29/04/2025

Superannuation Access and Compliance Unit
Retirement Income and Superannuation Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: **paydaysuper@treasury.gov.au**

Dear Treasury,

Payday super – exposure draft

AustralianSuper welcomes the opportunity to provide feedback on the Government's exposure draft legislation and regulations implementing payday super.

AustralianSuper strongly supports the Government's commitment to implementing payday super. Superannuation represents wages of workers, deferred and preserved so that they can enjoy a better standard of living in retirement.

These reforms are crucial in addressing the significant problem of unpaid super. In FY22, Australians missed out on $5.1 billion in super entitlements.[1] Unpaid super affects Australians across the income levels, but the lowest income earners are particularly impacted. Payday super will significantly reduce the incidence of unpaid super and allow the ATO to detect it more quickly.

In addition, the payment of super at the same time as an employee's salary or wages allows for more time for superannuation savings to compound, leading to additional retirement savings for members.

Our comments focus on:

- The commencement date;
- Further protections required to ensure that advertising during onboarding does not undermine member outcomes (in particular, without further reforms, advertising during onboarding could undermine the intent of stapling and the default system); and
- Additional changes that we consider are required to streamline the implementation of payday super.

Further detail about our recommendations is in the **attachment**.

If you have any questions about this submission or would like to arrange a discussion, please contact Richard Murphy, Manager, Government Relations & Public Policy (**rmurphy@australiansuper.com**).

Yours sincerely

Nick Coates
Head of Government Relations & Public Policy

[1] Superannuation Members' Council, Fixing Unpaid Super Report, 2024, page 5.

Attachment – Detailed comments on proposals

Commencement date

This important measure was first announced on 2 May 2023, with a commencement date of 1 July 2026. Recognising the need to urgently address unpaid super, we support the draft legislation's proposed 1 July 2026 commencement date.

This start date should be accompanied with a facilitative compliance approach during an initial phase. During this phase, recognising that this is a significant change to the arrangements surrounding the payment of super, the ATO should work to support employers who are genuinely trying to do the right thing and comply.

Recommendation 1: Retain the 1 July 2026 start date, however, the ATO should take a facilitative approach to compliance during an initial period after commencement and publish its approach.

Advertising on onboarding platforms

We agree with the Government's aim of protecting employees from being influenced during onboarding to make uninformed decisions, open inappropriate products and unintentionally create duplicate accounts. We welcome the proposal to limit advertising to performing MySuper products and default products.

However, we consider that further restrictions in respect of advertising during onboarding are required to protect consumers.

Unlike TV, print or internet advertising, advertising during onboarding is directed to employees at the very moment they are required to make a decision about their superannuation fund. They are a captive audience. Decisions employees make about their superannuation can have long-term consequences, directly affecting how much money they have to live on in retirement.[2]

To further protect employees, an onboarding platform should be required to display an employee's stapled and default fund with at least *equal prominence* as an advertised fund. This is important because:

- Stapling has greatly improved members' retirement outcomes by reducing multiple accounts. It ensures that a member's super fund follows them across different employers if they do not choose otherwise.
- Default funds are a key component of the superannuation system. They may be listed in an award, agreed as part of an enterprise agreement, or selected by an employer with regard to a person's work and employment. Employers often see the default fund as a key benefit, offering custom insurance or fee arrangements for employees.

We welcome other reforms in the draft legislation that support the implementation of these recommendations and streamline the onboarding process (specifically, the reforms allowing an employer or their agent the ability to access an employee's stapled fund details from the ATO prior to or during the 'choice of fund' process[3]).

In light of our comments above, we make the following recommendations as to further requirements that should be included in the payday super legislation before it is finalised.

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[2] This is noted in ASIC Information Sheet 89, Communicating with employees about choice of superannuation fund: What you can and cannot do.

[3] See proposed subsections 32R(1A) and 32R(4) of the *Superannuation Guarantee (Administration) Act 1992*.

Recommendation 2: An employee's stapled fund and default fund should be displayed with at least equal prominence as an advertised fund during onboarding.

Recommendation 3: Where it can be recognised, an employee's stapled fund should be the pre-selected fund in the onboarding platform. This is consistent with the intent of stapling laws, that: "if a new employee has an existing 'stapled' superannuation fund and does not choose a fund to receive contributions, their employer is required to make contributions on behalf of the employee into the stapled fund".[4]

Recommendation 4: The proposed requirement in the regulations to disclose fees[5] should include disclosure of any fees or payments paid by onboarding platforms to the relevant employer and payroll provider to use the platform. It is important that there is transparency about the business models underpinning advertising.

Recommendation 5: Onboarding platforms should include a link to the ATO YourSuper Comparison Tool. This measure would provide another means of helping members make informed decisions about their superannuation during the onboarding process.

Business day measure instead of calendar day measure

Under the proposed law, contributions will generally need to be received by the superannuation fund within a 7-calendar day period from the day on which employees are paid qualifying earnings.

A 7-business day period would be more appropriate. This recognises the fact that superannuation payments will continue to rely on the BECS system (under which payments are made on business days) after the 1 July 2026 start date.

Given that employers are required to correct errors and remake payments within the 7-day timeframe, this would also align with the requirement on superannuation funds to refund contributions that they are unable to allocate to members no later than 3 business days after receiving the contribution.

Recommendation 6: Adopt a business day measure instead of a calendar day measure for the date payments are due to the superannuation fund.

Clearing houses

We note the Government's announcement that it will close the free ATO Small Business Superannuation Clearing House from 1 July 2026. This is an important service for small businesses, who will need to find alternative clearing house providers.

Recommendation 7: The Government should ensure that small business employers have information about alternative clearing houses including free options.

Salary sacrificing

This legislation is an opportunity to ensure that salary sacrificed superannuation payments are made in a timely manner. Any employee who elects to make additional super contributions by means of salary sacrificing under these reforms would expect that their super is paid at the same time as their wages, and indeed many employers already do this. We have, however, seen cases where employees, upon their

[4] Section 1.2 of the explanatory memorandum to the Treasury Laws Amendment (Your Future, Your Super) Bill 2021 and section 32C of the *Superannuation Guarantee (Administration) Act 1992*.

[5] Paragraph 2.13 of the draft explanatory materials state that "the regulations are expected to include requirements to clearly label advertising material, include appropriate disclaimers and disclose any fees or payments, among other things."

employer's insolvency, found that their salary sacrificed superannuation contributions were not made. This is unacceptable.

Recommendation 8: Salary sacrificed superannuation contributions should be subject to the same timing requirements as eligible contributions.