with the ATO, and which ones could be transferred to, or shared with, the Fair Work Ombudsman or an alternative body,
 - directing the Fair Work Ombudsman to begin receiving and acting on SG non-payment complaints where appropriate, rather than simply referring the affected employees to the ATO,
 - reviewing the SG contribution regime and its management by the ATO to ascertain whether it is adequately deterring underpayments and recovering unpaid SG entitlements, and
 - improving proactive SG initiatives including strengthening and increasing penalties for deliberate and repeated acts of non-compliance, the inclusion of random audits, and the publication of enforcement activities in relation to SG payments.

There has been no official Government response to the report as yet.

'Addressing Superannuation Guarantee Non-Compliance', Australian National Audit Office (ANAO), 2022

After employer non-compliance with SG obligations was identified as a parliamentary priority in 2019-20, the ANAO conducted an audit and release a report titled '*Addressing Superannuation Guarantee Non-Compliance*' in April 2022.

The objective of the audit was to assess the effectiveness of the ATO's activities in addressing SG non-compliance. The audit found that:

- The ATO's activities in addressing SG non-compliance and their risk-based SG compliance framework are partly effective.
- The risk rating for unpaid SG is lower than the ATO's own framework would indicate if consideration of risk to revenue were applied.
- The ATO's activities are partly effective in achieving greater employer SG compliance and these activities have only had a small influence on reducing the SG gap over time.

- Compliance activities were found to be mainly corrective and reactive. Current risk-based compliance activities are limited to assessing known compliance cases and a sample of ATO held data. These activities require manually intensive use of Microsoft Excel by a few experienced staff.

The report had 3 recommendations outlined in Table 22 to improve the ATO’s compliance framework and ensure that their compliance efforts are effective in achieving greater employer compliance with their SG obligations.

Table 22. Recommendations from the ANAO report, 2022

Rec #	Recommendation	Australian Taxation Office response
1	The ATO to implement the proposed preventative approach to SG compliance as documented in the risk-based compliance strategy.	Agreed
2	<p>The ATO assess its performance measures against the Public Governance, Performance and Accountability Rule 2014 and enhance its public SG performance information by:</p> <p>(a) setting targets for measures, including the SG gap; and</p> <p>(b) including explanations for performance results, including performance changes over time.</p>	<p>(a) Agreed with qualification that the SG gap is not a suitable target measure.</p> <p>(b) Agreed.</p>
3	<p>To maximise the benefit to employees’ superannuation funds, the ATO:</p> <p>(a) make more use of its enforcement and debt recovery powers</p> <p>(b) develop performance measures for evaluating the effectiveness of debt recovery and</p> <p>(c) consider the merit of incorporating debtors holding the majority of debt into the prioritisation of debt recovery actions.</p>	Agreed

Appendix B: Previous Government action

The Superannuation Guarantee Taskforce, July 2018 to June 2021

In August 2017 the then Government announced the Superannuation Guarantee Taskforce (SG Taskforce) which was part of a package of reforms intended to give the ATO near real-time visibility over SG compliance by employers. The ATO received funding of \$20.92 million over four years for the SG Taskforce to undertake additional data modelling, and early intervention compliance activities using STP and MATS data; and conduct debt collection activities for unpaid SG.

SG Taskforce operations commenced on 1 July 2018 and ended on 30 June 2021.

The ATO advised the ANAO that, during the three years of the SG Taskforce: around 6800 audits were conducted; \$600 million of debt was raised; \$340 million was collected or credited to the debtor accounts; 4800 clients made at least one payment; and 1472 payment plans were in effect as at 3 September 2021, to a value of \$73 million.⁷⁰

The ANAO reported that the SG Taskforce “partly achieved the planned outcomes. It achieved a higher strike rate from a smaller case pool, but it did not achieve several of its objectives associated with the usage of STP and other data.”⁷¹ The ATO did not report on SG Taskforce outcomes.

Superannuation Guarantee Integrity package, March 2019

In March 2019 the then Government passed the Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 which legislated the Superannuation Guarantee Integrity package.

The package contained a range of measures targeted at employer non-compliance including:

- allow the Commissioner in cases where employers fail to comply with their SG obligations, to issue directions to pay unpaid SG and undertake SG education courses
- allow the Commissioner to disclose more information about SG non-compliance to affected employees
- extend Single Touch Payroll reporting to all employers
- facilitate more regular reporting by superannuation funds
- streamline employee commencement processes and
- improve the operation of the Commissioner’s collection and compliance measures.
 - Strengthen the rules imposing penalties on directors of non-compliant employers and
 - empower the Commissioner to seek court orders to compel an entity to comply with a requirement to provide a security deposit for an existing or future tax related liability under s 255-100 of Schedule 1 to the *Taxation Administration Act 1953*.

⁷⁰ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

⁷¹ *Ibid*.

The Superannuation Guarantee Amnesty, May 2018 to September 2020

In May 2018 the then Government announced a Superannuation Guarantee Amnesty (SG Amnesty) for unpaid SG for the period 1 July 1992 to 31 March 2018. The SG Amnesty was legislated in February 2020 Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019. The start date for the SG Amnesty was 24 May 2018 and the end date was 7 September 2020.

The SG Amnesty was a one-off opportunity for employers to voluntarily disclose and pay any shortfall that they owed for their employees without incurring the usual \$20 per employee per quarter administration fees or penalties, while retaining tax deductibility of disclosed amounts.

The ATO reported that as at 30 April 2021:

- Around 28,300 employers qualified for the amnesty, disclosing around \$911.5 million and covering around 195,600 quarters.
- The amnesty will result in a total of over \$850 million flowing to superannuation funds, benefiting the retirement savings of more than 692,200 employees. Of this:
 - \$796.1 million has been paid
 - \$62.3 million are under agreed payment plans.⁷²

ATO analysis of employers who qualified for the amnesty found that:

- 70 per cent were small businesses with an annual turnover less than \$2 million; and
- 55 per cent of employers, and 45 per cent of amounts disclosed, were from the top five high-risk industries: construction, retail trade, professional scientific and technical services, accommodation and food services, and other services.⁷³

The ATO also found that:

- 62 per cent (\$561 million) of amounts disclosed were for three financial years immediately before the Amnesty — 2015–16, 2016–17 and 2017–18.⁷⁴

The ANAO report found that that the SG Amnesty “supported the ATO’s transition to a preventative compliance approach by encouraging employers to self-correct non-compliance and is associated with higher voluntary employer lodgements.” However, “Its reporting of SG Amnesty outcomes could have been improved by adjusting the results achieved to account for the business-as-usual level of voluntary lodgements.”⁷⁵

⁷² ATO (2021), *Superannuation guarantee amnesty*, available at: www.ato.gov.au/business/super-for-employers/misled-and-late-super-guarantee-payments/the-super-guarantee-charge/Superannuation-guarantee-amnesty/#Amountsdisclosed.

⁷³ Ibid.

⁷⁴ ANAO (2022), *Addressing Superannuation Guarantee Non-Compliance*.

⁷⁵ Ibid.

Appendix C: Calculation of Regulatory Costs

Option 2

Methodology used to estimate regulatory costs for individuals

Under Option 2, a regulatory save for individuals comes from the time they would save through either greater efficiency in unpaid SG cases processed by the ATO or reduced need to engage with the ATO to raise a complaint about unpaid SG. This is due to automatic data matching given the ATO more efficient and effective data matching capabilities and timely oversight of unpaid SG liabilities.

Data for the number of individuals (15,200) benefitting from the change is based on the SG cases finalised in 2021-22 which were raised through an employee complaint with the ATO, published on their website.

Several further assumptions were made to calculate the regulatory save for individuals:

- Individuals would save an hour of their time per year from either more efficient ATO data matching processes in SG cases or reduced need to identify unpaid SG amounts and raise a complaint with the ATO. However, individuals would still be required to engage with the ATO notification process for the recovery of unpaid SG even with automatic data matching.
- The Office of Impact Analysis Regulatory Burden Measurement Framework was used to determine a non-work-related labour cost of \$36 per hour.

Based on these assumptions, the total annual average regulatory savings for individuals would be \$0.5 million.

Methodology used to estimate regulatory costs for businesses

Under Option 2, a regulatory cost for superannuation funds and digital services providers comes from the time it would take to provide appropriate guidance by updating their documentation and communications to employers regarding unpaid SG and improved capability of the ATO to identify unpaid amounts.

Data for the number of superannuation funds affected is from the January 2023 APRA superannuation bulletin (1,530) and unique digital service providers as listed on the ATO website (57).

Several further assumptions were made to calculate the regulatory costs for businesses:

- 3 staff from each superannuation fund would be required to make the updates to guidance for employers, on average taking 1.5 hours each.
- 3 staff from each digital service provider would take approximately 8 hours each to update their guidance for employers.
- The Office of Impact Analysis Regulatory Burden Measurement Framework was used to determine a work-related labour cost of \$79.63 per hour.

Based on these assumptions, the total annual average regulatory cost for businesses would be \$0.1 million.

Option 3

Methodology used to estimate regulatory costs for individuals

Under Option 3, a regulatory save for individuals comes from the time they would save through either greater efficiency in unpaid SG cases processed by the ATO or reduced need to engage with the ATO to raise a complaint about unpaid SG. This is due to SG being paid more frequently (alongside salary and wages), which alongside automatic data matching would allow earlier detection by the ATO of SG non-compliance.

Data for the number of individuals (15,200) benefitting from the change is based on the SG cases finalised in 2021-22 which were raised through an employee complaint with the ATO, published on their website.

Several further assumptions were made to calculate the regulatory save for individuals:

- Individuals would save an hour of their time per year from either more efficient ATO data matching processes in SG cases or reduced reconciling their superannuation and raising a complaint with the ATO. However, individuals would still engage with the ATO notification process about the recovery of unpaid SG even with greater SG frequency. If Option 2 and 3 are implemented together, automatic data matching will also assist individuals in saving time, but it may not result in any further regulatory save.
- The Office of Impact Analysis Regulatory Burden Measurement Framework was used to determine a non-work-related labour cost of \$36 per hour.

Based on these assumptions, the total annual average regulatory savings for individuals would be \$0.5 million.

Methodology used to estimate regulatory costs for business

Under Option 3, a regulatory cost for digital service providers, employers, superannuation funds and clearing houses comes from the significant system updates needed to be undertaken to facilitate SG paid at the same frequency as wages.

The number of unique digital service providers and superannuation clearing houses assumed to be impacted is based on the number of these entities listed on the ATO website, being 57 and 8 respectively. Treasury received data from the ATO for 2021-22 on the total number of employers (796,095) and those that do not currently pay SG with the same or greater frequency than wages (697,000). It is assumed 697,000 employers would be impacted for system changes, while all 796,095 employers would familiar themselves with any new SG payment obligations. We assume all superannuation funds would be affected, being 1,530 funds (based on the number listed in the January 2023 APRA superannuation bulletin).

A number further assumptions were made to calculate the regulatory costs for businesses, as outlined below.

System change costs

- All businesses would be required to undertake system changes to process and/or deliver more frequent SG payments. Assumptions include business areas making changes, and where necessary manager and executive approval. Hours vary between businesses depending on the magnitude of changes required.
 - *Digital Service Providers:* 5 staff, 1 manager and 1 executive manager member would be required to implement changes involving approximately three months' work (456 hours) plus review time of senior staff (12 hours).
 - *Employers:* 2 staff and 1 manager or small business owner would take 12 hours.
 - *Superannuation funds:* 3 staff and 1 manager would take 17 hours to implement and review changes.

- *Clearing houses*: 3 staff and 1 manager would be required to implement changes involving approximately one month's work (152 hours) and review time of manager (2 hours).
- Additionally, 2 staff and a manager from clearing houses would each spend 5 hours reviewing their fee structures and operating strategies. Any activities involved in implementing any required changes would be assumed to be incorporated in the time estimate above.
- The Office of Impact Analysis Regulatory Burden Measurement Framework was used to determine a work-related labour cost of \$79.63 per hour.

Based on these assumptions, the total annual average regulatory costs for system changes would be \$123.8 million.

Education costs

- All businesses would spend additional time familiarising themselves with changes to the frequency of SG payments. Depending on the impacts of the changes, the number of individuals (payroll staff or IT technicians) and time taken may vary.
 - *Digital Service Providers*: A team of 5 staff would take 2 hours to familiarise themselves.
 - *Employers*: 2 payroll staff would take 1 hour to familiarise themselves.
 - *Superannuation funds*: 2 staff would take 1 hour to familiarise themselves.
 - *Clearing houses*: 3 IT staff would take 1.5 hours to familiarise themselves.
- The Office of Impact Analysis Regulatory Burden Measurement Framework was used to determine a work-related labour cost of \$79.63 per hour.

Based on these assumptions, the total annual average regulatory costs for education would be \$12.7 million.